

M O N T S E R R A T

No. 21 of 2010

**TAX INFORMATION EXCHANGE ACT**

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**I ASSENT**

**Peter Waterworth  
GOVERNOR**

**DATE: 6.1.2011**

**M O N T S E R R A T**

**N O . 2 1 O F 2 0 1 0**

AN ACT TO PROVIDE FOR THE MUTUAL EXCHANGE OF INFORMATION ON TAXATION MATTERS BETWEEN MONTSERRAT AND OTHER COUNTRIES; AND FOR RELATED MATTERS.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council of Montserrat and by the Authority of the same as follows—

**PART 1**

**PRELIMINARY**

**Short title**

- 1.** This Act may be cited as the Tax Information Exchange Act, 2010.
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**Interpretation**

2. In this Act—

“**Authority**” means the Tax Information Authority designated under section 7;

“**designated competent authority**” means the competent authority specified in a scheduled agreement or the competent authority designated by a scheduled country and in respect of Montserrat, the Tax Information Authority;

“**effective date**” means—

(a) in relation to a scheduled agreement, the date of entry into force stipulated in the agreement; and

(b) in relation to a scheduled country, the date the Order made under section 6 adding the country to the Schedule comes into force;

“**electronic**” has the same meaning as in the Electronic Transactions Act;

“**information on taxation matters**” means any fact, statement, document or record in whatever form respecting a taxation matter, and includes—

(a) any fact, statement, document or record held by any bank, other financial institution, or any person, including any nominee and trustee, acting in an agency or fiduciary capacity;

(b) any fact, statement, document or record regarding the beneficial ownership of any company, partnership and any other person, including—

(i) in the case of a collective investment fund, information on any shares, units and other interests; and

(ii) in the case of a trust, information on any settlors, trustees and beneficiaries;

(c) articles of evidence relating to a taxation matter;

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**“items subject to legal privilege”** means items subject to client legal privilege under the laws of Montserrat;

**“judge”** means a judge of the Eastern Caribbean Supreme Court and includes a Commissioner of the High Court appointed under section 27 of the Supreme Court Act;

**“legal representative”** means a person who is authorised to practise law in Montserrat;

**“Minister”** means the Minister responsible for finance;

**“party”** means a party to a scheduled agreement;

**“proceedings”** has the same meaning as in section 2 of the Supreme Court Act;

**“request”** means—

(a) a request made by a designated competent authority to another in accordance with a scheduled agreement or in accordance with the scheduled country requirements;

(b) a request made by Montserrat to a designated competent authority of a scheduled country;

**“requesting designated competent authority”** means a designated competent authority who makes a request for information on taxation matters under this Act;

**“Rules”** means the Rules for the Exchange of Information on Taxation Matters made under section 28;

**“scheduled agreement”** means an agreement for the provision of information on taxation matters set out in an Order made under section 5;

**“scheduled country”** means a country listed in the Schedule by the Governor in Council under section 6;

**“scheduled country requirements”** means the Rules and any other conditions imposed on a scheduled country under section 6; and

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“**taxation matter**” includes a matter relating to the collection, calculation or assessment of a tax covered by a scheduled agreement or by the scheduled country requirements.

### **Purpose**

3. The purpose of this Act is to—
- (a) give legal effect to a scheduled agreement; and
  - (b) enable information on taxation matters to be provided to a scheduled country on its request under the scheduled country requirements.

### **Application**

4. (1) This Act does not permit a request to be made or executed prior to the later of the following—

- (a) the effective date; and
- (b) the date of commencement of this Act.

(2) This Act permits the provision of information on taxation matters prior to the date of commencement of this Act.

(3) Subject to subsections (1) and (2), a scheduled agreement has legal effect in Montserrat for the period specified in the Agreement.

(4) This Act, a scheduled agreement and the scheduled country requirements are to be construed as requiring the provision solely of information on taxation matters in the country of the requesting designated competent authority respecting—

- (a) a person who is subject, or potentially subject, to a tax covered by the scheduled agreement or the scheduled country requirements; and
  - (b) any property which is relevant to the taxation matter.
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## PART 2

BILATERAL AND UNILATERAL MECHANISMS FOR THE EXCHANGE OF  
INFORMATION**Scheduling Agreements**

5. (1) Subject to subsection (2), the Governor in Council may give legal effect to an agreement for the exchange of information on taxation matters entered into with another country by Order published in the *Gazette* setting out the full text of the agreement and inserting in Part A of the Schedule—

- (a) the parties;
- (b) the effective date; and
- (c) the designated competent authority.

(2) An Order made under this section is subject to a negative resolution.

**Scheduling Countries**

6. (1) In this section—

“**eligible country**” means a country in respect of which there is—

- (a) a bilateral agreement or arrangement between Montserrat or the United Kingdom and the country that facilitates trade and investment in Montserrat or the United Kingdom by nationals or residents of that country;
- (b) a Double Taxation Agreement between Montserrat or the United Kingdom and the country, if that Agreement does not cover exchange of information on taxation matters to the Organization for Economic Cooperation and Development (OECD) standard.

(2) The Governor in Council may bind Montserrat, subject to subsections (3) and (4), to execute requests from an eligible country, by Order published in the *Gazette* inserting in Part B of the Schedule—

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- (a) the name of the country;
- (b) the date that the country was notified of the intention to schedule it;
- (c) the effective date; and
- (d) the designated competent authority for the country.

(3) The Order shall also set out the scope of assistance to be offered to the country and any other conditions subject to which requests are to be executed.

(4) An Order made under this section is subject to a negative resolution.

(5) The Governor in Council shall notify a scheduled country of any change to the Schedule in respect of the scheduled country and the grounds for it.

### PART 3

#### THE TAX INFORMATION AUTHORITY

##### **Tax Information Authority**

7. (1) The Comptroller of Inland Revenue is hereby designated the Tax Information Authority.

(2) The Authority shall exercise his or her functions acting alone, or through a person designated by the Authority to act on his or her behalf, and is considered to act in an administrative capacity.

##### **Functions and powers of the Authority**

8. (1) The functions of the Authority include—

- (a) subject to this Act, the Rules and any regulations made under the Act, executing requests, including providing assistance in relation to—
  - (i) serving documents,
  - (ii) taking the testimony or statement of any person, and
  - (iii) executing searches and seizures,



- (b) ensuring compliance with a scheduled agreement and with the scheduled country requirements;
- (c) advising the Minister on matters respecting a proposal or agreement for the provision of information on taxation matters, and any other related matter requested by the Minister;
- (d) making determinations under the terms of a scheduled agreement or the scheduled country requirements as to any costs and the apportionment of these costs;
- (e) entering into agreements with, or giving directions to, scheduled competent authorities, respecting the operation of and procedures for the exchange of information on taxation matters; and
- (f) performing any other functions prescribed under this Act.

(2) The Authority has the power to do all things necessary or convenient for the exchange of information on taxation matters under this Act, the relevant scheduled agreement or the relevant scheduled country requirements.

#### PART 4

##### EXECUTION OF REQUESTS

##### **Notification of Attorney General required**

9. The Authority shall notify the Attorney General of any request received by the Authority, including particulars of the request.

##### **Powers of Attorney General**

10. (1) The Attorney General is entitled, in a manner analogous to an *amicus curiae*, to take part in any proceedings, whether judicial or administrative, arising directly or indirectly from a request received by the Authority.

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(2) If the Attorney General considers that the execution of a request is contrary to public policy, he or she may issue a certificate to that effect and the Authority shall deny the request.

#### **Procedures for the execution of a request**

11. (1) Upon receipt of a request, and subject to the provisions of sections 10(2) and 14(1), the Authority shall determine whether the request is in compliance with the relevant scheduled agreement or the scheduled country requirements as the case may be and, if it determines that there is compliance, it shall execute the request in accordance with this Act and the relevant scheduled agreement or the scheduled country requirements as the case may be.

(2) The Authority may request any additional information from the requesting designated competent authority that may be necessary to assist the Authority in executing the request.

#### **Receiving testimony**

12. (1) If, pursuant to a request, a person is required to testify, the Authority shall apply to a judge for the judge to receive the testimony that appears to the judge to be appropriate for the purpose of giving effect to the request, and the Authority shall provide the testimony to the requesting designated competent authority.

(2) The judge may issue a subpoena, take evidence under oath and exercise any other power that the High Court may exercise for the purpose of compelling testimony.

(3) A person is not compelled in proceedings under this section to give evidence that he or she cannot be compelled to give in proceedings before a court in Montserrat.

#### **Production of evidence other than for proceedings or related investigations**

13. (1) If, pursuant to a request, the Authority considers it necessary to obtain information on a taxation matter from a person for a purpose other than proceedings in the country of the requesting designated competent authority or investigations related

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to those proceedings, the Authority shall issue a notice in writing requiring the production of the information specified in the notice.

- (2) The notice may require the information to be —
  - (a) provided within a specified time;
  - (b) provided in the form as the Authority may require; and
  - (c) verified or authenticated in the manner that the Authority may require.
- (3) If information is produced under this section—
  - (a) the Authority may take copies or extracts of it; and
  - (b) where a person claims a lien on a document, the production is without prejudice to the lien.
- (4) A notice under this section—
  - (a) does not confer a right to production of, or access to, items subject to legal privilege; and
  - (b) has effect despite any obligation as to confidentiality or other restriction upon the disclosure of information whether imposed by the Confidential Information Act (Cap. 11.25), any other law or the common law.

### **Production of evidence for proceedings and related investigations**

**14. (1)** If, pursuant to a request, the Authority considers it necessary to obtain information on a taxation matter from a person for proceedings in the country of the requesting designated competent authority or for related investigations, the Authority shall apply to a judge for an order to produce the information.

(2) If, on the application, the judge is satisfied that the conditions in subsection (4) are fulfilled, the judge may make an order that the person who appears to the judge to be in control of the information, within the period specified in the order—

- (a) produce it to the Authority to take away; or
  - (b) give the Authority access to it.
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(3) The period to be specified in the order is 14 days, unless it appears to the judge that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in subsection (2) are that the judge is satisfied that—

- (a) the Authority has certified the request in accordance with the relevant scheduled agreement or the scheduled country requirements as the case may be, and this Act;
- (b) the information is under the control of a person in Montserrat;
- (c) the information does not include items subject to legal privilege or items subject to protection as secret, under the scheduled agreement or the scheduled country requirements as the case may be;
- (d) the provisions of section 19(1) have been complied with; and
- (e) under the relevant scheduled agreement or the scheduled country requirements as the case may be, there are no reasonable grounds for not granting the request.

(5) When the judge makes an order under subsection (2)(b) in relation to information held on any premises, the judge may also, on the application of the Authority, issue a warrant for the Authority, accompanied by a police officer, to enter the premises to obtain access to the information.

(6) The rules of Court made under section 85 of the Supreme Court Act and section 17 of the Supreme Court Order 1967 of the United Kingdom may include rules in relation to—

- (a) applications for the discharge and variation of orders under subsection (2); and
- (b) proceedings relating to such orders.

(7) Information obtained under an order under subsection (2) shall be brought immediately to the Authority to be dealt with according to this Act.

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(8) An order under this section—

- (a) does not confer a right to production of, or access to, items subject to legal privilege; and
- (b) has effect despite any obligation as to confidentiality or other restriction upon the disclosure of information whether imposed by the Confidential Information Act, any other law or the common law.

### **Form of production of electronic information**

15. If the information to be produced under section 13 or 14 exists electronically it is to be produced in a form in which it is visible and legible and, if it is to be taken away, then it should also be in a form appropriate for that purpose.

### **Right to legal representative**

16. A person required to testify or to produce information under section 12, 13 or 14 has the right to a legal representative.

### **Warrant to enter, search and seize**

17. (1) If the Authority considers it necessary for a request to enter and search any premises, the Authority shall apply to the High Court for a warrant for the Authority, accompanied by a police officer, to enter and search the premises, and seize information on taxation matters.

(2) The judge may issue a warrant authorising the entry, search and seizure if the judge is satisfied that—

- (a) a notice issued under section 13(1) or an order made under section 14(2) in relation to information on the premises has not been complied with and the request for the purposes of which the application is made might be seriously prejudiced unless the Authority could secure immediate access to the information; or
  - (b) the conditions in section 14(4) are fulfilled and he or she considers that it would not be appropriate to make an order under section 14(2) in relation to the material because—
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- (i) it is not practicable to communicate with a person entitled to produce the information;
- (ii) it is not practicable to communicate with a person entitled to grant access to the information or entitled to grant entry to the premises on which the information is situated; or
- (iii) the request for the purposes of which the application is made might be seriously prejudiced unless a police officer could secure immediate access to the information.

(3) Any information seized under a warrant issued under subsection (2) shall be brought immediately to the Authority to be dealt with according to law.

#### **Interviews and examinations with consent**

**18. (1) If—**

- (a) under a relevant scheduled agreement or the scheduled country requirements as the case may be, the designated competent authority asks permission for its representative to interview a specified person or examine their records in Montserrat, or both; and
- (b) the specified person notifies the Authority in writing that he or she consents,

the representative, accompanied by the Authority, may conduct the interview or examination or both, at a time and place agreed in writing by the Authority and the specified person.

**(2) The representative may—**

- (a) take statements from the specified person; and
- (b) with the consent of the specified person, make copies of, or take extracts from, any record.

**(3) A representative does not have the power to—**

- (a) compel the specified person to answer a question;
  - (b) compel the specified person to remain in a place for the purpose of the interview;
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- (c) compel the specified person to produce any information;
- (d) enter or search premises without the consent of the owner or occupier of the premises; or
- (e) do anything without the consent of the specified person.

(4) A person who consents to an interview or examination or both has the right to be advised by his or her legal representative during the interview or examination.

(5) In this section, “**specified person**” means a person who is subject to a tax that—

- (a) is covered in the relevant scheduled agreement; or
- (b) is specified in the scheduled country requirements.

### **Notification**

**19. (1)** A person who is the subject of a request for information solely in relation to a matter that is not a criminal matter or an alleged criminal matter, shall, if his or her whereabouts or address is made known to the Authority, be served with a notice by the Authority advising of the existence of a request, specifying that person, the country making the request and the general nature of the information sought.

(2) A person notified may, within 15 days from the date of receipt of the notice, make a written submission to the Authority specifying any grounds which he or she wishes the Authority to consider in making its determination as to whether or not the request is in compliance with the scheduled agreement or the scheduled country requirements as the case may be, including any assertions that the information requested is subject to legal privilege.

(3) The Authority shall consider any written submission made in compliance with subsection (2), but is not obliged to permit or consider any oral submission by or on behalf of a person who is the subject of a request for information.

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(4) Save as expressly provided in this Act, the Authority shall hold all information received as confidential, and the proceedings of the Authority shall accordingly be closed to all persons not specifically authorised by the Authority or by this Act to be present at the proceedings.

(5) This Act does not require the Authority to search for or conduct enquiries into the address of a person who is the subject of a request in order to serve a notice to that person under subsection (1).

(6) For the purposes of subsection (1), the date of receipt of notice from the Authority is deemed to be 15 days from the date of issuance indicated on the notice.

#### **Authentication of official documents**

**20.** For the purpose of this Act, the Authority may authenticate official documents or records of Montserrat containing information relating to taxation matters.

#### **Service of notices and documents**

**21. (1)** For the purposes of this Act, the service of a document is sufficient if delivered by hand or posted by registered post to the registered or other office of the addressee or to his or her last known address.

(2) Affidavit testimony of delivery of the notice or document by hand or supporting the registration certificate is sufficient proof of service.

### **PART 5**

#### **CONFIDENTIALITY**

#### **Protection of persons disclosing confidential information**

**22. (1)** A person who divulges confidential information or gives testimony in compliance with an order or notice issued under Part 4 does not commit an offence under the Confidential Information Act, or under any other law in Montserrat, by reason only of the disclosure or the giving of the testimony.

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(2) A disclosure or testimony referred to in subsection (1) is not a breach of a confidential relationship between that person and any other person, and no civil claim or action whatsoever shall lie against the person making the disclosure or giving the testimony or against the person's principal or employer by reason of the disclosure or testimony.

### **Restriction on application of Confidential Information Act**

23. Section 4 of the Confidential Information Act does not apply to confidential information given by a person in conformity with an order or notice issued in pursuance of a request under this Act.

### **Confidentiality with regard to a request**

24. (1) If so instructed by the Authority, the particulars of and all matters relating to a request shall be treated as confidential.

(2) A person who is notified of a request, or is required to take any action, or produce a document or supply information in respecting a request, shall not disclose the fact of the receipt of the request or any of the particulars required or documents produced or information supplied to any other person, except that person's legal representative and any other persons that the Authority may authorise, for the period that the person may be notified by the Authority.

(3) This section is binding on the legal representative of a person to whom subsection (2) applies as if he or she were that person.

### **Restriction on use of information**

25. The Authority shall not consent to the use or transmission by the requesting designated competent authority of information or evidence provided under this Act for purposes, investigations or proceedings other than those stated in the request unless the transmission or use is authorised by the Court.

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## PART 6

## ENFORCEMENT

**Offences**

**26. (1)** A person who is required under this Act to produce information on taxation matters that is under his or her control and who—

- (a) without lawful excuse fails to do so, within the time specified by a judge by order, or by the Authority by notice; or
- (b) alters, destroys, mutilates, defaces, hides or removes the information,

commits an offence and is liable on summary conviction to a fine of \$10,000 or to a term of imprisonment of 2 years or to both.

**(2)** A person who divulges information contrary to section 24 commits an offence and is liable on summary conviction to a fine of \$2,000 or to imprisonment for a term of 6 months or to both.

**(3)** If, pursuant to a request concerning criminal proceedings or investigations—

- (a) an order under section 14(2) is made or is applied for, and is refused;
- (b) or a warrant under section 17(1) is issued,

a person who, knowing or suspecting that a request is made, or that an investigation into any matter to which a request relates is taking place, makes a disclosure which is likely to prejudice the proceedings or the investigation to which the request relates, commits an offence and is liable on summary conviction to a fine of \$20,000 or to imprisonment for a term of 5 years or to both.

**(4)** In proceedings against a person for an offence under subsection (3), it is a defence to prove that the person—

- (a) reasonably believed that the disclosure was not likely to prejudice the request or investigation; or
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(b) had lawful authority or reasonable excuse for making the disclosure.

(5) A person who, when required to do so in accordance with the instructions given by a judge under section 12, or any subpoena served upon him, refuses to attend as required or to provide testimony in response to a request, commits an offence and is liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of one year or to both.

### **Immunity**

27. Neither the Authority nor any person designated under section 7 to act on his or her behalf is liable in damages for anything done or omitted in the discharge of their functions under this Act unless it is shown that the act or omission was in bad faith.

## **PART 7**

### **MISCELLANEOUS**

#### **Rules**

28. The Governor in Council may make Rules for the Exchange of Information on Taxation Matters to govern the exchange of information on taxation matters with scheduled countries.

#### **Regulations**

29. The Governor in Council may make regulations generally for carrying out the purposes of this Act including prescribing the forms to be used for the purposes of this Act.

#### **Act to bind the Crown**

30. This Act binds the Crown.

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**SCHEDULE***(Sections 5 and 6)***Part A**

<i>Scheduled Agreements</i>				
<i>Item No.</i>	<i>Order No.</i>	<i>Parties: Montserrat and</i>	<i>Effective date</i>	<i>Designated Competent Authority</i>

**Part B**

<i>Scheduled Countries</i>					
<i>Item No.</i>	<i>Order No.</i>	<i>Country</i>	<i>Notifi- cation Date</i>	<i>Effective Date</i>	<i>Designated Competent Authority</i>

**T Bodkin**  
**SPEAKER**

Passed by the Legislative Council this 23rd day of December,  
2010.

**Judith Jeffers**  
**CLERK OF COUNCIL**