

ANTIGUA AND BARBUDA



**AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION BILL,
2016**

NO. OF 2016

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**AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT
INFORMATION BILL, 2016**

NO. OF 2016

AN ACT to make provision for implementing the obligations of Antigua and Barbuda under the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information in tax matters

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short title and commencement

This Act may be cited as the Automatic Exchange of Financial Account Information Act, 2016 and comes into force on a day to be appointed by the Minister by Notice published in the *Gazette*.

2. Interpretation

In this Act,

“**Account holder**” has the meaning given to it in the Common Reporting Standard;

“**Agreement**” means

- (a) the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information to improve international tax compliance based on the Common Reporting Standard, signed by the Government of Antigua and Barbuda on 29 October 2015 as set out in the Schedule, or
- (b) any other agreement or arrangement between the Government of Antigua and Barbuda and the government of another territory which makes

provisions corresponding, or substantially similar, to that made by the agreement referred to in paragraph (a);

“Antigua and Barbuda Financial Institution” means:

- (a) any Financial Institution that is resident in Antigua and Barbuda, but excludes any branch of that Financial Institution that is located outside of Antigua and Barbuda; and
- (b) any branch of a Financial Institution that is not resident in Antigua and Barbuda, if that branch is located in Antigua and Barbuda;

“Commissioner” means Commissioner as defined in the Tax Administration and Procedure Act, 2012, No. 19 of 2012;

“Common Reporting Standard” means the Common Reporting Standard, including the Commentaries thereon, approved by the Council of the Organisation for Economic Co-operation and Development on 15 July 2014, which contains reporting and due diligence procedures for the exchange of information on an automatic basis, as amended from time to time;

“Department” means the Department of Inland Revenue;

“Designated officer” means with respect to any function, the officer of the Department designated to carry out that function.

“Entity” means under the Common Reporting Standard, a legal person or legal arrangement such as a corporation, partnership, trust or foundation;

“financial account” means an account that is not –

- a) retirement and pension accounts;
- b) non-retirement tax-favoured accounts;
- c) term life insurance contracts;
- d) estate accounts;
- e) escrow accounts;
- f) Depository Accounts due to not-returned overpayments; and
- g) low-risk excluded accounts.

provided that such types of accounts satisfy all the relevant requirements listed for an excluded account in subparagraph C(17) of the Common Reporting Standard.

“Information return” means a report, setting out such information prescribed by Regulations made under this Act, which a reporting financial institution is required to file with the Commissioner;

“Minister” means the Minister of Finance;

“Non-Reporting Financial Institution” means any Antigua and Barbuda Financial Institution that in accordance with Section VIII of the Common Reporting Standard is –

- (i) a Government Entity, International Organisation, or Central Bank;
- (ii) a broad participation retirement fund;
- (iii) a narrow participation retirement fund;
- (iv) a pension fund of a government entity, international organisation or central bank;
- (v) A qualified credit card issuer;
- (vi) an entity in accordance with the Act;
- (vii) an exempt collective investment vehicle; or
- (viii) a trust to the extent that the trustee or the trust is a Reporting Financial institution and reports all information required to be reported pursuant to section 1 with respect to all Reportable Account trusts;

“reportable account” means an account held by one or more Reportable Person or by a Passive NFE with one or more controlling persons provided it has been identified as such pursuant to the due diligence procedure described in Section II through VII of the Common Reporting Standard;

“Reporting Financial Institution” means any Antigua and Barbuda Financial Institution that is not a non-reporting financial institution in accordance with Section VIII of the Common Reporting Standard.

3. The Agreement has the force of law in Antigua and Barbuda

The provisions of the Agreement shall have the force of law in Antigua and Barbuda.

4. Implementation of amendment to the Agreement

(1) Where an amendment to the Agreement is accepted by the Government of Antigua and Barbuda, the Minister may, by Order, amend the Schedule for the purpose of including the amendment.

(2) Where the schedule is amended in accordance with this section, any reference in this Act or any other enactment or in any instrument having effect under any such enactment shall, unless the context otherwise requires, be construed as a reference to the Agreement as so amended.

5. Inconsistent laws

Where there is an inconsistency between the provisions of this Act and the provisions of any other law, the provisions of this Act shall prevail only to the extent of the inconsistency.

6. Information returns by financial institutions

Every reporting financial institution shall collect and report to the Commissioner such information in respect of such financial account as prescribed by Regulations made under this Act.

7. Functions and powers of the Commissioner

(1) The Commissioner shall, subject to the general directions of the Minister, administer and enforce compliance with the provisions of this Act and any Regulations made under this Act.

(2) The Commissioner may exercise all powers vested in him under the Tax Administration and Procedure Act, 2012 No.19 of 2012 to administer and enforce compliance with the provisions of this Act and any Regulations made under this Act.

(3) The Commissioner may delegate, in writing, to any designated officer any power or duty conferred on the Commissioner by this Act.

(4) The Commissioner or any designated officer may request information from a reporting financial institution for the purposes of:

- (a) determining whether information
 - (i.) included in an information return made under the Regulations by the reporting financial institution is correct and complete, or

- (ii.) not included in an information return was correctly not included; or
- (b) examining the procedures put in place by the reporting financial institution for the purposes of ensuring compliance with that institution's obligations under this Act and the Regulations.

8. Supplementary powers of the Commissioner

(1) The Commissioner or an officer in his department authorised by him in writing may apply to a magistrate under and in accordance with the provisions of this section for a warrant to enter upon premises for the purpose of enforcing section 6.

(2) Any officer so authorised under subsection (1) must produce to the magistrate the written authority signed by the Commissioner.

(3) If on information given on oath by such an officer, a magistrate 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 endangering the delivery of information sought by the Commissioner, the magistrate may issue a warrant, in writing, authorizing the officer to enter and search the premises, if necessary by force, at any time within 14 days commencing on the day on which the warrant is signed by the magistrate.

(4) In issuing a warrant under this section, the magistrate may impose such restrictions upon the execution of the warrant in accordance with any law in force in Antigua and Barbuda.

(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 as he considers necessary to enable him to execute the warrant, and on leaving such premises entered by virtue of a warrant under this section shall, if the premises is unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as he found it.

(6) On entering any premises by virtue of a warrant under this section, the officer may seize and remove any material or information relevant to a request under this Act where so ever found which he reasonably believes may contain information relevant to a request, and shall immediately deliver such material and information so seized and removed to the Commissioner.

(7) Where entry to a premises has been made by virtue of a warrant under this section and the officer making the entry has seized any material containing information under the authority of the warrant, he shall prepare an inventory of such material

containing the information so removed 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 things immediately before the seizure,

provide that person with a copy of that inventory.

(8) Where material and information are seized under the authority of a warrant and it is shown that access to such material and information are required for the continued conduct of the business or affairs of any person, the Commissioner shall afford to that person reasonable access to the material and information solely for the purpose of continuing such business or affairs.

9. Confidentiality

(1) The requirements of any other law relating to confidentiality shall not apply to the disclosure of information by a reporting financial institution to the Commissioner that is required to be included in an information return filed under this Act or the Regulations made under this Act and, accordingly, this section shall apply to information to which, but for this subsection, the said Acts or other law would apply.

(2) Every person having an official duty, including but not limited to consultants and service providers or being employed in the administration or enforcement of this Act, or the Regulations made under this Act, or any person who formerly had a duty or was formerly so employed in the administration or enforcement of this Act, or the Regulations made under this Act; shall treat information received from a reporting financial institution under this Act, or those Regulations as confidential and shall only disclose such information as may be necessary for the purpose of the administration or enforcement of this Act or Regulations made under this Act.

(3) A person who discloses or divulges any information or produces any document relating to the information received from a reporting financial institution under this Act or the Regulations made under this Act in contravention of subsection (2) commits an offence and is liable, on conviction, to a fine of Fifty Thousand United States Dollars or to a term of imprisonment not exceeding one year.

10. Penalties

(1) Every person who fails to comply with a duty or obligation imposed by this Act or the Regulations made under this Act is liable to a penalty of Ten Thousand United States Dollars, for each such failure, and Five Thousand United States Dollars for each day that the failure continues.

(2) Every reporting financial institution that fails to file an information return as and when required under this Act or under the Regulations made under this Act is liable to a penalty of Ten Thousand United States Dollars for each such failure.

(3) Every person who –

(a) makes a false statement in respect of any information required to be included on an information return, under this Act or under the Regulations made under this Act; or

(b) omits to include in a statement an information required to be included in an information return

is liable to a penalty of Ten Thousand United States Dollars for each such failure, unless in the case of information required in respect of another person, a reasonable effort was made by the person to obtain the information from the other person.

(4) Every reporting financial institution that fails to file an information return in the manner required under this Act or under the Regulations made under this Act is liable to a penalty of Ten Thousand United States Dollars for each such failure.

(5) Every person who fails to comply with the direction or requirement of the Commissioner or a designated officer during the exercise or performance of the Commissioner or the officer's powers or duties under this Act or the Regulations made under this Act is liable to a penalty of Ten Thousand United States Dollars for each such failure.

11. Liabilities to penalties

(1) Liability to a penalty under section 10 does not arise if the person satisfies the Commissioner that there is a reasonable excuse for the failure.

(2) For the purposes of this Act;

(a) insufficiency of funds to comply with an obligation, or;

(b) reliance upon another person to fulfil an obligation is not an excuse which this section considers to be reasonable.

(3) If a person had a reasonable excuse for a failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

12. Assessment of penalties

(1) If a person becomes liable to a penalty under section 10(2), the Commissioner shall—

- (a) assess the penalty, and
- (b) notify the person of the assessment.

(2) An assessment of a penalty under section 9 shall be made within the period of 12 months beginning with the date on which —

- (a) the person became liable to the penalty, or
- (b) the inaccuracy first came to the attention of the Commissioner.

13. Right to appeal against penalties

A person may appeal against a penalty assessment of the Commissioner:

- (a) on the grounds that liability to a penalty under section 10 does not arise, or
- (b) as to the amount of such a penalty.

14. Procedure on appeal against penalty

(1) Notice of an appeal under section 13 shall —

- (a) be given to the Commissioner, in writing, within 30 days from the date on which notification of the assessment under section 12 was served; and
- (b) set out the grounds of appeal.

(2) On an appeal under paragraph 13(a) that is notified to the Commissioner, the Commissioner may confirm or cancel the assessment.

(3) On appeal under section 13(b) that is notified to the Commissioners the Commissioner may confirm the assessment or substitute another assessment that the Commissioner had power to make.

(4) Subject to this section, Part V of the Tax Administration and Procedure Act, 2012 No. 19 of 2012 shall apply in relation to appeals under section 13 as they apply to appeals against tax assessment under the Tax Administration and Procedure Act.

15. Enforcement of penalties

(1) A penalty under this Act shall be paid to Inland Revenue Department within 30 days after –

- (a) the date on which notification under section 12 is given in respect of the penalty, or
- (b) the date on which an appeal against a penalty assessment pursuant to section 9 is finally determined or withdrawn.

(2) If any amount in respect of a penalty is not paid by the due date described in subsection (1), interest on the amount owing shall be charged for the period during which that amount is outstanding.

(3) The rate of interest charged under subsection (3) shall be two percent per annum.

16. Anti-avoidance

Any arrangement or a practice, with intent to avoid compliance with obligation imposed under this Act or Regulations under the Act, shall not affect a person's duty to comply with such obligation made or regulations and any such person shall, despite the arrangement or practice, continue to comply with his obligation under the Act or regulations.

17. Interpretation of terms not defined

Any word or term defined by the Common Reporting Standard and used in this Act shall have the same meaning given to that word or term by the Common Reporting Standard.

18. Regulations

(1) The Minister may make any Regulations that he considers necessary for carrying out the purposes of this Act, or for giving effect to any of the provisions of this Act, including Regulations

- (a) requiring a reporting financial institution to file an information return on such financial accounts held, managed or administered by that reporting financial institution;
- (b) determining the date on which an information return shall be filed with the Commissioner;
- (c) prescribing the manner in which an information return is to be filed;
- (d) prescribing the information to be reported in an information return in relation to certain financial accounts and, where different information is to be reported for different years, specifying the information to be reported for each of those years;
- (e) requiring reporting financial institutions to identify certain financial accounts;
- (f) specifying the records and documents that must be examined or the procedures to obtain records and documents by the reporting financial institution to enable the institution to identify such financial accounts;
- (g) specifying the records and documents used to identify such financial accounts that must be retained by the reporting financial institution;
- (h) setting out the conditions under which a reporting financial institution may appoint a third party as its agent to carry out the duties and obligations imposed on it by the Regulations;
- (i) in relation to any of the matters specified in the preceding paragraphs, determining the manner of keeping records and setting the period for the retention of records so kept;
- (j) authorising designated officers to require the production of books, records or other documents and the provision of information in relation to financial accounts within such time as may be specified in the Regulations, and
- (k) generally to carry out the purposes and provisions of the Act.

SCHEDULE

(Section 2)

The multilateral competent authority agreement on the Automatic exchange of financial account information to improve international tax compliance based on the Standard, signed by the government of Antigua and Barbuda On 29 October 2015.

MULTILATERAL COMPETENT AUTHORITY AGREEMENT ON AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION

Whereas, the jurisdictions of the signatories to the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (the "Agreement") are Parties of, or territories covered by, the Convention on Mutual Administrative Assistance in Tax Matters or the Convention on Mutual Administrative Assistance in Tax Matters as amended by the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters (the "Convention") or have signed or expressed their intention to sign the Convention and acknowledge that the Convention must be in force and in effect in relation to them before the first exchange of financial account information takes place;

Whereas, the jurisdictions intend to improve international tax compliance by further building on their relationship with respect to mutual assistance in tax matters;

Whereas, the Common Reporting Standard was developed by the OECD, with G20 countries, to tackle tax avoidance and evasion and improve tax compliance;

Whereas, a country that has signed or expressed its intention to sign the Convention will only become a Jurisdiction as defined in Section 1 of this Agreement once it has become a Party to the Convention;

Whereas, the laws of the respective Jurisdictions require or are expected to require financial institutions to report information regarding certain accounts and follow related due diligence procedures, consistent with the scope of exchange contemplated by Section 2 of this Agreement and the reporting and due diligence procedures set out in the Common Reporting Standard;

Whereas, it is expected that the laws of the Jurisdictions would be amended from time to time to reflect updates to the Common Reporting Standard and once such changes are enacted by a Jurisdiction the definition of Common Reporting Standard would be deemed to refer to the updated version in respect of that Jurisdiction;

Whereas, Chapter III of the Convention authorises the exchange of information for tax purposes, including the exchange of information on an automatic basis, and allows the competent authorities of the Jurisdictions to agree the scope and modalities of such automatic exchanges;

Whereas, Article 6 of the Convention provides that two or more Parties can mutually agree to exchange information automatically, the exchange of the information will be on a bilateral basis between the Competent Authorities;

Whereas, the Jurisdictions have, or are expected to have, in place by the time the first exchange takes place (i) appropriate safeguards to ensure that the information received pursuant to this Agreement remains confidential and is used solely for the purposes set out in the Convention, and (ii) the infrastructure for an effective exchange relationship (including established processes for ensuring timely, accurate, and confidential information exchanges, effective and reliable communications, and capabilities to promptly resolve questions and concerns about exchanges or requests for exchanges and to administer the provisions of Section 4 of this Agreement);

Whereas, the Competent Authorities of the jurisdictions intend to conclude an agreement to improve international tax compliance based on automatic exchange pursuant to the Convention, without prejudice to national legislative procedures (if any), respecting EU law (if applicable), and subject to the confidentiality and other protections provided for in the Convention, including the provisions limiting the use of the information exchanged thereunder;

Now, therefore, the Competent Authorities have agreed as follows:

SECTION I

Definitions 1. For the purposes of this Agreement, the following terms have the following meanings:

- a) the term "Jurisdiction" means a country or a territory in respect of which the Convention is in force and is in effect, either through signature and ratification in accordance with Article 28, or through territorial extension in accordance with Article 29, and which is a signatory to this Agreement;
- b) the term "Competent Authority" means, for each respective Jurisdiction, the persons and authorities listed in Annex B of the Convention;

c) the term “Jurisdiction Financial Institution” means, for each respective Jurisdiction, (i) any Financial Institution that is resident in the Jurisdiction, but excludes any branch of that Financial Institution that is located outside the Jurisdiction, and (ii) any branch of a Financial Institution that is not resident in the Jurisdiction, if that branch is located in the Jurisdiction;

d) the term “Reporting Financial Institution” means any Jurisdiction Financial Institution that is not a Non-Reporting Financial Institution;

e) the term “Reportable Account” means a Financial Account that is maintained by a Reporting Financial Institution and that, pursuant to due diligence procedures consistent with the Common Reporting Standard, has been identified as an account that is held by one or more persons that are Reportable Persons with respect to another Jurisdiction or by a Passive Non-Financial Entity with one or more Controlling Persons that are Reportable Persons with respect to another Jurisdiction,

f) the term “Common Reporting Standard” means the standard for automatic exchange of financial account information in tax matters (which includes the Commentaries), developed by the OECD, with G20 countries;

g) the term “Co-ordinating Body Secretariat” means the OECD Secretariat that, pursuant to paragraph 3 of Article 24 of the Convention, provides support to the coordinating body that is composed of representatives of the competent authorities of the Parties to the Convention;

h) the term “Agreement in effect” means, in respect of any two Competent Authorities, that both Competent Authorities have indicated their intention to automatically exchange information with each other and have satisfied the other conditions set out in subparagraph 2.I. of Section 7. The Competent Authorities for which this Agreement is in effect are listed in Annex E.

2. Any capitalised term not otherwise defined in this Agreement will have the meaning that it has at that time under the law of the Jurisdiction applying the Agreement, such meaning being consistent with the meaning set forth in the Common Reporting Standard. Any term not otherwise defined in this Agreement or in the Common Reporting Standard will, unless the context otherwise requires or the Competent Authorities agree to a common meaning (as permitted by domestic law), have the meaning that it has at that time under the law of the Jurisdiction applying this Agreement, any meaning under the applicable tax laws of that Jurisdiction prevailing over a meaning given to the term under other laws of that Jurisdiction.

SECTION 2

Exchange of Information with Respect to Reportable Accounts

1.1. Pursuant to the provisions of Articles 6 and 22 of the Convention and subject to the applicable reporting and due diligence rules consistent with the Common Reporting Standard, each Competent Authority will annually exchange with the other Competent Authorities, with

respect to which it has this Agreement in effect, on an automatic basis the information obtained pursuant to such rules and specified in paragraph 2.

1.2. Notwithstanding the previous paragraph, the Competent Authorities of the Jurisdictions listed in Annex A will send, but not receive, the information specified in paragraph 2, Competent Authorities of Jurisdictions not listed in Annex A will always receive the information specified in paragraph 2. Competent Authorities will not send such information to Competent Authorities of the Jurisdictions listed in Annex A.

2. The information to be exchanged is, with respect to each Reportable Account of another Jurisdiction:

a) the name, address, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of due diligence procedures consistent with the Common Reporting Standard, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, and TIN(s) of the

Entity and the name, address, TIN(s) and date and place of birth of each Reportable Person;

b) the account number (or functional equivalent in the absence of an account number);

c) the name and identifying number (if any) of the Reporting Financial Institution;

d) the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;

e) in the case of any Custodial Account:

(1) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and

(2) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;

f) in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and

g) in the case of any account not described in subparagraph 2(e) or (f), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other

appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

SECTION 3

Time and Manner of Exchange of Information

1. For the purposes of the exchange of information in Section 2, the amount and characterisation of payments made with respect to a Reportable Account may be determined in accordance with the principles of the tax laws of the Jurisdiction exchanging the information.
2. For the purposes of the exchange of information in Section 2, the information exchanged will identify the currency in which each relevant amount is denominated.
3. With respect to paragraph 2 of Section 2, and subject to the notification procedure set out in Section 7, including the dates specified therein, information is to be exchanged commencing from the years specified in Annex F within nine months after the end of the calendar year to which the information relates. Notwithstanding the foregoing sentence, information is only required to be exchanged with respect to a calendar year if both Competent Authorities have this Agreement in effect and their respective Jurisdictions have in effect legislation that requires reporting with respect to such calendar year that is consistent with the scope of exchange provided for in Section 2 and the reporting and due diligence procedures contained in the Common Reporting Standard.
4. [deleted]
5. The Competent Authorities will automatically exchange the information described in Section 2 in the common reporting standard schema in Extensible Markup Language.
6. The Competent Authorities will work towards and agree on one or more methods for data transmission including encryption standards with a view to maximising standardisation and minimising complexities and costs and will specify those in Annex B.

SECTION 4

Collaboration on Compliance and Enforcement

A Competent Authority will notify the other Competent Authority when the first-mentioned Competent Authority has reason to believe that an error may have led to incorrect or incomplete information reporting or there is non-compliance by a Reporting Financial Institution with the applicable reporting requirements and due diligence procedures consistent with the Common Reporting Standard. The notified Competent Authority will take all appropriate measures available under its domestic law to address the errors or non-compliance described in the notice.

SECTION 5

Confidentiality and Data Safeguards

1. All information exchanged is subject to the confidentiality rules and other safeguards provided for in the Convention, including the provisions limiting the use of the information exchanged and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by the supplying Competent Authority as required under its domestic law and listed in Annex C.

2. A Competent Authority will notify the Co-ordinating Body Secretariat immediately regarding any breach of confidentiality or failure of safeguards and any sanctions and remedial actions consequently imposed. The Co-ordinating Body Secretariat will notify all Competent Authorities with respect to which this is an Agreement in effect with the first mentioned Competent Authority.

SECTION 6

Consultations and Amendments

1. If any difficulties in the implementation or interpretation of this Agreement arise, a Competent Authority may request consultations with one or more of the Competent Authorities to develop appropriate measures to ensure that this Agreement is fulfilled. The Competent Authority that requested the consultations shall ensure, as appropriate, that the Co-ordinating Body Secretariat is notified of any measures that were developed and the Co-ordinating Body Secretariat will notify all Competent Authorities, even those that did not participate in the consultations, of any measures that were developed.

2. This Agreement may be amended by consensus by written agreement of all of the Competent Authorities that have the Agreement in effect. Unless otherwise agreed upon, such an amendment is effective on the first day of the month following the expiration of a period of one month after the date of the last signature of such written agreement.

SECTION 7

Term of Agreement

1. A Competent Authority must provide, at the time of signature of this Agreement or as soon as possible after its Jurisdiction has the necessary laws in place to implement the Common Reporting Standard, a notification to the Co-ordinating Body Secretariat:

a) that its Jurisdiction has the necessary laws in place to implement the Common Reporting Standard and specifying the relevant effective dates with respect to Preexisting Accounts, New Accounts, and the application or completion of the reporting and due diligence procedures;

- b) confirming whether the Jurisdiction is to be listed in Annex A, c) specifying one or more methods for data transmission including encryption (Annex B); d) specifying safeguards, if any, for the protection of personal data (Annex C);
- e) that it has in place adequate measures to ensure the required confidentiality and data safeguards standards are met and attaching the completed confidentiality and data safeguard questionnaire, to be included in Annex D; and
- f) a list of the Jurisdictions of the Competent Authorities with respect to which it intends to have this Agreement in effect, following national legislative procedures (if any).

Competent Authorities must notify the Co-ordinating Body Secretariat, promptly, of any subsequent change to be made to the above-mentioned Annexes.

2.1. This Agreement will come into effect between two Competent Authorities on the later of the following dates: (i) the date on which the second of the two Competent Authorities has provided notification to the Co-ordinating Body Secretariat under paragraph 1, including listing the other Competent Authority's Jurisdiction pursuant to subparagraph 1(f), and, if applicable, (ii) the date on which the Convention has entered into force and is in effect for both Jurisdictions.

2.2. The Co-ordinating Body Secretariat will maintain a list that will be published on the OECD website of the Competent Authorities that have signed the Agreement and between which Competent Authorities this is an Agreement in effect (Annex E).

2.3. The Co-ordinating Body Secretariat will publish on the OECD website the information provided by Competent Authorities pursuant to subparagraphs 1(a) and (b). The information provided pursuant to subparagraphs 1(c) through (f) will be made available to other signatories upon request in writing to the Co-ordinating Body Secretariat.

3. A Competent Authority may suspend the exchange of information under this Agreement by giving notice in writing to another Competent Authority that it has determined that there is or has been significant non-compliance by the second-mentioned Competent Authority with this Agreement. Such suspension will have immediate effect. For the purposes of this paragraph, significant non-compliance includes, but is not limited to, non-compliance with the confidentiality and data safeguard provisions of this Agreement and the Convention, a failure by the Competent Authority to provide timely or adequate information as required under this Agreement or defining the status of Entities or accounts as Non-Reporting Financial Institutions and Excluded Accounts in a manner that frustrates the purposes of the Common Reporting Standard.

4. A Competent Authority may terminate its participation in this Agreement, or with respect to a particular Competent Authority, by giving notice of termination in writing to the Coordinating Body Secretariat. Such termination will become effective on the first day of the month following the expiration of a period of 12 months after the date of the notice of termination. In the event of

termination, all information previously received under this Agreement will remain confidential and subject to the terms of the Convention.

SECTION 8

Co-ordinating Body Secretariat

1. Unless otherwise provided for in the Agreement, the Co-ordinating Body Secretariat will notify all Competent Authorities of any notifications that it has received under this Agreement and will provide a notice to all signatories of the Agreement when a new Competent Authority signs the Agreement.
2. All signatories to the Agreement will share equally, on an annual basis, the costs for the administration of the Agreement by the Co-ordinating Body Secretariat. Notwithstanding the previous sentence, qualifying countries will be exempt from sharing the costs in accordance with Article X of the Rules of Procedure of the Co-ordinating Body of the Convention.

EXPLANATORY MEMORANDUM

The Bill seeks to make provisions for implementing the obligations of Antigua and Barbuda under the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information in tax matters which was signed by Antigua and Barbuda on 29th October, 2015 and set out in the Schedule to this Bill.

The Bill has eighteen clauses.

Clause 2 provides for the key definitions of terms used throughout the Bill and includes the definitions of the terms specified below. These terms are also defined in Section VIII of the Common Reporting Standard for automatic exchange of financial account information in tax matters.

- (a) Reporting Financial Institution which includes
- (b) Depository Institutions which accepts deposits in the course of a banking or similar business;
- (c) Custodial Institutions with greater than 20% of gross income from holding Financial Assets for others;
- (d) Investment Entities with gross income primarily greater than 50% from business investment activities; or gross income primarily greater than 50% from investment in Financial Assets;
- (e) Specified Insurance Companies which is Insurance company making payments on a Cash Value Insurance/Annuity Contracts; and
- (f) Non-Reporting Financial Institutions which are specified low risk institutions and jurisdiction-specific lists. Non-Reporting Financial Institutions are also defined to include
 - (a) Government Entity, International Organisation, Central Bank;
 - (b) Broad/Narrow participation retirement fund;
 - (c) Pension fund of a government entity, international organisation or central bank;
 - (d) Qualified credit card issuer;
 - (e) Exempt collective investment vehicle; or
 - (f) a trust.

Clause 3 provides that the provisions of the Agreement, which is set out in the Schedule to the Bill, shall form part of the Bill and have the force of law in Antigua and Barbuda. The Agreement when passed as part of the Bill deemed ratified in accordance with section 3(2) (a) of the Ratification of Treaties Act, Cap. 364

Clause 4 makes provision to authorise the Minister to amend the Schedule by an Order whenever the Agreement is amended. Where the Schedule is so amended, the Bill would provide that a reference in this Act or any other enactment or any instrument shall be construed as a reference to the Agreement so amended.

Clause 5 addresses the question of inconsistencies in this Bill and any other enactment and confers on of the Bill supremacy over all other laws where there is a conflict or inconsistency between the provisions of the Act and any other law inforce in Antigua and Barbuda.

Clause 6 authorises financial institutions in Antigua and Barbuda to collect and report to the Competent Authority in respect of such financial account information as prescribed by the Regulations made under the Act.

Clause 7 provides for the functions and powers of the Commissioner of Inland Revenue. These functions and powers include the general administration of the Act and the enforcement of its provision. To the Bill requires the Commissioner's to exercise his powers under the general direction of the Minister. In addition to his powers under the Act, The Commissioner is also authorised to apply the provisions of the Tax Administration and Procedure Act, 2012 in enforcing compliance of this Act and any regulation made there under.

Clause 8 confers upon the Commissioner supplementary powers to require persons to produce information and to enter premises to obtain such information. In the enforcement of the supplementary powers, the Commissioner or any officer in his department, authorised by him in writing, may apply to a Magistrate for a warrant to enable him or any authorised officer to enter any premises of the financial institution for the purposes of enforcing compliance with the provisions of this Bill.

Clause 9 makes provision for Confidentiality, and disapplies any other law relating to confidentiality to the disclosure of information by a reporting financial institution in respect of any information included in an information return filed under this Bill or the Regulations. The Bill restricts the disclosure of information obtained by a person who is employed or was employed in the administration or enforcement of the provisions of the Bill or the Regulations from disclosure, except in limited circumstances. A person employed in the administration and enforcement the provisions of the Bill is therefore required to treat all information received as confidential and to be disclosed only in

limited circumstances. The Bill makes unauthorised disclosure of any information or document relating to information which is confidential an offence and imposes a fine of USD \$50,000.00 Fifty Thousand United States Dollars or to term of imprisonment not exceeding one (1) year for any contravention of the offence.

Clause 10 imposes administrative penalties for non-compliance with an obligation under the Regulations. The general penalty for failure to comply with any provision of the Regulations is Ten Thousand United States Dollar for each such failure and five thousand United States dollars for each day that the failure continues.

Clause 11. Under this clause an accused person may produce in his defence evidence that is reasonably excusable. The Bill provides that for the purposes of Clause 11, insufficiency of funds to comply with an obligation or to comply with an obligation reliance on another person is not a reasonable excuse.

Clause 12 provides for the assessment of a penalty by the Commissioner after determining that a person under obligation is in breach. The Commissioner is required to notify the person of the assessment.

Clauses 13 and 14 make provision for a person to whom a notice of an assessment has been given to appeal against the penalties assessed by the Commissioner. The Bill also sets out the grounds on which an appeal maybe lodged.

Clause 16 makes provision to void any arrangement or practice that is intended to avoid an obligation imposed under the Bill or Regulations under the Act. Any such arrangement or practice to avoid compliance with a person's obligation under the Bill does not affect the person's duty to comply with this obligation.

The Schedule contains the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information to improve international tax compliance based on the Common Reporting Standards, as signed by the Government of Antigua and Barbuda on 29 October, 2015.

*Hon. Gaston Browne
Prime Minister and
Minister of Finance*