

A BILL

ENTITLED

AN ACT to Amend the Revenue Administration Act.

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BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Revenue Administration (Amendment) Act, 2020, and shall be read and construed as one with the Revenue Administration Act (hereinafter referred to as the "principal Act") and all amendments thereto, and shall come into operation on a day appointed by the Minister by notice published in the *Gazette*.

Short title
and
commence-
ment

Amendment of section 17NB of principal Act.

2. Section 17NB of the principal Act is amended—

- (a) in subsection (2)(c), by deleting the word “and”;
- (b) in subsection (d), by deleting the full stop and substituting therefor a semi-colon; and
- (c) by inserting next after paragraph (d), the following paragraphs—

“
 Second
 Schedule.
 Third
 Schedule.
 Fourth
 Schedule.”

- (e) amend, revoke and replace the regulations specified in the Second Schedule and the Third Schedule; and
- (f) amend the text set out in the Fourth Schedule as necessary to bring that text up to date for consistency with any amendment of the Convention on Mutual Administrative Assistance in Tax Matters, as amended as of 1st of June, 2011, as in force in relation to Jamaica.”.

Amendment of section 17NC of principal Act.

3. Section 17NC of the principal Act is amended by deleting the words “the Schedule” and substituting therefor the words “the First Schedule”.

Insertion of new section 17ND in principal Act.

4. The principal Act is amended by inserting next after section 17NC the following section—

“Saving of regulations. 17ND. Notwithstanding section 17NB, until amended or revoked and replaced by regulations under section 17NB, the following regulations shall remain in force and shall have effect as being made under section 17NB—

- (a) the Revenue Administration (International Tax Compliance Agreement (Jamaica and the United States of America)) Regulations, 2015, specified in the Second Schedule; and

Second Schedule.

(b) the Revenue Administration (Convention on Mutual Administrative Assistance in Tax Matters) Regulations, 2020, specified in the Third Schedule.”.

Third
Schedule.

5. Section 19 of the principal Act is amended by deleting subsection (3). Amendment of section 19 of principal Act.

6. The First Schedule to the principal Act is amended by inserting next after item 1 the following item— Amendment of First Schedule to principal Act.

“2. The Convention on Mutual Administrative Assistance in Tax Matters, in force, as amended as of 1st of June, 2011, to which Jamaica became a party on the 29th day of November, 2018, the text of which is set out in the Fourth Schedule to this Act.”.

Fourth
Schedule.

7. The Second Schedule to the principal Act is amended in the heading by deleting the words “(section 19)” and substituting therefor the words“(section 17ND(a))”. Amendment of Second Schedule to principal Act.

8. The principal Act is amended by inserting next after the Second Schedule the following Schedules— Insertion of new Third and Fourth Schedules in principal Act.

“ THIRD SCHEDULE (Section 17ND(b))

The Revenue Administration (Convention on Mutual Administrative Assistance in Tax Matters) Regulations, 2020

Citation. 1. These Regulations may be cited as the Revenue Administration (Convention on Mutual Administrative Assistance in Tax Matters) Regulations, 2020.

Interpretation. 2.—(1) In these Regulations—
“account holder” means—

(a) the person who is listed or identified as the holder of a financial account by the financial institution that maintains the account;

- (b) the person for whose benefit or to whose account another person, other than a financial institution, holds a financial account as an agent, custodian, nominee, signatory, investment adviser or intermediary;
- (c) in the case of a cash value insurance contract or an annuity contract—
 - (i) any person entitled to access the cash value or change the beneficiary of the contract;
 - (ii) if no person can access the cash value or change the beneficiary, any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract;
 - (iii) upon maturity of a cash value insurance contract or annuity contract, each person entitled to receive a payment under the contract;

“active NFE” shall be construed in accordance with paragraph (2);

“AML/KYC procedures” means the customer due diligence procedures of a reporting financial institution pursuant to anti-money laundering or similar requirements to which the reporting financial institution is subject;

“annuity contract” means a contract under which the issuer agrees to make payments for a period of time determined, in whole or in part, by reference to the life expectancy of one or more individuals and includes a contract that is considered to be an annuity contract in accordance with the law, including regulations or practice of the jurisdiction in which the contract was issued and under which the issuer agrees to make payments for a term of years;

“Authority” has the meaning assigned to it by section 2 of the Tax Administration Jamaica Act;

“cash value”—

- (a) means the greater of—
 - (i) the amount that the policyholder is entitled to receive upon surrender or

termination of the contract (determined without reduction for any surrender charge or policy loan); and

- (ii) the amount the policyholder can borrow under or with regard to the contract;
- (b) notwithstanding paragraph (a), does not include an amount payable under an insurance contract—
- (i) solely by reason of the death of an individual insured under a life insurance contract;
 - (ii) as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
 - (iii) as a refund of a previously paid premium, less the cost of insurance charges whether or not actually imposed, under the insurance contract, other than an investment-linked life insurance or annuity contract, due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error

with regard to the premium for the contract;

(iv) as a policyholder dividend, other than a termination dividend, if the dividend relates to an insurance contract under which the only benefits payable are as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;

(v) as a return of an advance premium or premium deposit for an insurance contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium payable under the contract;

“cash value insurance contract” means an insurance contract, other than an indemnity reinsurance contract between two insurance companies, that has a cash value;

“collective investment vehicle” includes any vehicle in whatever form, whether in Jamaica or elsewhere, whereby members of the public are invited or permitted to invest money or any other property—

(a) in a portfolio of assets managed as a whole by or on behalf of the operator of the vehicle; and

- (b) on terms on which those investors, being two or more in number, and in which they hold a participating interest in, receive profits or income arising out of, or share in the risks and benefits of the vehicle;

“controlling person” means the natural person who exercises control over an entity and—

- (a) in the case of a trust, the term shall be construed as referring to the settlors, trustees, the protectors (if any), the beneficiaries or any classes of beneficiaries and any other natural person exercising ultimate effective control over the trust; and
- (b) in the case of legal arrangements other than a trust, means a person in an equivalent or similar position to a person referred to in paragraph (a);

“Convention” means the Convention referred to in item 2 of the First Schedule to the Act;

“custodial account” means an account (other than an insurance contract or an annuity contract) that holds one or more financial assets for the benefit of another person;

“depository account” includes—

- (a) any commercial, chequing, savings, time or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a financial institution in the ordinary course of banking or similar business; and

- (b) an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon;

“designated officer” means an officer of the Authority to whom the Authority has delegated powers or duties under regulation 10;

“documentary evidence” includes—

- (a) a certificate of residence, issued by an authorised government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a resident;
- (b) with respect to an individual, any valid identification issued by an authorised government body (for example, a government or agency thereof, or a municipality), that includes the individual’s name and is typically used for identification purposes;
- (c) with respect to an entity, any official documentation issued by an authorised government body (for example, a government or agency thereof, or a municipality) that includes the name of the entity and either the address of its principal office in the jurisdiction in which it claims to be resident or the jurisdiction in which the entity was incorporated or organised;
- (d) any audited financial statement, third party credit report, bankruptcy filing, or securities regulator’s report;

“entity” means a legal person or a legal arrangement, such as a corporation, partnership, trust or foundation;

“excluded account” means—

- (a) an account as defined in subparagraphs C(17)(a) to (f) of Section VIII of the Standard; or
- (b) an account to which these Regulations, in whole or in part, do not apply as declared under regulation 3;

“exempt collective investment vehicle” has the meaning assigned to it by paragraph (5);

“financial account” has the meaning assigned to it by Section VIII of the Standard;

“Governmental entity” means a public body;

“high value account” means a pre-existing individual account with an aggregate balance or value that exceeds US\$1,000,000.00 as at December 31, 2019 and thereafter at December 31 in any subsequent year;

“information return” means the report required under regulation 6;

“insurance contract” means a contract, other than an annuity contract, under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability or property risk;

“investment entity” means any entity—

- (a) that primarily conducts as a business one or more of the following operations or activities for or on behalf of a customer—
 - (i) trading in money market instruments (including cheques, bills,

certificates of deposit and derivatives), foreign exchange, exchange, interest rate and index instruments, transferable securities, or commodity futures trading;

- (ii) individual or collective portfolio management;
 - (iii) otherwise investing, administering or managing financial assets or money on behalf of other persons;
- (b) the gross income of which is primarily attributable to investing, reinvesting, or trading in financial assets, if the entity is managed by another entity that is a depository institution, a custodial institution, a specified insurance company, or an investment entity described in paragraph (a); or
- (c) that, although not an Active NFE for the purposes of paragraph (2), meets any of the criteria in paragraph (2)(d), (e), (f) or (g);

“lower value account” means a pre-existing individual account, which is not a high value account, with an aggregate balance or value as of December 31, 2019, that does not exceed US\$1,000,000.00;

“new account” means a financial account maintained by a reporting financial institution opened on or after January 1, 2020, unless it is treated as a pre-existing account in accordance with paragraph (9);

“NFE” or “non-financial entity” means an entity that is not a financial institution;

“non-reporting financial institution” means—

- (a) a financial institution as defined in subparagraphs B(1)(a), (b), (d) and (e) of Section VIII of the Standard; or
- (b) an entity to which these Regulations, in whole or in part, do not apply, as declared under regulation 3;

“participating jurisdiction” means a jurisdiction specified in Part I of the Schedule to these Regulations;

“participating jurisdiction financial institution” means—

- (a) any financial institution that is resident in a participating jurisdiction, but excludes any branch of that financial institution that is located outside each participating jurisdiction; and
- (b) any branch of a financial institution that is not resident in that participating jurisdiction, if that branch is located in that participating jurisdiction;

“passive income” has the meaning assigned to it by paragraph (10);

“passive NFE” means—

- (a) any NFE that is not an active NFE; or
- (b) an investment entity as described in paragraph (b) of the definition of “investment entity”, that is not a participating jurisdiction financial institution;

“pre-existing account” shall be construed in accordance with paragraph (9);

“public body” has the meaning assigned to it by section 17GA(5) of the Act;

“related entity” shall be construed in accordance with paragraph (3);

“reportable account” means an account held by one or more reportable persons or by a passive NFE with one or more controlling persons that is a reportable person, if the account has been identified as such pursuant to the due diligence procedures under regulation 4;

“reportable jurisdiction” means a jurisdiction—

- (a) with which an agreement is in place pursuant to which there is an obligation to provide the information specified in regulation 6; and
- (b) which is specified in Part II of the Schedule to these Regulations;

“reportable jurisdiction person” means—

- (a) an individual or entity that is resident in a reportable jurisdiction under the tax laws of that jurisdiction;
- (b) an estate of a decedent that was a resident of a reportable jurisdiction; or
- (c) a partnership, limited liability partnership or other similar legal arrangement that has no residence for tax purposes, that has its place of effective management in a reportable jurisdiction;

“reportable person” means a reportable jurisdiction person other than—

- (a) a corporation the stock of which is regularly traded on one or more established securities markets;

- (b) any corporation that is a related entity of a corporation referred to in paragraph (a);
- (c) a Governmental entity;
- (d) an international organisation;
- (e) a central bank; or
- (f) a financial institution;

“reporting financial institution” means any participating jurisdiction financial institution that is not a non-reporting financial institution;

“Standard” means the Standard for Automatic Exchange of Financial Account Information in Tax Matters (the Common Reporting Standard), including the Commentaries thereon, approved by the Council of the Organisation for Economic Co-operation and Development on 15 July, 2014, and which contains reporting and due diligence procedures for the exchange of information on an automatic basis, as amended from time to time;

“Standardised industry coding system” means a coding system used to classify establishments by business type for purposes other than tax purposes;

“TIN” means a taxpayer identification number or functional equivalent in the absence of a taxpayer identification number;

“US\$” means United States Dollars, the official currency of the United States of America.

(2) For the purposes of these Regulations, an entity is an “active NFE” if—

- (a) less than 50% of the NFE’s gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50% of the assets held by the NFE during the preceding calendar

year or other appropriate reporting period are assets that produce or are held for the production of passive income;

- (b) the stock of the NFE is regularly traded on an established securities market or the NFE is a related entity of an entity the stock of which is regularly traded on an established securities market;
- (c) the NFE is a Governmental entity, an international organisation, a central bank, or an entity wholly owned by one or more of the foregoing;
- (d) substantially all of the activities of the NFE consist of holding, in whole or in part, the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a financial institution, except that an entity does not qualify for this status if the entity functions, or holds itself out, as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle the purpose of which is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- (e) the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a financial institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;
- (f) the NFE was not a financial institution in the past five years, and is in the process of liquidating its assets or is re-organising with the intent to continue or recommence operations in a business other than that of a financial institution;

- (g) the NFE primarily engages in financing and hedging transactions with, or for, related entities that are not financial institutions, and does not provide financing or hedging services to any entity that is not a related entity provided that the group of any such related entities is primarily engaged in a business other than that of a financial institution; or
- (h) the NFE meets all of the following requirements—
 - (i) it is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes, or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
 - (ii) it is exempt from income tax in its jurisdiction of residence;
 - (iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
 - (iv) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable entity other than pursuant to the conduct of the NFE's charitable activities,

or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and

- (v) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets are to be distributed to a Governmental entity or other non-profit organisation, or escheat to the government of the NFE's jurisdiction of residence or any political subdivision of that jurisdiction.

(3) For the purposes of these Regulations—

- (a) the definition of "related entity" specified in subsection E(4) of Section VIII of the Standard shall not apply;
- (b) an entity is a related entity in relation to another entity if—
 - (i) either entity controls the other entity;
 - (ii) the two entities are under common control; or
 - (iii) the two entities are investment entities within the meaning of paragraph (b) of the definition of "investment entity", are under common management, and such management fulfils the due diligence obligations of such investment entities; and
- (c) in paragraph (b), in relation to a related entity,

“control”, includes direct or indirect ownership of more than 50% of the vote and value in that entity.

(4) For the purposes of these Regulations, the date specified in—

- (a) the definition of “Qualified Credit Card Issuer” specified in sub-paragraph B(8) of Section VIII of the Standard, is deemed to be January 1, 2019; and
- (b) the definition of “excluded account” in subparagraph C(17) (f) (ii) of Section VIII of the Standard, is deemed to be January 1, 2019.

(5) Subject to paragraph (8), an exempt collective investment vehicle is an investment entity regulated under the Securities Act provided that all of the interests in the collective investment vehicle are held by or through individuals or entities that are not reportable persons, except a passive NFE with controlling persons who are reportable persons.

(6) For the purposes of these Regulations, in relation to an investment entity, an entity is treated as—

- (a) primarily conducting as a business the activities described in paragraph (a) of the definition of “investment entity”; or
- (b) having a gross income primarily attributable to investing, reinvesting, or trading in financial assets for the purposes specified in paragraph (b) of the definition of “investment entity”, if the entity’s gross income attributable to the relevant activities equals or exceeds 50% of the entity’s gross income during the shorter of the two periods specified in paragraph (7).

(7) The periods referred to in paragraph (6), are—

- (a) the three year period ending 31st December of the year preceding the year in which the determination is made; or

- (b) the period during which the entity has been in existence.

(8) An investment entity that is regulated as a collective investment vehicle shall not fail to qualify as an exempt collective investment vehicle, solely because the collective investment vehicle has issued physical shares in bearer form, if—

- (a) the collective investment vehicle has not issued, and does not issue, any physical shares in bearer form after June 21, 2017;
- (b) the collective investment vehicle retires all such shares upon surrender;
- (c) the collective investment vehicle performs the due diligence procedures set out in Sections II to VII of the Standard and reports any information required to be reported with respect to any such shares when such shares are presented for redemption or other payment; and
- (d) the collective investment vehicle has in place policies and procedures to ensure that the shares are redeemed and immobilised as soon as possible, and in any event prior to December 20, 2018.

(9) For the purposes of these Regulations, an account is to be treated as a pre-existing account in the following circumstances—

- (a) a financial account maintained by a reporting financial institution as of December 31, 2019; or
- (b) any financial account of an account holder, regardless of the date such financial account was opened, if—
 - (i) the account holder also holds with the reporting financial institution, or with a related entity within the same jurisdiction as the reporting financial institution, a

financial account that is a pre-existing account under paragraph (a);

- (ii) the reporting financial institution and, as applicable, the related entity within the same jurisdiction as the reporting financial institution, treats both of the previously mentioned financial accounts, and any other financial accounts of the account holder that are treated as pre-existing accounts under this paragraph, as a single financial account for purposes of satisfying the standards of knowledge requirements set out in paragraph A of Section VII of the Standard, and for purposes of determining the balance or value in any of the financial accounts when applying any of the account thresholds;
- (iii) with respect to a financial account that is subject to AML/KYC procedures, the reporting financial institution is permitted to satisfy such AML/KYC procedures for the financial account by relying upon the AML/KYC procedures performed for the pre-existing account described in paragraph (a); and
- (iv) the opening of the financial account does not require the provision of new, additional or amended customer information by the account holder other than for purposes of the Standard.

- (10) In these Regulations, “passive income”—
- (a) subject to paragraph (b), is the portion of gross income that consists of—
- (i) dividends;
 - (ii) interest or income equivalent to interest;
 - (iii) rents and royalties, other than rents and royalties derived in the active conduct of a business conducted, at least in part, by employees of the NFE;
 - (iv) annuities;
 - (v) the excess of gains over losses from the sale or exchange of financial assets that give rise to the passive income specified in sub-paragraphs (i), (ii), (iii) and (iv);
 - (vi) the excess of gains over losses from transactions (including futures, forwards, options, and similar transactions) in any financial assets;
 - (vii) the excess of foreign currency gains over foreign currency losses;
 - (viii) net income from swaps;
 - (ix) amounts received under cash value insurance contracts; or
 - (x) any other income that the Commissioner General may determine by notice published in the *Gazette* to be passive income for the purposes of these Regulations;
- (b) in the case of a NFE that regularly acts as a dealer in financial assets, does not include

any income from any transaction entered into in the ordinary course of such dealer's business as a dealer.

(11) Terms and expressions used and not defined in these Regulations, shall have the same meaning as set out in the Convention or the Standard, as applicable.

3.—(1) The Minister may, by order, declare that these Regulations, in whole or in part, do not apply to any account (referred to as an “excluded account”) and any entity (referred to as a “non-reporting financial institution”), subject to such terms and conditions, if any. Application.

(2) An order under paragraph (1), shall be made by the Minister in accordance with the Convention and the Standard.

4.—(1) Every reporting financial institution shall establish, maintain and document the procedures required by these Regulations that are designed to identify reportable accounts maintained by the institution. Due diligence obligations.

(2) Every reporting financial institution shall—

- (a) identify reportable accounts maintained by the institution by applying the due diligence procedures described in Sections II to VII of the Standard; and
- (b) apply the due diligence procedures as if the date specified in—
 - (i) sub-paragraph C(6) of Section III of the Standard is December 31, 2019;
 - (ii) paragraph D of Section III of the Standard is December 31, 2020 in respect of high value accounts and December 31, 2021 in respect of lower value accounts;
 - (iii) paragraph A of Section V of the Standard is December 31, 2019;

- (iv) paragraph B of Section V of the Standard is December 31, 2019 in both the first and second instances;
- (v) sub-paragraph E(1) of Section V of the Standard is December 31, 2019 in the first instance, and December 31, 2020 in the second instance; and
- (vi) sub-paragraph E(2) of Section V of the Standard is December 31, 2019.

(3) An account is treated as a reportable account beginning as of the date it is identified as such pursuant to the due diligence procedures described in Sections II to VII of the Standard and, unless otherwise provided, information with respect to a reportable account shall be reported annually in the calendar year following the year to which the information relates.

(4) For the purposes of these Regulations, the balance or value of an account shall be determined as follows—

- (a) an account with a balance or value that is negative is deemed to have a balance or value equal to nil;
- (b) in the case of an account denominated in a currency other than US\$, whether the account has met a US\$ threshold amount specified in the Standard, shall be determined by calculating the value of the currency in which the account is denominated in US\$ by applying the rate of exchange for that currency in relation to the US\$ as at the date on which the threshold amount is to be determined;
- (c) a financial account held by an individual as a partner of a partnership is deemed to be a financial account of the entity.

5.—(1) A reporting financial institution may apply, for a calendar year—

Modification
to due
diligence
procedures.

- (a) the residence address procedure, specified in sub-paragraph B(1) of Section III of the Standard, to a lower value account;
- (b) the due diligence procedures for a high value account, specified in paragraph C of Section III of the Standard, to a lower value account; and
- (c) paragraphs A to C of Section V of the Standard to determine whether a pre-existing entity account is subject to the due diligence procedures described in Section V of the Standard.

(2) Subject to paragraphs (3) and (4), a reporting financial institution may apply, for a calendar year, the due diligence procedures for a new account, described in paragraph A of Section IV or VI of the Standard, to a pre-existing account.

(3) Where a reporting financial institution applies the due diligence procedures for a new account to a pre-existing account, the procedures described in sub-paragraph B(1) of Section III and paragraphs C of Section I, A of Section III and A of Section V of the Standard shall apply to the new account.

(4) For the purpose of applying Section IV of the Standard, regulation 4 is to be read as if paragraph B of Section VII of the Standard read as follows—

“(a) a reporting financial institution may deem an individual beneficiary, other than the owner of a cash value insurance contract or an annuity contract receiving a death benefit, as not being a reportable person and may treat such financial account as other than a reportable account unless the reporting financial institution has actual knowledge, or reason to know, that the beneficiary is a reportable person;

- (b) a reporting financial institution has reason to know that a beneficiary of a cash value insurance contract or an annuity contract is a reportable person if the information collected by the reporting financial institution and associated with the beneficiary contains indicia as described in paragraph B of Section III of the Standard;
- (c) if a reporting financial institution has actual knowledge, or reason to know, that the beneficiary is a reportable person, the reporting financial institution shall apply the procedures specified in paragraph B of Section III of the Standard;
- (d) a reporting financial institution may treat a financial account that is a member's interest in a group cash value insurance contract or group annuity contract as a financial account that is not a reportable account until the date on which an amount is payable to the employee, certificate holder or beneficiary, if the financial account that is a member's interest in a group cash value insurance contract or group annuity contract meets the following requirements—
 - (i) the group cash value insurance contract or group annuity contract is issued to an employer and covers 25 or more employees or certificate holders;
 - (ii) the employees or certificate holders are entitled to receive any contract value related to their interests and to name beneficiaries for the benefit payable upon the employee's death; and
 - (iii) the aggregate amount payable to any employee or certificate holder or beneficiary does not exceed an

amount in Jamaican currency equivalent at the current rate of exchange to US\$1,000,000.00.”.

(5) A reporting financial institution may not apply the due diligence procedures for a new account to a pre-existing account unless the institution applies the procedures to all pre-existing accounts or a clearly identifiable group of pre-existing accounts.

(6) A reporting financial institution may with respect to a pre-existing entity account, use as documentary evidence any classification in the institution’s records with respect to the account holder that was determined based on a standardised industry coding system, that was recorded by the institution consistent with its normal business practices for the purposes of AML/KYC procedures or any other regulatory purposes (other than for tax purposes) and that was implemented by the institution prior to the date used to classify the financial account as a pre-existing account, provided that the institution does not know or does not have reason to know that such classification is incorrect or unreliable.

(7) With respect to new entity accounts, for the purposes of determining whether a controlling person of a passive NFE is a reportable person, a reporting financial institution may only rely on a self-certification from either the account holder or the controlling person.

(8) In this regulation—

“group annuity contract” means an annuity contract under which the obligees are individuals who are affiliated through an employer, trade association, labour union, or other association or group;

“group cash value insurance contract” means a cash value insurance contract that—

- (a) provides coverage on individuals who are affiliated through an employer, trade association, labour union, or other association or group; and

- (b) charges a premium for each member of the group (or member of a class within the group) that is determined without regard to the individual health characteristics other than age, gender, and smoking habits of the member (or class of members) of the group.

Reporting
obligation.

6.—(1) A reporting financial institution shall, in relation to every financial account identified as a reportable account that is maintained by the institution at any time during a calendar year file with the Commissioner General an information return setting out the information specified in paragraph (2) in respect of the calendar year 2021 and every subsequent calendar year and the information return for a calendar year shall be filed not later than May 31 of the subsequent calendar year to which the information return relates.

(2) Subject to paragraph (3), an information return filed by a reporting financial institution under paragraph (1) shall, in respect of each reportable account, include—

- (a) the name, address, jurisdictions of residence, TINs and date and place of birth (in the case of an individual) of each reportable person that is an account holder of the account; and
- (b) in the case of any entity that is an account holder that, after application of the due diligence procedures consistent with Sections V, VI and VII of the Standard, is identified as having one or more controlling persons that is a reportable person—
 - (i) in the case of an entity, the name, address, jurisdictions of residence and TINs of the entity; and
 - (ii) in the case of an individual, the name, address, jurisdictions of residence, TINs and date and place of birth of each reportable person;

- (c) the account number or functional equivalent in the absence of an account number;
- (d) the name and identifying number, if any, of the reporting financial institution;
- (e) the account balance or value, including in the case of a cash value insurance contract or annuity contract, the cash value or surrender value, as of the end of the relevant calendar year or, if the account was closed during such year, the closure of the account;
- (f) in the case of any custodial account—
 - (i) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account, or with respect to the account, during the calendar year;
 - (ii) the total gross proceeds from the sale or redemption of financial assets paid or credited to the account during the calendar year with respect to which the reporting financial institution acted as a custodian, broker, nominee, or otherwise as an agent for the account holder;
- (g) in the case of any depository account, the total gross amount of interest paid or credited to the account during the calendar year;
- (h) in the case of any account not described in sub-paragraph (f) or (g), the total gross amount paid or credited to the account holder with respect to the account during the calendar year with respect to which the

reporting financial institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the account holder during the calendar year; and

- (i) the currency in which each amount is denominated.

(3) In respect of a report included in an information return—

- (a) for each reportable account that is a pre-existing account, the TIN or date of birth of an account holder is not required to be reported if the TIN or date of birth is not in the records of the reporting financial institution and is not otherwise required to be collected by such reporting financial institution under any other law;
- (b) a reporting financial institution is required to use reasonable efforts to obtain the TINs and dates of birth of account holders with respect to pre-existing accounts by the end of the second calendar year following the year in which such accounts were identified as reportable accounts;
- (c) notwithstanding paragraphs (2)(a) and (b), a TIN is not required to be reported if a TIN is not issued by the relevant reportable jurisdiction or the domestic law of the relevant reportable jurisdiction does not require the collection of the TIN issued by such reportable jurisdiction;
- (d) notwithstanding paragraph (2)(a) and (b), the place of birth of an account holder is not required to be reported unless the financial institution is otherwise required to obtain and report the account holder's place of birth under any other law and the information is available in the electronically searchable data maintained by the reporting financial institution.

(4) If a reporting financial institution applies the due diligence procedures specified in regulation 4 for a calendar year and no account is identified by the institution as a reportable account, the institution shall file an information return which provides that the institution maintains no such reportable accounts in respect of that year.

(5) An information return, required to be filed by these Regulations, shall be submitted electronically in accordance with regulation 7.

7. An information return, required to be filed electronically by these Regulations, shall be filed using technology approved or provided by the Authority, and in such form as the Authority may require. Electronic return system.

8.—(1) Every reporting financial institution shall keep records of any information that the institution obtains or creates for the purpose of complying with these Regulations, including any self-certifications and records of documentary evidence. Records.

(2) Every reporting financial institution required by these Regulations to keep records electronically, shall retain those records in an electronically readable format for the duration of the retention period referred to in paragraph (4).

(3) Every reporting financial institution that obtains or creates records, as required under these Regulations, in a language other than English shall, upon request, provide an English language translation to the Commissioner General.

(4) Every reporting financial institution that is required to keep, obtain or create records under these Regulations shall retain those records for a period of not less than seven years after—

- (a) in the case of a self-certification, the last day on which a related financial account is open; and
- (b) in any other case, the end of the last calendar year in respect of which the record is relevant.

Authority's
power to
enforce
Convention,
etc.

9. The Authority, subject to the general directions of the Minister, shall generally administer and enforce compliance with the provisions of the Convention and these Regulations.

Designated
officer.

10. Subject to section 9 of the Tax Administration Jamaica Act, the Authority may delegate, in writing, to an officer of the Authority any duty or power conferred on the Authority by these Regulations.

Power to
enter
premises,
inspection
of books,
etc.

11.—(1) A designated officer may request information from and, at all reasonable times, enter any premises or place of business of a reporting financial institution for the purposes of—

- (a) determining whether information—
 - (i) included in an information return made under the regulations by the reporting financial institution is correct and complete; or
 - (ii) not included in an information return was correctly not included; or
- (b) examining the procedures put in place by the reporting financial institution for the purposes of ensuring compliance with that institution's obligations under this Act and these Regulations.

(2) A designated officer may, by notice in writing, require a financial institution to give the officer within such time, not being less than 14 days, as may be provided by the notice, such information, including copies of any relevant books, records or other documents, as the officer may reasonably require for any purpose relating to the administration or enforcement of these Regulations.

(3) A designated officer may require a financial institution to produce books, records or other documentation; to provide information, explanations and particulars; and to give all assistance which the officer may reasonably require relating to the administration or enforcement of these Regulations.

(4) A designated officer may make extracts from or copies of all or any part of the books, records or other documents or other material made available to the officer or require that copies of books, records or other documents be made available to the officer for any purpose relating to the administration or enforcement of these Regulations

12.—(1) A reporting financial institution may appoint a third party as its agent to carry out the duties and obligations imposed on it by these Regulations.

Liability of reporting financial institution for acts of agent.

(2) Where a third party is appointed by a reporting financial institution as its agent, the financial institution shall—

- (a) at all times, have access to and be able to produce, where so requested by the Authority or a designated officer, the records and documentary evidence used to identify and report on reportable accounts; and
- (b) be responsible for any failure of that agent to carry out the obligations of the financial institution, and regulations 11, 14 and 15 shall apply to the financial institution notwithstanding that the failure is due to the act or omission of that agent.

13.—(1) Every person having an official duty or being employed or any person who formerly had a duty or was formerly employed—

Confidentiality.

- (a) in the administration or enforcement of these Regulations; or
- (b) to receive information from a reporting financial institution or a competent authority under the Convention,

shall treat information received from a reporting financial institution or a competent authority under these Regulations as confidential and shall only disclose such information as may be necessary for the purpose of the administration or enforcement of the Convention or under these Regulations.

(2) A person who discloses or divulges any information or produces any document relating to the information received from a reporting financial institution or a competent authority under the Convention or these Regulations in contravention of paragraph (1) commits an offence and is liable, on summary conviction in a Parish Court, to a fine not exceeding one million dollars or to a term of imprisonment not exceeding nine months.

Pecuniary penalties.

14.—(1) Every reporting financial institution who fails to file an information return as and when required under these Regulations is liable to a pecuniary penalty not exceeding one million dollars for each such failure.

(2) Every reporting financial institution who fails to apply the due diligence procedures required by the Standard is liable to a pecuniary penalty not exceeding one million dollars for each such failure.

(3) Every reporting financial institution who—

- (a) opens an account without valid self-certification; or
- (b) fails to close that account if the holder refuses to provide the financial institution with valid self-certification or documentary evidence,

is liable to a pecuniary penalty not exceeding five hundred thousand dollars for each failure.

(4) Every person who makes a false statement or omission in respect of any information required to be included on an information return is liable to a pecuniary penalty not exceeding ten thousand dollars, unless in the case of information required in respect of another person, a reasonable effort was made by the person to obtain the information from the other person.

(5) Every person who provides a financial institution with false self-certification or documentary evidence is liable to a pecuniary penalty not exceeding ten thousand dollars, unless in the case of information

required in respect of another person, a reasonable effort was made by the person to obtain the self-certification or documentary evidence from the other person.

(6) Every person who fails to comply with a duty or obligation imposed under these Regulations is liable to a pecuniary penalty not exceeding five hundred thousand dollars.

(7) Every person who does not comply with the requirement of the Commissioner General or a designated officer in the exercise or performance of the Commissioner General's or the officer's powers or duties under these Regulations is liable to a pecuniary penalty not exceeding five hundred thousand dollars for each such failure.

15.—(1) If a person becomes liable to a penalty under regulation 14, the Commissioner General shall notify the person of—

Notice of assessment of penalties.

(a) the duty or obligation under these Regulations with which the person has failed to comply and the liability to the pecuniary penalty, including the date on which the person's failure first came to the attention of the Commissioner General; and

(b) the assessment of the amount of pecuniary penalty payable to the Authority.

(2) Liability to a pecuniary penalty in respect of the breach of these Regulations and the assessment of a pecuniary penalty payable under regulation 14 shall be determined and notified by the Commissioner General not later than twelve months beginning after the date on which the person's failure to comply with a duty or obligation under these Regulations first came to the attention of the Commissioner General.

16.—(1) Liability to a penalty under regulation 14 does not arise if the person satisfies the Commissioner General that there is a reasonable excuse for the failure.

No liability to penalty for reasonable excuse, etc.

(2) For the purposes of these Regulations neither of the following is a reasonable excuse—

(a) that there is an insufficiency of funds to do something; or

- (b) that a person relies upon another person to do something.

(3) If a person had a reasonable excuse for a failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied within 30 days after the excuse ceased.

Appeal to Revenue Court against assessment of penalty.

17.—(1) Where any person is aggrieved by a decision of the Commissioner General in respect of—

- (a) liability to a pecuniary penalty, on the grounds that liability to the pecuniary penalty does not arise; or
- (b) the assessment of the amount of pecuniary penalty payable,

that person may appeal to the Revenue Court.

(2) The Revenue Court may, as it thinks just—

- (a) in the case of an appeal under paragraph (1)(a), confirm or quash the determination of liability;
- (b) in the case of an appeal under paragraph (1)(b), vary or confirm the assessment of any amount of pecuniary penalty payable to the Authority.

(3) Subject to rules of court, an appeal from any order by the Revenue Court under this regulation shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the Court.

Payment of penalties.

18.—(1) A pecuniary penalty under these Regulations shall be paid to the Authority within 30 days after the date on which—

- (a) notification under regulation 15 is received; or
- (b) an appeal against liability to a pecuniary penalty or against the assessment of the amount of pecuniary penalty payable, as the case may be, is finally determined against, or withdrawn by, the appellant.

(2) If any amount in respect of a pecuniary penalty is not paid by the due date specified in paragraph (1), interest on the amount owing shall be charged for the period during which that amount is outstanding.

(3) The rate of interest to be applied on an outstanding amount owed to satisfy a pecuniary penalty under subsection (2) shall be the rate prescribed under section 2A of the Tax Collection Act.

(4) Section 79 of the Income Tax Act shall apply, with necessary modification, to the treatment of any pecuniary penalty, being due and payable, which remains unpaid.

Anti-avoidance.

19. Where a person enters into any arrangement or engages in any practice, the main purpose or one of the purposes of which can reasonably be considered to be to avoid an obligation imposed under these Regulations, the person remains and shall be treated as subject to these obligations as if the person had not entered into the arrangement or engaged in the practice.

Inconsistency.

20. In the event of any inconsistency between these Regulations and the provisions of any other law, the provisions of these Regulations shall prevail to the extent of the inconsistency.

SCHEDULE

(Regulation 2)

PART I.

Participating Jurisdictions

The jurisdictions of the following treaty parties are participating jurisdictions—

1. Andorra
2. Anguilla
3. Antigua and Barbuda
4. Argentina
5. Aruba
6. Australia
7. Austria
8. Azerbaijan
9. Bahamas
10. Bahrain
11. Barbados
12. Belgium
13. Belize
14. Bermuda
15. Brazil
16. British Virgin Islands
17. Brunei Darussalam
18. Bulgaria
19. Canada
20. Cayman Islands
21. Chile
22. China
23. Colombia
24. Cook Islands
25. Costa Rica
26. Croatia
27. Curaçao
28. Cyprus
29. Czech Republic

30. Denmark
31. Dominica
32. Estonia
33. Faroe Islands
34. Finland
35. France
36. Germany
37. Ghana
38. Gibraltar
39. Greece
40. Greenland
41. Grenada
42. Guernsey
43. Hong Kong (China)
44. Hungary
45. Iceland
46. India
47. Indonesia
48. Ireland
49. Isle of Man
50. Israel
51. Italy
52. Japan
53. Jersey
54. Korea
55. Kuwait
56. Latvia
57. Lebanon
58. Liechtenstein
59. Lithuania
60. Luxembourg
61. Macau (China)
62. Malaysia
63. Malta
64. Marshall Islands

65. Mauritius
66. Mexico
67. Monaco
68. Monserrat
69. Nauru
70. Netherlands
71. New Zealand
72. Niue
73. Norwa
74. Pakistan
75. Panama
76. Poland
77. Portugal
78. Qatar
79. Romania
80. Russia
81. Saint Kitts and Nevis
82. Saint Lucia
83. Saint Vincent and the Grenadines
84. Samoa
85. San Marino
86. Saudi Arabia
87. Seychelles
88. Singapore
89. Saint Maarten
90. Slovak Republic
91. Slovenia
92. South Africa
93. Spain
94. Sweden
95. Switzerland
96. Trinidad and Tobago
97. Turkey
98. Turks and Caicos Islands
99. United Arab Emirates
100. United Kingdom
101. Uruguay
102. Vanuatu

PART II.

Reportable Jurisdictions

The jurisdictions of the following treaty parties are reportable jurisdictions—

1. Andorra
2. Anguilla
3. Antigua and Barbuda
4. Argentina
5. Aruba
6. Australia
7. Austria
8. Azerbaijan
9. Bahamas
10. Bahrain
11. Barbados
12. Belgium
13. Belize
14. Bermuda
15. Brazil
16. British Virgin Islands
17. Brunei Darussalam
18. Bulgaria
19. Canada
20. Cayman Islands
21. Chile
22. China
23. Colombia
24. Cook Islands
25. Costa Rica
26. Croatia
27. Curaçao
28. Cyprus
29. Czech Republic
30. Denmark
31. Dominica
32. Estonia

33. Faroe Islands
34. Finland
35. France
36. Germany
37. Ghana
38. Gibraltar
39. Greece
40. Greenland
41. Grenada
42. Guernsey
43. Hong Kong (China)
44. Hungary
45. Iceland
46. India
47. Indonesia
48. Ireland
49. Isle of Man
50. Israel
51. Italy
52. Japan
53. Jersey
54. Korea
55. Kuwait
56. Latvia
57. Lebanon
58. Liechtenstein
59. Lithuania
60. Luxembourg
61. Macau (China)
62. Malaysia
63. Malta
64. Marshall Islands
65. Mauritius
66. Mexico
67. Monaco

68. Monserrat
69. Nauru
70. Netherlands
71. New Zealand
72. Niue
73. Norway
74. Pakistan
75. Panama
76. Poland
77. Portugal
78. Qatar
79. Romania
80. Russia
81. Saint Kitts and Nevis
82. Saint Lucia
83. Saint Vincent and the Grenadines
84. Samoa
85. San Marino
86. Saudi Arabia
87. Seychelles
88. Singapore
89. Saint Maarten
90. Slovak Republic
91. Slovenia
92. South Africa
93. Spain
94. Sweden
95. Switzerland
96. Trinidad and Tobago
97. Turkey
98. Turks & Caicos Islands
99. United Arab Emirates
100. United Kingdom
101. Uruguay
102. Vanuatu

FOURTH SCHEDULE

(Item 2, First
Schedule)*The Convention*

THE

JAMAICA GAZETTE

EXTRAORDINARY

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The following Notification is, by command of His Excellency the Governor-General, published for general information.

DIONNE TRACEY DANIEL, (MRS.)
Governor-General's Secretary.

GOVERNMENT NOTICE

MISCELLANEOUS

No. 174F

CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS

Text amended by the provisions of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, which entered into force on 1st June, 2011

Preamble

The member States of the Council of Europe and the member countries of the Organisation for Economic Co-operation and Development (OECD), signatories of this Convention;

Considering that the development of international movement of persons, capital, goods and services—although highly beneficial in itself—has increased the possibilities of tax avoidance and evasion and therefore requires increasing co-operation among tax authorities;

Welcoming the various efforts made in recent years to combat tax avoidance and tax evasion on an international level, whether bilaterally or multilaterally;

Considering that a co-ordinated effort between States is necessary in order to foster all forms of administrative assistance in matters concerning taxes of any kind whilst at the same time ensuring adequate protection of the rights of taxpayers;

Recognising that international co-operation can play an important part in facilitating the proper determination of tax liabilities and in helping the taxpayer to secure his rights;

Considering that fundamental principles entitling every person to have his rights and obligations determined in accordance with a proper legal procedure should be recognised as applying to tax matters in all States and that States should endeavour to protect the legitimate interests of taxpayers, including appropriate protection against discrimination and double taxation;

Convinced therefore that States should carry out measures or supply information, having regard to the necessity of protecting the confidentiality of information, and taking account of international instruments for the protection of privacy and flows of personal data;

Considering that a new co-operative environment has emerged and that it is desirable that a multilateral instrument is made available to allow the widest number of States to obtain the benefits of the new co-operative environment and at the same time implement the highest international standards of co-operation in the tax field;

Desiring to conclude a convention on mutual administrative assistance in tax matters;

Have agreed as follows:

Chapter I—Scope of the Convention

Article 1—*Object of the Convention and persons covered*

1. The Parties shall, subject to the provisions of Chapter IV, provide administrative assistance to each other in tax matters. Such assistance may involve, where appropriate, measures taken by judicial bodies.
2. Such administrative assistance shall comprise:
 - a. exchange of information, including simultaneous tax examinations and participation in tax examinations abroad;
 - b. assistance in recovery, including measures of conservancy; and
 - c. service of documents.
3. A Party shall provide administrative assistance whether the person affected is a resident or national of a Party or of any other State.

Article 2—*Taxes covered*

1. This Convention shall apply:
 - a. to the following taxes:
 - i. taxes on income or profits,
 - ii. taxes on capital gains which are imposed separately from the tax on income or profits,
 - iii. taxes on net wealth,
 imposed on behalf of a Party; and
 - b. to the following taxes:
 - i. taxes on income, profits, capital gains or net wealth which are imposed on behalf of political subdivisions or local authorities of a Party,
 - ii. compulsory social security contributions payable to general government or to social security institutions established under public law, and
 - iii. taxes in other categories, except customs duties, imposed on behalf of a Party, namely:
 - A. estate, inheritance or gift taxes,
 - B. taxes on immovable property,
 - C. general consumption taxes, such as value added or sales taxes
 - D. specific taxes on goods and services such as excise taxes,
 - E. taxes on the use or ownership of motor vehicles,
 - F. taxes on the use or ownership of movable property other than motor vehicles,
 - G. any other taxes;
 - iv. taxes in categories referred to in sub-paragraph iii above which are imposed on behalf of political subdivisions or local authorities of a Party.

2. The existing taxes to which the Convention shall apply are listed in Annex A in the categories referred to in paragraph 1.
3. The Parties shall notify the Secretary General of the Council of Europe or the Secretary General of OECD (hereinafter referred to as the "Depositaries") of any change to be made to Annex A as a result of a modification of the list mentioned in paragraph 2. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary.
4. The Convention shall also apply, as from their adoption, to any identical or substantially similar taxes which are imposed in a Contracting State after the entry into force of the Convention in respect of that Party in addition to or in place of the existing taxes listed in Annex A and, in that event, the Party concerned shall notify one of the Depositaries of the adoption of the tax in question.

Chapter II—General definitions

Article 3—Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
 - a. the terms "applicant State" and "requested State" mean respectively any Party applying for administrative assistance in tax matters and any Party requested to provide such assistance;
 - b. the term "tax" means any tax or social security contribution to which the Convention applies pursuant to Article 2;
 - c. the term "tax claim" means any amount of tax, as well as interest thereon, related administrative fines and costs incidental to recovery, which are owed and not yet paid;
 - d. the term "competent authority" means the persons and authorities listed in Annex B;
 - e. the term "nationals" in relation to a Party means:
 - i. all individuals possessing the nationality of that Party; and
 - ii. all legal persons, partnerships, associations and other entities deriving their status as such from the laws in force in that Party.

For each Party that has made a declaration for that purpose, the terms used above will be understood as defined in Annex C.

2. As regards the application of the Convention by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that Party concerning the taxes covered by the Convention.
3. The Parties shall notify one of the Depositaries of any change to be made to Annexes B and C. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary in question.

Chapter III—Forms of assistance

Section 1—Exchange of information

Article 4—General Provision

1. The Parties shall exchange any information, in particular as provided in this section, that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by this Convention.
2. Deleted.
3. Any Party may, by a declaration addressed to one of the Depositaries, indicate that, according to its internal legislation, its authorities may inform its resident or national before transmitting information concerning him, in conformity with Articles 5 and 7.

Article 5—Exchange of information on request

1. At the request of the applicant State, the requested State shall provide the applicant State with any information referred to in Article 4 which concerns particular persons or transactions.
2. If the information available in the tax files of the requested State is not sufficient to enable it to comply with the request for information, that State shall take all relevant measures to provide the applicant State with the information requested.

Article 6—Automatic exchange of information

With respect to categories of cases and in accordance with procedures which they shall determine by mutual agreement, two or more Parties shall automatically exchange the information referred to in Article 4.

Article 7—Spontaneous exchange of information

1. A Party shall, without prior request, forward to another Party information of which it has knowledge in the following circumstances:

- a. the first-mentioned Party has grounds for supposing that there may be a loss of tax in the other Party;
 - b. a person liable to tax obtains a reduction in or an exemption from tax in the first-mentioned Party which would give rise to an increase in tax or to liability to tax in the other Party;
 - c. business dealings between a person liable to tax in a Party and a person liable to tax in another Party are conducted through one or more countries in such a way that a saving in tax may result in one or the other Party or in both;
 - d. a Party has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
 - e. information forwarded to the first-mentioned Party by the other Party has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Party.
2. Each Party shall take such measures and implement such procedures as are necessary to ensure that information described in paragraph 1 will be made available for transmission to another Party.

Article 8—Simultaneous tax examinations

1. At the request of one of them, two or more Parties shall consult together for the purposes of determining cases and procedures for simultaneous tax examinations. Each Party involved shall decide whether or not it wishes to participate in a particular simultaneous tax examination.
2. For the purposes of this Convention, a simultaneous tax examination means an arrangement between two or more Parties to examine simultaneously, each in its own territory, the tax affairs of a person or persons in which they have a common or related interest, with a view to exchanging any relevant information which they so obtain.

Article 9—Tax examinations abroad

1. At the request of the competent authority of the applicant State, the competent authority of the requested State may allow representatives of the competent authority of the applicant State to be present at the appropriate part of a tax examination in the requested State.
2. If the request is acceded to, the competent authority of the requested State shall, as soon as possible, notify the competent authority of the applicant State 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 requested State for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested State.
3. A Party may inform one of the Depositaries of its intention not to accept, as a general rule, such requests as are referred to in paragraph 1. Such a declaration may be made or withdrawn at any time.

Article 10—Conflicting information

If a Party receives from another Party information about a person's tax affairs which appears to it to conflict with information in its possession, it shall so advise the Party which has provided the information.

Section II—Assistance in recovery

Article 11—Recovery of tax claims

1. At the request of the applicant State, the requested State shall, subject to the provisions of Articles 14 and 15, take the necessary steps to recover tax claims of the first-mentioned State as if they were its own tax claims.
2. The provision of paragraph 1 shall apply only to tax claims which form the subject of an instrument permitting their enforcement in the applicant State and, unless otherwise agreed between the Parties concerned, which are not contested.
However, where the claim is against a person who is not a resident of the applicant State, paragraph 1 shall only apply, unless otherwise agreed between the Parties concerned, where the claim may no longer be contested.
3. The obligation to provide assistance in the recovery of tax claims concerning a deceased person or his estate, is limited to the value of the estate or of the property acquired by each beneficiary of the estate, according to whether the claim is to be recovered from the estate or from the beneficiaries thereof.

Article 12—Measures of conservancy

At the request of the applicant State, the requested State shall, with a view to the recovery of an amount of tax, take measures of conservancy even if the claim is contested or is not yet the subject of an instrument permitting enforcement.

Article 13—Documents accompanying the request

1. The request for administrative assistance under this section shall be accompanied by:
 - a a declaration that the tax claim concerns a tax covered by the Convention and, in the case of recovery that, subject to paragraph 2 of Article 11, the tax claim is not or may not be contested,
 - b an official copy of the instrument permitting enforcement in the applicant State, and
 - c any other document required for recovery or measures of conservancy.
2. The instrument permitting enforcement in the applicant State shall, where appropriate and in accordance with the provisions in force in the requested State, be accepted, recognised, supplemented or replaced as soon as possible after the date of the receipt of the request for assistance, by an instrument permitting enforcement in the latter State.

Article 14—Time limits

1. Questions concerning any period beyond which a tax claim cannot be enforced shall be governed by the law of the applicant State. The request for assistance shall give particulars concerning that period.
2. Acts of recovery carried out by the requested State in pursuance of a request for assistance, which, according to the laws of that State, would have the effect of suspending or interrupting the period mentioned in paragraph 1, shall also have this effect under the laws of the applicant State. The requested State shall inform the applicant State about such acts.
3. In any case, the requested State is not obliged to comply with a request for assistance which is submitted after a period of 15 years from the date of the original instrument permitting enforcement.

Article 15—Priority

The tax claim in the recovery of which assistance is provided shall not have in the requested State any priority specially accorded to the tax claims of that State even if the recovery procedure used is the one applicable to its own tax claims.

Article 16—Deferral of payment

The requested State may allow deferral of payment or payment by instalments if its laws or administrative practice permit it to do so in similar circumstances, but shall first inform the applicant State.

Section III—Service of documents*Article 17—Service of documents*

1. At the request of the applicant State, the requested State shall serve upon the addressee documents, including those relating to judicial decisions, which emanate from the applicant State and which relate to a tax covered by this Convention.
2. The requested State shall effect service of documents:
 - a by a method prescribed by its domestic laws for the service of documents of a substantially similar nature;
 - b to the extent possible, by a particular method requested by the applicant State or the closest to such method available under its own laws.
3. A Party may effect service of documents directly through the post on a person within the territory of another Party.
4. Nothing in the Convention shall be construed as invalidating any service of documents by a Party in accordance with its laws.
5. When a document is served in accordance with this article, it need not be accompanied by a translation. However, where it is satisfied that the addressee cannot understand the language of the document, the requested State shall arrange to have it translated into or a summary drafted in its or one of its official languages. Alternatively, it may ask the applicant State to have the document either translated into or accompanied by a summary in one of the official languages of the requested State, the Council of Europe or the OECD.

Chapter IV—Provisions relating to all forms of assistance*Article 18—Information to be provided by the applicant State*

1. A request for assistance shall indicate where appropriate:
 - a the authority or agency which initiated the request made by the competent authority;
 - b the name, address, or any other particulars assisting in the identification of the person in respect of whom the request is made;

- c In the case of a request for information, the form in which the applicant State wishes the information to be supplied in order to meet its needs;
 - d In the case of a request for assistance in recovery or measures of conservancy, the nature of the tax claim, the components of the tax claim and the assets from which the tax claim may be recovered;
 - e in the case of a request for service of documents, the nature and the subject of the document to be served;
 - f whether it is in conformity with the law and administrative practice of the applicant State and whether it is justified in the light of the requirements of Article 21.2.g.
2. As soon as any other information relevant to the request for assistance comes to its knowledge, the applicant State shall forward it to the requested State.

Article 19—*Deleted*

Article 20—*Response to the request for assistance*

1. If the request for assistance is complied with, the requested State shall inform the applicant State of the action taken and of the result of the assistance as soon as possible.
2. If the request is declined, the requested State shall inform the applicant State of that decision and the reason for it as soon as possible.
3. If, with respect to a request for information, the applicant State has specified the form in which it wishes the information to be supplied and the requested State is in a position to do so, the requested State shall supply it in the form requested.

Article 21—*Protection of persons and limits to the obligation to provide assistance*

1. Nothing in this Convention shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested State.
2. Except in the case of Article 14, the provisions of this Convention shall not be construed so as to impose on the requested State the obligation:
 - a to carry out measures at variance with its own laws or administrative practice or the laws or administrative practice of the applicant State;
 - b to carry out measures which would be contrary to public policy (*ordre public*);
 - c to supply information which is not obtainable under its own laws or its administrative practice or under the laws of the applicant State or its administrative practice;
 - d to supply information which would disclose any trade, business, industrial, commercial or professional secret, or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*);
 - e to provide administrative assistance if and insofar as it considers the taxation in the applicant State to be contrary to generally accepted taxation principles or to the provisions of a convention for the avoidance of double taxation, or of any other convention which the requested State has concluded with the applicant State;
 - f to provide administrative assistance for the purpose of administering or enforcing a provision of the tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested State as compared with a national of the applicant State in the same circumstances;
 - g to provide administrative assistance if the applicant State has not pursued all reasonable measures available under its laws or administrative practice, except where recourse to such measures would give rise to disproportionate difficulty;
 - h to provide assistance in recovery in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the applicant State.
3. If information is requested by the applicant State in accordance with this Convention, the requested State shall use its information gathering measures to obtain the requested information, even though the requested State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations contained in this Convention, but in no case shall such limitations, including in particular those of paragraphs 1 and 2, be construed to permit a requested State to decline to supply information solely because it has no domestic interest in such information.
4. In no case shall the provisions of this Convention, including in particular those of paragraphs 1 and 2, be construed to permit a requested State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 22—*Secrecy*

1. Any information obtained by a Party under this Convention shall be treated as secret and protected in the same manner as information obtained under the domestic law of that Party and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by the supplying Party as required under its domestic law.
2. Such information shall in any case be disclosed only to persons or authorities (including courts and administrative or supervisory bodies) concerned with the assessment, collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes of that Party, or the oversight of the above. Only the persons or authorities mentioned above may use the information and then only for such purposes. They may, notwithstanding the provisions of paragraph 1, disclose it in public court proceedings or in judicial decisions relating to such taxes.
3. If a Party has made a reservation provided for in sub-paragraph a, of paragraph 1 of Article 30, any other Party obtaining information from that Party shall not use it for the purpose of a tax in a category subject to the reservation. Similarly, the Party making such a reservation shall not use information obtained under this Convention for the purpose of a tax in a category subject to the reservation.
4. Notwithstanding the provisions of paragraphs 1, 2 and 3, information received by a Party may be used for other purposes when such information may be used for such other purposes under the laws of the supplying Party and the competent authority of that Party authorises such use. Information provided by a Party to another Party may be transmitted by the latter to a third Party, subject to prior authorisation by the competent authority of the first-mentioned Party.

Article 23—*Proceedings*

1. Proceedings relating to measures taken under this Convention by the requested State shall be brought only before the appropriate body of that State.
2. Proceedings relating to measures taken under this Convention by the applicant State, in particular those which, in the field of recovery, concern the existence or the amount of the tax claim or the instrument permitting its enforcement, shall be brought only before the appropriate body of that State. If such proceedings are brought, the applicant State shall inform the requested State which shall suspend the procedure pending the decision of the body in question. However, the requested State shall, if asked by the applicant State, take measures of conservancy to safeguard recovery. The requested State can also be informed of such proceedings by any interested person. Upon receipt of such information the requested State shall consult on the matter, if necessary, with the applicant State.
3. As soon as a final decision in the proceedings has been given, the requested State or the applicant State, as the case may be, shall notify the other State of the decision and the implications which it has for the request for assistance.

Chapter V—*Special provisions*Article 24—*Implementation of the Convention*

1. The Parties shall communicate with each other for the implementation of this Convention through their respective competent authorities. The competent authorities may communicate directly for this purpose and may authorise subordinate authorities to act on their behalf. The competent authorities of two or more Parties may mutually agree on the mode of application of the Convention among themselves.
2. Where the requested State considers that the application of this Convention in a particular case would have serious and undesirable consequences, the competent authorities of the requested and of the applicant State shall consult each other and endeavour to resolve the situation by mutual agreement.
3. A co-ordinating body composed of representatives of the competent authorities of the Parties shall monitor the implementation and development of this Convention, under the aegis of the OECD. To that end, the co-ordinating body shall recommend any action likely to further the general aims of the Convention. In particular it shall act as a forum for the study of new methods and procedures to increase international co-operation in tax matters and, where appropriate, it may recommend revisions or amendments to the Convention. States which have signed but not yet ratified, accepted or approved the Convention are entitled to be represented at the meetings of the co-ordinating body as observers.
4. A Party may ask the co-ordinating body to furnish opinions on the interpretation of the provisions of the Convention.
5. Where difficulties or doubts arise between two or more Parties regarding the implementation or interpretation of the Convention, the competent authorities of those Parties shall endeavour to resolve the matter by mutual agreement. The agreement shall be communicated to the co-ordinating body.
6. The Secretary General of OECD shall inform the Parties, and the Signatory States which have not yet ratified, accepted or approved the Convention, of opinions furnished by the co-ordinating body according to the provisions of paragraph 4 above and of mutual agreements reached under paragraph 5 above.

Article 25 – Language

Requests for assistance and answers thereto shall be drawn up in one of the official languages of the OECD and of the Council of Europe or in any other language agreed bilaterally between the Contracting States concerned.

Article 26 – Costs

Unless otherwise agreed bilaterally by the Parties concerned:

- a ordinary costs incurred in providing assistance shall be borne by the requested State;
- b extraordinary costs incurred in providing assistance shall be borne by the applicant State.

*Chapter VI – Final provisions**Article 27 – Other International agreements or arrangements*

1. The possibilities of assistance provided by this Convention do not limit, nor are they limited by, those contained in existing or future international agreements or other arrangements between the Parties concerned or other instruments which relate to co-operation in tax matters.
2. Notwithstanding paragraph 1, those Parties which are member States of the European Union can apply, in their mutual relations, the possibilities of assistance provided for by the Convention in so far as they allow a wider co-operation than the possibilities offered by the applicable European Union rules.

Article 28 – Signature and entry into force of the Convention

1. This Convention shall be open for signature by the member States of the Council of Europe and the member countries of OECD. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with one of the Depositaries.
2. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five States have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.
3. In respect of any member State of the Council of Europe or any member country of OECD which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.
4. Any member State of the Council of Europe or any member country of OECD which becomes a Party to the Convention after the entry into force of the Protocol amending this Convention, opened for signature on 27th May, 2010 (the "2010 Protocol"), shall be a Party to the Convention as amended by that Protocol, unless they express a different intention in a written communication to one of the Depositaries.
5. After the entry into force of the 2010 Protocol, any State which is not a member of the Council of Europe or of the OECD may request to be invited to sign and ratify this Convention as amended by the 2010 Protocol. Any request to this effect shall be addressed to one of the Depositaries, who shall transmit it to the Parties. The Depositary shall also inform the Committee of Ministers of the Council of Europe and the OECD Council. The decision to invite States which so request to become Party to this Convention shall be taken by consensus by the Parties to the Convention through the co-ordinating body. In respect of any State ratifying the Convention as amended by the 2010 Protocol in accordance with this paragraph, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification with one of the Depositaries.
6. The provisions of this Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to taxable periods beginning on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party. Any two or more Parties may mutually agree that the Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to earlier taxable periods or charges to tax.
7. Notwithstanding paragraph 6, for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party, the provisions of this Convention, as amended by the 2010 Protocol, shall have effect from the date of entry into force in respect of a Party in relation to earlier taxable periods or charges to tax.

Article 29 – Territorial application of the Convention

1. Each State may, at the time of signature, or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.

2. Any State may, at any later date, by a declaration addressed to one of the Depositaries, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Depositary.
3. Any declaration made under either of the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to one of the Depositaries. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary.

Article 30—*Reservations*

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval or at any later date, declare that it reserves the right:
 - a. not to provide any form of assistance in relation to the taxes of other Parties in any of the categories listed in sub-paragraph b. of paragraph 1 of Article 2, provided that it has not included any domestic tax in that category under Annex A of the Convention;
 - b. not to provide assistance in the recovery of any tax claim, or in the recovery of an administrative fine, for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;
 - c. not to provide assistance in respect of any tax claim, which is in existence at the date of entry into force of the Convention in respect of that State or, where a reservation has previously been made under sub-paragraph a. or b. above, at the date of withdrawal of such a reservation in relation to taxes in the category in question;
 - d. not to provide assistance in the service of documents for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;
 - e. not to permit the service of documents through the post as provided for in paragraph 3 of Article 17;
 - f. to apply paragraph 7 of Article 28 exclusively for administrative assistance related to taxable periods beginning on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party.
2. No other reservation may be made.
3. After the entry into force of the Convention in respect of a Party, that Party may make one or more of the reservations listed in paragraph 1 which it did not make at the time of ratification, acceptance or approval. Such reservations shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the reservation by one of the Depositaries.
4. Any Party which has made a reservation under paragraphs 1 and 3 may wholly or partly withdraw it by means of a notification addressed to one of the Depositaries. The withdrawal shall take effect on the date of receipt of such notification by the Depositary in question.
5. A Party which has made a reservation in respect of a provision of this Convention may not require the application of that provision by any other Party; it may, however, if its reservation is partial, require the application of that provision insofar as it has itself accepted it.

Article 31—*Denunciation*

1. Any Party may, at any time, denounce this Convention by means of a notification addressed to one of the Depositaries.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Depositary.
3. Any Party which denounces the Convention shall remain bound by the provisions of Article 22 for as long as it retains in its possession any documents or information obtained under the Convention.

Article 32—*Depositaries and their functions*

1. The Depositary with whom an act, notification or communication has been accomplished, shall notify the member States of the Council of Europe and the member countries of OFCD and any Party to this Convention of:
 - a. any signature;
 - b. the deposit of any instrument of ratification, acceptance or approval;

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- c any date of entry into force of this Convention in accordance with the provisions of Articles 28 and 29;
 - d any declaration made in pursuance of the provisions of paragraph 3 of Article 4 or paragraph 3 of Article 9 and the withdrawal of any such declaration;
 - e any reservation made in pursuance of the provisions of Article 30 and the withdrawal of any reservation effected in pursuance of the provisions of paragraph 4 of Article 30;
 - f any notification received in pursuance of the provisions of paragraph 3 or 4 of Article 2, paragraph 3 of Article 3, Article 29 or paragraph 1 of Article 31;
 - g any other act, notification or communication relating to this Convention.
2. The Depositary receiving a communication or making a notification in pursuance of the provisions of paragraph 1 shall inform immediately the other Depositary thereof.

MEMORANDUM OF OBJECTS AND REASONS

The Revenue Administration Act (“the Act”) provides for the administration of Jamaica’s tax regime, including the implementation of international agreements, conventions and arrangements entered into by Jamaica for the exchange of financial or other information for tax purposes.

This Bill seeks to amend the Act to implement the—

- (a) Convention on Mutual Administrative Assistance in Tax Matters, the latest international convention signed by Jamaica to improve international tax compliance by enabling the exchange of financial and other tax information among the State parties to the Convention; and
- (b) Standard for Automatic Exchange of Financial Account Information in Tax Matters developed by the Organisation for Economic Co-operation and Development (OECD), to create a single platform for the administration of the automatic exchange of tax information under the Convention.

NIGEL CLARKE
Minister of Finance and the Public Service

A BILL

ENTITLED

AN ACT to Amend the Revenue Administration
Act.

As introduced by the Honourable Minister of Finance
and the Public Service.

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