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No. 14 of 2018

Third Session Eleventh Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to make provision for the implementation of
agreements between Trinidad and Tobago and
other States providing for the exchange of
information for the purposes of taxation, and for
related purposes

THE TAX INFORMATION EXCHANGE AGREEMENTS
BILL, 2018

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

This Bill seeks to provide for the implementation of agreements between Trinidad and Tobago and other countries to provide for the exchange of information for the purposes of taxation and for related purposes.

The Bill first contains Preambulatory clauses which are required where a Bill seeks to infringe the fundamental rights guaranteed by section 4 of the Republican Constitution. Since the Bill would require the Board of Inland Revenue to share personal information on individuals in its possession with certain Government agencies and under tax information exchange agreements, this amounts to an infringement of the right of a person to privacy and family life and as such, the Bill would contravene sections 4 and 5 of the Constitution. The Bill would therefore have to be passed in both Houses of Parliament with a three-fifths majority votes of all members as required by section 13(2) of the Republican Constitution.

The Bill would contain nine (9) clauses.

Clause 1 of the Bill would set out the long title of the Act for which this is Bill.

Clause 2 of the Bill would provide that the Act for which this is the Bill would have effect even though it is inconsistent with the Constitution.

Clause 3 of the Bill would provide for the interpretation of certain words and phrases used in the Bill.

Clause 4 of the Bill would set out what is a tax information exchange agreement and what it would contain.

Clause 5 of the Bill would empower the President by Order, to declare a tax information exchange agreement to be a declared agreement.

Clause 6 of the Bill would require the competent authority to give effect to declared agreements and empowers the Minister to give general directions to the Board as to its functions under this Act.

Clause 7 of the Bill would set out the powers of the Board relative to the Act. The Board is empowered to provide any information obtained by it under this or any other written law and to request and receive any information required by it for the purpose of any written law.

Clause 8 of the Bill would provide that nothing in section 4 of the Income Tax Act or any other law of like effect, would prevent the disclosure of information under the Act in order to give effect to a declared agreement.

Clause 9 of the Bill recognizes that there are several secrecy provisions under the Data Protection Act, Chap. 22:04, which would prevent the sharing of information in the possession of the Board. The Data Protection Act, Chap. 22:04 also restricts how information collected can be used and prevents the sharing with countries which do not have equivalent safeguards. The Bill now makes provision for sharing notwithstanding these privacy limitations by introducing a new section 93A. The clause goes on to provide however, that the Board cannot disclose information it receives with other agencies for non-taxation purposes where the country supplying the information has laws allowing for such sharing and consents to the sharing of the information.

Clause 10 of the Bill would provide that where information is received under this Act, a person who discloses the information other than for the purposes of the Act, commits an offence and he is liable on summary conviction to a fine of one hundred thousand dollars (\$100,000.00) and imprisonment for three years and on conviction on indictment to a fine of one hundred and fifty thousand dollars (\$150,000.00) and to imprisonment for five years.

THE TAX INFORMATION EXCHANGE AGREEMENTS
BILL, 2018

Arrangement of Clauses

Clause

1. Short title
2. Act inconsistent with Constitution
3. Interpretation
4. Tax information exchange agreements
5. Declaration of agreement
6. Implementation of agreement
7. Powers of Board
8. Secrecy
9. Exemption from Chap. 22:04
10. Penalty for unauthorized disclosure

BILL

AN ACT to make provision for the implementation of agreements between Trinidad and Tobago and other States providing for the exchange of information for the purposes of taxation, and for related purposes.

[, 2018]

WHEREAS it is enacted by section 13(1) of the ^{Preamble} Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any Act does so declare, it shall have effect accordingly:

And whereas it is provided in section 13(2) of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

Enactment

ENACTED by the Parliament of Trinidad and Tobago as follows:

Short title

1. This Act may be cited as the Tax Information Exchange Agreements Act, 2018.

Act inconsistent with Constitution

2. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Interpretation

3. In this Act—

“competent authority”, in relation to a tax information exchange agreement means in the case of—

(a) Trinidad and Tobago, the Board as the Minister’s authorised representative; and

(b) another State, has the meaning ascribed in the tax information exchange agreement;

“contracting states”, in relation to tax information exchange agreement, means Trinidad and Tobago and the other State on behalf of which the tax information exchange agreement is entered into;

“declared agreement” means a tax information exchange agreement that has, under section 4, been declared by the President to be a declared agreement for the purposes of this Act;

“Minister” means the Minister to whom the responsibility for finance is assigned;

“tax information exchange agreement” has the meaning assigned to it by section 4;

“the Board” means the Board of Inland Revenue established by section 4 of the Income Tax Act.

Chap. 75:01

4. (1) For the purpose of this Act, a tax information exchange agreement is an agreement whereby the Government of Trinidad and Tobago and the Government of another State undertake that those States will, through their competent authorities, provide each other, upon request, with any financial and other information and supporting documentation accessible to the competent authority of the State to which the request is made that is required by the competent authority of the requesting State for the purposes of administering or enforcing a law relating to taxation of a kind specified in the agreement.

(2) An agreement is not precluded from being a tax information exchange for the purposes of this Act by reason that it—

- (a) includes provision for matters necessary for, or incidental to, the matters referred to in subsection (1);
- (b) provides for a contracting State to obtain and transmit to the other contracting State any information that it considers may assist that other State to administer or enforce a law referred to in subsection (1); or

(c) provides for the implementation of programmes or measures to facilitate or improve the administration and enforcement of the laws referred to in subsection (1).

Declaration of agreement

5. The President may, by Order, declare a tax information exchange agreement specified in the Order to be a declared agreement for the purposes of this Act.

Implementation of agreement

6. (1) The competent authority has the function of ensuring that effect is given to every declared agreement.

(2) The Minister may give general directions to the Board as to the performance by it of its functions under this Act, and the Board shall comply with any direction so given.

Powers of Board

7. (1) The Board has, for the purposes of giving effect to a declared agreement, all the powers that it would have if it were acting generally for the purposes of, or for any particular purpose specified in, any written law that confers powers on the Board and any such power is exercisable notwithstanding that the circumstances, if any, necessary under that written law for the exercise of the power may not have arisen and, subject to this subsection, the provisions of that written law, shall apply to, and in relation to, the exercise of any such power were exercised for the purposes of that written law.

(2) The Board may, in accordance with a declared agreement—

- (a) provide any information obtained by it under this or any other written law; and
- (b) request and receive any information required by it for the purposes of any written law.

8. Nothing in section 4 of the Income Tax Act, or any other law to a like effect, prevents the disclosure of information where that disclosure is in accordance with, and for the purpose of giving effect to, a declared agreement.

9. (1) Notwithstanding sections 6, 38 and 40 of the Data Protection Act, the Board may, for the purposes of this Act, process information collected by it under this Act.

(2) Notwithstanding sections 6, 30 and 31 of the Data Protection Act, the Board shall for the purposes of this Act, receive information on an individual.

(3) Notwithstanding section 46 of the Data Protection Act, information received by the Board under this Act shall be disclosed under an agreement even if the individual to whom the information relates does not consent to the disclosing of his information or the jurisdiction does not have comparable safeguards as required by the Data Protection Act.

(4) Notwithstanding any other written law, where the Board receives information for the purposes of this Act, it shall not share that information with any person unless so permitted under this Act.

10. Where information has been obtained or received under this Act, a person who uses or discloses the information other than for the purposes for which it is obtained or received commits an offence and is liable—

- (a) on summary conviction to a fine of one hundred thousand dollars and to imprisonment for a term of three years; and
- (b) on conviction on indictment to a fine of one hundred and fifty thousand dollars and to imprisonment for a term of five years.

Passed in the House of Representatives this day
of , 2018.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for
which has been passed in the House of Representatives
and at the final vote thereon in the House has been
supported by the votes of not less than three-fifths of all
the members of the House, that is to say by the votes of
members of the House.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2018.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for
which has been passed by the Senate and at the final
vote thereon in the Senate has been supported by the
votes of not less than three-fifths of all the members of
the Senate, that is to say by the votes of Senators.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 14 of 2018

THIRD SESSION
ELEVENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to make provision for the implementation of agreements between Trinidad and Tobago and other States providing for the exchange of information for the purposes of taxation, and for related purposes

Received and read the

First time

Second time

Third time