



PORTCULLIS TRUSTNET

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BRITISH VIRGIN ISLANDS (“BVI”) UPDATE

India signs Tax Information Exchange Agreement with the BVI

On 9 February 2011, India and the BVI entered into a Tax Information Exchange Agreement (“TIEA”).

In the BVI, a TIEA is brought into effect in accordance with the provisions of the Mutual Legal Assistance (Tax Matters) Act 2003 by issuing an Order made by the Minister of Finance.¹ No information request relating to tax matters from any country will be processed unless the BVI has a TIEA with that specific country. Information requests can only be processed once the TIEA comes into force and they cannot be made retroactive.

Information is not given automatically under a TIEA. The request for information must follow the procedure set out in the TIEA and the country requesting information must provide to the Competent Authority² the reasons why the information is being requested and why it is relevant to the requesting country's inquiry.³ If the correct procedure is not adhered to, the request for information can be declined. The information requested must also relate to the specific tax affairs of a given taxpayer, and must be foreseeably relevant to the administration and enforcement of the domestic laws of the contracting parties relating to taxes and tax matters covered by the TIEA. The country must also provide to the BVI Competent Authority a statement that they have pursued all means available in their own country to obtain the information they are requesting.

When the BVI receives a request for information and the Competent Authority has determined that it is a legitimate request to which it will respond, it may require any person in the BVI to provide such information as may be specified in a notice.⁴ The information provided to the Competent Authority of the country requesting the information must be kept confidential and cannot be disclosed without the express written consent of the BVI Competent Authority. Contravention of this confidential obligation is an offence, for which the offender may be liable on summary conviction to a fine not exceeding USD10, 000.00 or imprisonment not exceeding 2 years or both.

The BVI can refuse to provide information on the following grounds: if it deems that the information is not made in conformity with the TIEA; if it deems that the country has not pursued all means available in its own country to obtain the information; or where the information requested is contrary to the BVI's public policy.⁵ The BVI must, however, write to the country explaining why it is refusing or is unable to do so.

¹ Briefing Paper 1 on “Tax Information Exchange Agreements” dated 14 April 2009 by International Affairs Secretariat, Office of the Premier, Government of the BVI at page 3.

² The Financial Secretary is the BVI's Competent Authority, but he or she may designate any person or authority to perform the functions of the Authority, (usually for the BVI, this person will be the Commissioner of Inland Revenue).

³ See footnote 1 at pg 4.

⁴ See footnote 1 at pg 5.

⁵ See footnote 3.

Please note that the information contained herein is intended to provide general information to the client and professional contacts of Portcullis TrustNet. It does not purport to be comprehensive and is in no way intended and should not be relied upon as legal advice.



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A person or authority upon whom a notice is served to produce documents or information is free to seek legal advice as regards the person's or authority's obligations or liabilities or rights.⁶

For further information about BVI's TIEA programme, please refer to the following link:
<http://www.bviifc.gov.vg/BVIIFC/TIEAProgramme/tabid/218/Default.aspx>

⁶ See footnote 1 at pg 5.

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