

Private Client & Wealth Management BULLETIN

The Bahamas - Implementation of Tax Information Exchange Agreements

The Government of The Bahamas has recently tabled draft bills necessary to effectuate the implementation of the recently signed TIEAs in Parliament. These draft bills are The International Tax Cooperation Act, 2010 and The International Tax Cooperation Regulations, 2010. The Government has also set forth amendments and additions to The Bahamas-U.S. TIEA Act and Regulations (the "Bahamas-US TIEA Act"), which are encompassed in the following series of legislations: (i) The Bahamas and the United States Tax Information Exchange Agreement (Amendment) Act, 2010, and (ii) The Bahamas and the United States Tax Information Exchange Agreement (Amendment) Regulations, 2010.

The International Tax Cooperation Bill, 2010

The International Tax Cooperation Bill, 2010 (the "Act") will come into force on the 30th June, 2010. The Act will effectuate the enforcement of the giving of assistance by Bahamian authorities in the performance of obligations under the previously signed TIEAs. The Act expressly sets forth the procedure that must be made in respect of all requests for tax information. The procedure mirrors the requirements specifically provided for in each of the TIEAs The Bahamas is party to; for example, the request must explicitly detail a statement of the information sought, including its nature, and the form in which the requesting state wishes to receive the information from The

Bahamas. Importantly, the Act provides a right of judicial review for persons affected by any request for tax information to seek review of a grant of the request by Bahamian authorities by commencing an action in the Supreme Court.

The Act also gives Bahamian authorities the power to apply to a judge for a warrant to enter upon the premises of any person for the purpose of providing notice in writing to the person whom the request for tax information is surrounding. Bahamian authorities will also have the right to obtain the information sought by the request in the form of depositions of witnesses, as the laws and administrative practices of The Bahamas permit.

The International Tax Cooperation Act, 2010 (Regulations)

The Regulations subsidiary to the Act outline the detailed procedures for obtaining information (i) by examination, (ii) by document, and (iii) by on-side interview. The Regulations also contains the necessary forms as Schedules that must be used in obtaining tax information.

New Penalties

The Bahamas-U.S. TIEA Act will be amended to increase the penalties applicable for offenses committed under the Act to ensure consonance with the penalties provided for in recently signed Bahamas TIEAs that will give effect to other TIEAs into which The Bahamas has entered. Any person who commits an offence under the Act will now be liable to

to a fine not exceeding \$25,000 (formerly \$5,000) or to imprisonment for a term not exceeding twelve (formerly six) months or to both.

On-Site Interviews

Previously, the Bahamas-US TIEA did not allow the IRS or U.S. officials to enter The Bahamas to interview persons or examine records. The Bill amends this by seeking to empower the Minister, in his discretion, to permit U.S. authorities to conduct interviews in The Bahamas with persons that voluntarily consent to participate in such interviews and on such conditions as the Minister may set.

The 22nd TIEA: Canada and The Bahamas

On Thursday, June 17, The Commonwealth of The Bahamas signed its 22nd Agreement with Canada for the Exchange of Information on Tax Matters. The Bahamas-Canada TIEA is particularly favourable as it not only applies to all existing taxes imposed or administered by

the Government of Canada; it is also applicable to all existing taxes administered or imposed by the Government of The Bahamas. Therefore, The Bahamas is treated as having double-taxation rights in the absence of a double taxation treaty. Once the Bahamas-Canada TIEA enters into force, it will extend exempt surplus treatment to dividends paid to a Canadian parent corporation by its foreign affiliates resident and carrying on business in The Bahamas, thereby permitting such dividends to be exempted from tax in Canada.

Conclusion

The Bahamian economy can only be strengthened by the government's continued commitment to transparency cooperation in matters of exchange of tax information. In today's rapidly changing environment jurisdictions which offer tax neutral platforms must comply with emerging international standards in order to remain viable as international financial centres.

The information contained in this bulletin is provided for the general interest of our readers, but is not intended to constitute legal advice. Clients and the general public are encouraged to seek specific advice on matters of concern. This guide can in no way serve as a substitute in such cases.