

SAINT VINCENT AND THE GRENADINES
INTERNATIONAL CO-OPERATION
(TAX INFORMATION EXCHANGE AGREEMENTS) ACT 2011
ARRANGEMENT OF SECTIONS

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SAINT VINCENT AND THE GRENADINES

ACT NO. OF 2011
I ASSENT

[]

Governor-General

AN ACT to make general provisions for the implementation of agreements and arrangements entered into by the Government of Saint Vincent and the Grenadines with other jurisdictions to provide for the exchange of information for the purpose of taxation, and for connected purposes.

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BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same, as follows—

1. This Act may be cited as the International Co-operation (Tax Information Exchange Agreements) Act 2011. Short title

2. In this Act— Interpretation

“agreement” means a tax information exchange agreement entered into by the Government of Saint Vincent and the Grenadines with another jurisdiction;

“arrangement” means an arrangement between Saint Vincent and the Grenadines and another jurisdiction for the exchange of information for tax purposes;

“competent authority” means

- (a) a person authorised under an agreement or arrangement to make and receive requests for the exchange of tax information; or
- (b) the person designated by section 4 to exercise the powers or perform the functions conferred upon the competent authority by an agreement or arrangement or by this Act;

“information” means any fact, statement or record in any form whatever that is relevant or material to tax administration and enforcement;

“Minister” means the Minister charged with responsibility for finance;

“police officer” means a police officer of the rank of inspector or above or a police officer who is authorised in writing by an inspector or above rank to so act;

“privileged communication” means any information or other matter which is communicated between a client and attorney, solicitor or other admitted legal representative where such communication is —

- (a) produced for the purposes of seeking or providing legal advice; or
- (b) produced for the purposes of use in existing or contemplated legal proceedings;

“representative” means a representative of a competent authority of a requesting party;

“request” means a request made under the agreement or arrangement by a requesting party to the competent authority.

“requested party” means the party that provides or is requested to provide assistance to a requesting party.

“requesting party” means a party that makes a request for assistance under an agreement or arrangement;

3. (1) This Act shall apply for the purpose of giving effect to agreements and arrangements.

Implementation of agreements and arrangements

(2) The Minister may enter into an agreement or arrangement with the government of any other jurisdiction with a view to the rendering of assistance to facilitate the exchange of information for tax purposes.

(3) The Minister may from time to time by notice published in the *Gazette* identify the agreements or arrangements entered into by Saint Vincent and the Grenadines.

4. (1) The Minister is designated the competent authority for Saint Vincent and the Grenadines.

Competent authority

(2) The Minister may designate any person or authority to perform his or her functions under this Act.

5. (1) The competent authority has the power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions under this Act or the terms of the agreement or arrangement.

Powers and functions of the competent authority

(2) Without prejudice to subsection (1) the principal functions of the competent authority include—

- (a) subject to sections 10 and 14, executing requests, including providing assistance in relation to—
 - (i) taking the evidence or statement of any person;
 - (ii) providing information and articles of evidence;
 - (iii) serving documents; and
 - (iv) executing searches and seizures;

- (b) ensuring compliance with the agreement or arrangement;
- (c) making determinations under the terms of the agreement or arrangement as to any costs and the apportionment of such costs relating to or arising from any request;
- (d) entering into agreement with the competent authority of another jurisdiction under the agreement or arrangement on matters relating to the operation thereof or issuing operating procedures to such competent authority; and
- (e) performing such other functions as may be prescribed under this Act or any other Act.

Grounds for declining
a request for
assistance

6. (1) The competent authority may decline the assistance requested where the requesting party does not pay the costs as agreed by section 19.

(2) The competent authority may also decline a request for assistance if—

- (a) the requested information is not foreseeably relevant to the administration or enforcement of the tax laws of the requesting party;
- (b) the information is protected from disclosure under the laws of Saint Vincent and the Grenadines on the grounds that the information constitutes or would reveal a privileged communication;
- (c) the requesting party would not be able to obtain the information—
 - (i) under its own laws for the purposes of administration or enforcement of its tax laws; or
 - (ii) in response to a similar valid request from the competent authority under the agreement or arrangement;

- (d) the disclosure of the information would be contrary to public policy or national security;
- (e) the information is requested by the requesting party to administer or enforce a provision of the tax law of the requesting party, or any requirement connected therewith, which discriminates against a national of Saint Vincent and the Grenadines as compared with a national of the requesting party in the same circumstances;
- (f) the supply of the information would disclose a trade, business, industrial, commercial or professional secret or trade process.

7. (1) Upon receipt of a request, the competent authority shall determine whether the request is in compliance with the agreement or arrangement, and, if it is determined that there is compliance, the competent authority shall execute the request in accordance with, but subject to, the provisions of the agreement or arrangement and this Act.

Procedures for the execution of a request

(2) The competent authority may request such additional information from the requesting party as may be necessary to assist him or her in executing the request.

(3) A certificate given by the competent authority that a request is in compliance with the relevant agreement or arrangement, shall be taken into account by the High Court pursuant to an application under section 10(4)(a).

(4) Notwithstanding any other Act, if the execution of any request requires service of any order or document or the seizure of any article in pursuance of any order or directions given by the High Court, a police officer, if so required by the High Court, shall assist in such service or seizure.

8. The competent authority may, by notice in writing served on any person in Saint Vincent and the Grenadines, require the person to

Power to require information

provide any information that the competent authority may require with respect to a request for assistance by a requesting party.

Statutory duty to provide information

9. (1) A person on whom notice has been served under section 8 shall provide the information to the competent authority within the period specified in the notice.

(2) The time to be specified in such a notice is twenty eight days commencing on the day on which the notice was served, or such greater or lesser number of days as the competent authority may in any particular case think fit.

(3) The competent authority may extend the time specified in the notice if in his opinion the circumstances so warrant.

(4) A person is not required to comply with a request for information if the information is not in the possession or control of the person.

Powers to compel witnesses or production of evidence

10. (1) Where, under a request, any person is required to give evidence, the competent authority shall apply to the High Court for the High Court to receive such evidence as appears to him to be appropriate for the purpose of giving effect to the request, and such evidence shall be provided to the competent authority of the requesting party.

(2) The High Court may, in pursuance of an application under subsection (1), issue a summons, take evidence under oath and exercise any other power which the High Court may exercise for the purpose of compelling evidence.

(3) A person shall not be compelled in any proceedings under this section to give evidence which that person could not be compelled to give in proceedings in Saint Vincent and the Grenadines.

(4) Where, under a request, the competent authority considers it necessary to obtain specified information or information of a specified description from any person, the competent authority shall—

- (a) in the case of information required for proceedings in the territory of the requesting party or related investigations, apply to the High Court for an order to produce such information; or
- (b) in any other case other than that referred to in paragraph (a), issue a notice in writing requiring the production of such information as may be specified in the notice.

(5) A notice referred to in subsection (4) (b) may require the information—

- (a) to be provided within a specified time,
- (b) to be provided in such form as the competent authority may require, and
- (c) to be verified or authenticated in such manner as the competent authority may require.

(6) Where information is produced under subsection (4) (b)—

- (a) the competent authority may take copies or extracts of any information; and
- (b) the production is without prejudice to the lien of a person who claims a lien on a document.

(7) If, on application under subsection (4) (a), the High Court is satisfied that the conditions in subsection (10) are met, it may make an order that the person who appears to it to be in possession or control of the information to which the application relates shall produce it to the police officer within such period as the order may specify.

(8) An order under subsection (7) or a notice under subsection (4)(b)—

- (a) shall not confer any right to production for, or access to, items subject to legal privilege; and

- (b) shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information whether imposed by any Act or the common law.

(9) The period to be specified in an order under subsection (7) shall be fourteen days, unless it appears to the High Court that a longer or shorter period would be appropriate in the particular circumstances of the application.

(10) The conditions referred to in subsection (7) are that the High Court is satisfied that—

- (a) the competent authority has certified the request in accordance with section 7 (3);
- (b) the information to which the request relates is in the possession or control of a person in Saint Vincent and the Grenadines;
- (c) pursuant to section 6, there are no grounds for declining a request for assistance.

Search and seizure

11. (1) Where pursuant to a request, the competent authority considers it necessary to enter and search any premises, the competent authority may apply to the High Court for the issue of a search warrant for specified premises to search for and seize specified information or information of a specified description.

(2) On application made under subsection (1), the High Court may issue a warrant authorising the search and seizure if satisfied that—

- (a) an order made under section 10 (4)(a) or notice issued under section 10 (4)(b) in relation to information on the premises has not been complied with;
- (b) there are reasonable grounds for believing that the information is on the premises specified in the application for the warrant;

- (c) the request for the purposes of which the application is made might be seriously prejudiced unless immediate access to the information is secured;
- (d) the conditions in section 10 (10) are fulfilled in relation to any information on the premises; or
- (e) it would not be appropriate to make an order under section 10 (7) in relation to the material because—
 - (i) it is not practicable to communicate with any person entitled or authorised to produce the information;
 - (ii) it is not practicable to communicate with any person entitled or authorised to grant access to the information or entitled or authorised to grant entry to the premises on which the information is situated; or
 - (iii) the request for the purposes of which the application is made might be seriously prejudiced unless a police officer could secure immediate access to the information.

(3) Any information seized under a warrant issued under subsection (2) shall be brought immediately to the competent authority.

12. Any person who divulges any confidential information or gives any evidence in compliance with an order or notice issued pursuant to a request shall be deemed not to commit any offence under any Act in force in Saint Vincent and the Grenadines, by reason only of such disclosure or the giving of such evidence; and such disclosure or evidence shall be deemed not to be in breach of any confidential relationship between that person and any other person, and no civil claim or action shall be brought against the person making such disclosure or giving such evidence.

Protection of
persons disclosing
confidential
information

13. Where the competent authority obtains any information pursuant to issuing a notice under section 8, he or she shall keep it

Forwarding
information to
requesting party

confidential and may not provide it to the requesting party for a period of twenty days, commencing on the day on which he or she obtained the information.

Confidentiality with regard to a request

14. (1) Any information received by a requesting party shall be kept confidential and may be disclosed only to—

- (a) a person or authority or court in its jurisdiction for the purposes of the administration and enforcement of its tax laws or the determination of appeals relating thereto; or
- (b) a person employed or authorised by the government of the requesting party to oversee data protection.

(2) Any information received by a requesting party may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested party.

(3) A person who is—

- (a) notified or required to take any action; or
- (b) required to supply any information,

in relation to any matter to which a request relates shall not—

- (i) disclose the notification or receipt of such request; or
- (ii) supply the information,

to another person except in accordance with the agreements or the arrangement.

(4) A person who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of two years or to both.

Offences and penalties

15. (1) A person commits an offence who—

- (a) fails to provide information as required by section 7 (1); or

(b) wilfully tampers with or alters such information so that it is not true when received by the competent authority.

(2) A person commits an offence who, without lawful excuse, destroys or damages any information which the competent authority, by notice under section 8, has directed that person to provide.

(3) A person who commits an offence under subsection (1) or (2) shall be liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of two years or to both.

(4) A person commits an offence who refuses to give evidence or fails to comply with a summons or any order or direction given by the High Court pursuant to section 10(2) and shall be liable on summary conviction to a fine of five thousand dollars or to a imprisonment for a term of one year or to both.”

16. Where a request so stipulates, the competent authority shall obtain the information sought by the request in the form of—

Depositions etc

(a) depositions of witnesses; or

(b) original documents or copies of original documents,

being depositions so made, and documents or copies so certified or authenticated, as the laws and administrative practices of the requested party permit.

17. Nothing in this Act shall exclude or restrict the right of any person aggrieved by a decision by the competent authority or any other person with any function to make a decision under this Act to challenge that decision, in so far as it affects such person, by seeking review of the decision by the High Court.

Judicial review

18. For the purposes of this Act and the agreements or the arrangement, the service of any notice or document shall be sufficient if delivered by hand or posted by registered post to the registered or other office of the addressee and an affidavit as to delivery of the notice or document by hand or the registered postal receipt shall be deemed sufficient proof of such service.

Service of documents

No. International Co-operation (Tax Information Exchange Agreements) 2011

Costs	19. Any incidence of costs incurred in providing assistance shall be agreed by the parties to an agreement or arrangement.
Power to remove difficulties	20. If any difficulty arises in giving effect to an agreement or arrangement or to the provisions of this Act, the Minister may, by order in the <i>Gazette</i> , make such provisions as appear to him to be necessary or expedient for removing the difficulty.
Regulations	21. The Minister may make regulations providing for such matters as may be necessary or convenient for carrying out or giving effect to this Act and its administration.

Passed in the House of Assembly this day of 2011.

Clerk of the House of Assembly.

OBJECTS AND REASON

This Bill seeks to make general provisions for the implementation of agreements and arrangements entered into by the Government of Saint Vincent and the Grenadines with other jurisdictions to provide for the exchange of information for the purpose of taxation, and for connected purposes.

Dr. the Hon. Ralph Gonsalves
Prime Minister, Minister of Finance,
Economic Planning, National Security,
Public Service, Legal Affairs and
Grenadines Affairs