



Seychelles Revenue Commission

CIRCULAR

TO:

- CHAIRMAN OF BANKERS ASSOCIATION
- CEO OF COMPANY REGISTRAR
- PS OF MINISTRY OF INTERNAL AFFAIRS
- CEO SEYCHELLES INTERNATIONAL BUSINESS AUTHORITY
- CEO SEYCHELLES LICENSING AUTHORITY
- CHAIRMAN OF BAR ASSOCIATION
- TAX AGENTS

FROM: REVENUE COMMISSIONER

DATE: 10th May 2013

SUBJECT: EXCHANGE OF INFORMATION IN TERMS OF TAX AGREEMENTS AND TREATIES

Preamble

Any enquiries in relation to this circular can be addressed to the Seychelles Revenue Commission, PO Box 50, Orion Mall, Republic of Seychelles.

1. Purpose

The Global Forum was created in 2002 and carries out work in cooperation with OECD and non-OECD countries. It is mandated to set up high standards of international cooperation in tax matters to be complied with by all jurisdictions. In order to achieve this task, the Global Forum conducts some reviews in order to ensure that all standards are met. The Seychelles, which is a member of the Global Forum, is fully committed to the fight against tax evasion and avoidance. This commitment cannot be successfully implemented without the assistance and cooperation of all third parties from whom information may be requested. These different parties need to be aware of the process required to be followed so that appropriate action is taken accordingly.

The purpose of this circular is to provide clarity about functions and powers of the Revenue Commissioner and obligation and rights of taxpayers or third parties involved in an exchange of information with reference to the relevant provisions of the law. This circular is not a public ruling and has merely an indicative purpose.

2. Legislation and explanations.

2.1 Competency of the Revenue Commissioner to exchange information.

2.1.2 Relevant sections of the law

- Section 13(1) (h) of the Seychelles Revenue Commission Act 2009 as amended by the Act 15 of 2011; and
- Section 2 of the Revenue Administration Act 2009.

2.1.2 Interpretation

In order to exchange information with a treaty partner, there shall be a Competent Authority designated as the only contact point to facilitate cooperation. This role is one of the roles of the Revenue Commissioner who has the competence to exchange information in terms of tax agreements.

2.2. Powers to request any information to any person for carrying out obligation under a Tax Agreement.

2.2.1 Relevant section of the law

- Section 34 of the Revenue Administration Act 2009;
- Section 47(1)(vi) of the Revenue Administration Act 2009.

2.2.2 Interpretation

The Revenue Commissioner is empowered by the SRC Act to be the competent authority for the exchange of information purposes. In order to efficiently exchange the information, the Revenue Commissioner has the power to request from any person any information that is relevant for the administration of a revenue law or exchange of information. The Notice is formatted in a letter and shall be signed by the Revenue Commissioner or acting Revenue Commissioner if the Revenue Commissioner is not in a capacity to sign it. The acting Revenue Commissioner will always be the Deputy Commissioner. This letter shall state with reasonable certainty the information required but does not have to indicate that it is for domestic or exchange of information purposes.

Where a person does not furnish the information requested in a notice sent under section 34, this person is guilty of an offence and on conviction is liable to a fine of no less than SCR 50,000.

2.3 Power to enter and search for carrying out the obligation under a Tax Agreement.

2.3.1 Relevant sections of the law

- Section 33 of the Revenue Administration Act 2009;
- Section 47(1)(v) of the Revenue Administration Act 2009

2.3.2 Interpretation

The Revenue Commissioner may also have recourse to exceptional powers of investigation to enable an efficient access to information if the circumstances justify it. The Revenue Commissioner can therefore freely access any documents or premises, with or without notice.

Where a person does not provide assistance and reasonable facilities to enable the process of accessing information, this person is guilty of an offence and on conviction is liable to a fine of no less than SCR 50,000.

2.4 No excuse not to provide the information requested under sections 33 and 34 of the Revenue Administration Act 2009.

2.4.1 Relevant sections of the law

- Sections 33(8) of the Revenue Administration Act 2009; and
- Section 34(4) of the Revenue Administration Act 2009
- Section 2 of the Revenue Administration Act 2009
- Section 2 of the Business Tax Act 2009

2.4.2 Interpretation

No requested person can refuse to disclose information to the Revenue Commissioner despite the fact that -

- ✚ this person is bound by a confidentiality clause of any kind in an agreement;
- ✚ a law relating to privilege or the public interest with respect to access to premises or places, or the production of any property, accounts, documents, or records (including in electronic format) states otherwise;
- ✚ an Act stating to the contrary.

A requested person can be an individual, entity, partnership, trust, estate, government, political subdivision of a government or public international organisation. An entity is a body or association of persons corporate or unincorporate whether incorporated, created, or formed under the law of Seychelles or elsewhere including a limited partnership and a unit trust. Any person that fills the criteria stated above shall comply with a request under section 34 which includes: International Business Companies, International Trusts, a Limited Partnerships, Protected Cell Companies, Foundations and Companies Special License and this even if they are not liable to tax in Seychelles.

3. Practice

The complete list of tax agreements or treaties in force can be found in the sixth schedule of the Business Tax Act 2009 or on SRC's website at www.src.gov.sc

The notice requesting information must be signed by the Revenue Commissioner or the acting Revenue Commissioner if the Revenue Commissioner has delegated his/her power to someone else but it cannot be a lower level than that of a Director level.

There are no reasonable justifications that the Revenue Commissioner can consider to exempt a person from the obligation of providing information.

The person to whom such a request is sent shall make all the necessary to respond within a 14 days period. However if, justified by any reasonable cause, the requested party needs a longer period, an application can be made to the Revenue Commissioner stating all the reasons why the provision of information will take longer than 14 days. This application shall be submitted within 4 days of receipt of the notice of request of information and subject to the satisfaction of the Revenue Commissioner, the delay can be extended.

Please note that seeing the importance of complying with our international obligation, SRC will not hesitate to take legal action to make sure that all third parties are also compliant.

Confidentiality is one of the most important components of the exchange of information and both SRC and third parties must take certain precaution to ensure that information is never disclosed to the wrong person. SRC follows strict procedures to ensure that the information received is sent to the Contracting Party via a secured channel: the mail is sealed and stamped with an embedded warning that is internationally recognised.

The third party assisting SRC in an EOI shall not seek for evidence from SRC to support the request and further shall not disclose its involvement to the taxpayer concerned unless otherwise authorised.