

VIRGIN ISLANDS

INTERNATIONAL TAX AUTHORITY ACT, 2018

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I Assent
(Sgd.) Augustus J. U. Jaspert,
Governor.
4th September, 2018

VIRGIN ISLANDS

No. 7 of 2018

An Act to provide for the establishment of a body to be known as the International Tax Authority, the functions and powers of that body, to transfer certain statutory powers and functions to the Authority and to provide for other matters connected therewith.

[Gazetted 6th September, 2018]

ENACTED by the Legislature of the Virgin Islands as follows:

- Short title and commencement. **1.** This Act may be cited as the International Tax Authority Act, 2018 and shall come into operation on such day as the Minister may, by Notice published in the *Gazette*, appoint.
- Interpretation. **2.** In this Act, unless the context otherwise requires,
- No. 18 of 2003 “Agreement” has the meaning assigned to it under section 2 of the Mutual Legal Assistance (Tax Matter) Act, 2003;
- “Authority” means the International Tax Authority established under section 3(1);
- “Board” means the Board of the Authority established under section 3(2);
- 2007 No. 1678 “Cabinet” means the Cabinet established under section 47(1) of the Virgin Islands Constitution Order, 2007;
- “Chairperson” means the Chairperson of the Board assigned under section 3(2);
- “Committee” means the Committee of the Authority established under section 3(4);
- “Court” means the High Court;

“Director” means the Director of the Authority appointed under section 6;

“Minister” means the Minister to whom responsibility for the subject of this Act is assigned;

“mutual legal assistance legislation” means any legislation listed in Schedule 1, or Schedule 1 statutory document made thereunder;

“regulations” means regulations made under section 26;

“Representative” has the meaning assigned to it under section 2 of the Mutual No. 18 of 2003 Legal Assistance (Tax Matters) Act, 2003;

“request” means a request made under an Agreement by a requesting party to the Authority.

3. (1) There is hereby established a body corporate to be known as the International Tax Authority, which shall have power to do all such things as are necessary or incidental to the performance of its functions and the provisions of section 21 of the Interpretation Act shall apply accordingly. Establishment of the Authority and the Board. Cap. 136

(2) There shall be a Board of the Authority which shall comprise

- (a) a Chairperson, who shall be the Director of International Business (Regulations);
- (b) the Attorney General;
- (c) the Managing Director of the Financial Services Commission;
- (d) the Director of the Financial Investigation Agency; and
- (e) the Director as *ex officio* member.

(3) Schedule 2 shall have effect with respect to the meetings of the Board, the administration and proceedings of the Authority, the Director and otherwise in relation to the Authority. Schedule 2

4. (1) The functions of the Authority are

- (a) to ensure that the Government of the Virgin Islands fulfills its obligations under an Agreement;

Functions of the Authority and the Board.

- (b) to monitor the compliance of the Virgin Islands with international obligations in relation to cross border tax matters;
- (c) to administer and monitor the compliance of persons, entities, legal and other arrangements in the Virgin Islands with this Act and mutual legal assistance legislation;
- (d) subject to the provisions of this Act, to provide the Minister with periodic reports, advice, assistance and information in relation to any matters relating to information exchange in relation to tax matters as may be necessary;
- (e) to develop appropriate legal, supervisory and monitoring mechanism for the effective and efficient administration of the Authority and the mutual legal assistance legislation;
- (f) to maintain contact and develop relations with foreign competent authorities, international bodies and associations in relation to tax matters and other international associations or groups relevant to its functions and to provide assistance to foreign competent authorities in accordance with this Act or as may be provided in any other mutual legal assistance legislation;
- (g) to monitor the effectiveness of mutual legal assistance legislation in providing for the supervision and monitoring of persons, entities, legal and other arrangements in the Virgin Islands to the internationally accepted standards;
- (h) to make recommendations to the Minister on such amendments or revisions to the mutual legal assistance legislation or such new legislation as the Authority considers necessary or appropriate to ensure compliance with the international standards in relation to tax matters;
- (i) to develop, with such persons as the Authority may determine for the purposes of maintaining compliance and understanding in relation to cross border tax matters, a system of continuing education for persons in the Virgin Islands and towards this end to develop such curriculum as it considers appropriate;
- (j) to adopt such measures as may appropriately inform the general public of its functions and on matters relating to or

affecting cross border tax matters or mutual legal assistance legislation;

- (k) to issue such advisories to the general public as it considers appropriate;
- (l) to monitor, in the public interest, promotional advertisements relating to any cross border tax matters or with respect to any mutual legal assistance legislation and give such advice relating to accuracy, fairness and compliance with established laws and policies;
- (m) to enter into memoranda of understanding and competent authority agreements with other competent authorities within and outside of the Territory with the consent of the Minister;
- (n) to perform such other functions as may be assigned to it under this Act or under any other enactment.

(2) In performing its functions the Authority may take into account any matter which it considers appropriate including international initiatives geared towards cross border tax matters.

(3) The Authority shall not be liable for any loss or injury arising from the performance of its functions pursuant to subsection (1) or (2).

(4) The Board is the governing body of the Authority and shall be responsible for providing guidance on policy and for taking policy decisions in relation to the administration of the Authority and, in addition to any powers conferred by or under this Act, shall,

- (a) submit the budget estimates of the Authority to the Minister for approval, subject to section 14;
- (b) classify and identify senior management positions to which to appoint suitably qualified persons;
- (c) review and approve a staff pension plan;
- (d) through the Authority, inform the public, entities, legal or other arrangements of their obligations under measures that have been or might be taken in relation to tax matters and other related matters concerning international cooperation;

- (e) consider and approve such other matters which in the opinion of the Director requires the input or approval of the Board.

Transfer of statutory functions, powers and duties to the Authority.

5. The functions, powers and duties that, prior to the coming into force of this Act, vested in, the Financial Secretary or any other officer by virtue of any mutual legal assistance legislation, Agreement or Arrangement signed or extended to the Virgin Islands that deals with exchange of information or the international standards in relation to cross border tax matters shall, upon the coming into force of this Act, vest in the Authority.

Appointment and functions of Director.

6. (1) The Board shall, with the approval of the Minister, appoint a fit and proper person to be the Director on such terms and conditions as it considers appropriate.

(2) The Board may remove the Director from office pursuant to the terms and conditions of his or her appointment, and shall provide in writing the reason for the removal.

(3) The Director is an employee of the Authority and shall

- (a) be responsible for the day to day administration and operation of the Authority and supervision of staff of the Authority;
- (b) subject to any general or special direction of the Board, execute the functions of the Authority outlined in section 4;
- (c) be responsible for identifying and classifying staff positions in the Authority, which are not designated senior management positions under section 4(4)(b) to which he or she shall, subject to the approval of the Board, appoint suitably qualified persons;
- (d) coordinate and ensure timely responses to and delivery of all requests for assistance emanating under an agreement or any mutual legal assistance legislation;
- (e) bring to the attention of the Board any matter that requires policy decision or guidance with regard to the functions of the Authority;
- (f) perform such other duties as may be assigned or delegated to him or her by the Board; and
- (g) ensure that the Virgin Islands is in compliance with its

international obligations in relation to tax matters and other related matters concerning international cooperation for tax purposes.

(4) In discharging his or her functions, the Director shall use his or her best endeavours to ensure that

- (a) the resources of the Authority are utilised economically and efficiently;
- (b) the internal financial and management controls of the Authority are adequate;
- (c) the Authority is operated in accordance with principles of good governance; and
- (d) the Authority fulfils its statutory obligations and properly discharges its functions.

7. (1) Subject to section 26 and without prejudice to the powers granted under sections 4(4)(b) and 6(1), the Board may appoint such officers, employees and agents as it considers necessary and proper for the administration, management and performance by the Authority of its functions under this Act.

Appointment of other staff.

(2) Appointments under this Act shall be on such terms as to remuneration, expenses, pensions and other conditions of service as the Board thinks fit.

(3) Subject to subsection (4), the Authority may establish and maintain such plans or make such other arrangements as it thinks fit for the payment of pensions and other benefits in respect of its officers and employees.

(4) The Minister, with the approval of the Cabinet, may approve the establishment and maintenance of such plans or other arrangements.

8. No action shall lie against the Authority, the Director, officers or personnel of the Authority or any person acting under the direction of the Authority or the Director for anything done or omitted to be done in good faith in the discharge or purported discharge of any functions, duties or powers under this Act.

Immunity of officers from suit.

9. (1) No proceeding for breach of banking or professional confidentiality may be instituted against any person or against any director or employee of an entity or other legal arrangement who in good faith transmits information or submits reports in accordance with the provisions of this Act or any mutual legal assistance legislation to the Authority.

No criminal or civil liability for providing information.

(2) No civil or criminal action may be brought nor any professional sanction taken against any person who, or against any director or employee of an entity or other legal arrangement that, in good faith transmits information to the Authority.

Confidentiality.

10. (1) Any person who obtains information in any form as a result of his or her connection with the Authority shall not disclose that information to any person except so far as it is required or permitted under this Act or any other enactment.

(2) Any person who communicates any information in breach of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year, or to both.

Duty to take
oath.
Schedule 3

11. (1) The members of the Board, the Director and the staff of the Authority shall, prior to assuming office with the Authority, subscribe to the Oath of Confidentiality set out in Schedule 3.

(2) The Oath of Confidentiality referred to in subsection (1) shall be taken before a Magistrate, Additional Magistrate, Registrar of the High Court or a Justice of the Peace.

(3) The Director shall keep a record of all Oaths of Confidentiality taken pursuant to this section.

Annual report.

12. (1) The Director shall prepare and submit to the Board on or before the 30th day of June in each year an annual report of the Authority during the previous year.

(2) The Chairperson shall forward a copy of every annual report to the Minister, who shall cause the report to be laid on the table of the House of Assembly before the end of the year immediately following the year to which the annual report relates.

Funds and
resources.

13. (1) The funds and resources of the Authority shall comprise

- (a) fees and penalties (excluding penalties imposed by a court) payable under this Act and the mutual legal assistance legislation;
- (b) such monies as may be appropriated by the House of Assembly for the purposes of the Authority;

- (c) monies paid and property provided to the Authority by way of grants, fees, charges, rent, interest and other income derived from the investment of the Authority's funds;
- (d) monies derived from the disposal of or dealing with real or personal property held by the Authority; and
- (e) any property lawfully received or made available to the Authority.

(2) The Authority shall open and maintain with a reputable bank licensed and operating in the Territory and approved by the Minister, an account into which the funds and resources of the Authority shall be paid and such account shall be for the exclusive use of the Authority.

(3) Where there is a surplus on the budget approved for the Authority's expenditure for any financial year, such surplus shall be paid into a reserve account to be established by the Authority, unless otherwise agreed upon with the Minister.

(4) The Authority may charge a fee in respect of costs incurred in the performance of its duties under this Act or the mutual legal assistance legislation or any agreement or arrangement signed by or extended to the Virgin Islands.

14. The Board shall, not later than three months before the commencement of each financial year, prepare in respect of the financial year, and submit for the approval of the Minister, estimates of the expected expenditure and expected income of the Authority. Annual budget.

15. (1) The Authority shall keep proper accounts and other records in relation thereto, and shall prepare in respect of each financial year a statement of accounts. Accounts and audit.

(2) The accounts of the Authority for each financial year shall be audited by the Auditor General or such other auditor as he or she may designate to perform the auditing functions.

(3) The financial year of the Authority shall be the period commencing on 1st January and ending on 31st December in each year.

(4) As soon as the accounts have been audited, the Authority shall submit a copy thereof to the Minister together with a copy of any report made by the Auditor General or other auditor.

(5) The Minister shall lay on the table of the House of Assembly before the 31st of December of the following year a copy of every such audited

accounts, together with a copy of any report made by the Auditor General or such other auditor designated by the Auditor General.

Annual meeting between Cabinet and Board.

16. The Minister may require the Board to attend a meeting of the Cabinet to apprise the Cabinet of its operations.

Exemption from taxation, etc.

17. The Authority is exempt from the payment of all taxes, levies and licence fees on its income and operations and from the payment of all taxes, duties and rates on its property and documents.

Exemption from work permit requirement. No. 4 of 2010

18. A person who is employed by the Authority, whether on a permanent or contractual basis, and who would be required to obtain a work permit pursuant to the Labour Code Act, is exempted from applying for and holding a work permit for the purpose of his or her employment with the Authority.

Secondment of public officers, members of the Financial Service Commission and members of the Financial Investigation Agency to the Authority.

19. (1) A public officer may, with his or her own consent and the approval of the Governor, be seconded to the Authority.

(2) A member of Financial Services Commission may, with his or her own consent and with the approval of the Managing Director, be seconded to the Authority.

(3) A member of the Financial Investigation Agency may, with his or her own consent and with the approval of the Director, be seconded to the Authority.

(4) A person who is seconded to the Authority shall draw the full pay of the post to which he or she is seconded and is eligible for any increment that is normally payable in that post.

(5) During the period that a person is seconded to the Authority, he or she shall be deemed to remain on

- (a) the establishment of the Government department from which he or she is seconded, in the case of a public officer, or
- (b) the establishment of the Commission, in the case of a member of the Financial Services Commission, or
- (c) the establishment of the Agency, in the case of a member from the Financial Investigation Agency,

and he or she shall be eligible for promotion *in absentia* on the basis of the performance evaluation reports submitted under subsection (6).

(6) The Board shall cause the performance evaluation reports of a person who is seconded to the Authority to be forwarded to

- (a) the Managing Director of the Financial Services Commission, in the case of a member of the Commission; or
- (b) the Director of the Financial Investigation Agency, in the case of a member of the Agency.

(7) The service of a person who is seconded to the Authority shall,

- (a) in the case of a member of the Commission, count as service with the Financial Services Commission for the purposes of the Financial Services Commission Act; or
- (b) in the case of a member from the Agency, count as service with the Financial Investigation Agency for the purposes of the Financial Investigation Agency Act.

No. 12 of 2001

No. 19 of 2003

(8) A person who is seconded to the Authority is eligible for leave applicable to the post to which he or she is seconded and while on such leave he or she shall be paid the pay of that post.

20. Subject to section 21, the Authority shall from time to time issue, in respect of a person to whom this Act applies, guidelines relating to matters of mutual legal assistance and such guidelines may make different provisions for different kinds of matters.

Authority to issue guidelines.

21. (1) The Authority shall, before issuing any guidelines,

Consultation of proposed guidelines.

- (a) consult with such other agencies and entities as the Board may by Order designate and shall have regard to any representations made by such agencies and entities;
- (b) publish in the *Gazette* and in a newspaper circulating in the Territory, notice of its intention to issue the guidelines, which notice shall contain an invitation to agencies and entities that are likely to be affected by the proposed guidelines, and industry organisations that are representative of those agencies and entities, to express to the Authority, within such reasonable period as is specified in the notice, their interest in being consulted in the course of the development of the guidelines; and

- (c) consult with, and invite representations from, agencies and entities with respect to guidelines, and shall have regard to any such representations.

(2) Nothing in subsection (1) prevents the Authority from issuing guidelines following consultations.

Authority to make guidelines available.

22. On request by any person in respect of whom any guidelines are for the time being in force or by any industry organisation that represents any such person, the Authority shall, without charge,

- (a) make those guidelines, and all amendments to those guidelines, available for inspection, any person, entity or other legal arrangement or, as the case requires, an industry organisation to which the guidelines are applicable, at the Authority's offices; and
- (b) provide copies of those guidelines, and all amendments to those guidelines, to that person, entity or other legal arrangement, or, as the case requires, an industry organisation to which the guidelines are applicable.

Fees.

23. (1) Where fees are chargeable under this Act or any mutual legal assistance legislation, the Minister with the approval of the Cabinet may impose or amend such fees in the manner prescribed in this Act or in any other mutual legal assistance legislation.

(2) Any fee imposed or amended by the Minister pursuant to subsection (1) shall be subject to a negative resolution of the House of Assembly.

(3) Where the Authority prepares a manual or other documentation pursuant to the performance of its functions or for the purposes generally of ensuring the efficient administration of the purposes of this Act or any mutual legal assistance legislation, it may charge such fee for use of the manual or documentation as it may consider necessary to defray its costs.

(4) Any fee received pursuant to subsection (3) shall be paid into the Authority's reserve account.

Transitional provisions: Officers and employees.

24. (1) Subject to subsection (2), every officer or employee of the International Tax Authority unit shall, upon the coming into force of this Act, be deemed to be transferred from the service of the Government to the service of the Authority upon terms and conditions not less favourable in aggregate than those which were attached to the appointments held by such officers and employees under the Government.

(2) Every officer and employee of the International Tax Authority Unit who is deemed to have been transferred under subsection (1) shall, within six months of the coming into force of this Act, have the option of electing

- (a) to continue in the service of the Authority, in which case such service shall be retrospective from the date of his or her transfer and he or she shall be entitled to such pension, gratuity and other allowances and rights, if any, as he or she would have received had he or she been retired from the service of the Government on the abolition of his or her office on the date of his or her transfer to the Authority;
- (b) To be transferred to another department of Government, subject to a suitable vacancy existing, with his or her service with the Authority counting as service with the Government in respect of his or her pension, gratuity and other allowances and rights, if any; or
- (c) To be deemed to have retired from the service of the Government on the abolition of his or her office on the date he or she ceases to be in the service of the Authority.

(3) Where any officer or employee referred to in this section fails to elect as provided under subsection (2), he or she shall be deemed to have elected under subsection (2)(a) and he or she shall be so treated accordingly.

(4) Nothing in this section shall be deemed to affect the right of the Authority

- (a) to terminate the employment of an officer or employee transferred to the service of the Authority, or
- (b) to vary the rate of pay or conditions of service of an officer or employee, in the manner and to the extent that the Government could have done had he or she continued in the service of the Government.

(5) Where any officer or employee has elected to continue in the service of the Authority under subsection (2) or has been deemed to so continue under subsection (3), he or she shall not be entitled to be paid any pension, gratuity or other allowance that may have accrued to him or her whilst in the service of the Authority, until the time when he or she would have qualified for a pension, gratuity or other allowance under the Pensions Act had he or she continued in the service of the Government.

Power to amend
the Schedules.

25. (1) The Minister with the approval of the Cabinet may, amend the Schedules by Order published in the *Gazette*.

(2) An order made under subsection (1) shall be subject to a negative resolution of the House of Assembly.

Regulations.

26. (1) The Minister with the approval of the Cabinet may, make such regulations as he or she considers necessary or expedient for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may in particular

- (a) require financial and other institutions as may be prescribed to establish and maintain procedures relating to the keeping of records and the making of reports;
- (b) create criminal offences and penalties triable summarily for failing to comply with the regulations;
- (c) provide that in determining whether a person has complied with the regulations the trial court shall take account of any relevant guidelines issued by the Authority;
- (d) provide for the imposition by the Authority of administrative penalties on any person that contravenes a provision of this Act, any mutual legal assistance legislation or any Notice issued by the Authority;
- (e) prescribe all matters required or permitted by this Act to be prescribed.

(3) Any regulations made under subsection (1) shall be subject to a negative resolution of the House of Assembly.

SCHEDULE 1

[Section 2]

MUTUAL LEGAL ASSISTANCE LEGISLATION

- 1. Mutual Legal Assistance (Tax Matters) Act, 2003**

SCHEDULE 2

[Section 3 (3)]

PROVISIONS RELATING TO THE MEETINGS OF THE BOARD, THE ADMINISTRATION AND PROCEEDINGS OF THE AUTHORITY AND THE DIRECTOR OF THE AUTHORITY

Meetings of the
Board.

1. (1) The Board shall meet at least once every quarter at such place and time as may be designated by the Chairperson.

(2) The Chairperson shall preside at meetings of the Board but where the Chairperson is absent Members present may select one of their members to act as Chairperson.

(3) The quorum of the Board shall be three.

(4) At any meeting for the conduct of its business, the Board shall take its decision by a majority vote of the members present.

(5) The Chairperson shall at any time convene a special meeting of the Board upon receipt of a request signed by at least three members calling upon him to do so, and such meeting shall be held not later than fourteen days after receipt of the request.

(6) No act or proceeding of the Board shall be invalid by reason only of the existence of a vacancy among its members or of any defect in the appointment of a member.

(7) Notwithstanding anything contained in this paragraph, the Chairperson may, in any matter he or she considers exceptional, make arrangements for a decision of the Board to be taken on such matter through a process of consultation without the need for an actual meeting.

(8) Subject to the provisions of this Act, the Board shall establish its own rules of procedure for the purposes of the conduct of its meetings.

Official seal of
the Authority.

2. (1) The Authority shall have an official seal for the authentication of documents issued by the Authority and the application of the seal of the Authority shall be authenticated by the signature of the Chairperson or a person authorised to do so by the Board.

(2) The Board shall appoint a fit and proper person to be the Secretary to the Board who shall have custody of the Seal.

(3) A document purported to be executed under the seal of the Authority, or signed on its behalf, shall be received in evidence and, unless the contrary is proved, shall be taken to be so executed or signed.

3. Anything permitted or required to be done by the Authority under this Act may be done by any member of the Board or any employee of the Authority who is authorised for that purpose by the Authority either generally or specifically. Things required to be done.

4. The Board may establish committees which may include persons who are not members of the Board. Ad hoc committees.

5. (1) The Director shall not, hold any other office or employment, without the prior approval of the Board. Director not to hold other office etc.

(2) Subject to subparagraph (1), a person may not be appointed or remain Director who

- (a) is a member of the House of Assembly;
- (b) is a public officer; or
- (c) is director, officer or employee of, or has a controlling interest in, any financial institution.

6. The Board may appoint a Deputy Director or any person eligible to be appointed as Director to act temporarily in the place of the Director whenever the Director is absent or is unable to act. Deputy Director and Acting Director.

7. The Director may by giving three months' notice in writing to the Chairperson resign his or her office. Resignation of Director.

8. If the Board is satisfied that the Director Vacancy of office of Director.

- (a) has become bankrupt or made arrangements with his or her creditors,
- (b) is incapacitated by physical or mental illness,
- (c) has been convicted of an offence and sentenced to a penalty of a fine or imprisonment, or
- (d) is otherwise unable or unfit to discharge the functions of Director,

the Board may declare the office of Director vacant and shall notify that fact in such manner as the Board thinks fit, and thereupon that office shall become vacant.

SCHEDULE 3

[Section 11]

OATH OF CONFIDENTIALITY

I, _____, being a Board member / the Director / an officer / an employee / an agent / an adviser* of the International Tax Authority solemnly swear / affirm* that I shall keep confidential all information which comes to my knowledge in my capacity as a Board member / the Director / an officer / an employee / an agent / an adviser* of the Authority and I shall not divulge such information except as authorized by and in accordance with law.

So help me God! (omit if affirming)

Sworn / Affirmed before me, a Magistrate / Additional Magistrate / Registrar of the High Court / Justice of the Peace* this _____ day of _____, _____.

(Name of person swearing / affirming)

(Magistrate / Additional Magistrate/
Registrar of the High Court/
Justice of the Peace)*

* Delete as appropriate

Passed by the House of Assembly this 25th day of July, 2018.

(Sgd.) Ingrid Moses-Scatliffe,
Speaker.

(Sgd.) Phyllis Evans,
Clerk of the House of Assembly.