

S.I. 104 of 2014

BUSINESS TAX ACT

(Act 28 of 2009)

Business Tax (Taxation Information Exchange Agreement) (No. 2) Regulations, 2014

In exercise of the powers conferred by section 79 of the Business Tax Act, the Minister of Finance, Trade and Investment hereby makes the following Regulations—

1. These Regulations may be cited as the Business Tax (Taxation Information Exchange Agreement) (No.2) Regulations, 2014.

Citation

2. It is hereby declared that the Government of the Republic of Seychelles and the Government of the Swiss Confederation have entered into an Agreement for the purpose of exchange of Information pertaining to taxes and the Agreement shall have effect in relation to the tax imposed under the Act.

Declaration
and effect of
Agreement

**AGREEMENT BETWEEN THE REPUBLIC
SEYCHELLES AND THE SWISS CONFEDERATION
FOR THE EXCHANGE OF INFORMATION
ON TAX MATTERS**

PREAMBLE

The Government of the Republic of Seychelles and the Swiss Federal Council desiring to facilitate the exchange of information with respect to certain taxes

HAVE AGREED as follows:

ARTICLE 1

OBJECT AND SCOPE OF THE AGREEMENT

1. The Competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement.
2. 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.
3. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 7.
4. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly delay or prevent effective exchange of information.

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. Taxes which are the subject of this Agreement are:
 - (a) in Switzerland

- (i) the federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, capital gains, and other items of income);
 - (ii) the federal, cantonal and communal taxes on capital;
 - (iii) the cantonal and communal inheritance and gift taxes;
- (b) in Seychelles,
 - (i) business tax,

2. This Agreement shall apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties shall notify each other in writing of any substantial changes in their laws which may affect their obligations pursuant to this Agreement.

ARTICLE 4 DEFINITIONS

1. For the purposed of this Agreement, unless otherwise defined:
- (a) The term "Contracting Party" means Switzerland or Seychelles as the context requires; "Switzerland" means the territory of the Swiss Confederation as defined by its laws in accordance with international law;

"Seychelles" means the territory of the Republic of Seychelles including its exclusive economic zone and continental shelf where the Republic of Seychelles exercises sovereign rights and jurisdiction in conformity with international law, in particular the provisions of the United Nations Convention on the Law of the Sea;

(b) the term "competent authority" means:

(i) in the case of Switzerland, the Head of the Federal Department of Finance or his authorised representative;

(ii) in the case of Seychelles, the Minister responsible for Finance or his authorised representative;

(c) the term "person" includes an individual, a company and any other body of persons";

(d) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

(e) the term "publicly traded company" means any company whose principal class of shares is listed on a recognized stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be 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;

(f) the term "principal class of shares" means the class of shares representing a majority of the capital or of the voting power of the company;

- (g) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of its 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;
- (h) the term “tax” means any tax to which the Agreement applies;
- (i) the term “requested Party” means the Contracting Party requested to provide information;
- (j) the term “requesting Party” means the Contracting party requesting information.
- (k) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information; and
- (l) the term “information” means any fact, statement or record in any form whatever.

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 law of that Party, any meaning under the applicable tax

laws of that Party prevailing over a meaning given to the term under other laws of that Party.

ARTICLE 5

EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means within its own territory, except where recourse to such means would give rise to disproportionate difficulty.
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, that 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, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Contracting Party shall ensure that its competent authorities, for the purposes specified in Article 1 and in accordance with Article 2 of this Agreement, have the authority to obtain and provide upon request:

- (a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
 - (b) information regarding the ownership of companies, partnerships, trusts, foundations and other persons, including ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees, protectors and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, 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, in writing, the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:
- (a) the identity of the person under examination or investigation;
 - (b) the period of time for which the information is requested;
 - (c) a statement of the information sought including its nature and the form in which the requesting Party wishes to receive the information from the requested Party;

- (d) the tax purpose for which the information is sought;
 - (e) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
 - (f) to the extent known, the name and address of any person believed to be in possession of the requested information;
 - (g) a statement that the request is in conformity with the law and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
 - (h) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
6. The competent authority of the requested Party shall forward the requested information as promptly as possible to 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 60 days of the receipt of the request;

- (b) if the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

ARTICLE 6 POSSIBILITY OF DECLINING A REQUEST

1. The requested Party shall not be required to obtain or provide information that the requesting Party would not be able to obtain under its own laws for the purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.
2. The provisions of 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. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:
 - (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.
- 4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (*ordre public*).
- 5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
- 6. The requested Party may decline a request for information if 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 or citizen of the requested Party as compared with a national or citizen of the requesting Party in the same circumstances.

ARTICLE 7 CONFIDENTIALITY

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority without the express written consent of the competent authority of the requested Party. The information provided to a requesting Party

under this Agreement may not be disclosed to any other jurisdiction.

ARTICLE 8 COSTS

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

ARTICLE 9 IMPLEMENTATION LEGISLATION

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of this Agreement.

ARTICLE 10 MUTUAL AGREEMENT PROCEDURE

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the competent authorities 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 8.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Contracting Parties may also agree on other forms of dispute resolution.

ARTICLE 11

ENTRY INTO FORCE

1. Each Contracting Party shall notify the other, in writing, of the completion of the procedures required by its law for the bringing into force of this Agreement.
2. This Agreement shall enter into force on the date on which the later of those notifications has been received.
3. The provisions of this Agreement shall have effect for requests made on or after the date of entry into force of the Agreement for information that relates to any taxable period beginning on or after the first day of January of the calendar year following the entry into force of the Agreement or, where there is no taxable period, for all charges to tax arising on or after the first day of January of the calendar year following the entry into force of the Agreement.

ARTICLE 12

TERMINATION

1. Either Contracting Party may terminate this Agreement by serving a notice of termination, in writing, to the competent authority of the other Contracting Party.
2. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Contracting Party. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.
3. If this Agreement is terminated the Contracting Parties shall remain bound by the provisions of Article 7 with

respect to any information obtained under the Agreement.

In witness whereof, the undersigned, being duly authorised thereto have signed the Agreement.

Done in duplicate at Brussels on 26th May 2014 in the English and German languages, both texts being equally authentic.

**For the Government
of the Republic of Seychelles:**

**For the Swiss
Federal Council:**

MADE this 18th day of December, 2014.

**PIERRE LAPORTE
MINISTRY OF FINANCE TRADE
AND INVESTMENT**
