



## **Double Tax Agreements (The Bahamas) Order 2010**

Anand Satyanand, Governor-General

### **Order in Council**

At Wellington this 8th day of June 2010

Present:

His Excellency the Governor-General in Council

Pursuant to section BH 1 of the Income Tax Act 2007, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

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## Order

### 1 Title

This order is the Double Tax Agreements (The Bahamas) Order 2010.

### 2 Commencement

This order comes into force on the 28th day after the date of its notification in the *Gazette*.

### 3 Commencement of agreement

The agreement set out in the Schedule comes into force on the date referred to in Article 14 of the agreement as the date on which the agreement enters into force.

### 4 Purposes

The arrangements specified in the agreement set out in the Schedule have been negotiated with The Bahamas for 1 or more of the purposes set out in section BH 1(2) of the Income Tax Act 2007.

### 5 Arrangements to have effect

The arrangements specified in the agreement set out in the Schedule have effect according to the agreement.

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## Schedule

cls 3, 4, 5

### **Agreement between the Government of New Zealand and the Government of the Commonwealth of The Bahamas on the exchange of information with respect to taxes**

The Government of New Zealand and the Government of the Commonwealth of The Bahamas,

*Desiring* to facilitate the exchange of information with respect to taxes,

Have agreed as follows:

## Article 1

### Object and scope of this agreement

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 those 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 exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the Requested Party remain applicable. The Requested Party shall use its best endeavours to ensure that any such rights and safeguards are not applied in a manner that unduly prevents or delays effective exchange of information.

## Article 2

### Jurisdiction

A 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. The taxes which are the subject of this Agreement are existing taxes of every kind and description.
2. This Agreement shall also apply to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The Agreement shall also apply to such other taxes as may be agreed in an exchange of letters between the Contracting Parties. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by this Agreement.

Article 3—*continued*

3. This Agreement shall not apply to taxes imposed by municipalities, local authorities, or possessions of a Contracting Party.

Article 4  
Definitions

1. For the purposes of this Agreement, unless otherwise defined:
  - (a) the term “New Zealand” means the territory of New Zealand but does not include Tokelau; it also includes any area beyond the territorial sea designated under New Zealand legislation and in accordance with international law as an area in which New Zealand may exercise sovereign rights with respect to natural resources;
  - (b) the term “The Bahamas” means the Commonwealth of The Bahamas, encompassing the land, the territorial waters, and in accordance with international law and the laws of The Bahamas any area outside the territorial waters, inclusive of the exclusive economic zone and the seabed and subsoil over which The Bahamas exercises jurisdiction and sovereign rights for the purpose of exploration, exploitation and conservation of natural resources;
  - (c) the term “Applicant Party” means the Contracting Party requesting information;
  - (d) 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;

Article 4—*continued*

- (e) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) the term “competent authority” means in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner and, in the case of The Bahamas, the Minister of Finance or the Minister’s duly authorised delegate;
- (g) the term “Contracting Party” means New Zealand or The Bahamas as the context requires;
- (h) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes;
- (i) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Applicant Party;
- (j) the term “information” means any fact, statement or record in any form whatever;
- (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;
- (l) the term “national”, in relation to a Contracting Party, means:
  - (i) any individual possessing the nationality or citizenship of that Contracting Party; and
  - (ii) any legal person, partnership, association or other entity deriving its status as such from the laws in force in that Contracting Party;
- (m) the term “person” includes an individual, a company and any other body of persons;
- (n) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- (o) the term “publicly traded company” means any company whose principal class of shares is listed on a recog-

Article 4—*continued*

- nised 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;
- (p) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
  - (q) the term “Requested Party” means the Contracting Party requested to provide information; and
  - (r) the term “tax” means any tax to which this Agreement applies pursuant to Article 3.
2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined herein 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.
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 Applicant 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 an Applicant Party, the competent authority of the Requested Party

Article 5—*continued*

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 authority, for the purposes specified in Article 1 of this Agreement, has 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, 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, beneficiaries and protectors; 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 Applicant Party shall formulate a request for information under this Agreement with sufficient detail and shall provide the following information in writing to the competent authority of the Requested Party:
  - (a) the identity of the taxpayer under examination or investigation;
  - (b) the identity of the person in respect of whom information is requested, if that person is not also the taxpayer in subparagraph (a) of this paragraph;
  - (c) a statement of the information sought including its nature and the form in which the Applicant Party wishes to receive the information from the Requested Party;
  - (d) the period of time with respect to which the information is requested;

Article 5—*continued*

- (e) the tax purpose for which the information is sought, including:
    - (i) the citation of the legal authority under the Applicant Party's tax law with respect to which the information is sought;
    - (ii) whether the matter is a criminal tax matter; and
    - (iii) the reasons for believing that the information requested is foreseeably relevant to the Applicant Party's tax administration and enforcement with respect to the person identified in subparagraph (a) of this paragraph;
  - (f) the 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;
  - (h) to the extent known, the name and address of any person believed to be in possession of the requested information;
  - (i) a statement that the request is in conformity with the law and administrative practices of the Applicant Party, that if the requested information was within the jurisdiction of the Applicant Party then the competent authority of the Applicant Party would be able to obtain the information under the laws of the Applicant Party or in the normal course of administrative practice and that the information request is in conformity with this Agreement; and
  - (j) a statement that the Applicant 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 acknowledge receipt of the request to the competent authority of the Applicant Party, shall advise if there are any unexpected delays in obtaining the requested information, and shall use its best endeavours to forward the requested information to the Applicant Party with the least possible delay.

## Article 6

### Tax examinations abroad

1. A Contracting Party may allow, to the extent permitted under its domestic laws, representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.
2. At the request of the competent authority of one of the Contracting Parties, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.
3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other 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 first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

## Article 7

### Possibility of declining a request

1. The Requested Party shall not be required to obtain or provide information that the Applicant Party would not be able to obtain under its own laws for 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 subject to legal privilege, or to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, informa-

Article 7—*continued*

tion of the type referred to in paragraph 4 of Article 5 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. The Requested Party may decline a request for information if the disclosure of the information would be contrary to national security or public policy (*ordre public*).
4. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed by the taxpayer.
5. The Requested Party may decline a request for information if the information is requested by the Applicant Party to administer or enforce a provision of the tax law of the Applicant Party, or any requirement connected therewith, which discriminates against a national of the Requested Party as compared with a national of the Applicant Party in the same circumstances.

Article 8  
Confidentiality

1. 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 or any other jurisdiction (including a foreign Government) without the express written consent of the competent authority of the Requested Party.
2. Where information provided pursuant to this Agreement for a criminal tax purpose is, subsequently, to be used for a non-criminal tax purpose (and vice versa), the competent authority which supplied the information shall be notified of this

Article 8—*continued*

change in use, if not before, then within a reasonable time of the change in use occurring.

## Article 9

## Prejudicial or restrictive measures

1. Neither of the Contracting Parties shall apply prejudicial or restrictive measures based on harmful tax practices to residents, nationals or transactions of either Contracting Party so long as this Agreement is in force and effective.
2. A “prejudicial or restrictive measure based on harmful tax practices” is a measure applied by one Contracting Party to residents, nationals or transactions of either Contracting Party on the basis that the other Contracting Party does not engage in effective exchange of information and/or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria.
3. Without limiting the generality of paragraph 2 of this Article, the term “prejudicial or restrictive measure” includes:
  - (a) the introduction of any tax law or administrative arrangements that specifically and adversely target taxpayers of one Contracting Party conducting business activities or investing in the other Contracting Party; or
  - (b) the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements.
4. A “prejudicial or restrictive measure” does not include generally applicable measures, applied by either Contracting Party, such as Controlled Foreign Company rules, Foreign Investment Fund rules, transfer pricing rules, thin capitalisation rules, or general information reporting rules that relate to the disclosure of information from other countries or jurisdictions, or transactions with such countries or jurisdictions, such as record keeping requirements imposed on foreign owned subsidiaries to ensure access to information concerning parent companies.

## Article 10

### Costs

Unless the competent authorities of the Contracting Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the Requested Party, and extraordinary costs incurred in providing assistance (including reasonable costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the Applicant Party. At the request of either Contracting Party, the competent authorities shall consult as necessary with regard to this Article, and in particular the competent authority of the Requested Party shall consult with the competent authority of the Applicant Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

## Article 11

### Implementation legislation

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

## Article 12

### Other international agreements or arrangements

The possibilities of assistance provided by this Agreement do not limit, nor are they limited by, those contained in existing international agreements or other arrangements between the Contracting Parties which relate to co-operation in tax matters.

## Article 13

### Mutual agreement procedure

1. The competent authorities of the Contracting Parties shall jointly endeavour to resolve any difficulties or doubts arising as to the interpretation or application of this Agreement.
2. In addition to the endeavours referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually determine the procedures to be used under this Agreement.

Article 13—*continued*

3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of this Article.
4. The Contracting Parties may agree on other forms of dispute resolution.

## Article 14

## Entry into force

The Government of New Zealand and the Government of The Bahamas shall notify each other in writing through the diplomatic channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and shall thereupon have effect for taxable periods beginning on or after that date or, where there is no taxable period, for all charges to tax arising on or after that date.

## Article 15

## Termination

1. This Agreement shall continue in effect indefinitely, but either of the Contracting Parties may, after the expiration of 3 years from the date of its entry into force, give to the other Contracting Party through the diplomatic channel written notice of termination.
2. Such termination shall become effective on the first day of the month following the expiration of a period of 6 months after the date of receipt of notice of termination by the other Contracting Party.
3. Notwithstanding any termination of this Agreement, the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

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

DONE at Washington, DC this 18 day of November, 2009.

For the Government  
of New Zealand:

Roy Ferguson  
New Zealand Ambassador to the  
United States of America

For the Government  
of the Commonwealth of  
The Bahamas:

Ambassador Cornelius A. Smith  
Ambassador for The Bahamas to  
the United States of America

Rebecca Kitteridge,  
Clerk of the Executive Council.

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### **Explanatory note**

*This note is not part of the order, but is intended to indicate its general effect.*

This order, which comes into force on the 28th day after the date of its notification in the *Gazette*, gives effect to an agreement between New Zealand and The Bahamas on the exchange of information between the parties for the purpose of administering and enforcing domestic law relating to taxes.

The agreement comes into force on the last date of notification by the parties that domestic procedures for bringing the agreement into force have been completed.

Once it has entered into force, the agreement has effect despite anything in the Income Tax Act 2007, any other Inland Revenue Act, the Official Information Act 1982, or the Privacy Act 1993.

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**Order 2010**

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 10 June 2010.

This order is administered by the Inland Revenue Department.

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