

SAINT CHRISTOPHER AND NEVIS

STATUTORY RULES AND ORDERS

No. 18 of 2015

**Saint Christopher and Nevis (Mutual Exchange of Information on Taxation
Matters) (South Africa) Order**

In exercise of the powers conferred by Section 3 of the Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act, Cap. 20.60, the Minister makes the following Order:

[Published 30th July 2015, Official Gazette No. 36 of 2015]

1. CITATION.

This Order may be cited as the Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) (South Africa) Order, 2015.

2. INTERPRETATION.

In this Order, “Act” means the Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act, Cap. 20.60.

3. AMENDMENT OF SECOND SCHEDULE.

The Second Schedule of the Act is amended by inserting the following expression immediately after the expression “22. Germany”

“23. South Africa”.

4. AMENDMENT OF THIRD SCHEDULE.

The Third Schedule of the Act is amended by inserting the following new Part XXII immediately after the end of Part XXI

“PART XXII

Agreement

Between

Saint Christopher (Saint Kitts) and Nevis

And

The Republic of South Africa

For the Exchange of Information Relating to Tax Matters

PREAMBLE

Whereas the Government of Saint Christopher (Saint Kitts) and Nevis and the Government of the Republic of South Africa (“the Contracting Parties”) have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing, and the Parties wish to facilitate the exchange of information with respect to taxes;

NOW THEREFORE the Contracting Parties have agreed to conclude the following Agreement which contains obligations on the part of the Contracting Parties only,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

OBJECT AND SCOPE OF THE AGREEMENT

The Contracting Parties through their competent authorities shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning the taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

ARTICLE 2

JURISDICTION

A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

ARTICLE 3

TAXES COVERED

1. This Agreement shall apply to the following taxes imposed by the Contracting Parties:
 - a) in the case of Saint Kitts and Nevis:
 - (i) the income tax;
 - (ii) the withholding tax;
 - (iii) the unincorporated business tax; and
 - (iv) the value added tax;
 - b) in the case of South Africa:
 - (i) the normal tax;
 - (ii) the dividends tax;
 - (iii) the withholding tax on royalties;
 - (iv) the withholding tax on interest;
 - (v) the tax on foreign entertainers and sportspersons; and

(vi) the value added tax.

2. This Agreement shall apply also to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Contracting Parties in the form of exchange of letters. The competent authorities of the Contracting Parties shall notify each other of any substantial changes of the taxation and related information gathering measures covered by the Agreement.

ARTICLE 4 DEFINITIONS

1. In this Agreement:
 - a) the term “Saint Kitts and Nevis” means the twin island Federation of Saint Kitts (Saint Christopher) and Nevis and when used in a geographical sense, means the territories of Saint Kitts and Nevis;
 - b) the term “South Africa” means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, which has been or may hereafter be designated, under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights of jurisdiction;
 - c) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
 - d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - e) the term “competent authority” means:
 - (i) in the case of Saint Kitts and Nevis, the Financial Secretary or the Financial Secretary’s authorised representative;
 - (ii) in the case of South Africa, the Commissioner of the South African Revenue Service or an authorised representative of the Commissioner;
 - f) the term “Contracting Party” means St. Kitts and Nevis or the Republic of South Africa as the context requires;
 - g) the term “criminal laws” means all criminal laws designated as such under domestic law, irrespective of whether such are contained in the tax laws or other statutes;

- h) the term “criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the requesting Party;
 - i) the term “information” means any fact, statement, document or record in any form whatsoever;
 - j) the term “information gathering measures” means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the requested information;
 - k) the term “person” includes an individual, a company or any other body or group of persons;
 - l) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
 - m) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
 - n) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
 - o) the term “requested Party” means the Contracting Party to this Agreement which is requested to provide or has provided information to the requesting Party;
 - p) the term “requesting Party” means the Contracting Party to this Agreement submitting a request for or having received information from the requested Party; and
 - q) the term “tax” means any tax to which this Agreement applies.
2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

ARTICLE 5

EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of the requested Party shall provide upon request by the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if it had occurred in the territory of the requested Party.
2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, the requested Party shall use all relevant information gathering measures to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:
 - a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
 - b) information regarding the ownership of companies, partnerships, trusts, foundations, "Anstalten" and other persons, including, within the constraints of Article 2, ownership information on all such other persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.
5. The competent authority of the requesting Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:
 - a) the identity of the person under examination or investigation;
 - b) the period for which the information is requested;
 - c) a statement of the information sought including its nature and the form in which the requesting Party wishes to receive the information from the requested Party;
 - d) the tax purpose for which the information is sought;
 - e) grounds for believing that the information requested is present in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
 - f) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
 - g) a statement that the request is in conformity with the laws and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
 - h) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the requesting Party. To ensure a prompt response, the competent authority of the requested Party shall:
 - a) Confirm receipt of a request in writing to the competent authority of the requesting Party and shall notify the competent authority of the requesting Party of deficiencies in the request, if any, within 60 days of the receipt of the request.
 - b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

ARTICLE 6 TAX EXAMINATIONS ABROAD

1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first mentioned Party, to the extent permitted under its domestic laws, to interview individuals and examine records with the prior written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the intended meeting with the individuals concerned.
2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may permit representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.
3. If the request referred to in paragraph 2 is granted, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party of the time and place of the examination, the authority or official authorised to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the Party conducting the examination.

ARTICLE 7 POSSIBILITY OF DECLINING A REQUEST

1. The requested Party shall not be required to obtain or provide information that the requesting Party would not be able to obtain under its own laws for the purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.
2. The provisions of this Agreement shall not impose upon a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria of that paragraph.

3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:
 - a) produced for the purposes of seeking or providing legal advice; or
 - b) produced for the purposes of use in existing or contemplated legal proceedings.
4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (order public).
5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
6. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a national or citizen of the requested Party as compared with a national or citizen of the requesting Party in the same circumstances.

ARTICLE 8 CONFIDENTIALITY

All information provided to or received by the competent authorities of the Contracting Parties under this Agreement shall be treated as confidential. Such information may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the other Contracting Party.

ARTICLE 9 COSTS

Unless the competent authorities of the Contracting Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party, and extraordinary costs incurred in providing assistance (including reasonable costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the requesting Party. At the request of either Contracting State, the competent authorities shall consult as necessary with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

ARTICLE 10 IMPLEMENTATION LEGISLATION

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of the Agreement.

ARTICLE 11
MUTUAL AGREEMENT PROCEDURE

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Contracting Parties may also agree on other forms of dispute resolution should this become necessary.

ARTICLE 12
ENTRY INTO FORCE

1. Each of the Contracting Parties shall notify the other in writing of the completion of the procedures required by its law for the entry into force of this Agreement.
2. This Agreement shall enter into force on the thirtieth day after the receipt of the later of these notifications and shall thereupon have effect:
 - a) for criminal tax matters, on that date;
 - b) for all other matters covered in Article 1, for taxable periods beginning on or after the first day of January of the year next following the date on which this Agreement comes into force, or where there is no taxable period, for all charges to tax arising on or after the first day of January of the year next following the date on which this Agreement enters into force.

ARTICLE 13
TERMINATION

1. This Agreement shall remain in force until terminated by either Contracting Party.
2. Either Contracting Party may terminate this Agreement by serving a notice of termination through diplomatic channels to the other Contracting Party.
3. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Contracting Party. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.
4. If the Agreement is terminated the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed and sealed this Agreement in two originals in the English language, both texts being equally authentic.

DONE at Basseterre St. Kitts on the 7th day of April in the year 2015.

Dr. Timothy Harris

Mr Nhlanhla Musa Nene

Minister of Finance
FOR THE GOVERNMENT OF
SAINT CHRISTOPHER
(SAINT KITTS) AND NEVIS

Minister of Finance
FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE COMPETENT AUTHORITY OF THE REPUBLIC OF SOUTH AFRICA
AND
THE COMPETENT AUTHORITY OF THE FEDERATION OF
SAINT CHRISTOPHER (ST. KITTS) AND NEVIS**

The Competent Authorities of The Republic of South Africa and The Federation of Saint Christopher (St. Kitts) and Nevis (“the Authorities”) have reached the following understanding regarding the costs of obtaining and providing information in response to a request under the Agreement between The Republic of South Africa and The Federation of Saint Christopher (St. Kitts) and Nevis for the Exchange of Information relating to Tax Matters (“the Agreement”):

1. Pursuant to Article 9 of the Agreement, it is agreed that ordinary costs incurred for the purpose of responding to a request for information will be borne by the requested Party. Such ordinary costs would normally cover internal administration costs of the Competent Authority of the requested Party and minor external costs for conveying documents to the requesting Party.
2. All costs not covered by paragraph 1 are considered extraordinary costs and will be borne by the requesting Party. Examples of extraordinary costs include, but are not limited to, the following:
 - a) reasonable costs of engaging experts, interpreters, or translators;
 - b) reasonable costs for courier services for conveying documents to the requesting Party;
 - c) reasonable fees charged by third parties for carrying out research;
 - d) reasonable fees charged by third parties for copying documents;
 - e) reasonable legal fees for non-governmental counsel appointed or retained, with the approval of the Competent Authority of the requesting Party, for litigation in the courts of the requested Party related to a specific request for information, and
 - f) reasonable fees and expenses for an interview, deposition, or testimony of a person who voluntarily appears in the territory of the requested Party, relating to a particular information request.
3. The Competent Authority of the requested Party will consult with the Competent Authority of the requesting Party in any particular case where extraordinary costs are likely to exceed US\$500 or its equivalent in Eastern Caribbean dollars (XCD) to determine whether the requesting Party will continue to pursue the request and bear the cost.

4. This Memorandum of Understanding may be amended by the written mutual consent of the Authorities, upon the request of either Competent Authority.
5. This Memorandum of Understanding will take effect on the date when signed by the Authorities and will remain in effect until it is mutually agreed by the Authorities that this Memorandum of Understanding is no longer in effect.

THE COMPETENT AUTHORITY
OF THE REPUBLIC OF SOUTH AFRICA

THE COMPETENT AUTHORITY
OF THE FEDERATION OF
SAINT CHRISTOPHER
(ST. KITTS) AND NEVIS

Mr. Thomas Moyane
Competent Authority
South African Revenue Service
Government of the Republic of South Africa

Hilary Hazel (Mrs.)
Competent Authority
Ministry of Finance
Government of St. Christopher and
Nevis

Dated: 28th November, 2014

Dated: 3rd October, 2014

Made this 29th day of July, 2015.

TIMOTHY HARRIS
Minister responsible for Finance