

CHAPTER 332
UNITED STATES OF AMERICA—GRENADA TAXES
(EXCHANGE OF INFORMATION) ACT

• Act • Subsidiary Legislation •

ACT

Act No. 10 of 1987

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CHAPTER 332
UNITED STATES OF AMERICA—GRENADA TAXES (EXCHANGE OF
INFORMATION) ACT

An Act to give effect in law to the Agreement made at Washington D.C. on the 18th December, 1986, between the Governments of Grenada and the United States of America, for the exchange of information with respect to taxes.

[Act No. 10 of 1987.]

[15th May, 1987.]

1. Short title

This Act may be cited as the United States of America—Grenada Taxes (Exchange of Information) Act.

2. Interpretation

(1) In this Act—

“Agreement” means the Agreement made between the Governments of Grenada and the United States of America set out in the Schedule;

“Article” means Article of the Agreement;

“business” includes profession or trade;

“document” includes book, paper, statement, account, writing or record, and any device by means of which information is recorded or stored;

“information” includes documents;

“Judge” means Judge of the High Court;

“Minister” means the Minister of Finance;

“premises” includes any place whatsoever and any means of transport;

“request” means an application made pursuant to Article 4;

“United States” has the meaning assigned by paragraph (1)(g) of Article 3.

(2) In this Act a reference to the Permanent Secretary (Finance) in relation to any function to be performed by him or her under this Act, is a reference as well to such person, being an officer or employee, or an agency, of the Government, as he or she may designate to perform the function in his or her stead as his or her delegate (with or without a duty to refer back to him or her).

(3) A reference in this Act to the performance of a function includes reference to the performance of a duty or the exercise of a power or right.

3. Effect of this Act

(1) This Act has effect for the purpose of enforcing the giving of assistance by persons in Grenada in connection with the performance of the obligations assumed by the Government of Grenada under the Agreement.

(2) The Permanent Secretary (Finance) in performing his or her functions under this Act, is not restricted by any written law or any rule of law relating to confidentiality except the law relating to solicitor-client privilege.

4. Procedure in respect of a request

(1) A request must be in writing.

(2) A request must be signed by a senior official designated by the Government of the United States.

(3) A request shall contain particulars indicating—

- (a) that, by the request, the Government of the United States seeks information identified in the request;
- (b) that a person in Grenada has or may have the information in his or her possession, custody or control;
- (c) that the information relates to the carrying out of the laws of the United States mentioned in Article 2;
- (d) that the information relates to the affairs of a person in respect of whom the request has been made under the Agreement (“the taxpayer”);
- (e) whether or not the taxpayer is a resident of Grenada or of the United States; and
- (f) that the request relates to an examination of the taxpayer in relation to a taxable period of the taxpayer, being a period specified in the request, but so that where a request seeking information relating to a taxable period so specified also seeks information relating to a time outside that period the request must establish the connection between that period and that time.

5. Power to require production of information

(1) Subject to this section, where the Permanent Secretary (Finance) has received a request in respect of which the requirements of section 4 are fulfilled he or she shall, by notice in writing under this section served upon the person referred to in section 4(3)(b),

direct him or her to deliver to the Permanent Secretary (Finance) the information referred to in that paragraph.

(2) A notice under this section must—

- (a) contain the pertinent details of the request to which the notice relates; and
- (b) specify the time within which the information sought by the request is to be delivered to the Minister.

(3) The time to be specified in such a notice is twenty-eight days commencing on the day on which the notice was served, or such greater or lesser number of days as the Permanent Secretary (Finance) may in any particular case think fit.

(4) Subject to subsections (5) and (6), a person who is directed by such a notice to deliver information to the Permanent Secretary (Finance) shall deliver it to the Permanent Secretary (Finance) in accordance with the notice if the information is in Grenada and that person has it in his or her possession, custody or control.

(5) A person complies with a duty under this section to deliver information to the Permanent Secretary (Finance) if he or she makes the information available to him or her.

(6) After a notice has been served, the Permanent Secretary (Finance) may in any case enlarge the time specified in the notice, either before or after that time has expired, if in his or her opinion the circumstances so warrant.

(7) A direction given in a notice under this section to a person is an absolute defence to any claim brought against him or her in respect of any act of his or her that was done, or any omission of his or her that was made, in good faith in obedience to the direction.

6. Warrant to search and seize things

(1) An officer of the Ministry of Finance may make an application to a Judge under and in accordance with this section for the issue of a warrant authorising entry upon premises.

(2) An officer of that Ministry who makes such an application must produce a minute signed by the Permanent Secretary (Finance) himself or herself authorising the officer to make the application in that particular case.

(3) If, on the *ex parte* application supported by a sworn written statement of such an officer, a Judge is satisfied that there is reasonable ground for suspecting that an offence against this Act has been, or is being, or is about to be committed on any premises, being an offence by reason of which the delivery to the Permanent Secretary (Finance) of information sought by a request is endangered, then the Judge may issue a warrant in writing authorising an officer of that Ministry and a police officer to enter the premises, if necessary by force, at any time within fourteen days commencing on the day of the issue of the warrant, and to search them.

(4) In issuing a warrant under this section the Judge may impose such restrictions upon the execution of the warrant as he or she may deem proper in the circumstances.

(5) An officer of that Ministry entering premises by virtue of a warrant under this section may take such other persons and equipment with him or her as he or she thinks necessary and, on leaving premises entered by virtue thereof, shall, if they are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he or she found them.

(6) On entering premises by virtue of a warrant under this section an officer of that Ministry may seize and remove any things whatsoever found there which he or she has reasonable cause to believe may contain information relevant to a request, and he or she shall deliver any things so seized and removed to the Permanent Secretary (Finance).

(7) Where entry to premises has been made by virtue of a warrant under this section and the officer making the entry has seized things under the authority of the warrant he or

she shall prepare a list of them and, if so requested by a person showing himself or herself either—

- (a) to be the occupier of the premises; or
- (b) to have had possession or custody of those things immediately before the seizure,

provide that person with a copy of that list.

(8) Where things are seized under the authority of a warrant and it is shown that access to those things is required for the continued conduct of the business or affairs of a person, the Permanent Secretary (Finance) shall afford to that person reasonable access to those things.

7. Use of information or thing obtained by virtue of section 5 or 6

Where the Permanent Secretary (Finance) obtains any information or thing by virtue of section 5 or 6—

- (a) for not less than twenty days, commencing on the day on which he or she obtained it, unless he or she returns it pursuant to paragraph (c) he or she shall not disclose or reveal to any person its contents or import and, in particular, if in his or her opinion it comprises information sought by a request he or she shall not, as respects that information or thing, comply with the request;
- (b) after the expiry of twenty days, if in his or her opinion it comprises information sought by a request, he or she shall be entitled to make copies of it and keep and also make available such copies to authorised persons;
- (c) whether or not it comprises information or a thing sought by a request, he or she shall return it as soon as practicable to the person from whom he or she obtained it.

8. Offences

(1) A person who—

- (a) disobeys or wilfully fails to comply with a direction given to him or her under section 5(1); or
- (b) wilfully obstructs an officer executing a warrant under section 6, or a person lawfully accompanying him or her pursuant to section 6(5),

is guilty of an offence.

(2) If a person, in or in connection with delivering information pursuant to section 5(4), wilfully tampers with or alters it so that the information is false when received by the Minister, he or she is guilty of an offence.

(3) If a person without reasonable excuse destroys or damages any information which he or she knows to be the subject of a direction given in a notice under section 5, he or she is guilty of an offence.

(4) A person guilty of an offence under this section shall be liable, on summary conviction, to imprisonment for six months and to a fine of ten thousand dollars.

9. Particular method of obtaining information may be required

Where a request so stipulates, the Permanent Secretary (Finance) shall obtain the information sought by the request in the form of—

- (a) depositions of witnesses on oath; or

- (b) original documents or copies of original documents or certified or authenticated copies of original documents,

or in such other form, or in such manner, as is required by paragraph 5 of Article 4 of the Agreement, and the Minister shall make regulations to confer such functions, on such persons, as appear to him or her to be necessary to give effect to the purposes of this section.

10. Saving

Nothing in this Act excludes or restricts the right of a person aggrieved by the performance, by the Permanent Secretary (Finance) or any other person, of a function under this Act to challenge the performance of that function, to the extent that he or she is affected thereby, by seeking the grant by the High Court of an injunction, or an order of prohibition, or such other order as the Court may think just.

11. Power of the Minister to make regulations

- (1) The Minister may make regulations—
- (a) prescribing anything that is required or permitted by this Act to be prescribed by regulation, or that is in the opinion of the Minister necessary or convenient to be prescribed for carrying out the provisions of this Act; and
 - (b) creating offences and prescribing penalties for such offences not exceeding six months' imprisonment and a fine of ten thousand dollars.
- (2) Regulations made under this Act shall be subject to affirmative resolution.

Schedule

UNITED STATES OF AMERICA—GRENADA TAXES (EXCHANGE OF INFORMATION) ACT

Taxes Exchange Information Agreement

Agreement between the Government of Grenada and the Government of the United States of America for the Exchange of Information with Respect to Taxes

The Government of Grenada and the Government of the United States of America, desiring to conclude an Agreement for the exchange of information with respect to taxes (hereinafter referred to as the “Agreement”), have agreed as follows.

ARTICLE 1

Object and Scope of the Agreement

1. The Contracting States shall assist each other to assure the accurate assessment and collection of taxes, to prevent fiscal fraud and evasion, and to develop improved information sources for tax matters. The Contracting States shall provide assistance through exchange of information authorised pursuant to Article 4 and such related measures as may be agreed upon by the competent authorities pursuant to Article 5.

2. Information shall be exchanged to fulfil the purpose of this Agreement without regard to whether the person to whom the information relates is, or whether the information is held by, a resident or national of a Contracting State.

ARTICLE 2