

ANTIGUA AND BARBUDA



LAW (MISCELLANEOUS AMENDMENTS) BILL, 2017

NO. OF 2017

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Law (Miscellaneous Amendments) Bill, 2017

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LAW (MISCELLANEOUS AMENDMENTS) BILL, 2017**

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ARRANGEMENT OF CLAUSES

CLAUSES

1. Short title and Commencement
2. Amendment to the Automatic Exchange of Financial Account Information Act, 2016
3. Amendment to the Antigua and Barbuda Tax Information Exchange Act 2002
4. Amendment to the International Business Corporations Act, Cap. 222

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LAW (MISCELLANEOUS AMENDMENTS) BILL 2017

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AN ACT to amend the provisions of certain Acts of Parliament to strengthen the effectiveness of laws relating to taxation, to facilitate the exchange of account information for tax purposes, to give effect to global standards of transparency in tax matters and for related purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows-

1. Short title and Commencement

This Act may be cited as the Law (Miscellaneous Amendments) Act, 2017 and shall come into effect on a day appointed by the Minister and published by Notice in the *Gazette*.

2. Amendment to the Automatic Exchange of Financial Account Information Act 2016, No. of 2016

Section 2 of the Automatic Exchange of Financial Account information Act 2016, No. of 2016 is amended by inserting in the correct alphabetical order the following term and its meaning –

“automatic exchange of financial account information” includes spontaneous, simultaneous and other systematic and periodic predefined exchange of financial account information without prior request”;

3. Amendment to the Antigua and Barbuda Tax Information Exchange Act 2002

The Antigua and Barbuda Tax Information Exchange Act 2002 is amended as follows –

- (a) In section 2, by repealing the definition of “agreement” and replacing it with the following definition –

“ ‘Agreement’ means a treaty, convention or any international agreement that makes provisions for the exchange of information with respect to tax matters including the automatic exchange of information between a foreign State and Antigua and Barbuda.”

- (b) In section 3 by inserting after subsection (2) a new subsection (3) to read as follows –

“ (3) 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.”

- (c) The Antigua and Barbuda Tax Information /exchange Act 2002 is amended by inserting after section 6 the following new section to read as follows –

“6A 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 services providers or a person 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 any regulations made under this Act as confidential and shall only disclose such information as may be necessary for the purpose of the administration or

enforcement of the Agreement, this Act and regulations made under the 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 One hundred and Thirty-five Thousand Dollars or to a term of imprisonment not exceeding one year.”
- (4) A person who directly or indirectly discloses to any person any information in contravention of this Act or the Agreement, commits an offence and is liable on conviction by a fine not exceeding Two Hundred and Fifty Thousand Dollars or to a term of imprisonment not exceeding five years, or both.”

4. Amendment to the International Business corporations Act, Cap. 222

(1) Section 130A of the International business Corporation Act, Cap. 222 is amended by inserting after subsection (6) the following new subsection (7) to read as follows –

“(7) Where any record as specified in subsection (1) is requested by the Commission the corporation shall satisfy the request as stated in the written notice.”

(2) Section 335 of the International Business Corporation Act, Cap. 222 is amended in subsection (1) as follows –

- (a) by repealing the word “or” at the end of paragraph (d) and replacing it with a semi-colon (“;”);
- (b) by removing the period or full stop at the end of paragraph (e) and replacing it with a semi colon followed by the word “or”
- (c) by inserting after paragraph (e) the following new paragraph (f) as follows –
“(f) the corporation fails to satisfy the request made pursuant to section 130A.”

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Law (Miscellaneous Amendments) Bill, 2017

Passed the House of Representatives on the
2017.

Passed the Senate on the
2017

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Speaker.

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President.

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Clerk to the House of Representatives.

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Clerk to the Senate.

EXPLANATORY MEMORANDUM

The laws to be amended are those which are relevant to the Competent Authority, Commissioner of Inland Revenue in respect of the exchange of information for tax purposes, the respective laws to be amended are as follows:

1. The Automatic Exchange of Financial Account Information Act 2016;
2. The Antigua and Barbuda Tax Information Exchange Agreement Act, 2002
3. The International business Corporations Act, Cap. 222.

All the aforementioned laws have been amended in strategic areas to address the various elements of the Organization for Economic Co-operation and Development (OECD), Global Forum to permit the jurisdiction to participate in the Fast Track Review Procedure, as the jurisdiction seeks to avoid being listed in July, 2017 by the G20 as being non-cooperative with respect to the tax transparency standards.

The G20 Finance Ministers in their April 2016 Communiqué indicated the need for all jurisdictions to “upgrade their Global Forum rating to a satisfactory level” by the time of the July 2017 G20 Leaders’ Summit. Any jurisdiction which fails to satisfy the established criteria by July 2017 would be listed as non-cooperative with respect to the tax transparency standards; this list will essentially constitute a blacklist.

In July 2017 the OECD established three criteria for identifying non-cooperative jurisdictions::

- (i) signature of the multilateral Convention on Mutual Administrative Assistance in Tax Matters, (or equivalent),

- (ii) commitment to the automatic exchange of financial account information (where required); and
- (iii) achieving at least a Largely Compliant rating in the Global Forum's peer review for exchange of information on request.

The determination was that a jurisdiction shall be listed as non-cooperative in July 2017 if it fails to meet two of the three criteria. The OECD is mandated to report back by June 2017 on the progress made by jurisdictions on tax transparency. This listing of non-cooperative jurisdictions will then be made available to the July 2017 G20 leaders' summit.

The Fast-Track Review Procedure, was therefore adopted by the OECD, Global Forum designed to recognise progress made by jurisdictions in implementing the Exchange of Information on request standard since its last review. This progress will be taken into account for the purposes of communicating progress by the Global Forum and for OECD's and in preparing the list of non-cooperative jurisdictions to the G20.

The Fast-Track Review Procedure was therefore open to all jurisdictions with an overall rating of "Partially Compliant" or Non-Compliant", amongst other categories. The deadline for the submission of a fast track report for the Fast-Track Review Procedure is 7th April 2017.

Antigua and Barbuda as a result of its last review by the Global Forum in 2014 had an overall rating of "Partially Compliant", therefore the jurisdiction satisfied one of the initial requirements for a jurisdiction to be allowed to participate in the Fast-Track Review Procedure.

Antigua and Barbuda in making a determination to participate in the Fast Track Procedure conducted a self-assessment against the three objective criteria and the following was concluded:

- (i) signature of the multilateral Convention on Mutual Administrative Assistance in Tax Matters, (or equivalent) – the domestic law, the Automatic Exchange of Financial Account Information Act, 2016 which gives effect to multilateral Competent Authority Agreement and soon thereafter the multilateral Convention, requires an additional amendment in order to permit the sharing of tax information not only pursuant to an automatic exchange, but also pursuant to a spontaneous exchange. There was also the additional requirement of sanctions to be included in instances of information which was provided pursuant to an international instrument being disclosed unlawfully. Upon the completion of these amendment, the request made by Antigua and Barbuda to become signatories to the multilateral Convention ought to be satisfied and the jurisdiction ought to be permitted to be part of the multilateral Convention; this criteria is therefore outstanding until the amendment of the stated legislation is concluded;
- (ii) commitment to the automatic exchange of financial account information (where required) – Antigua and Barbuda is already listed amongst 47 countries who are committed to first exchange of tax information in 2018; this criteria is therefore satisfied;
- (iii) achieving at least a Largely Compliant rating in the Global Forum’s peer review for exchange of information on request – the jurisdiction since its first review in 2011 and second review 2013 have since then continuously conducted corrective action to a number of relevant laws. It has also sought to put into effect a required monitoring program for international business corporations related to financial records, upon review the jurisdiction was advised by the Global Forum to pursue in

addition to the existing criminal sanctions, if the jurisdiction was so minded, to include within the International Business Corporations Act Cap. 222 an administrative penalty of striking off corporation off the register in instances where financial records are requested and declined. Finally, it was determined to amend the Antigua and Barbuda Tax Information Exchange Act, 2002, to allow for consistency between that legislation and the Automatic Exchange of Financial Account Information Act, 2016, on the basis that it is through both pieces of legislation that the jurisdiction will give effect to the new global standard of tax transparency; after the additional amendments to the stated laws, the rating of the jurisdiction is likely to be increased; therefore this criteria is outstanding.

Consequently, the amendments to the aforementioned laws are critical and therefore proposed to ensure that the legislative framework is in place to facilitate Antigua and Barbuda satisfying the three objective criteria and avoid the G20 listing in July 2017.

*Honourable Gaston B. Browne
Prime Minister and Minister of Good Governance*