

THE OFFICIAL GAZETTE 8TH AUGUST, 1992  
LEGAL SUPPLEMENT – B

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GUYANA

No. 35 of 1992

ORDER

Made Under

THE INCOME TAX ACT

(Cap. 81:01)

IN EXERCISE OF THE POWERS CONFERRED UPON ME BY SECTION 92A OF THE INCOME TAX ACT, I HEREBY MAKE THE FOLLOWING ORDER:—

1. This Order may be cited as the Income Tax (Exchange of Information) (United States of America) Order 1992 and shall come into operation upon an exchange of notes by the Contracting States in accordance with Article 6 of the Agreement in the Schedule.

Citation  
and Com-  
mencement.

2. I hereby declare that the Agreement, set out in the Schedule, between the Government of the United States of America and the Government of the Co-operative Republic of Guyana for the exchange of information with respect to income tax shall have effect in accordance with its terms throughout and for its duration notwithstanding anything in any other written law.

Declaration  
by Minister  
that Ex-  
change of  
Informa-  
tion Agree-  
ment with  
United  
States of  
America in  
relation to  
Income tax  
shall have  
effect.  
Schedule.

SCHEDULE

Cl. 2

AGREEMENT BETWEEN THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA AND THE GOVERNMENT  
OF THE CO-OPERATIVE REPUBLIC OF GUYANA FOR  
THE EXCHANGE OF INFORMATION WITH RESPECT  
TO TAXES

The Government of the United States of America and the Government of the Co-operative Republic of Guyana, desiring to conclude an Agreement for the exchange of information with respect to taxes (hereinafter referred to as the "Agreement"), have agreed as follows

Article 1

TAXES COVERED

1. This Agreement shall apply to the following taxes imposed by or on behalf of a Contracting State.

(a) in the case of the United States of America,

- (i) Federal income taxes;
- (ii) Federal taxes on self-employment income;
- (iii) Federal taxes on transfers to avoid income tax;
- (iv) Federal estate and gift taxes; and
- (v) Federal excise taxes;

(b) in the case of the Co-operative Republic of Guyana,

- (i) Income tax;
- (ii) Corporation tax;
- (iii) Property tax;
- (iv) Capital gains tax;

2. This Agreement shall apply also to any identical or substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authority of each Contracting State shall notify the other of significant changes in laws which may affect the obligations of that State pursuant to this Agreement.

3. This Agreement shall not apply to the extent that an action or proceeding concerning taxes covered by this Agreement is barred by the applicant State's statute of limitations.



4. This Agreement shall not apply to taxes imposed by states, municipalities or other political subdivisions, or possessions of a Contracting State.

## Article 2

### DEFINITIONS

1. In this Agreement, unless otherwise defined :

(a) The term "competent authority" means :

- (i) in the case of the United States of America, the Secretary of the Treasury or his delegate, and
- (ii) in the case of the Co-operative Republic of Guyana, the Minister of Finance or his authorized representative.

(b) The term "national" means:

- (i) in the case of the United States, any individual who is a citizen of the United States and any person other than an individual deriving its status as such from the laws of the United States or any political subdivision thereof; and
- (ii) in the case of the Co-operative Republic of Guyana, any individual who is a citizen of the Co-operative Republic of Guyana and any person other than an individual deriving its status as such from the laws of the Co-operative Republic of Guyana.

(c) The term "person" includes an individual, a partnership, a corporation, an estate, a trust, association or other legal entity.

(d) The term "tax" means any tax to which the Agreement applies.

(e) The terms "applicant State" and "requested State" mean, respectively, the Contracting State applying for or receiving information and the Contracting State providing or requested to provide such information.

(f) For purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term "United States" means the United States of America, including Puerto Rico, the Virgin

Islands, Guam, and any other United States possession or territory, and the territorial waters thereof.

- (g) For the purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term "Guyana" means the Co-operative Republic of Guyana and the territorial waters thereof.
- (h) The term "Contracting State" means the United States or Guyana as the context requires.

2. Any term not defined in this Agreement, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 4, shall have the meaning which it has under the laws of the Contracting State relating to the taxes which are the subject of this Agreement.

### Article 3

#### EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange information to administer and enforce the domestic laws of the Contracting States concerning the taxes covered by this Agreement or assure the accurate assessment and collection of taxes, to prevent fiscal fraud and evasion, and to develop improved information sources for tax matters. Information shall be exchanged to fulfil the purpose of this Agreement without regard to whether the information relates to, or is held by, a resident or national of a Contracting State.

2. The competent authority of the requested State shall endeavour to provide information upon request by the competent authority of the applicant State for the purposes referred to in paragraph 1 of this Article. If the information available in the tax files of the requested State is not sufficient to enable compliance with the request, that State shall take all relevant measures to provide the applicant State with the information requested. The laws of the respective Contracting States authorize each State to obtain and provide information from financial institutions. Privileges under the laws or practices of the applicant State shall not apply to the requested State's execution of a request but shall be preserved for resolution by the applicant State.

3. If the information is requested by a Contracting State pursuant to paragraph 2 of this Article, the requested State shall endeavour to obtain the information requested in the same manner and provide it in the same form, as if the tax of the applicant State were the



tax of the requested State. If specifically requested, the requested State shall endeavour to provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts and writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of the requested State with respect to its own taxes. The applicant State shall specify the form and manner in which such depositions and documents shall be authenticated.

4. The provisions of the preceding paragraphs shall not be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that State or of the other Contracting State;
- (b) to supply particular items of information which are not obtainable under the laws or in the normal course of the administration of that State or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process;
- (d) to supply information, the disclosure of which would be contrary to public policy (*ordre public*);
- (e) to supply information requested by the applicant State to administer or enforce a provision of the tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested State. A provision of tax law, or connected requirement, will be considered to be discriminatory against a national of the requested State if it is more burdensome with respect to a national of the requested State than with respect to a national of the applicant State in the same circumstances. For the purposes of the preceding sentence, a national of the applicant State who is subject to tax on worldwide income is not in the same circumstances as a national of the requested State who is not subject to tax on worldwide income. The provisions of this sub-paragraph shall not be construed to prevent the exchange of information with respect to taxes imposed by the United States or by Guyana on branch profits or on the premium income of non-resident insurers or foreign insurance companies.

5. Except as provided in paragraph 4 of this Article, the provisions of the preceding paragraphs shall be construed so as to impose on a Contracting State the obligation to use all legal means and its best efforts to execute a request. A Contracting State may, in its discretion, take measures to obtain and transmit to the other State information which, pursuant to paragraph 4, it has no obligation to transmit.

6. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to individuals or authorities (including judicial and administrative bodies) involved in the determination, assessment, collection, and administration of, the recovery and collection of claims derived from, the enforcement or prosecution in respect of, or the determination of appeals in respect of, the taxes which are the subject of this Agreement, or the oversight of the above. Such individuals or authorities shall use the information only for such purposes. These individuals or authorities may disclose the information in public court proceedings or in judicial decisions. Information shall not be disclosed to any third jurisdiction for any purpose without the consent of the Contracting State originally furnishing the information.

#### Article 4

##### MUTUAL AGREEMENT PROCEDURE AND COSTS

1. The competent authorities of the Contracting States shall agree to implement a program to carry out the purposes of this Agreement.
2. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement and may communicate directly for this purpose. In particular, the competent authorities may agree to a common meaning of a term and may determine when costs are extraordinary for purposes of this Article.
3. Unless the competent authorities of the Contracting States otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested State and extraordinary costs incurred in providing assistance shall be borne by the applicant State.

#### Article 5

##### OTHER APPLICATIONS OF THE AGREEMENT

This Agreement is consistent with the standards for an exchange of information agreement described in Section 274 (h) (6) (C)



of the United States Internal Revenue Code of 1986 (the Code) (relating to deductions for attendance at foreign conventions), and referred to by cross-reference in Section 927 (e) (3) (A) of the Code (relating to foreign sales corporations), and Section 936 (d) (4) relating to Puerto Rico and the possession tax credit).

— Article 6

ENTRY INTO FORCE

This Agreement shall enter into force upon an exchange of notes by the duly authorized representatives of the Contracting States confirming their mutual agreement that both sides have met all constitutional and statutory requirements necessary to effectuate this Agreement.

Article 7

TERMINATION

This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement at any time after the Agreement enters into force provided that at least 6 months prior notice of termination has been given through diplomatic channels.

DONE at Georgetown, Guyana in duplicate,  
this 22nd day of July, 1992.

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA

George Flemming Jones,

FOR THE GOVERNMENT OF THE  
CO-OPERATIVE REPUBLIC OF GUYANA.

Carl Greenidge,

Made this                    day of August, 1992.

*Carl B. Greenidge,*  
Minister of Finance.