CHAPTER 369F

INTERNATIONAL TAX COOPERATION

INTERNATIONAL TAX COOPERATION REGULATIONS

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CHAPTER 369F

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S.I. 92/2010

(SECTION 13)

[Commencement 30th July, 2010]

Citation.

1. These Regulations may be cited as the International Tax Cooperation Regulations.

Interpretation.

2. In these Regulations —

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"Act" means the International Tax Cooperation Act;

"examination" means a hearing for the purpose of obtaining a deposition pursuant to section 8(a) of the Act;

"Minister" means the Minister of Finance;

"serve" has the meaning assigned to it by section 11 of the Act;

"Court" means the Supreme Court of The Bahamas;

"requesting state" means the party to an Agreement that is requesting information.

Application.

3. These Regulations apply where the Minister intends to obtain information under section 8 or 9 of the Act.

PART I

OBTAINING INFORMATION BY EXAMINATION

Examination orders.

4. (1) Where an examination is to be held, the Minister shall make an order under this regulation ("an examination order").

(2) An examination order —

(a) shall designate the person who is to conduct the examination ("the examiner");

(b) shall specify the person or persons who is or who are to make a deposition ("a witness or witnesses");

(c) shall describe, in such general or specific terms as the Minister deems fit, the information which is to be obtained in the form of a witness' deposition;

(d) shall require the examiner to send a full report on the examination to the Minister as soon as the examination is concluded; and

(e) may, in addition, contain such directions, other than would relate to the regulation of the proceedings by an examiner under regulation 14, as the Minister deems it necessary or expedient for him to give so that the purposes of the examination may be fulfilled.

(3) An examination order which affects a prospective witness shall be served on him but otherwise shall not be published.

Examiner.

5. An examiner shall be a person considered by the Minister to be qualified and competent to conduct an examination.

Attendance of, and production of documents by, witnesses.

6. An examiner may by written notice require a witness to attend at an examination, and to produce any documents required from him in connection with the examination if it is in his possession, custody or control.

Examination on oath.

7. An examiner may for the purposes of an examination take evidence from a witness upon oath and for that purpose may administer an oath or affirmation.

Refusal of person to attend, be sworn, etc.

8. (1) A person who, having been required under regulation 6 to attend at an examination, refuses or fails to attend or, having so attended, refuses or fails to be sworn, or to answer any question or produce any document that he is properly asked to answer or to produce, for the purpose of the examination, commits an offence and shall be liable on summary conviction to a fine not exceeding $25,000 or to imprisonment for a term not exceeding twelve months or to both.

(2) Notwithstanding paragraph (1), an examiner may apply to the Court for an order requiring a person whom the Court finds to be in breach of that paragraph to attend before die examiner, or to be sworn, or to answer a question or produce a document for the purposes of the

examination, as the case may be, and the Court may make an order accordingly.

(3) An order made under paragraph (2) may contain a direction that the person against whom the order is made shall pay any costs occasioned by his refusal or failure.

(4) A person who wilfully disobeys a direction given to him under paragraph (3) is guilty of contempt of court.

Time and place for examination.

9. An examiner shall give to the Minister a notice which shall appoint the place and time at which the examination shall take place, subject to any alteration that the examiner may make on the application of the Minister or any party, and the Minister shall notify all parties accordingly.

Recording of proceedings.

10. Subject to any directions to the contrary in an examination order, an examiner may appoint a shorthand or verbatim reporter to record the proceedings at the examination.

Legal representation.

11. A witness at an examination may at his own expense have legal representation at the examination.

Objections to questions.

12. (1) Where a person objects to being questioned, or to answering a particular question, at an examination, he may refuse to answer but shall state the grounds for his objection; and those grounds and any answer that he gives under objection shall be set out in his deposition or a statement annexed to it.

(2) Where an examiner determines that it is desirable that an objection made under paragraph (1) should be overridden for the purposes of the examination, he may refer the objection to the Court under paragraph (2) of regulation 8, and the Court shall decide the issue.

(3) An examiner shall set forth in any reference that he makes to the Court under paragraph (2) his own opinion on the issue.

(4) Where, on a reference to the Court under paragraph (2), the Court decides the issue in favour of the person objecting, it shall order any answer that he may have given under objection in the examination to be stricken from the record of the examination.

Fees and expenses.

13. (1) An examiner shall be paid such fees and expenses as the Minister may approve.

(2) A witness shall be paid such witness expenses as the examiner may order.

(3) A shorthand or verbatim reporter appointed under regulation 10 shall be paid such fees as the examiner may order.

Residuary power to regulate proceedings.

14. Subject to these regulations, an examiner may regulate the proceedings at an examination as he sees fit.

Report of Examiner.

15. (1) An examiner shall conduct his examination with all dispatch and shall, as soon as the examination is concluded, send to the Minister —

(a) the deposition of every witness; and

(b) the report referred to in sub-paragraph (d) of paragraph (2) of regulation 4.

(2) The deposition referred to in paragraph (1), in relation to a witness, is the written record of the matters deposed to by him, including any document or exhibit forming part of those matters; and that record shall be authenticated —

(a) by the witness himself (if he is willing to authenticate it); and

(b) by the shorthand or verbatim reporter (if there was one); and

(c) by the examiner,

by being signed and dated by each of them in witness of its correctness.

PART II

OBTAINING INFORMATION BY DOCUMENT

Authentication of documents.

16. (1) Where information sought from a person, in a notice served upon him under section 5 of the Act, is required in the form of an authenticated copy of an original document that is in his custody, possession or control, the Minister may include in the notice a requirement that such person authenticate the copy of the document by making a declaration —

(a) in the prescribed form set forth in the Schedule; or

(b) in a form as near to that form as the circumstances permit,

and the person shall comply with any such requirement.

(2) A copy of the document to which such a declaration relates must be exhibited to the declaration.

(3) Any person who wilfully makes a false declaration under this regulation commits an offence and is liable upon summary conviction to a fine not exceeding $25,000.00 or to imprisonment for a term not exceeding twelve months or to both.

PART III

OBTAINING INFORMATION BY ON-SITE INTERVIEW

Request for Interview.

17. (1) All requests for information to be obtained by means of an interview in The Bahamas, by the competent authority of a requesting state shall be accompanied by the following —

(a) a brief written background regarding the information sought, which shall satisfy all of the requirements of section 4 of the Act;

(b) a copy of the written consent of the specified person to be interviewed; and

(c) notification of the time and place of the intended meeting with the specified person.

(2) Requests for an interview shall be made not less than two weeks prior to the intended interview date, however, in exceptional circumstances, the Minister may grant consideration within a shorter period of time.

Conducting the Interview.

18. The Minister may appoint a representative to be present at any interview conducted in The Bahamas.

SCHEDULE

(Regulation 16)

FORM A

DECLARATION OF AUTHENTICITY OF BUSINESS RECORDS

I, the undersigned, _____, with the understanding that I am subject to criminal penalty for an intentionally false declaration, declare that I am employed by/associated with _____ in the position of _____ and by reason of my position am authorised and qualified to make this declaration.

I further declare that the documents attached hereto are true copies of records which —

1. were made at or near the time of the occurrence of the matters set forth therein, by (or from information transmitted by) a person with knowledge of those matters;
2. were kept in the course of regularly conducted business activity;
3. were made by the said business activity as a regular practice; and
4. are duplicates of original records.

Date of execution: _____

Place of execution: _____

Signature: _____

FORM B

DECLARATION OF ABSENCE OF DOCUMENTS OF REGULARLY CONDUCTED BUSINESS

1. I, the undersigned _____ attest on penalty of criminal punishment for false declaration that I am employed by _____ in the position of _____ and by reason of my position am authorised and qualified to make this declaration.

2. In my employment with _____
(Name of business)
I am familiar with the records it maintains. During the ordinary course of its regularly conducted business activity, the _____
(Name of business)
maintains records of its transactions, where records are made at or near the time of the information reflected therein. These records are kept as a regular business practice of the _____
(Name of business)

3. Among these are records of individuals and entities that conduct or have conducted transactions with _____
(Name of business)

4. I have reviewed these records and have found no record reflecting any activity with or involving any transaction that relates to the request contained in the Notice from the Minister of Finance dated

Date of execution: _____
Place of execution: _____
Signature: _____
(seal of company/business if applicable)

FORM C

ATTESTATION OF AUTHENTICITY OF DOCUMENTS BY A GOVERNMENT AGENCY

I, _____ attest on penalty of criminal punishment
(Name)
for false declaration that my position with the Government of The Bahamas is _____ and that in that position I am
(Official title)
authorised by the laws of The Bahamas to attest that the documents attached hereto and described below are true copies of the original official records which are recorded and filed in _____ which is an
(Name of Government Office or Agency)
office or agency of the Government of The Bahamas.

Description of Documents:

(Signature) _____
(Title) _____
(Date) _____
(Official Seal or Stamp)

FORM D

CERTIFICATION OF ABSENCE OR NONEXISTENCE OF OFFICIAL RECORDS

I, _____ attest on penalty of criminal punishment
(Name)
for false declaration that —

1. _____ is a government
(Name of public authority)
office or agency of the Commonwealth of The Bahamas and is authorised by law to maintain official records setting forth matters that are authorised by law to be reported and recorded or filed;

2. records of the type described below set forth matters that are authorised by law to be reported and recorded or filed, and such matters regularly are recorded or filed by the above-named public authority;

3. my position with the above-named public authority is _____;
(Official title)

4. in my official capacity I have made, or caused to be made, a diligent search of the above-named public authority's records for the records described below; and

5. no such records have been found to exist therein.

Description of documents:

(Signature) _____
(Date) _____

(Official Seal or Stamp)