
CHAPTER 369B
TAX INFORMATION EXCHANGE

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SCHEDULE — Agreement between the government of the Commonwealth of The Bahamas and The Government of the United States of America for the provision of information with respect to taxes and for other matters.

CHAPTER 369B

TAX INFORMATION EXCHANGE

An Act to make provisions authorizing the enforcement of certain obligations of The Bahamas under an agreement on taxation matters signed on 25th January, 2002 at Washington D.C. in the United States of America between the government of The Bahamas and the government of the United States of America, and to provide for other connected or incidental purposes.

*22 of 2003
17 of 2010
60 of 2011*

[Assent 22nd December, 2003]

[Commencement 1st January, 2004]

1. This Act may be cited as The Bahamas and the United States of America Tax Information Exchange Agreement Act.

Short title.

2. (1) In this Act —

Interpretation.

“Agreement” means the arrangements between The Bahamas and the United States entered into on 25th January, 2002 at Washington, D. C. in the United States of America by the Government of The Bahamas and the United States Government for the provision of information with respect to taxes and for other matters, the text of which is set forth in the Schedule;

Schedule.

“Article” means Article of the Agreement;

“business” means a profession or trade;

“civil matter” means an examination, investigation or proceeding relating to United States federal tax administration and enforcement with respect to conduct that does not constitute a criminal tax offence under the laws of the United States that is pending at the time of a request and which relates to a taxable period commencing on or after January 1, 2006;

“Competent Authority” means —

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- (a) in the case of The Bahamas, the Financial Secretary in the Ministry of Finance; and
 - (b) in the case of the United States, the Secretary of the Treasury or his delegate;

“criminal matter” means an examination, investigation or proceeding concerning conduct that constitutes a criminal tax offence under the laws of the United States that is pending at the time of a request and which relates to a taxable period commencing on or after January 1, 2004;

“document” includes any book, page, statement, account, writing or record, howsoever recorded or stored;

“information” means any fact or statement, in any form, that is foreseeably relevant or material to United States Federal tax administration and enforcement, including (but not limited to) —

- (a) the testimony of an individual; and
- (b) documents or records;

“judge” means a Judge of the Supreme Court;

“Minister” means the Minister of Finance;

“pending matter” has the meaning assigned to it under Article 1;

“premises” includes any place whatsoever and any means of transport;

“privileged communication” means a communication that —

- (a) is a confidential communication, whether oral or written, passing between —
 - (i) counsel and attorney in his or her professional capacity and another counsel and attorney in such capacity; or
 - (ii) a counsel and attorney in his or her professional capacity and his or her client, whether made directly or indirectly through an agent of either;
- (b) is communicated or given to a counsel and attorney by, or by a representative of, a client of his or hers in connection with the

giving by the counsel and attorney of legal advice to the client;

- (c) is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and
- (d) is not made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act;

“regulation” means regulations made under section 13;

“request” means an application made pursuant to Article 2 for assistance;

“resident” has the meaning assigned to it by Article 1;

“tax” has the meaning assigned by Article 1;

“the United States” has the meaning assigned by Article 1;

“the U.S. Government” means the Government of the United States.

(2) In this Act, a reference to the Minister, in relation to any function to be performed by the Minister under this Act, includes a reference to the Financial Secretary as the duly designated Competent Authority under the Agreement.

(3) A reference in this Act to the performance of a function includes reference to the performance of a duty or the exercise of a power or right.

3. (1) This Act has effect for the purpose of enforcing the giving of assistance by persons in The Bahamas in connection with the performance of the obligations assumed by The Bahamas under the Agreement and shall remain in force only for the duration of the Agreement.

Legal effect
of this Act.

(2) Subject to subsections (3) and (4), the Minister in performing his functions under this Act, is not restricted by any law or any rule of law relating to confidentiality except as expressly provided in the Agreement.

(3) For the avoidance of doubt it is hereby expressly declared that nothing in this Act shall be construed as imposing any obligation on the Government of The

Bahamas to supply information that constitutes or would reveal a privileged communication.

(4) Nothing in this Act shall be construed as imposing on the Government of The Bahamas any obligation to —

- (a) carry out administrative measures at variance with the laws and administrative practices of The Bahamas;
- (b) supply particular items of information which are not obtainable under the laws or in the normal course of the administration of The Bahamas;
- (c) supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process;
- (d) supply information the disclosure of which would, in the judgment of the Government of The Bahamas, be contrary to national security or public policy in The Bahamas; or
- (e) supply information that relates to a matter under United States federal tax law that is barred by the applicable statute of limitations.

4. (1) A request must be in writing.

(2) A request must be signed by a senior official designated by the U.S. Government.

(3) A request shall include the following particulars —

- (a) that by the request, the U.S. Government seeks the information identified in the request;
- (b) that the information requested relates to the carrying out of the laws of the United States following the procedure as prescribed in Article 2;
- (c) the identity of the taxpayer in respect of whom the information is sought;
- (d) whether or not the taxpayer is a resident of the United States;
- (e) a description of the requested information including the type and form of information being sought;
- (f) the period of time with respect to which the information is requested;
- (g) that the information relates to an examination of the taxpayer identified in the request for a

Procedure in respect of a request.

pending matter relating to a taxable period of the taxpayer, being the period so specified in the request;

- (h) where the request also seeks information relating to a time frame outside the taxable period specified in the request, the request must clearly establish the connection between that taxable period and the time frame for the information;
- (i) that the period in respect of which the information is sought is not barred by the applicable statute of limitation of the United States;
- (j) the likely location of the information and, to the extent known, the name and address of a person in The Bahamas that has or may have the information in his possession, custody, or control;
- (k) whether the information is required for a civil matter or for a criminal matter;
- (l) where the request is in respect of a civil matter the law imposing the tax must be specified;
- (m) where the request involves a criminal matter the law contravened or believed to have been contravened must be specified;
- (n) a declaration that the information being sought is foreseeably relevant or material to United States federal tax administration and enforcement with respect to the person identified in paragraph (c) above;
- (o) the reasons for believing that the information requested is foreseeably relevant or material to tax administration and enforcement with respect to the person identified in paragraph (c) of this subsection.

60 of 2011, s. 2.

(4) In addition to the requirement under subsection (2) of this section, in the case where the information requested is in respect of a matter which relates to a person who is not resident in the United States or does not constitute a criminal matter, a senior official designated by the U.S. Government must certify that the request is foreseeably relevant or material to the determination of a tax liability of a taxpayer of the United States, or to the criminal liability of a person under the tax laws of the United States, as the case may be.

Power to require production of information.

5. (1) Subject to this section, where the Minister has received a request in respect of which the requirements of section 4 are fulfilled, he shall by notice in writing under this section served upon the person referred to in paragraph (j) of subsection (3) of that section direct him to deliver to the Minister the information referred to in that paragraph.

(2) For the purposes of subsections (3) and (4) of this section, a subsection (2) matter is a matter —

- (a) with respect to which information is sought in a request; and
- (b) which relates to a person who is not a resident of the United States,

whether or not the requirements of section 4 are fulfilled in relation to the request.

(3) Where the Minister receives a request which seeks information with respect to a matter which either —

- (a) is a subsection (2) matter; or
- (b) does not constitute a criminal matter,

he shall not issue a notice under this section to any person unless the Minister receives, in accordance with subsection (4) of section 4 certification from a senior official designated by the Secretary of the Treasury of the United States that the information sought by the request is foreseeably relevant or material to the determination of the federal tax liability of a United States taxpayer, or the criminal tax liability of a person under the federal tax laws of the United States, as the case may be.

(4) Notwithstanding the condition for certification set out under subsection (3), where the Minister receives a request which seeks information with respect to a subsection (2) matter, he shall not issue a notice under this section to any person unless the Minister is satisfied that the information is foreseeably relevant or material to the administration and enforcement of the federal tax laws of the United States.

(5) A notice issued under subsection (1) of this section must —

- (a) contain the relevant details of the request to which the notice relates; and
- (b) specify the time within which information sought by the request is to be delivered to the Minister, which time shall not be more than

twenty-eight days, commencing with the day on which the notice was served.

(6) The Minister may extend the time specified in the notice beyond twenty-eight days where he considers that the circumstances warrant such an extension.

(7) Subject to subsection (8), a person who is directed by a notice under subsection (1) to deliver information to the Minister shall deliver it to the Minister in accordance with the notice if the information is in the possession, custody or control of that person.

(8) A person complies with a duty under this section to deliver information to the Minister if he makes the information available to him.

(9) A direction given in a notice under this section to a person is an absolute defence to any claim brought against him in respect of any act of his that was done, or any omission of his that was made, in good faith in obedience to the direction.

(10) Where the Minister receives a request in respect of which the requirements of section 4 are fulfilled and such information is publicly available through a registry within a government department, the Minister may waive the requirements for notice under this section.

6. (1) The Minister, or an officer designated by him, may apply to a judge in accordance with the provisions of this section for a warrant to enter upon premises for the purpose of enforcing a notice issued under section 5.

Power to enter premises to obtain information.

(2) Any officer so designated under subsection (1) of this section must produce to the judge the written authority signed by the Minister.

(3) If, on information given on oath by such an officer, a judge is satisfied that there is reasonable ground for suspecting that an offence against this Act has been, or is being, or is about to be, committed on any premises, being an offence by reason of which the delivery to the Minister of information sought by a request is endangered, then the judge may issue a warrant in writing authorizing an officer of the Ministry to enter the premises at any reasonable time, if necessary by force, within fourteen days commencing on the day of the issue of the warrant, and search such premises.

(4) In issuing a warrant under this section, the judge may impose such restrictions upon the execution of the warrant as he may deem proper in the circumstances.

(5) An officer entering premises by virtue of a warrant under this section may be accompanied by a police officer and such other person and equipment authorized by the Minister as he considers necessary to enable him to enforce the warrant, and on leaving such premises entered by virtue of a warrant under this section, shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as the officer found them.

(6) On entering premises by virtue of a warrant under this section, the officer may seize and remove any article or information relevant to a request under this Act wheresoever found which he has reasonable cause to believe may contain information relevant to a request, and shall immediately deliver to the Minister such article and information so seized and removed.

(7) Where entry to premises has been made by virtue of a warrant under this section and the officer making the entry has seized any article or information under the authority of the warrant, the officer shall prepare a list of such articles or information and, if so requested by a person showing himself either —

- (a) to be the occupier of the premises; or
- (b) to have had possession or custody of those articles or information immediately before the seizure,

provide that person with a copy of that list.

(8) Where articles and information are seized under the authority of a warrant and it is shown that access to such articles and information is required for the continued conduct of the business or affairs of any person, the Minister shall afford to that person reasonable access to those articles commencing on the day on which he obtained the articles or information.

7. (1) Subject to subsection (2), where the Minister obtains articles by virtue of section 5 or 6, he shall —

- (a) unless he returns it pursuant to paragraph (c), not disclose or reveal to any person the contents or import of the articles or information, for

Provision
supplementary to
sections 5 and 6.

twenty days commencing on the day on which he obtained the articles or information;

- (b) after the expiry of the twenty days, if the articles or information in his opinion contains information sought by a request, he may make copies of such information as relates to the request for onward transmission to the Competent Authority of the United States; and
- (c) whether or not the articles or information contains information sought by a request, return the articles or information as soon as practicable to the person from whom he obtained it.

(2) The Minister may extend the time period under paragraph (a) of subsection (1) for the holding of any article or information without further disclosure in the event a taxpayer or interested person has objected to the Minister providing the assistance requested or otherwise seeking judicial review of or other lawful recourse against an act of the Minister pursuant to section 12.

8. (1) A document to be served under this Act is to be treated as properly served on the person to whom it is addressed if it is served in the manner provided under subsection (2).

Service of documents.

(2) The document may be served on or delivered to the person personally or by being sent by registered post in his name to his last known business or private address.

(3) The time period specified in section 7 of the Interpretation and General Clauses Act shall not apply to this section.

Ch. 2.

9. (1) A person who —

- (a) contravenes subsection (7) of section 5; or
- (b) wilfully obstructs an officer executing a warrant under section 6 or a person lawfully accompanying him pursuant to subsection (5) of that section,

Offences.

commits an offence.

(2) Any person who, in connection with delivering information pursuant to subsection (5) of section 5, wilfully tampers with or alters any information or any part of such information so that the information or any part of such information is false when received by the Minister, commits an offence.

(3) Any person who wilfully alters, destroys, damages or conceals any information requested by the Minister pursuant to section 5 commits an offence.

(4) Any person who commits an offence under this section shall be liable on summary conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding twelve months or to both.

17 of 2010, s. 2.

Depositions, etc.

10. (1) Where a request so stipulates, the Minister shall obtain the information sought by the request in the form of —

- (a) depositions of witnesses; or
- (b) original documents or copies of original documents, being depositions so made, and documents or copies so certified or authenticated, as the laws and administrative practices of The Bahamas permit.

(2) Regulations shall be made, conferring such functions on such persons as the regulations may specify, so that full effect can be given to subsection (1).

Advisory
Committee.

11. (1) The Minister shall establish and maintain a committee, to be known as “the Tax Agreement Advisory Committee” for the purpose of advising him on matters of policy in connection with the performance of his functions under this Act.

(2) The Tax Agreement Advisory Committee (“the Committee”) shall consist of such persons (not fewer than five in number), to be appointed by the Minister, as he thinks fit, but so that not fewer than three of the Committee’s members shall be persons appearing to him to be knowledgeable about the matters dealt with in the Agreement.

(3) The Minister shall appoint a person to be the Committee’s Chairman.

(4) Subject to Article 3(2) dealing with confidentiality, the Minister may refer to the Committee any matter mentioned in subsection (1), and shall take into consideration any advice that the Committee may tender on that matter.

Judicial review.

12. Nothing in this Act shall exclude or restrict the right of any person aggrieved by the performance by the Minister or any other person with any function under this Act to challenge the performance of that function, in so far

as it affects such person, either by seeking review of a decision by the Supreme Court or by taking any other action which is lawfully available.

13. (1) The Minister may make regulations — Regulations.

- (a) prescribing anything that is required or permitted by this Act to be prescribed by regulations, or that the Minister thinks is necessary to be prescribed for carrying out the provisions of this Act; and
- (b) creating offences under this Act and prescribing penalties for such offences not exceeding the penalties prescribed under section 9.

(2) The provisions of section 31 and 32 of the Interpretation and General Clauses Act shall not apply in relation to any regulations made by the Minister under this Act but instead all such regulations shall be subject to affirmative resolution of the House of Assembly. Ch. 2.

(3) In subsection (2), the expression “subject to affirmative resolution of the House of Assembly” in relation to regulations means that any such regulations are not to come into operation unless and until approved by a resolution of the House of Assembly.

13A. (1) Subject to subsection (2), the Minister may allow representatives of the competent authority of the United States of America to interview individuals and examine records in The Bahamas upon being satisfied that — Tax Interviews
and
examinations.
17 of 2010, s. 3.

- (a) the laws of The Bahamas regarding entry into The Bahamas have been complied with; and
- (b) the written consent of the persons to be interviewed or whose records are to be examined has been provided to the competent authority of The Bahamas.

(2) The conduct of any interview or examination under this section shall be subject to any additional conditions that the Minister, in his discretion, may set from time to time.

14. This Act binds the Crown. The Crown.

SCHEDULE**(Section 2)**

**AGREEMENT BETWEEN
THE GOVERNMENT OF THE COMMONWEALTH OF
THE BAHAMAS AND THE GOVERNMENT OF THE
UNITED STATES OF AMERICA FOR THE PROVISION
OF INFORMATION WITH RESPECT TO TAXES AND
FOR OTHER MATTERS**

WHEREAS The Bahamas has taken significant steps in the international fight against money laundering and other financial crimes, and the United States recognizes The Bahamas as a cooperating country with respect to all relevant international efforts to counter money laundering activities;

WHEREAS the United States has recognized the efforts on the part of The Bahamas to ensure that the same financial standards apply in The Bahamas as apply in other recognized international financial centers;

WHEREAS, the Government of The Bahamas and the Government of the United States (the “Contracting Parties”), wish to enter into an agreement (the “Agreement”) to establish the terms and conditions governing the provision of information by the Government of The Bahamas to the Government of the United States with respect to certain taxes; and

WHEREAS the Contracting Parties wish to enter into a form of agreement that allows United States taxpayers to deduct expenses allocable to a convention, seminar or similar meeting held in The Bahamas in the same manner and to the same degree that such a deduction would be permitted if such meeting were held in the United States,

NOW, THEREFORE, the Contracting Parties agree as follows:

ARTICLE 1 – DEFINITIONS

1. In this Agreement, unless otherwise defined:
 - (a) “civil matter” means an examination, investigation or proceeding relating to United States federal tax administration and enforcement with respect to conduct that does not constitute a criminal tax offense under the laws of the United States;
 - (b) “Competent Authority” means:
 - (i) in the case of the United States, the Secretary of the Treasury or his delegate; and

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- (ii) in the case of The Bahamas, the Minister of Finance or his delegate;
 - (c) “criminal matter” means an examination, investigation or proceeding concerning conduct that constitutes a criminal tax offense under the laws of the United States;
 - (d) “information” means any fact or statement, in any form, that is foreseeably relevant or material to United States federal tax administration and enforcement, including, but not limited to,
 - (i) testimony of an individual; and
 - (ii) documents or records;
 - (e) “pending matter” means an examination, investigation or proceeding under the federal tax laws of the United States that is pending at the time the request under Article 2 is made, and
 - (i) in the case of a criminal matter, relates to a taxable period commencing on or after January 1, 2004; or
 - (ii) in the case of a civil matter, relates to a taxable period commencing on or after January 1, 2006;
 - (f) “person” includes an individual and a partnership, corporation, trust, estate, association or other legal entity;
 - (g) “privileged communication” means a communication that
 - (i) is a confidential communication, whether oral or written, passing between —
 - (a) a counsel and attorney in his or her professional capacity and another counsel and attorney in such capacity; or
 - (b) a counsel and attorney in his or her professional capacity and his or her client, whether made directly or indirectly through an agent of either;
 - (ii) is communicated or given to a counsel and attorney by, or by a representative of, a client of his or hers in connection with the giving by the counsel and attorney of legal advice to the client;

- (iii) is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and
- (iv) is not made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act;
- (h) “resident” means:
 - (i) a citizen of the United States or any person, other than a company, resident in the United States for the purpose of United States tax; but in the case of a partnership, estate or trust, only to the extent that the income derived by such partnership, estate or trust is subject to United States tax as the income of a resident, either in its hands or in the hands of its partners or beneficiaries; and
 - (ii) a company created under the laws of the United States, any state or the District of Columbia;
- (i) “tax” means all federal taxes in the United States;
- (j) for purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised,
 - (i) “United States” means the United States of America, including Puerto Rico, the Virgin Islands, Guam and any other United States possession or territory;
 - (i) “The Bahamas” means The Commonwealth of The Bahamas.

ARTICLE 2 - PROVISION OF INFORMATION WITH RESPECT TO UNITED STATES TAXES

1. The Competent Authority of the United States shall only make a request for information pursuant to this Article when the Competent Authority of the United States is unable to obtain the requested information by other means, having made all reasonable efforts to do so.

2. Upon receipt of a request made in conformity with the provisions of this Article, the Competent Authority of The Bahamas shall, subject to the provisions of paragraph 7 of this Article, make all reasonable efforts to provide to the Competent Authority of the United States information with respect to United States federal taxes.

3. Any request for information made by the Competent Authority of the United States pursuant to this Article shall be made in connection with a pending matter of a United States taxpayer and shall be framed with the greatest degree of specificity possible. In all cases, such request shall specify in writing the following:

- (a) the legal name of the person about whom the request is made;
- (b) the type of information requested;
- (c) the period of time with respect to which the information is requested;
- (d) the likely location of the information;
- (e) the matter under United States federal tax law with respect to which the information is sought and whether that matter is criminal or civil in nature; and
- (f) the reasons for believing that the information requested is foreseeably relevant or material to United States federal tax administration and enforcement with respect to the person identified in subparagraph (a) of this paragraph.

4. This Article shall not apply to the extent that the requested information:

- (a) relates to a matter under United States federal tax law that is barred by the applicable statute of limitations; or
- (b) constitutes or would reveal a privileged communication.

5. Where the Competent Authority of the United States requests information with respect to a matter which (i) relates to a person not resident in the United States or (ii) does not constitute a criminal matter, a senior official designated by the Secretary of the Treasury of the United States shall certify that such request is foreseeably relevant or material to the determination of the federal tax liability of a taxpayer of the United States or the criminal liability of a person under the federal tax laws of the United States. If information is requested relating to persons not resident in the United States, it shall also be established to the satisfaction of the Competent Authority of The Bahamas that such information is foreseeably relevant or material to the administration and enforcement of the federal tax laws of the United States.

6. If specifically requested by the Competent Authority of the United States, the Competent Authority of The Bahamas

shall provide information pursuant to this Article in specified forms to be admissible in judicial or administrative proceedings in the United States to the same extent that such specified forms can be obtained under the laws and administrative practices of The Bahamas. The specified forms shall include depositions of witnesses and authenticated copies of original documents, including books, papers, statements, records, accounts, and writings.

7. Nothing in this Agreement shall be construed so as to impose on the Government of The Bahamas the obligation to:

- (a) carry out administrative measures at variance with the laws and administrative practices of The Bahamas;
- (b) supply particular items of information which are not obtainable under the laws or in the normal course of the administration of The Bahamas;
- (c) supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process; or
- (d) supply information the disclosure of which would, in the judgment of the Government of The Bahamas, be contrary to national security or public policy in The Bahamas.

8. Notwithstanding paragraph 7, the Competent Authority of The Bahamas shall have the authority to obtain and provide information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity or information respecting ownership interests in a person.

9. In connection with a request for information under this Article:

- (a) a claim of privilege under the laws of the United States shall be determined exclusively by the courts of the United States; and
- (b) a claim of privilege under the laws of The Bahamas shall be determined exclusively by the courts of The Bahamas.

ARTICLE 3 – PROTECTION OF INFORMATION WITH RESPECT TO UNITED STATES FEDERAL TAXES

1. Information provided to the Competent Authority of the United States pursuant to this Agreement shall be disclosed only to departments, agencies and judicial and administrative bodies of the Government of the United States, and to employees and agents thereof, involved in the —

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- (a) determination, assessment, and collection of; and
 - (b) administration of, the recovery and collection of claims derived from, the enforcement or prosecution in respect of, or the determination of appeals in respect of;

those United States federal taxes with respect to which the relevant request was made pursuant to this Agreement, or the oversight of the above. Such departments, agencies and judicial and administrative bodies, and the employees and agents thereof, shall use such information only for the purposes listed in this paragraph. Such departments, agencies and judicial and administrative bodies, and the employees and agents thereof, may disclose such information in connection with court proceedings related to those federal taxes with respect to which the relevant request was made pursuant to this Agreement.

2. The Competent Authority of The Bahamas shall treat any request for information received from the United States pursuant to this Agreement as confidential and shall only disclose such information as necessary to carry out its obligations under this Agreement. Such requests may be disclosed in connection with court proceedings related to the performance of the obligations of The Bahamas under this Agreement.

3. Nothing in this Agreement shall be construed to permit the Government of the United States to share information received pursuant to this Agreement with an agency or employee of any other government.

4. Information that is provided to the Government of the United States pursuant to this Agreement before January 1, 2006 concerning a criminal matter shall not be used in connection with any other matter without prior written consent of the Competent Authority of The Bahamas. With respect to information that is provided to the Government of the United States pursuant to this Agreement on or after January 1, 2006, the Competent Authority of the United States shall provide for written notice to the Competent Authority of The Bahamas before using such information for a type of United States federal tax matter other than the one for which it was requested.

ARTICLE 4 – QUALIFIED INTERMEDIARIES

For the purposes of considering an application by a person in The Bahamas to enter into a Qualified Intermediary Withholding Agreement (within the meaning of Revenue Procedure 2000-12) with the Internal Revenue Service of the

United States, The Government of the United States shall certify that The Commonwealth of The Bahamas has taken significant steps towards achieving effective rules and/or procedures for providing tax information to the United States of America for both civil tax administration and criminal tax enforcement purposes, and the Internal Revenue Service of the United States of America has determined The Bahamas’ “know your customer” rules to be acceptable within the meaning of Section 3 of Revenue Procedure 2000-12.

ARTICLE 5 – CONVENTION TAX TREATMENT

A United States taxpayer may deduct from income costs incurred with respect to attendance at a conference or convention held in The Bahamas in the same manner and to the same extent that such taxpayer is permitted to deduct such costs with respect to attendance at a conference or convention held in the United States.

ARTICLE 6 – ADMINISTRATIVE PROVISIONS

1. The Competent Authorities of the Contracting Parties shall enter into an agreement (the “Competent Authority Agreement”) regarding implementation of this Agreement.

2. The Competent Authorities of the Contracting Parties shall endeavor to resolve by mutual agreement any disputes arising as to the interpretation or application of this Agreement.

3. The Competent Authorities of the Contracting Parties may communicate directly for the purposes of reaching an agreement under this Article.

4. The Government of the United States shall reimburse the Government of The Bahamas for all direct costs incurred in providing information pursuant to this Agreement as provided in the Competent Authority Agreement. The Competent Authorities of the Contracting Parties shall consult from time to time with a view to minimizing such costs.

ARTICLE 7 – ENTRY INTO FORCE, EFFECTIVE DATE, MODIFICATION AND TERMINATION

1. This Agreement shall enter into force upon an exchange of notes by the duly authorized representatives of the Contracting Parties, confirming their agreement that both sides have met the constitutional and statutory requirements necessary to effectuate this Agreement.

2. The provisions of Articles 2 and 3 shall take effect —

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- (a) on January 1, 2004 with respect to requests for information made in connection with a criminal matter; and
 - (b) on January 1, 2006 with respect to requests for information made in connection with a civil matter.

3. The provisions of Article 5 shall take effect on January 1, 2006.

4. The provisions of this Agreement, with the exception of those identified in paragraphs 2 and 3 of this Article, shall take effect upon the entry into force of this Agreement.

5. The effective date provisions set forth in paragraph 2 of this Article are established in the expectation that the United States will enter into arrangements with certain other off-shore financial centers for the provision of information with respect to taxes. If the United States has not entered into such arrangements by January 1, 2004, or if the United States, at any time, enters into such arrangements that differ in material respect from the provisions of this Agreement, the Government of The Bahamas and the Government of the United States shall hold consultations concerning appropriate modifications to this Agreement.

6. If, at any time after the entry into force of this Agreement, the Organization for Economic Cooperation and Development or other international organization develops a model agreement on tax information exchange, a Contracting Party may propose modifications to this Agreement for the purpose of bringing this Agreement into conformity with the model agreement. Upon receipt of such a proposal, the other Contracting Party shall enter into good faith negotiations concerning the proposal.

7. This Agreement shall remain in force until terminated by one of the Contracting Parties. Either Contracting Party may terminate this Agreement at any time upon three months prior written notice transmitted through diplomatic channels.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective governments, have signed this Agreement.

DONE at Washington, in duplicate, this twenty-fifth day of January, 2002.

FOR THE GOVERNMENT

FOR THE GOVERNMENT

OF THE COMMONWEALTH
OF THE BAHAMAS:

OF THE UNITED STATES
OF AMERICA:

Sgd: William C. Allen

Sgd: Paul A. O'Neill

Minister of Finance

Secretary of the Treasury