



GUIDE TO THE INTERNATIONAL TAX AUTHORITY OF THE VIRGIN ISLANDS

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Overview

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The Competent Authority of the Virgin Islands in respect of matters relating to Tax Information is the Financial Secretary. The International Tax Authority (“ITA”) was established under the Ministry of Finance and charged with the responsibility of ensuring that the Virgin Islands effectively exchanges tax information with other countries under the laws of the Virgin Islands and the relevant Tax Information Exchange Agreements (“TIEA”). A TIEA is a bilateral agreement that has been negotiated and signed between two countries to establish a formal regime for the exchange of information relating to civil and criminal tax matters.

The Mutual Legal Assistance (Tax Matters) Act, 2003 (“MLA”) is the base for the Virgin Islands’ international co-operation regime in tax matters. The MLA gives effect to the terms of the Agreements concluded between the Government of the Virgin Islands and the Government of the USA and the Government of Great Britain and Northern Ireland in 2002 for the exchange of information in relation to tax matters. The MLA is broad enough to apply to any similar agreement that the Virgin Islands enters into. Thus the basis of the MLA is founded on bilateral agreements negotiated and concluded by the Government of the Virgin Islands on the principle of transparency and effective exchange of information on tax matters.

The Virgin Islands will only honor requests made by Countries with whom they have entered into an international agreement to provide tax information assistance. The Virgin Islands has thus far only entered into bilateral agreements. Another arrangement recognized by the OECD is a unilateral mechanism where jurisdictions authorize other jurisdictions by virtue of being included within a schedule to the Law which does not require a specific arrangement to be in place.

TIEAs

- A TIEA is brought into effect in accordance with the provisions of the MLA by issuing an Order made by the Minister of Finance. Information requests can only be processed once the TIEA comes into force and they cannot be made retroactive.
- TIEAs provide for the framework for effective exchange of information. Under the TIEAs information cannot be given automatically but by requests only.
- The Virgin Islands' TIEAs outline strict criteria to ensure that fishing expeditions are NOT carried out, and a number of Memoranda of Understanding have been also been negotiated and concluded to ensure the same.
- The information sought must be directly relevant to the tax affairs of a given tax payer.
- Every TIEA has strict guidelines to follow in order for information to be exchanged.
- A country cannot arbitrarily request information. Requests must be specific.

The International Tax Authority

The ITA is dedicated to ensuring international co-operation on tax matters.

The ITA's functions include:

- 1) determining whether or not a request that has been made complies with the terms of the MLA and the relevant TIEA;
- 2) executing the said request;
- 3) ensuring compliance with the MLA and the relevant TIEA;
- 4) making cost determinations in relation to requests; and
- 5) entering into operating arrangements with, or issuing operating procedures to, counterpart competent authorities.

The ITA requires the following information from the requesting Competent Authority:

- ❖ The name of the requesting authority;
- ❖ The identity of the person to whom the request relates;
- ❖ The nature and type of the information requested;
- ❖ A description of the specific evidence, information or other assistance sought;
- ❖ The purposes for which the information is sought;
- ❖ The period of time with respect to which the information sought is requested;
- ❖ Provide reasonable grounds for believing that the information sought is in the Virgin Islands or in the possession or control of a person subject to the Virgin Islands' jurisdiction and may be relevant to the purpose of the request;
- ❖ The name and address (to the extent possible) of the person in possession or control of the information sought; and
- ❖ A declaration that the request conforms to the law and administrative practice of the requesting country or territory and would be obtainable under its own laws in similar circumstances.

Where the ITA is satisfied that the request complies with the terms of the MLA and the relevant TIEA it may exercise the following powers in giving effect to the request:

- Issue a written notice to a specified person requiring such person to provide the information or documents therein specified;
- Require the information or documents to be provided within such time as may be specified in the notice;

- Require the information or documents to be provided in such form as the ITA may determine;
- Require that the information or documents to be provided be verified or authenticated in such manner as the ITA may consider reasonable;
- The ITA may take copies or extracts of any information or document provided;
- The ITA may, in such cases as it considers appropriate, apply to a Magistrate for a search warrant
 - to enter and search specified premises;
 - to take possession of any information or document that relates to the warrant;
 - to take copies or extracts relative to any information or document that may be the subject of the warrant;

Requests

- Requests for information are sent to the Competent Authorities of the respective countries.
- Requests may be made in relation to both criminal and non-criminal (civil and administrative) tax matters.
- The Competent Authority with respect to tax matters is the Financial Secretary.
- The functions of the Financial Secretary have been delegated to the International Tax Authority of the Virgin Islands as of 9th July, 2012.
- Information may be provided without prohibition or restriction by rules of confidentiality.
- Persons or entities disclosing requested information to the ITA are protected from civil and criminal liability;

- The ITA has wide powers to obtain access to and require production of, information.
- There are enforcement powers that carry criminal penalties.
- “information” has been defined to include any fact, statement, document or record in any form;
- “information” includes information held by banks, or other financial institution, any person, nominee, agent or trustee and covers ownership, identity and accounting information;
 - Information may be provided despite the fact that it is not needed by the Virgin Islands for its own purposes;
 - Confidentiality provisions apply to all information provided and received by the ITA;
 - The process for making requests, the assistance available and the process for dealing with requests are the same for all requesting jurisdictions;
 - Request may be made at either the investigation stage or the proceeding stage of any tax matter.

Declining a Request

The ITA may decline a request where:

- They have not received the information outlined above required to make a determination;
- The request is not consistent with the terms of the MLA and the relevant TIEA;
- The requesting Competent Authority has failed to pursue all the means available in its own jurisdiction (unless where recourse to such means would give rise to disproportionate difficulty); or
- The disclosure of the information that is the subject of the request would be contrary to the Virgin Islands public policy.

Supplemental requests

A requesting authority, having previously submitted a TIEA request, is entitled to submit a

supplemental request in relation to the earlier request. This may be done either

- during the of the initial request and before the completion thereof; or
- after receipt of the assistance requested;

In either case, the supplemental request is treated in the same manner as the initial request. Therefore all the requisite procedures must be followed, but then only information relevant to the further execution of the supplemental request need be provided. The supplemental request must make reference to the earlier request and be explicit as to the additional line of inquiry it wishes to be carried out. Failure to follow the established laws and rules may result in assistance either being delayed or not provided at all.

Confidentiality

- ❖ All information received pursuant to TIEA request is treated and held in the strictest of confidence. Any person who is notified of the information, whether to take action or supply information in respect thereof, is prohibited from disclosing such information or any particular thereof to another person save as may be permitted by law or the agreement governing the relationship between the Virgin Islands and the requesting country or territory.
- ❖ The ITA can approve the onward transmission or further use of information or evidence provided in response to a request by the Competent Authority of the requesting party.
- ❖ Contravention of this confidential obligation is an offence for which an offender may be liable on summary conviction to a fine not exceeding \$10,000 or imprisonment not exceeding two years or both.

Miscellaneous Matters

❖ *Costs of providing assistance*

Although cost for providing assistance is provided for in law, the Virgin Islands will only require such in exceptional cases where the costs are considered prohibitive. Virgin Islands law provides that the requesting authority may be asked to make a contribution to such costs or undertake to effect full payment of the costs. In such a situation, the processing of a request for information will depend on the positive response of the requesting authority. It should be noted that the Virgin Islands' general practice of not passing on costs takes into account the reciprocal principle that in a similar situation where the Virgin Islands makes a request of the requesting authority the costs associated therewith will not be passed on, save where such costs are prohibitive.

❖ *Where a TIEA request is lacking in relevant information*

In the rare circumstance where a TIEA request fails to provide the requisite information to enable assistance to be rendered, the requesting authority is notified to supply the missing information. No action is taken until the missing information is provided. The reason for this simple: the exercise by the ITA of the compulsive powers given to them under the relevant enactments are subject to judicial challenge – normally in the form of applications for judicial review – where a deviation occurs in keeping to the requirements of the law. It is therefore imperative that all that is necessary is done to ensure full compliance with the law and thus obviate such a challenge or minimize any costs that may be associated therewith and maintain the integrity of any ongoing inquiries or investigations.

❖ *Addressing Requests*

A TIEA request must be properly dated and signed and must emanate from a Competent Authority of a country or territory that has a TIEA in force with the Virgin Islands. It is for the ITA to satisfy itself that all of the requirements specific to a desired request set out herein have been complied with before submitting a request for information. When all the requisite information has been compiled, then the request may be addressed to:

The International Tax Authority
Ministry of Finance
33 Admin Drive
Central Administration Complex
Road Town, Tortola, VG1110
British Virgin Islands

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