

**BERMUDA STATUTORY INSTRUMENT**

**BR 2/1996**

**U.S.A.- BERMUDA TAX CONVENTION (SECTION 10)  
REGULATIONS 1995**

*[made under sections 10 and 13 of the U.S.A.- Bermuda Tax Convention Act 1986 [title 6 item 4] and brought into operation on 19 January 1996]*

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**Citation**

1 These Regulations may be cited as the U.S.A.-Bermuda Tax Convention (Section 10) Regulations 1995.

**Interpretation**

2 In these Regulations—

"the Act" means the U.S.A.-Bermuda Tax Convention Act 1986;

"examination" means a hearing for the purpose of obtaining a deposition pursuant to section 10(1)(a);

"the Minister" means the Minister of Finance;

"section" means section of the Act;

"serve" has the meaning assigned to it by section 8;

"the Court" means the Supreme Court.

**Application of these Regulations**

3 These Regulations apply where the Minister intends to obtain information under section 10.

**PART I  
OBTAINING INFORMATION BY EXAMINATION**

**Examination orders**

4 (1) Where an examination is to be held, the Minister shall make an order under this regulation (an "examination order").

(2) An examination order—

(a) shall designate the person who is to conduct the examination (the "examiner");

(b) shall specify the person or persons who is or who are to make a deposition (a "witness" or "witnesses");

(c) shall describe, in such general or specific terms as the Minister deems fit, the information which is to be obtained in the form of a witness's deposition;

(d) shall require the examiner to send to the Minister as soon as may be a full report on the examination, when completed; and

(e) may, in addition, contain such directions as the Minister deems it necessary or expedient for him to give so that the purposes of the examination may be fulfilled.

(3) An examination order affecting a prospective witness shall be served on him but otherwise shall not be published.

**Examiner**

5 An examiner shall be a person considered by the Minister to be qualified and competent to conduct an examination.

**Attendance of, and production of documents by, witnesses**

6 An examiner may by written notice require a witness to attend at an examination, and to produce any document required from him in connection with the examination if it is in his possession, custody or control.

**Examination on oath**

7 An examiner may for the purposes of an examination take evidence from a witness upon oath and for that purpose may administer an oath or affirmation.

**Refusal of person to attend, be sworn, etc.**

8 (1) A person who, having been required under regulation 6 to attend at an examination, refuses or fails to attend or, having so attended, refuses or fails to be sworn, or to answer any question or produce any document that he is properly asked to answer or to produce, for the purpose of the examination, is guilty of an offence and may be proceeded against and, if convicted, punished, as provided in subsection (4) of section 9.

(2) Notwithstanding paragraph (1), an examiner may apply to the Court for an order requiring a person whom the Court finds to be in breach of that paragraph to attend before the examiner, or to be sworn, or to answer a question or produce a document for the purposes of the examination, as the case may be, and the Court may make an order accordingly.

(3) An order made under paragraph (2) may contain a direction that the person against whom the order is made shall pay any costs occasioned by his refusal or failure.

(4) A person who wilfully disobeys a direction given to him under paragraph (3) is guilty of contempt of court.

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**Time and place for examination**

9 An examiner shall give to the Minister a notice appointing the place and time at which, subject to any alteration that the examiner may make on the application of the Minister or any party, the examination shall take place; and the Minister shall notify all parties accordingly.

**Recording of proceedings**

10 Subject to any directions to the contrary in an examination order, an examiner may appoint a shorthand or verbatim reporter to record the proceedings at the examination.

**Legal representation**

11 A witness at an examination may at his own expense have legal representation at the examination.

**Objection to questions**

12 (1) If a person objects to being questioned, or to answering a particular question, at an examination, he may refuse to answer but shall state the grounds for his objection; and those grounds and any answer that he gives under objection shall be set out in his deposition or a statement annexed to it.

(2) If an examiner determines that it is desirable that an objection made under paragraph (1) should be overridden for the purposes of the examination, he may refer the objection to the Court under paragraph (2) of regulation 8, and the Court shall decide the issue.

(3) An examiner shall set forth in any reference that he makes to the Court under paragraph (2) his own opinion on the issue.

(4) If on a reference to the Court under paragraph (2) the Court decides the issue in favour of the person objecting, it shall order any answer that he may have given under objection in the examination to be stricken from the record of the examination.

**Fees and expenses**

13 (1) An examiner shall be paid such fees and expenses as the Minister may approve.

(2) A witness shall be paid such witness expenses as the examiner may order.

(3) A shorthand or verbatim reporter appointed under regulation 10 shall be paid such fees as the examiner may order.

(4) All fees and expenses payable under this regulation shall be paid by the U.S. Government.

**Residuary power to regulate proceedings**

14 Subject to these Regulations, an examiner may regulate the proceedings at an examination as he sees fit.

**Examiner's report**

15 (1) An examiner shall conduct his examination with all despatch and shall, as soon as the examination is concluded, send to the Minister—

- (a) the deposition of every witness; and
- (b) the report called for by sub-paragraph (d) of paragraph (2) of regulation 4.

(2) The deposition referred to in paragraph (1), in relation to a witness, is the written record of the matters deposed to by him, including any document or exhibit forming part of those matters; and that record shall be authenticated—

- (a) by the witness himself (if he is willing to authenticate it); and
- (b) by the shorthand or verbatim reporter (if there was one); and
- (c) by the examiner,

by being signed and dated by each of them in witness of its correctness.

**PART II  
OBTAINING INFORMATION BY DOCUMENT**

**Authentication of documents**

16 (1) Where information sought from a person in a notice served upon him under section 5 is in the form of an original document, or a copy of an original document, in his possession, custody or control, the Minister may include in the notice a requirement that he authenticate the document or copy by making an affidavit in the form set forth in the Schedule, or in a form as near to that form as the circumstances permit; and he shall comply with any such requirement.

(2) A document to which such an affidavit relates must be exhibited to the affidavit and be identified by a certificate signed by the person making the affidavit.

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**SCHEDULE (Regulation 16)**

**AFFIDAVIT WITH RESPECT TO DOCUMENTS OF A  
REGULARLY CONDUCTED BUSINESS ACTIVITY**

NOTE: This Affidavit must be executed by the custodian of records or some other person who can explain the record-keeping procedure.

I ..... of .....  
(address)

in Bermuda (Swear) (Affirm) (On Penalty of Perjury) (On My Oath) as follows:

(1) I am employed by .....  
(Name of business, activity or person from whom documents are sought).

(2) .....  
(Name of business, activity, or person from whom documents are sought). engages in the regular business of .....  
(Describe business or activity).

(3) My official title is .....

(4) My duties and responsibilities include: (describe relationship to books and records, i.e., custodian of books and records, or supervision over books and records, etc.).

(5) As a result of my duties and responsibilities I have knowledge of the manner in which the books and records are kept.

(6) The attached documents are original (or true copies of original) documents which I obtained from the custody and control of .....  
(Name of ..... and are all business, activity, or person from which documents are sought).

the documents, or true copies of all the documents in the possession or custody of ..... and referred to in the Notice issued by the Minister of Finance and dated .....

(7) The attached documents are: .....  
(Description of documents: e.g.,

"Ledger of the checking account of John Doe for the Month of July, 1986").

(8) It is a regular practice of this business to make and keep .....  
..... in the following manner  
(Description of documents)

.....  
(Describe manner in which documents or categories of documents are  
.....  
made or kept).

(9) It is the regular practice of this business to base its records upon information transmitted by persons with knowledge of the matters recorded, who are acting in the course of the regularly conducted business activity.

(10) It is the regular practice of this business to check the correctness of documents of the kind exhibited hereto.

(11) It is the regular practice of this business to rely on records of the kind exhibited hereto.

(12) The entries on the documents exhibited hereto were made by persons with knowledge of the matters recorded, or from information transmitted by persons with such knowledge.

(13) The persons making the entries on the documents or transmitting the information for purposes of recording it were acting in the course of regularly conducted business or activity.

(14) The entries on these documents were made at or near the time of the matters recorded, pursuant to a systematic and routine procedure for the conduct of this business.

(15) The documents exhibited hereto and marked .....  
were kept in the course of the regular activity of this business.

.....  
(Date)

.....  
(Signature)

Sworn or Affirmed before

me a .....  
notary public, judicial officer, etc.

this ..... day of ..... 19.....