

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

INTERNATIONAL COOPERATION (TAX INFORMATION EXCHANGE AGREEMENTS) AMENDMENT (NO. 2) ACT 2016

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WHEREAS it is expedient to amend the International Cooperation (Tax Information Exchange Agreements) Act 2005;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the International Cooperation (Tax Information Exchange Agreements) Act 2005 (the "principal Act"), may be cited as the International Cooperation (Tax Information Exchange Agreements) Amendment (No. 2) Act 2016.

Amends section 2

2 Section 2 of the principal Act is amended—

- (a) by numbering the existing provision as subsection (1);
- (b) by inserting after the existing provision the following—

"(2) In this Act, a reference to the Minister, in relation to any function to be performed by the Minister under this Act, is a reference to the Minister of Finance or such person, being an officer or servant, or an agency, of the Government of Bermuda, as the Minister of Finance may designate to perform the function (with or without a duty to refer back to the Minister of Finance) in his stead as his delegate.

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(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.”.

Amends section 3

3 Section 3 of the principal Act is amended by inserting after subsection (2) the following—

“(3) For the purposes of this section, no person who—

- (a) receives a request; or
- (b) obtains information directly or indirectly for the purposes of paragraph (a),

shall disclose the request or the information to another person except in accordance with this Act.

(4) Pursuant to section 26A of the Public Access to Information Act 2010, and notwithstanding any other provision of that Act, this section shall have effect.”.

Amends section 5

4 Section 5 of the principal Act is amended—

- (a) in subsections (1) and (3), by deleting “Financial Secretary” wherever the term appears and substituting “Minister”;
- (b) by inserting after subsection (1) the following—

“(1A) With respect to an application for a production order, the Minister shall be under no duty to make inquiry in relation to any statements made or any information given in respect of a request for which a production order is sought, or to information obtained by him under a previous request.”;

- (c) by repealing subsection (9) and replacing it with the following—

“(9) Where an application for a production order is made by a person designated, pursuant to section 2(2), to make such application, the person so designated must produce a minute signed by the Minister of Finance authorizing such delegation.”; and

- (d) by repealing subsection (11).

Amends section 6A

5 (1) Section 6A of the principal Act is amended—

- (a) in subsection (1), by deleting the words “The Financial Secretary” and substituting the words “An officer of the Ministry of Finance”;
- (b) in subsection (2)—

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- (i) by deleting the words “Where the Financial Secretary makes such an application he” and substituting the words “Where an application for a production order under this section is made, the officer of the Ministry of Finance”;
 - (ii) by deleting the words “authorizing the Financial Secretary” and substituting the words “authorizing the officer”;
 - (c) in subsection (3)—
 - (i) by deleting the words “on information given on oath by the Financial Secretary” and substituting the words “on information given on oath by such officer”;
 - (ii) by deleting the words “the Financial Secretary” and substituting the words “an officer of the Ministry of Finance”;
 - (d) in subsection (5), by deleting the words “Financial Secretary” and substituting the words “officer of the Ministry of Finance”;
 - (e) in subsection (6), by deleting the words “Financial Secretary” and substituting the words “officer of the Ministry of Finance”;
 - (f) in subsection (7), by deleting the words “Financial Secretary” and substituting the words “officer of the Ministry of Finance”;
- (2) Subsection (9) of section 6A is repealed.

Amends section 11

6 Section 11 of the principal Act is amended—

- (a) by numbering the existing provision as subsection (1); and
- (b) by inserting after the existing provision the following —

“(2) Notwithstanding the generality of subsection (1), the Minister shall not bear the costs arising in the case of an application which is made under section 5(6) where the court—

- (a) decides not to hear the application for review; or
- (b) decides to hear the application for review, but the production order is not set aside.”.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the International Cooperation (Tax Information Exchange Agreements) Act 2005 (the “principal Act”).

Clause 1 provides the citation for the Bill.

Clause 2 amends section 2 of the principal Act by numbering the existing provision as subsection (1) and including, as subsection (2), a provision which broadens the definition of Minister so that, with respect to the Minister’s functions under the principal Act, any reference to the Minister includes the Minister of Finance or such other person, being an officer or servant, or an agency of the Government of Bermuda as the Minister of Finance may designate to perform such function in his stead.

Clause 3 amends section 3 of the principal Act to prohibit any person, in receipt of a request from a requesting party, from disclosing the request or any information related to the request to any other person except in accordance with this Act. This provision also provides that, pursuant to section 26A of the Public Access to Information Act 2010 (which provides that international tax agreements are exempted records under that Act), the prohibition on disclosure under this section of the principal Act shall have effect notwithstanding any other provision of the Public Access to Information Act 2010.

Clause 4 amends section 5 of the principal Act to: (a) replace the reference to Financial Secretary with Minister. This change, coupled with the broadening of the definition of Minister, enables persons designated by the Minister to carry out the functions of the Minister with respect to the making of an application for a production order; (b) provide that, in respect of an application for a production order, the Minister (or whomever he designates) shall be under no duty to make inquiries in relation to any statements made or any information given in respect of a request for which a production order is sought, or in relation to a previous request; and (c) require that the person designated by the Minister to make an application for a production order produce a minute signed by the Minister of Finance authorizing him to make such application.

Clause 5 amends section 6A of the principal Act to expand the category of officers of the Ministry of Finance who may enter premises to obtain information for the purposes of the Act.

Clause 6 amends section 11 of the principal Act by numbering the existing provision as subsection (1) and including, as subsection (2), a provision which further provides for circumstances relating to costs of the Minister.