

TAXATION

Information Exchange

**Agreement Between the
UNITED STATES OF AMERICA
and ANTIGUA AND BARBUDA**

Signed at Washington December 6, 2001



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

ANTIGUA AND BARBUDA

Taxation: Information Exchange

*Agreement signed at Washington December 6, 2001;
Entered into force February 10, 2003.*

**AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF
AMERICA AND THE GOVERNMENT OF ANTIGUA AND BARBUDA FOR THE
EXCHANGE OF INFORMATION WITH RESPECT TO TAXES**

The Government of the United States of America and the Government of Antigua and Barbuda, desiring to conclude an Agreement for the exchange of information with respect to taxes (hereinafter referred to as the "Agreement"), have agreed as follows:

ARTICLE 1

OBJECT AND SCOPE OF THE AGREEMENT

1. The Contracting States shall assist each other to assure the accurate assessment and collection of taxes, to prevent fiscal fraud and evasion, and to develop improved information sources for tax matters. The Contracting States shall provide assistance through exchange of information authorized pursuant to Article 4 and such related measures as may be agreed upon by the competent authorities pursuant to Article 5.

ARTICLE 2

TAXES COVERED BY THE AGREEMENT

1. This Agreement shall apply to the following taxes imposed by or on behalf of a Contracting State:
- a) in the case of the United States of America, all federal taxes.
 - b) in the case of Antigua and Barbuda, the following taxes: income tax (personal), income tax (companies), property tax, business tax (unincorporated), non-citizen undeveloped land tax, land value appreciation tax, gross turnover tax, telecommunication licence, stamp duty, hotel tax, guest tax, telecommunication tax, foreign currency levy, travel tax, insurance levy, hotel guest levy, time sharing occupancy tax, time sharing service tax, betting and gaming tax, money transfer levy, restaurant and caterers service tax, tax on gross income – offshore banks, casino licences, banking and insurance licences and fees, and guest levy.
2. This Agreement shall apply also to any identical or substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authority of each Contracting State shall notify the other of changes in laws which may affect the obligations of that State pursuant to this Agreement.

3. This Agreement shall not apply to the extent that an action or proceeding concerning taxes covered by this Agreement is barred by the applicant State's statute of limitations.

4. This Agreement shall not apply to taxes imposed by states, municipalities or other political subdivisions, or possessions of a Contracting State.

ARTICLE 3

DEFINITIONS

1. In this Agreement, unless otherwise defined:

a) The term "competent authority" means:

- (i) in the case of the United States of America, the Secretary of the Treasury or his delegate, and
- (ii) in the case of Antigua and Barbuda, the Minister of Finance or his delegate.

b) The term "national" means:

- (i) in the case of the United States, any United States citizen and any legal person, partnership, corporation, trust, estate, association, or other entity deriving its status as such from the laws in force in the United States; and
- (ii) in the case of Antigua and Barbuda, any citizen of Antigua and Barbuda and any legal person, partnership, company, trust, estate, association, or other entity deriving its status as such from the laws in force in Antigua and Barbuda.

c) The term "person" includes an individual and a partnership, corporation, trust, estate, association or other legal entity.

d) The term "tax" means any tax to which the Agreement applies.

e) The term "information" means any fact or statement, in any form whatever, that

may be relevant or material to tax administration and enforcement, including (but not limited to):

- (i) testimony of an individual, and
 - (ii) documents, records or tangible property of a person or Contracting State.
- f) The terms "applicant State" and "requested State" mean, respectively, the Contracting State applying for or receiving information and the Contracting State providing or requested to provide such information.
- g) For purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term "United States" means the United States of America, including Puerto Rico, the Virgin Islands, Guam, and any other United States possession or territory.
- h) For purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term "Antigua and Barbuda" means the State of Antigua and Barbuda and the territorial waters thereof.

2. 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 5, shall have the meaning which it has under the laws of the Contracting State relating to the taxes which are the subject of this Agreement.

ARTICLE 4

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange information to administer and enforce the domestic laws of the Contracting States concerning taxes covered by this Agreement, including information to effect the determination, assessment, and collection of tax, the recovery and enforcement of tax claims, or the investigation or prosecution of tax crimes or crimes involving the contravention of tax administration. Information shall be exchanged to fulfill the purpose of this Agreement without regard to

whether the person to whom the information relates is, or whether the information is held by, a resident or national of a Contracting State, provided that the information requested is covered by this Agreement.

2. The competent authority of the requested State shall endeavor in good faith to provide information upon request by the competent authority of the applicant State for the purposes referred to in paragraph 1. If the information available in the tax files of the requested State is not sufficient to enable compliance with the request, that State shall take all relevant measures to provide the applicant State with the information requested. Privileges under the laws or practices of the applicant State shall not apply in the execution of a request but shall be preserved for resolution by the applicant State.

3. The requested State shall endeavor in good faith to provide information requested pursuant to the provisions of this article regardless of whether the requested State needs such information for purposes of its own tax. If specifically requested, the requested State shall endeavor in good faith to provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts and writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of the requested State with respect to its own taxes.

4. The provisions of the preceding paragraphs shall not be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that State or of the other Contracting State;
- b) to supply particular items of information which are not obtainable under the laws or in the normal course of the administration of that State or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process;
- d) to supply information, the disclosure of which would be contrary to public policy;

- e) to supply information requested by the applicant State to administer or enforce a provision of the tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested State. A provision of tax law, or connected requirement, will be considered to be discriminatory against a national of the requested State if it is more burdensome with respect to a national of the requested State than with respect to a national of the applicant State in the same circumstances. For purposes of the preceding sentence, a national of the applicant State who is subject to tax on worldwide income is not in the same circumstances as a national of the requested State who is not subject to tax on worldwide income. The provisions of this subparagraph shall not be construed so as to prevent the exchange of information with respect to the taxes imposed by the United States or Antigua and Barbuda on branch profits or on the premium income of nonresident insurers or foreign insurance companies.
- f) Notwithstanding subparagraphs (a) through (e) of this paragraph, the requested State shall have the authority to obtain and provide, through its competent authority, information held by financial institutions, nominees, or persons acting in agency or fiduciary capacity (not including information that would reveal confidential communications between a client and an attorney, solicitor or other legal representative where the client seeks legal advice), or information respecting ownership interests in a person.

5. Except as provided in paragraph 4, the provisions of the preceding paragraphs shall be construed so as to impose on a Contracting State the obligation to use all legal means and its best efforts to execute a request. A Contracting State may, in its discretion, take measures to obtain and transmit to the other State information which, pursuant to paragraph 4, it has no obligation to transmit.

6. The competent authority of the requested State shall allow representatives of the applicant State to enter the requested State to interview individuals and examine books and

records with the consent of the individuals contacted. Representatives of the requested State shall have the opportunity to be present at any such interview or examination.

7. Any information received by a Contracting State shall be treated as confidential in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to individuals or authorities (including judicial and administrative bodies) involved in the determination, assessment, collection, and administration of, the recovery and collection of claims derived from, the enforcement or prosecution in respect of, or the determination of appeals in respect of, the taxes which are the subject of this Agreement, or the oversight of the above. Such individuals or authorities shall use the information only for such purposes. These individuals or authorities may disclose the information in public court proceedings or in judicial decisions. Information shall not be disclosed to any third jurisdiction for any purpose without the consent of the Contracting State originally furnishing the information.

ARTICLE 5

MUTUAL AGREEMENT PROCEDURE

1. The competent authorities of the Contracting States shall agree to implement a program to carry out the purposes of this Agreement. This program may include, in addition to exchanges specified in Article 4, other measures to improve tax compliance, such as exchanges of technical know-how, development of new audit techniques, identification of new areas of non-compliance, and joint studies of non-compliance areas.
2. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. In particular, the competent authorities may agree to a common meaning of a term, and may determine when costs are extraordinary for purposes of Article 6.
3. The competent authorities of the Contracting States may communicate with each other directly for the purposes of reaching an agreement under this Article.

ARTICLE 6

COSTS

Unless the competent authorities of the Contracting States otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested State and extraordinary costs incurred in providing assistance shall be borne by the applicant State. The requested State shall, before fulfilling a request, inform the applicant state if it believes the costs of fulfilling such request will be extraordinary. The competent authorities of the Contracting States agree to consult on an ongoing basis with respect to costs incurred or potentially to be incurred under this Agreement and with a view to minimizing such costs.

ARTICLE 7

IMPLEMENTATION

A Contracting State shall enact such legislation as may be necessary to effectuate this Agreement.

ARTICLE 8

OTHER APPLICATIONS OF AGREEMENT

This Agreement is consistent with the standards for an exchange of information agreement described in section 274(h)(6)(C) of the United States Internal Revenue Code of 1986, as amended (relating to deductions for attendance at foreign conventions).

ARTICLE 9

ENTRY INTO FORCE

This Agreement shall enter into force upon an exchange of notes by the duly authorized representatives of the Contracting States, confirming their mutual agreement that both sides have met constitutional and statutory requirements necessary to effectuate this Agreement.

ARTICLE 10

TERMINATION

This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement at any time after the Agreement enters into force provided that at least three months prior notice of termination has been given through diplomatic channels.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective governments, have signed this Agreement.

DONE at Washington, in duplicate, this sixth day of December, 2001.

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF
ANTIGUA AND BARBUDA:

