

Changes to the EU Savings Tax Regime in the British Virgin Islands

The British Virgin Islands' Mutual Legal Assistance (Tax Matters) Act, 2003 as amended in 2005 (the “**Act**”) has given effect in the BVI to EC Directive 2003/48 on the taxation of savings income in the form of interest payments (the “**Directive**”) for the last six tax years.

On 12 July 2011 the British Virgin Islands' government gazetted the Mutual Legal Assistance (Tax Matters) (Automatic Exchange Information) Order, 2011, (the “**Order**”) which changes the way in which the BVI complies with the Directive.

Under the Order the BVI will transition, as of the tax year commencing 1 January 2011, to the group of countries and territories that comply with the Directive through the automatic exchange of information on savings income with tax authorities in EU Member States.

Purpose and background of the Directive

The Directive is designed to facilitate the exchange of information on individuals' savings income between the tax authorities of EU Member States. Under the original design of the legislation, EU Member States were required to implement the Directive in their 'offshore' dependencies even though virtually all these dependencies are not part of the EU. Consequently, the UK arranged implementation in its overseas territories and crown dependencies, including the BVI.

The Directive and associated legislation provides that institutions, termed “paying agents”, must report certain 'minimum information' about savings income to their local tax authorities. The local tax authority in turn discloses the information received from the paying agent to the tax authority where the individual is resident. The minimum information for these purposes consists of the following:

- the identity and residence of the beneficial owner;
- the name and address of the paying agent;
- the account number of the beneficial owner or, where there is none, identification of the debt claim giving rise to the interest; and
- information concerning the interest payment.

Withholding tax option under the current regime

Despite the information exchange policy at the heart of the legislation, up until recently the Directive and the Act did entitle paying agents based in certain jurisdictions including the BVI to impose a withholding tax as an alternative to the requirement to disclose the minimum information referred to above.

Under the withholding tax option, paying agents would not be required to disclose the minimum information to the local tax authorities and would instead withhold a percentage of the income due and deliver this, via the local tax authority, to the relevant foreign tax authority.

The withholding tax option was added to the Directive to appease the governments of certain EU Member States which did not initially favour information exchange and in consequence the non-EU jurisdictions required to implement the Directive, including the BVI, were given this option as well.

Changes to the BVI position

When the Directive was originally introduced in July 2005, the BVI government decided to implement the withholding tax option as a mandatory requirement to be imposed by all BVI-based paying agents, instead of requiring or permitting information exchange, as this was seen to be in the BVI's interest at the time.

The Order provides that as of 1 January 2012, BVI-based paying agents will no longer be subject to, or be able to rely on, the withholding tax option as a way of complying with the Directive.

As such BVI institutions will now be obliged to disclose the minimum information, referred to above, to the BVI Inland Revenue who will in turn comply with the information exchange policy under the Directive.

The changes caused by the Order will be most relevant to individuals who are resident in a Member State of the European Union *and* who maintain savings accounts with banks in the BVI. Persons who do not meet both of these requirements are less likely to be impacted by the legislation.

For the reader's information, as of August 2011, the Financial Services Commission website lists the following institutions as licensed to carry on banking business in the BVI: Banco Popular de Puerto Rico, Firstbank Puerto Rico, First Caribbean International Bank (Cayman) Limited, London International Bank and Trust Company Ltd, National Bank of The Virgin Islands Limited, Scotiabank (British Virgin Islands) Limited and VP Bank (BVI) Limited.

Further Information

The foregoing is for general information purposes only and not intended to be relied upon for legal advice in any specific or individual situation.

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