

Tax Information Authority



CAYMAN ISLANDS

GUIDE TO THE TAX INFORMATION AUTHORITY LAW

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GUIDE TO THE TAX INFORMATION AUTHORITY LAW

The Tax Information Authority Law is the principal legislation enabling the provision of tax information by the Cayman Islands to other countries. Requests for information in tax matters may be made by:

- (a) jurisdictions with which the Cayman Islands has entered into an international agreement providing for tax information assistance; and
- (b) jurisdictions authorized by the Cayman Islands, by virtue of being included within a schedule to the Law which does not require such an agreement to be in place.

Both bilateral mechanisms (such as (a) above) and unilateral mechanisms (such as (b) above) are recognized by the OECD and, as implemented in the Cayman Islands, are treated in the same manner for the purposes of requests for tax information.

A summary of the Parts of Tax Information Authority Law by section is provided at **Appendix A** of this Guide.

The following key features of the tax information assistance regime under the Tax Information Authority Law relate to both the bilateral and the unilateral mechanism:

GENERAL

- requests may be made in respect of both criminal and non-criminal (civil & administrative) tax matters;
- there is no requirement for dual criminality;
- information may be provided without prohibition or restriction by rules of confidentiality;
- there are protections from civil and criminal liability for persons disclosing requested information to the Cayman Islands competent authority;
- there are wide powers given to the Cayman Islands competent authority to obtain access to, and production of, information;
- there are enforcement powers carrying criminal penalties;
- “information” extends to any fact, statement, document or record in whatever form;
- “information” includes information held by banks, other financial institutions, or any person, nominee, agent or trustee and covers ownership, identity and accounting information;
- information may be provided notwithstanding that it is not needed by the Cayman Islands for its own purposes;

- information may be provided regardless of the residence or nationality of the person(s) to whom it relates;
- confidentiality provisions apply to all information provided and received by the Cayman Islands competent authority;
- the conditions for making a request, the assistance available and the process for dealing with requests are the same for all requesting jurisdictions;
- requests may be made at either the investigation stage or the proceedings stage of any tax matter.

SCOPE OF ASSISTANCE

The Law provides for assistance generally in criminal and non-criminal tax matters but specifically in relation to:

- the taking of testimony;
- the obtaining of information;
- service of documents;
- executing searches and seizures;
- the interview and examination, by consent, of taxpayers of the requesting country who are in the Cayman Islands.

Both bilateral agreements and the schedule in relation to each country (unilateral mechanism) specify the taxes covered and operative dates.

TAX INFORMATION AUTHORITY

The Tax Information Authority is the sole, dedicated channel in the Cayman Islands for international co-operation on tax matters and is designated by the Law as the competent authority.

The Tax Information Authority's statutory functions include:

- executing requests for tax information;
- ensuring compliance with the Law and international agreements for the provision of tax information;
- making costs determinations in relation to requests; and
- entering into operating arrangements with, or issuing operating procedures to, counterpart competent authorities.

Details of the Tax Information Authority, its functions and all publicly available documents concerning its work may be accessed on its website: www.tia.gov.ky

MAKING AND EXECUTING REQUESTS

Guidance on these procedures, together with the necessary forms, is provided in the Operating Procedures issued to the competent authority of each country having access to the unilateral mechanism by virtue of being scheduled under the provisions of the Tax Information Authority Law. The procedures are the same for countries with whom the Cayman Islands has bilateral agreements.

(A) General rules for handling requests include:

- all requests are made in a standard format, and in English;
- all requests are examined for compliance with the Law (and any tax information agreement, where relevant) and, if compliant, are certified as such by the competent authority;
- requests in matters which are solely non-criminal may require notification to the subject of the request prior to certification by the competent authority;
- requests for information in matters which do not arise from proceedings are dealt with by the competent authority by issue of a formal Notice to Produce Information;
- requests for information in matters which do arise from proceedings are subject to an application by the competent authority to a judge for an Order to Produce Information;
- requests in matters which require the taking of testimony always require an application to be made to a judge to take the testimony;
- all information produced in response to Notices or Orders is produced on sworn affidavit or other agreed form of authentication as may be required by a requesting country; and
- requests made for the interview and examination of a person in the Cayman Islands who is a taxpayer of the requesting country are able to be facilitated, with the consent of the taxpayer.

(B) The standard request format requires the following to be specified:

(1) The nature of the request, namely:

- whether it is a new or supplementary request;
- whether it is in respect of a criminal or a non-criminal tax matter;
- whether it is, or is not, seeking information for proceedings or related investigations.

(2) The purpose of the request, namely:

- whether it is for testimony;
- whether it is for information;
- whether it is for permission to conduct an interview and examination in the Cayman Islands;
- whether it is for ancillary purposes.

- (3) The identity of the person who is the subject of the request, the taxable periods to which the request relates and the tax purpose for which any information is sought.
- (4) A detailed statement of the basis of the request.
- (5) A full specification of the information being sought by the request.
- (6) A statement of the reasonable grounds for believing that the information requested is present in the Cayman Islands or is in the possession or control of a person subject to the jurisdiction of the Cayman Islands.
- (7) The name and address of the person believed to be in possession or control of the information requested.
- (8) An undertaking that all information provided in relation to the request will be kept confidential to the extent required by the Law.
- (9) A declaration that the request conforms to the law and administrative practice of the jurisdiction making the request and that the information would be obtainable by that jurisdiction under its laws in similar circumstances for its own tax purposes.
- (10) Confirmation that all available means have been pursued in its own territory by the jurisdiction making the request.
- (11) An undertaking not to disclose the requested information to any third party and not to use or transmit the information for purposes beyond the request without the consent of the competent authority.
- (12) An acknowledgement relating to the form in which requested information will be provided.

CONFIDENTIALITY

- (1) All information provided and received by the competent authority, including requests and other formal notices and documents, or any other communications relating to requests, are confidential to the respective competent authorities.
- (2) The competent authority may impose conditions of confidentiality on any person who is notified of a request or involved in its execution, and, in requests involving criminal proceedings disclosure is prohibited by law. Breach of such confidentiality attracts criminal penalties.
- (3) The competent authority can approve the onward transmission or further use of information or evidence provided in response to a request by the competent authority of the requesting country.
- (4) Confidentiality may not be claimed against the production of information to the competent authority and no civil or criminal liability attaches to the person providing the information in respect of the production of information to the competent authority.

APPENDIX A

Summary of the Parts of the Tax Information Authority Law

PART I - PRELIMINARY

Interpretation

Inter alia, the interpretation provisions:

- include a comprehensive definition of “information” which covers all information held by banks, other financial institutions, agents, nominees and service providers;
- define “legal privilege” and excludes from legal privilege information held with the intention of furthering a criminal purpose;
- define “proceedings” as both civil and criminal proceedings;
- define how agreements, countries, competent authorities and taxation matters are identified.

Implementation

These provisions deal with how the Law may apply to those jurisdictions with which the Cayman Islands has entered into a Tax Information Agreement and those jurisdictions which have been authorized by the Cayman Islands as able to make requests for tax information without there being such an agreement in place.

The implementation provisions allow future Tax Information Agreements to be scheduled to the Law and provide a flexible approach for countries to be listed for the purpose of making requests for information, together with specifying their competent authorities, the taxation matters covered, the operative dates and the scope of assistance.

PART II - THE TAX INFORMATION AUTHORITY

Tax Information Authority

The Financial Secretary, or his delegate, is designated as the Tax Information Authority to act as competent authority for all purposes of the Law.

(Note: The Financial Secretary has exercised the power of delegation by delegating all of his functions under the Law to the Director of the Tax Information Authority.)

Functions of the Authority

The Authority is given a general wide power to do all things necessary or convenient in connection with the performance of its functions under the Law, under any other Law, under tax information agreements and in relation to requests from scheduled countries.

The general power is not limited. However, in particular, it includes:

- a general power to execute requests and provide tax assistance;
- compliance powers in relation to the Law and Tax Information Agreements;
- advisory functions relating to tax information matters;
- power to make costs determinations;
- power to enter working arrangements with other competent authorities or issue operating procedures relating to the working of the Law;
- ancillary powers.

Public Policy determination

The Authority may refer matters of public policy to the Attorney-General for determination.

PART III - EXECUTION OF REQUESTS

Procedures and powers for executing requests

The general procedures and powers for executing all requests are set out in this Part.

- Once a request is determined by the Authority to be in compliance with the Law and relevant Tax Information Agreement, the Authority is obliged to execute the request in accordance with the Law and any such Agreement.
- The Authority has power to seek additional information to assist in executing the request, to certify requests as complaint and has general power to deal with all information brought to it in accordance with the Law.
- Depending on the nature of the request, the Authority may issue a formal notice to produce information or make application to a Judge for an order to produce information. In cases requiring the taking of testimony, the Law requires the Authority to apply to a Judge for the Judge to receive the testimony.
- Obligations of confidentiality or other restrictions on disclosure do not prevail against a request for information. Legal privilege does however apply.
- There is a “tipping off” offence in the case of requests in criminal tax matters.
- Where a Judge has made an order to produce information, the Authority has power to seek further orders to allow a constable access to premises where the information may be held.

PART IV - REQUESTS FOR INFORMATION FROM SCHEDULED COUNTRIES

Requests from scheduled countries

This Part of the Law contains a unilateral mechanism relating to the provision of tax information and is available to those countries authorized by the Cayman Islands to make requests without a bilateral agreement being in place.

Countries which have been so authorized are listed in a schedule to the Law together with their competent authority, taxation matters covered, operative dates for making requests and the nature of assistance available (i.e. whether civil, criminal or both).

The mechanism is designed to apply to criminal and non-criminal tax matters and, as with requests under bilateral agreements, may be made at either the investigation stage or the proceedings stage of a tax matter. There is no requirement for dual criminality, information may be provided notwithstanding that it is not needed by the Cayman Islands for its own purposes and regardless of the residence or nationality of the person to whom it relates.

There are confidentiality provisions for all information provided and received by the competent authority.

All of the other general, procedural and enforcement provisions of the Law apply to requests made under Part IV.

PART V - GENERAL

Authentication of official documents

This deals with authorizations for the authentication of official records of the Cayman Islands.

Notification procedure

In requests in solely non-criminal matters, the Authority may be required to notify the person who is the subject of the request. If so, there is a prescribed procedure to be followed by the Authority for hearing representations before issuing a certificate of compliance.

Protections for persons disclosing information

The Law provides protection from civil and criminal liability for any person disclosing confidential information to the Authority in satisfaction of a request. Information may be disclosed without the need for any application to the court for such protection.

Confidentiality

In addition to the general confidentiality provisions in the Law which protect requests and all information relating to requests, the Authority may impose confidentiality conditions on any person who is notified of a request or who is required to deal with the request, including an attorney-at-law.

Further use of information

The Authority may consent to the further use or transmission of information or evidence produced in relation to a request for purposes other than those stated in the request.

Interviews and Examinations

Assistance in the form of an interview and examination, with consent, may be requested. Permission may be requested for the conduct of interviews and examinations of specified persons in the Cayman Islands. There are provisions for general protections and procedures for such requests.

Service of documents

The Law makes general provision regarding the service of documents.

Enforcement

Criminal offences and penalties are provided for failure to comply with notices or orders under the Law, for interfering with information, for tipping off and for failing to provide testimony when ordered to do so.

Provision is also made for the Authority to apply for search and seizure warrants.

Regulations

A wide power is given to make regulations for all purposes of the Law.

Currently, regulations have been made prescribing forms to be used for Public Policy Certificate, Certificate of Compliance, Notice of Request and Notice to Produce Information.

Immunity

Unless there is bad faith, the Authority is immune from suit in the carrying out of its functions under the Law.