

Montserrat
Tax Information Exchange Rules, 2011
S. R.O. 49 of 2011

MONTSERRAT

STATUTORY RULES AND ORDERS

S.R.O. 49 OF 2011

TAX INFORMATION EXCHANGE RULES 2011

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THE TAX INFORMATION EXCHANGE RULES, 2011 MADE BY THE GOVERNOR ACTING ON THE ADVICE OF CABINET UNDER SECTION 28 OF THE TAX INFORMATION EXCHANGE ACT, 2010.

Short title

1. These Rules may be cited as the Tax Information Exchange Rules 2011.

Definitions

2. (1) For the purposes of these Rules—

“**collective investment fund or scheme**” means any pooled investment vehicle, irrespective of legal form;

“**criminal laws**” means all criminal laws under the domestic law of Montserrat or a scheduled country, irrespective of whether contained in the tax laws, the Penal Code or other statutes;

“**information**” means any fact, statement or record in any form;

“**information gathering measures**” means laws and administrative or judicial procedures that enable Montserrat to obtain and provide the requested information;

“**information on taxation matters**” has the same meaning as in the Act;

“**principal class of shares**” means the class or classes of shares representing a majority of the voting power and value of a company;

“**public collective investment fund or scheme**” means a collective investment fund or scheme in which 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;

“**publicly traded company**” means a company whose principal class of shares is listed on a recognised stock exchange in which its listed shares can be readily purchased or sold by

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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;

“**recognised stock exchange**” means a stock exchange agreed upon by the competent authorities of Montserrat and a scheduled country;

“**request**” means request for information on taxation matters;

“**tax**” means a tax in respect of which information may be provided under rule 3.

Scope of assistance

3. (1) Subject to section 14(8) of the Act, the Tax Information Authority must, in accordance with these Rules, provide information on taxation matters that is foreseeably relevant to the administration and enforcement of a scheduled country’s domestic laws concerning the taxes stipulated under subrule (2)(a).

(2) Unless otherwise provided under section 6(3) of the Act in an Order scheduling the country, the Tax Information Authority—

- (a) may provide information on a taxation matter respecting taxes of every kind and description imposed by the scheduled country;
- (b) must provide information on a taxation matter without regard to whether the conduct being investigated would constitute a crime under the laws of Montserrat if such conduct occurred in Montserrat, or whether the information would be needed for tax purposes under the laws of Montserrat;
- (c) is not obligated to provide information that is neither held by authorities in Montserrat nor in the possession or control of persons who are within the territorial jurisdiction of Montserrat;
- (d) is not obligated to obtain or provide ownership information respecting a publicly traded company or a public collective investment fund or scheme unless the information can be obtained without giving rise to disproportionate difficulties.

(3) The rights and safeguards secured to a person by law or administrative practice of Montserrat remain applicable to the extent that they do not unduly prevent or delay effective provision of information.

Request

4. Subject to section 10(2) of the Act, if the competent authority of the scheduled country makes a request, the Tax Information Authority must ensure that the competent authority provides the following information—

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- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the scheduled country wishes to receive the information;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is foreseeably relevant to the administration and enforcement of the tax law of the scheduled country;
- (e) grounds for believing that the information requested is held in Montserrat or is in the control of a person within the jurisdiction of Montserrat;
- (f) to the extent known, the name and address of a person believed to be in control of the requested information;
- (g) a statement that the request conforms to the law and administrative practices of the scheduled country, and that if the information requested was within the jurisdiction of the scheduled country, the competent authority of the scheduled country would be able to obtain the information under its laws in the normal course of administrative practice; and
- (h) a statement that the scheduled country has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

Provision of information

5. (1) Upon receipt of a request from a scheduled country, the Tax Information Authority must use its best endeavours to comply with the request with the least reasonable delay to the extent that it is able and willing, and must—

- (a) within 60 days of receipt of the request, confirm receipt in writing to the competent authority of the scheduled country and notify it of deficiencies in the request having regard to rule 4;
- (b) after 90 days from the receipt of the request, immediately inform the scheduled country if it is unable to obtain and provide the information, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

(2) If the information in the control of the Tax Information Authority is not sufficient to enable it to comply with the request, the Authority must use all relevant information gathering measures to enable it to do so.

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(3) If specifically requested by the competent authority of the scheduled country, the Tax Information Authority must provide the information, in accordance with the Act or any other law, in the form of depositions of witnesses and authenticated copies of original records.

Grounds for declining a request

6. (1) The Tax Information Authority may decline a request—
- (a) that falls outside the scope of assistance in rule 3 or it does not contain the information in rule 4;
 - (b) to obtain or provide information that a scheduled country would not be able to obtain under its own laws for the purpose of the administration or enforcement of its own tax laws;
 - (c) if the scheduled country has not pursued all means available in its jurisdiction to obtain the information, except where recourse to such means would give rise to disproportionate difficulty;
 - (d) for information to administer or enforce a provision of the tax law of the scheduled country, or any connected requirement, which discriminates against a national of Montserrat as compared with a national of the scheduled country in the same circumstances; and
 - (e) to supply items that is subject to legal privilege under the laws of Montserrat or which would disclose a trade, business, industrial, commercial or professional secret or trade process, subject to subrule (2);
 - (f) where the disclosure of the information requested would be contrary to the public policy of Montserrat.

(2) For the purpose of these Rules, information within paragraphs (a) to (c) of the definition of “information on taxation matters” in the Act is not by reason of that fact alone to be treated as a secret or trade process.

(3) The Tax Information Authority must not refuse a request on the ground that the tax claim giving rise to it is disputed.

Confidentiality

7. Information is forwarded to a scheduled country under these Rules on the condition that the information—
- (a) be treated as confidential and be used only for the purposes specified in rule 3;
 - (b) be disclosed only to a person or authority (including a court and an administrative body) concerned with the purposes in rule 3 and used by these persons or authorities only for such purposes, including the determination of any appeal. For

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these purposes, information may be disclosed in public court proceedings or in judicial decisions; and

- (c) not be disclosed to another person or entity or authority or any other jurisdiction without the express written consent of the Tax Information Authority.

Costs

8. Costs incurred in providing assistance are to be agreed by Montserrat and the scheduled country concerned with the request.

Language

9. A request and answers must be provided in English or any other language agreed between Montserrat and the scheduled country.

Other international agreements or arrangements

10. The possibility of assistance provided by these Rules does not limit, nor is it limited by, those contained in existing international agreements or other arrangements between Montserrat and a scheduled country that relate to co-operation in taxation matters.

Mutual agreement procedure

11. (1) The competent authorities of Montserrat and a scheduled country may mutually agree—

- (a) on the procedure to be used under rules 4 and 5;
- (b) on the language to be used in making and responding to requests in accordance with rule 9.

(2) Montserrat and a scheduled country may also agree on forms of dispute resolution.

De-scheduling

12. (1) Montserrat may terminate a mutual cooperation under these Rules by serving a notice of termination either to the authority of the scheduled country responsible for external affairs or by letter to the competent authority of the scheduled country.

(2) The Tax Information Authority must notify a scheduled country that it is no longer a scheduled country if—

- (a) the Governor acting on the advice of Cabinet makes an Order to remove a country from the schedule to the Act; or
- (b) the scheduled country breaches rule 7 or any other condition subject to which information on taxation matters was forwarded under these rules.

(3) A scheduled country is de-scheduled on the date indicated in the notice, or, if no date is indicated, 30 days after the notice is sent.

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(4) If a scheduled country is de-scheduled, the country must continue to treat information forwarded to it under these Rules as confidential.

Made by the Governor acting on the advice of Cabinet this 6th day of October, 2011.

Angela Greenaway
CABINET SECRETARY

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Angela Greenaway
CABINET SECRETARY