

VIRGIN ISLANDS

MUTUAL LEGAL ASSISTANCE (TAX MATTERS) (NO.2) ORDER, 2014

ARRANGEMENT OF SECTIONS

Section

1. . Citation.
 2. . Application of Part I of the Act.
- SCHEDULE

VIRGIN ISLANDS

STATUTORY INSTRUMENT 2014 No. 62

**Mutual Legal Assistance (Tax Matters) Act, 2003
(No. 18 of 2003)**

Mutual Legal Assistance (Tax Matters) (No.2) Order, 2014

[Gazetted 21st August, 2014]

The Minister, in exercise of the power conferred by sections 3(3) of the Mutual Legal Assistance (Tax Matters) Act, 2003 (No. 18 of 2003) makes this Order.

Citation. **1.** This Order may be cited as the Mutual Legal Assistance (Tax Matters) (No.2) Order, 2014.

Application of Part I of the Act. No. 18 of 2003. **2.** Part I of the Mutual Legal Assistance (Tax Matters) Act, 2003 applies to the Agreement reproduced in the Schedule.

SCHEDULE

[Section 2]

AGREEMENT BETWEEN THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS AND THE GOVERNMENT OF JAPAN FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

The Government of the British Virgin Islands, the Government of the British Virgin Islands having been duly authorised by the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of Japan,

Desiring to conclude an Agreement for the exchange of information relating to tax matters,

Have agreed as follows:

Article 1 OBJECT AND SCOPE

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration or enforcement of the laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be obtained, exchanged and treated as confidential pursuant to the provisions of the Agreement, subject to the laws of the respective Contracting Parties.

Article 2 JURISDICTION

The 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. This Agreement shall apply to taxes of every kind and description imposed on behalf of a Contracting Party.

2. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their respective tax laws.

3. This Agreement shall not apply to taxes imposed on behalf of political subdivisions or local authorities of a Contracting Party.

Article 4 **DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term “Japan”, when used in a geographical sense, means all the territory of Japan, including its territorial sea, in which the laws relating to Japanese tax are in force, and all the area beyond its territorial sea, including the seabed and subsoil thereof, over which Japan has sovereign rights in accordance with international law and in which the laws relating to Japanese tax are in force;
- (b) the term “British Virgin Islands”, when used in a geographical sense, means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution Order 2007 (Statutory Instrument 2007 No. 1678);
- (c) the term “national” means:
 - (i) in the case of Japan, any individual possessing the nationality of Japan and any legal person, partnership or association deriving its status as such from the laws in force in Japan; and
 - (ii) in the case of the British Virgin Islands, any person who belongs to the British Virgin Islands by virtue of the Virgin Islands Constitution Order 2007 or has a certificate of residence of the British Virgin Islands by virtue of the Immigration and Passport Ordinance (Cap. 130); and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the British Virgin Islands;
- (d) the term “Contracting Party” means Japan or the British Virgin Islands as the context requires;
- (e) the term “competent authority” means:

- (i) in the case of Japan, the Minister of Finance or his authorised representative; and
 - (ii) in the case of the British Virgin Islands, the Financial Secretary or a person or authority designated by him in writing;
- (f) the term “person” includes an individual, a company and any other body of persons;
- (g) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (h) 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 readily 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;
- (i) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of a company;
- (j) the term “recognised stock exchange” means:
 - (i) any stock exchange established under the terms of the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan; and
 - (ii) any other stock exchange agreed upon by the competent authorities of the Contracting Parties;
- (k) 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;
- (l) the term “tax” means any tax to which the Agreement applies;
- (m) the term “Requesting Party” means the Contracting Party requesting information;

- (n) the term “Requested Party” means the Contracting Party requested to provide information;
- (o) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the information requested;
- (p) the term “information” means any fact, statement or record in any form whatever;
- (q) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting Party; and
- (r) the term “criminal laws” means all criminal laws designated as such under the laws of the Requesting Party irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, 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. (a) The competent authority of the Requested Party shall obtain and provide upon request in writing by the Requesting Party information for the purposes referred to in Article 1. Such information shall include:
 - (i) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees; and
 - (ii) information regarding the ownership of companies, partnerships, trusts, foundations and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; 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.

- (b) The information referred to in subparagraph (a) shall be provided without regard to whether the conduct under examination would constitute a crime under the laws of the Requested Party if such conduct occurred in the Requested Party.

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, the Requested Party shall use all relevant information gathering measures to provide the Requesting Party with the information requested, notwithstanding that the Requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the Requesting Party, the competent authority of the Requested Party shall provide information under this Article in the form of authenticated copies of original records.

4. 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. The competent authority of the Requesting Party shall provide the following information to the competent authority of the Requested Party when making a request for information under this Agreement to demonstrate the foreseeable relevance of the information sought to the request:

- (a) the identity of the person that is the subject of the request;
- (b) the period of time with respect to which the information requested is required for the tax purposes of the Requesting Party;
- (c) the nature of the information requested and the form in which the Requesting Party would prefer to receive the information;
- (d) the tax purposes for which the information requested is sought and the reason for believing that the information requested is foreseeably relevant to the administration or enforcement of the laws of the Requesting Party;

- (e) reasonable grounds for believing that the information requested is held by the Requested Party or is in the possession or control of a person who is within the territorial jurisdiction of the Requested Party;
- (f) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (g) a statement that:
 - (i) the request is in conformity with the laws and administrative practices of the Requesting Party;
 - (ii) if the information requested was within the territorial jurisdiction of the Requesting Party then the competent authority of the Requesting Party would be able to obtain the information under the laws or in the normal course of administrative practices of the Requesting Party; and
 - (iii) the request is in conformity with the Agreement; and
- (h) a statement that the Requesting Party has pursued all means available within its territorial jurisdiction to obtain the information requested, except those that would give rise to disproportionate difficulties.

6. The competent authority of the Requested Party shall forward the information requested as promptly as possible to the competent authority of the Requesting Party. To ensure a prompt response, the competent authority of the Requested Party shall:

- (a) confirm receipt of a request in writing to the competent authority of the Requesting Party and shall notify the competent authority of the Requesting Party of deficiencies in the request, if any, within sixty days of the receipt of the request; and
- (b) if the competent authority of the Requested Party has been unable to obtain and provide the information within ninety days of the receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, immediately inform the competent authority of the Requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

Article 6
TAX EXAMINATIONS ABROAD

1. At the request of the competent authority of the Requesting Party, the competent authority of the Requested Party may, in accordance with the laws of the Requested Party, allow representatives of the competent authority of the Requesting Party to be present at the appropriate part of a tax examination in the territorial jurisdiction of the Requested Party.

2. If the request referred to in paragraph 1 is acceded to, the competent authority of the Requested Party conducting the examination shall, as soon as possible, notify the competent authority of the Requesting 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 examination shall be made by the Requested Party conducting the examination in accordance with the laws of the Requested Party.

Article 7
POSSIBILITY OF DECLINING A REQUEST

1. The competent authority of the Requested Party may decline to assist:

- (a) where the request of the Requesting Party is not made in conformity with this Agreement;
- (b) where the Requesting Party has not pursued all means available within its territorial jurisdiction to obtain the information requested, except where recourse to such means would give rise to disproportionate difficulties; or
- (c) where the disclosure of the information requested would be contrary to public policy (*ordre public*) of the Requested Party.

2. The Requested Party shall not be required to obtain or provide information that, if the information requested was within the territorial jurisdiction of the Requesting Party, then the competent authority of the Requesting Party would not be able to obtain under the laws or in the normal course of administrative practices of the Requesting Party.

3. This Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Such information includes information relating to communications between attorneys, solicitors, barristers or other admitted legal representatives in their role as

such and their clients to the extent that the communications are protected from disclosure under the laws of each Contracting Party. Notwithstanding the foregoing sentences, information of the type referred to in subparagraph 1(a) of Article 5 shall not be treated as such a secret or trade process merely because it meets the criteria in that subparagraph.

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

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

Article 8 CONFIDENTIALITY

1. All information provided and received by the competent authorities of the Contracting Parties under this Agreement shall be kept confidential.

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

3. The information referred to in paragraph 1 may not be used for any purpose other than for the purposes referred to in Article 1 without the express written consent of the competent authority of the Requested Party.

4. The information referred to in paragraph 1 may not be disclosed to persons or authorities in non-Contracting Parties.

Article 9 SAFEGUARDS

In implementing this Agreement, the rights and safeguards secured to persons by the laws or administrative practices of the Requested Party remain applicable. The rights and safeguards may not be applied by the Requested Party in a manner that unduly prevents or delays effective exchange of information.

Article 10
COSTS

Incidence of costs incurred in providing assistance shall be agreed by the competent authorities of the Contracting Parties.

Article 11
MUTUAL AGREEMENT PROCEDURES

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the competent authorities of the Contracting Parties 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 Articles 5 and 6.
3. The competent authorities of the Contracting Parties may communicate with each other directly for the purpose of reaching an agreement under this Article.

Article 12
HEADINGS

The headings of the Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of the Agreement.

Article 13
ENTRY INTO FORCE

The Governments of the Contracting Parties shall notify each other, in writing through diplomatic channels, that they have completed their respective internal procedures necessary for the entry into force of this Agreement. The Agreement shall enter into force on the thirtieth day after the latter of the dates of receipt of the notifications and shall have effect:

- (a) with respect to criminal tax matters, from the date on which the Agreement enters into force, without regard to the taxable year to which the matter relates; and
- (b) with respect to all other matters covered in Article 1, for all requests made but only in respect of taxable years beginning on or after the date of entry into force of the Agreement or, where there is no taxable year, in respect of taxes levied on or after the date of entry into force of the Agreement.

Article 14
TERMINATION

1. This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement by giving notice of termination in writing through diplomatic channels at least six months before the end of any calendar year beginning after the expiry of three years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect:

- (a) with respect to taxes withheld at source, for amounts taxable on or after 1 January in the calendar year next following that in which the notice is given;
- (b) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after 1 January in the calendar year next following that in which the notice is given; and
- (c) with respect to other taxes, as regards taxes levied on or after 1 January in the calendar year next following that in which the notice is given.

2. If this Agreement is terminated, each Contracting Party shall remain bound by Article 8 with respect to any information provided and received by the competent authority of the Contracting Party under the Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at London this eighteenth day of June, 2014, in the English and Japanese languages, each text being equally authentic.

**FOR THE GOVERNMENT OF
THE BRITISH VIRGIN ISLANDS:**

(Hon. Dr. D. Orlando Smith, OBE)
Premier of the
British Virgin Islands

**FOR THE GOVERNMENT OF
JAPAN:**

(H.E. Mr. Keiichi Hayashi)
Japanese Ambassador to the
United Kingdom

Made by the Minister this 11th day of August, 2014.

(Sgd.) Dr. D. Orlando Smith, OBE,
Minister for Finance.