

SAINT CHRISTOPHER AND NEVIS

STATUTORY RULES AND ORDERS

No. 28 of 2010

Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) (Liechtenstein) Order.

In exercise of the powers conferred by section 3 of the Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act, No. 7 of 2009, the Minister makes the following Order:

[Published 23rd November 2010, Extra-Ordinary Gazette No. 55 of 2010]

1. Citation.

This Order may be cited as the Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) (Liechtenstein) Order, 2010.

2. Interpretation.

In this Order, “Act” means the Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act No. 7 of 2009.

3. Amendment of Second Schedule.

The Second Schedule of the Act is amended by inserting the following expression immediately after the expression “9. Finland”

“10. Liechtenstein”.

4. Amendment of Third Schedule.

The Third Schedule of the Act is amended by inserting the following new Part X immediately after the end of Part IX

“PART X

AGREEMENT between the Government of Saint Kitts and Nevis and the Government of the Principality of Liechtenstein on the exchange of information on tax matters

Preamble

The Government of Saint Kitts and Nevis and the Government of the Principality of Liechtenstein, hereinafter referred to as “the Contracting Parties”, –

whereas the Contracting Parties recognise that the well-developed economic ties between the Contracting Parties call for further cooperation;

whereas the Contracting Parties wish to develop their relationship further by cooperating to their mutual benefits in the field of taxation;

whereas the Contracting Parties wish to strengthen the ability of both Contracting Parties to enforce their respective tax laws; and

whereas the Contracting Parties wish to establish the terms and conditions governing the exchange of information on tax matters –

have agreed as follows:

Article 1
Object and Scope of the Agreement

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment and collection of such taxes with respect to persons subject to such taxes, or the investigation in or prosecution of criminal tax matters in relation to such persons. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable.

Article 2
Jurisdiction

A requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

Article 3
Taxes Covered

- (1) The taxes which are the subject of this Agreement are:
- a) in the Principality of Liechtenstein the personal income tax (Erwerbssteuer);
the corporate income tax (Ertragssteuer);
the corporation taxes (Gesellschaftssteuern);
the real estate capital gains tax (Grundstücksgewinnsteuer);
the wealth tax (Vermögenssteuer);
the coupon tax (Couponsteuer);
and the estate, inheritance and gift taxes (Nachlass-, Erbanfalls- und Schenkungssteuern);
 - b) in Saint Kitts and Nevis taxes on income and corporation tax respectively all taxes imposed within the jurisdiction of Saint Kitts and Nevis;

(2) This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes if the competent authorities of the Contracting Parties so agree. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxes covered by this Agreement and the related information gathering measures.

Article 4
Definitions

- (1) For the purposes of this Agreement, unless otherwise defined,

- a) the term “Principality of Liechtenstein” means, when used in a geographical sense, the area of the sovereign territory of the Principality of Liechtenstein;
- b) the term “Saint Kitts and Nevis” means the twin island Federation of Saint Kitts (St. Christopher) and Nevis and, when used in a geographical sense, means the territories of Saint Kitts and Nevis;
- c) the term “competent authority” means:
 - aa) in the case of the Principality of Liechtenstein, the Government of the Principality of Liechtenstein or its authorised representative;
 - bb) in the case of Saint Kitts and Nevis the Financial Secretary or his authorised representative;
- d) the term “person” includes an individual, a company, a dormant inheritance and any other body of persons;
- e) the term “company” means any body corporate, as well as entities and special asset endowments that are treated as a body corporate for tax purposes;
- f) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- g) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power or of the statutory capital of the company;
- h) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- i) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- j) the term “tax” means any tax to which this Agreement applies;
- k) the term “applicant Party” means the Contracting Party requesting information;
- l) the term “requested Party” means the Contracting Party requested to provide information;
- m) the term “information gathering measures” means administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- n) the term “information” means any fact, statement or record in any form whatever;
- o) the term “tax matters” means all tax matters, including criminal tax matters;

- p) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party;
- q) the term “criminal laws” means all criminal tax laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes;
- r) the term “national” means:
 - aa) with regard to Liechtenstein any individual possessing “Landesbürgerrechte” according to the “Bürgerrechtsgesetz” (LGBl. 1960, No. 23) and any person other than an individual deriving its status as such from the laws in force in Liechtenstein;
 - bb) in Saint Kitts and Nevis any individual possessing citizenship of Saint Kitts and Nevis;

(2) As regards the application of this Agreement at any time by a Contracting Party, any term not defined in this Agreement, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 10 of this Agreement, shall have the meaning that it has at that time under the laws of that Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

Article 5

Exchange of Information Upon Request

(1) The competent authority of the requested Party shall provide upon request of the applicant Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party. The competent authority of the applicant Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means available in its own territory, except where recourse to such means would give rise to disproportionate difficulty.

(2) If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not, at that time, need such information for its own tax purposes.

(3) If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

(4) Each Contracting Party shall ensure that its competent authorities, in accordance with the terms of this Agreement have the authority to obtain and provide upon request:

- a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
- b) information regarding the ownership of companies, partnerships and other persons, including,

- aa) in the case of investment funds or schemes information on the units, shares or other interests in the fund or scheme;
- bb) in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries;

provided that this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

(5) Any request for information shall be formulated with the greatest detail possible and shall in all cases specify in writing:

- a) the identity of the person under examination or investigation;
- b) the taxable period for which the information is sought;
- c) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
- d) the matter under the applicant Party's tax law with respect to which the information is sought;
- e) grounds for believing that the information requested is foreseeably relevant to the administration and enforcement of the domestic tax laws of the applicant Party with regard to the person specified in subparagraph a;
- f) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- g) to the extent known, the name and address of any person believed to be in possession of the requested information;
- h) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws or in the normal course of administrative practice of the applicant Party and that it is in conformity with this Agreement; and
- i) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

(6) The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the applicant Party and shall use its best endeavours within its means to forward the requested information to the applicant Party with the least reasonable delay.

Article 6
Tax Examinations Abroad

(1) By reasonable notice given in advance, the applicant Party may request that the requested Party allows representatives of the competent authority of the applicant Party to enter the territory of the requested Party, to the extent permitted under its laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requested Party shall notify the competent authority of the applicant Party of the time and place of the meeting with the individuals concerned.

(2) At the request of the competent authority of the applicant Party, the competent authority of the requested Party may allow representatives of the competent authority of the applicant Party to be present at the appropriate part of a tax examination in the requested Party.

(3) If the request referred to in paragraph 2 is acceded to, the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the applicant Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested Party conducting the examination.

Article 7
Possibility of Declining a Request

(1) The competent authority of the requested Party may decline a request of the applicant Party, where

- a) the request is not made in conformity with this Agreement and, in particular, where the requirements of Article 5 are not met; or
- b) the applicant Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
- c) the disclosure of the information requested would be contrary to the public policy (*ordre public*) of the requested Party; or
- d) the amount of tax or duty in question does not exceed EUR 25 000 or the Swiss Franc equivalent, unless the case is deemed to be extremely serious by the applicant Party.

(2) This Agreement shall not impose upon a requested Party any obligation

- a) to provide information subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 5 paragraph 4 shall not by reason of that fact alone be treated as such a secret or trade process; or
- b) to carry out administrative measures at variance with its laws and administrative practices, provided that nothing in this subparagraph shall affect the obligations of a Contracting Party under Article 5 paragraph 4 of this Agreement.

(3) A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

(4) The requested Party shall not be required to obtain and provide information which the applicant Party would be unable to obtain under its own laws or in the normal course of administrative practice in response to a valid request made in similar circumstances from the requested Party under this Agreement.

(5) The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

Article 8 Confidentiality

(1) All information provided and received by the competent authorities of the Contracting Parties shall be kept confidential.

(2) This information may be disclosed only to persons or authorities (including courts and administrative bodies) of the Contracting Parties concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes. For these purposes information may be used in public court proceedings or in judicial decisions.

(3) Such information may not be used for any purpose other than for the purposes stated in Article 1 without the expressed written consent of the competent authority of the requested Party.

(4) Information received under this Agreement must not be disclosed to any other State or sovereign territory not party to this Agreement.

(5) Personal data may be transmitted to the extent necessary for carrying out the provisions of this Agreement and subject to the provisions of the law of the supplying Party.

(6) Information received by the requested Party in conjunction with a request for assistance under this Agreement shall likewise be treated as confidential in the requested Party.

Article 9 Costs

The applicant Party shall reimburse the requested Party for all direct costs incurred in providing information pursuant to this Agreement. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the applicant Party if the costs of providing information with respect to a specific request are expected to be significant.

Article 10
Mutual Agreement Procedure

(1) Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.

(2) In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under this agreement.

(3) The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

(4) The Contracting Parties may also agree on other forms of dispute resolution.

Article 11
Protocol

The attached Protocol shall be an integral part of this Agreement.

Article 12
Implementation Legislation

Legislation necessary to comply with, and to give effect to, the terms of this Agreement shall be enacted by December 31, 2010.

Article 13
Entry into Force

(1) This Agreement shall enter into force one month from the date on which the Contracting Parties have notified each other that their respective requirements for the entry into force of this Agreement have been fulfilled. The relevant date shall be the day on which the last notification is received.

(2) Upon the date of entry into force, this Agreement shall have effect for all requests made but only in respect of taxable periods beginning on or after January 1, 2010.

Article 14
Termination

(1) This Agreement shall remain in force until terminated; either Contracting Party may terminate this Agreement by serving a notice of termination by letter to the competent authority of the other Contracting Party.

(2) Such termination shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the other Contracting Party.

(3) After termination of this Agreement, both Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information provided and received under this Agreement.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done at Washington D.C., this 11th day of December 2009, in duplicate, in the German and English languages, each text being equally authentic.

Izben Williams
Ambassador of St Kitts and Nevis
to the USA
For the Government of Saint Kitts and Nevis:

Mrs Claudia Fritsche
Ambassador of the Principality of
Liechtenstein to the USA
For the Government of the Principality
of Liechtenstein:

Protocol

to the Agreement between the Government of Saint Kitts and Nevis and Government of the Principality of Liechtenstein on the exchange of information on tax matters

On the occasion of the signing of the Agreement between the Government of Saint Kitts and Nevis and the Government of the Principality of Liechtenstein (the “Contracting Parties”) on the exchange of information on tax matters, the Contracting Parties have agreed upon the following provisions, which are an integral part of this Agreement:

1. With respect to Article 5 paragraph 1, it is understood that the taxpayer, unless subject to criminal investigations, is to be informed about the intention to make a request for information. If informing the taxpayer would jeopardise the purpose of the criminal investigation, informing the taxpayer is not necessary.

2. With respect to Article 5 paragraph 5 subparagraph a), it is understood that it is not necessary to provide the name of the taxpayer in order to define its identity, if this identity can be determined from equivalent elements.

3. In Article 9 the term “direct” costs shall be interpreted as follows:-

- a) examples of the ‘direct costs’ include, but are not limited to, the following:
 - (i) reasonable costs of reproducing and transporting documents or records to the competent authority of the applicant Party;
 - (ii) reasonable fees imposed by a financial institution or other record keeper for copying records and research related to a specific request for information;
 - (iii) reasonable costs for stenographic reports and interviews, depositions or testimony;
 - (iv) reasonable fees and expenses, determined in accordance with amounts allowed under applicable law, on the person who voluntarily appears in the territory of one of the Contracting Parties for interview, deposition or testimony relating to a particular information request;

- (v) reasonable legal fees for non-government counsel appointed or retained, with the approval of the competent authority of the applicant Party, for litigation in the courts of the requested Party related to a specific request for information.
- b) 'Direct costs' do not include ordinary administrative and overhead expenses incurred by the requested Party in reviewing and responding to information requests submitted by the applicant Party.
- c) If the direct costs pertaining to a specific request are expected to exceed EUR 500 or the Swiss Franc equivalent, the competent authority of the requested Party shall contact the competent authority of the applicant Party to determine whether the applicant Party wants to pursue the request and bear the costs.

4. Formal communications, including requests for information, made in connection with or pursuant to the provisions of this Agreement entered into will be in writing directly to the competent authority of the other Contracting Party at the addresses given below, or such address as may be notified by one Contracting Party to the other from time to time. Any subsequent communications regarding requests for information will be in writing between the earlier mentioned competent authorities or their authorised entities, whereas the possibility of direct consultation is being given.

Izben Williams
Ambassador of St Kitts and Nevis
to the USA
For the Government of Saint Kitts and Nevis:

Mrs Claudia Fritsche
Ambassador of the Principality of
Liechtenstein to the USA
For the Government of the Principality
of Liechtenstein:

Made this 22nd day of November, 2010

DENZIL L. DOUGLAS
Minister responsible for Finance