Draft Order in Council laid before the House of Commons under section 173(7) of the Finance Act 2006, for approval by resolution of that House.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2013 No.

TAXES

The International Tax Enforcement (Marshall Islands) Order 2013

Made - - - - *[day] [Month] 2013*

At the Court at Buckingham Palace, the [date] day of [Month] 2013

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order was laid before the House of Commons in accordance with section 173(7) of the Finance Act 2006(**a**) and approved by a resolution of that House.

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by section 173(1) to (3) of the Finance Act 2006, by and with the advice of Her Privy Council, orders as follows—

Citation

1. This Order may be cited as the International Tax Enforcement (Marshall Islands) Order 2013.

Tax information exchange agreement to have effect

2. It is declared that—

(a) the agreement set out in the Schedule to this Order has been made with the Government of the Republic of the Marshall Islands with a view to the exchange of information foreseeably relevant to the administration or enforcement or recovery of the taxes, and debts relating to the taxes, covered by the agreement; and

(b) it is expedient that the agreement should have effect.

Name
Clerk of the Privy Council

(**a**) 2006 c. 25.

SCHEDULE 1

Article 2

AGREEMENT BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE REPUBLIC OF THE MARSHALL ISLANDS FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of the Marshall Islands, desiring to facilitate the exchange of information with respect to taxes have agreed as follows:

ARTICLE 1

Object and Scope of the Agreement

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration or enforcement of the domestic laws of the Contracting Parties concerning 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 obliged 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. The taxes which are the subject of this Agreement are taxes of every kind and description imposed by the Contracting Parties at the date of signature of the Agreement.

2. This Agreement shall also apply 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. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

ARTICLE 4

Definitions

1. For the purposes of this Agreement, unless otherwise defined:

   a) the term “Contracting Party” means the United Kingdom or the Republic of the Marshall Islands as the context requires;

b) the term “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom designated under its laws concerning the Continental Shelf and in accordance with international law as an area within which the rights of the United Kingdom with respect to the seabed and sub-soil and their natural resources may be exercised;

c) the term “Republic of the Marshall Islands” means any land territory within the territorial limits of the Republic of the Marshall Islands, and includes internal waters and territorial sea of the Republic of the Marshall Islands;

d) the term “competent authority” means:

   i) in the case of the United Kingdom, the Commissioners for Her Majesty’s Revenue and Customs or their authorised representative;

   ii) in the case of the Republic of the Marshall Islands, the Secretary of Finance or an authorized representative;

e) the term “person” includes an individual, a company and any other body of persons;

f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;

g) 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;

h) 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;

i) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;

j) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or 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 or scheme 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;

k) the term “tax” means any tax to which the Agreement applies;

l) the term “applicant Party” means the Contracting Party requesting information;

m) the term “requested Party” means the Contracting Party requested to provide information;

n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;

o) the term “information” means any fact, statement or record in any form whatever;

p) the term “national” means:

   i) in relation to the United Kingdom, any British citizen, or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided

he has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status from the laws in force in the United Kingdom; and

ii) in relation to the Republic of the Marshall Islands, any Marshallese citizen; and any legal person, partnership, association or other entity deriving its status from the laws of the Republic of the Marshall Islands;

q) the term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party;

r) the term "criminal laws" means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

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 law 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 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 such conduct 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, that Party shall use all relevant information gathering measures to provide the applicant 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 an applicant 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 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, and equivalent information in the case of entities that are neither trusts nor foundations. Notwithstanding the previous sentence, 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 applicant 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) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;

c) the tax purpose for which the information is sought;

d) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;

e) to the extent known, the name and address of any person believed to be in possession of the requested information;

f) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;

g) a statement that the applicant 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 applicant 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 applicant Party and shall notify the competent authority of the applicant 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 applicant 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 requested Party may allow representatives of the competent authority of the applicant Party to enter the territory of the requested Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the applicant Party shall notify the competent authority of the requested Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of the applicant Party, the competent authority of the requested Party may allow representatives of the competent authority of the applicant Party to be present at the appropriate part of a tax examination in the requested Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the requested Party shall, as soon as possible, notify the competent authority of the applicant Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made

by the requested Party.

ARTICLE 7

Possibility of Declining a Request

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for 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 on a requested 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 in 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.

Information held with the intention of furthering an offence is not subject to legal privilege, and nothing in this Article shall prevent an attorney, solicitor or barrister or admitted legal representative from providing the name and address of a client where doing so would not constitute a breach of legal privilege.

4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy.

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 applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

ARTICLE 8

Confidentiality

Any information received by a Contracting Party under this Agreement shall be treated as confidential and 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 or the oversight of the above. 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 requested Party.

ARTICLE 9

Costs

Incidence of costs incurred in providing assistance shall be agreed by the Contracting Parties.

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 the Agreement, the competent authorities shall endeavour 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.

ARTICLE 12

Entry into Force

Each of the Contracting Parties shall notify each other in writing through diplomatic channels, of the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the day of the later of these notifications. Upon entry into force, it shall have effect:

a) for criminal tax matters on that date; and

b) for all other matters covered in Article 1 on that date, but only in respect of taxable periods beginning on or after that date, or where there is no taxable period, all charges to tax arising on or after that date.

ARTICLE 13

Termination

1. Either Contracting Party may terminate the Agreement by serving a notice of termination through diplomatic channels.

2. 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.

3. Following termination of the Agreement the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed the Agreement.

DONE in two originals in Manila and Majuro on 17th day of September and 26th day of October 2012, in the English language**.**

For the Government of the United Kingdom of Great Britain and Northern Ireland:	**For the Government of the Republic of the Marshall Islands:**
Stephen Lille	*Dennis Momotaro*

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains an agreement ("the Agreement") dealing with the exchange of information for tax purposes between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of the Marshall Islands. This Order brings the Agreement into effect.

Article 1 provides for citation.

Article 2 makes a declaration as to the effect and content of the Agreement.

The Agreement provides for the exchange of information foreseeably relevant to the administration or enforcement of the taxes covered by the Agreement by the revenue authorities of the two countries. Information will be exchanged in accordance with the provisions of the Agreement.

The Agreement will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures. It will take effect as follows:

(c) in respect of requests relating to criminal tax matters, on the date of entry into force; and

(d) for all other matters covered in Article 1 on that date, but only in respect of taxable periods beginning on or after that date, or where there is no taxable period, all charges to tax arising on or after that date.

The date of entry into force will, in due course, be published in the *London*, *Edinburgh* and *Belfast Gazettes*.

A Tax Information and Impact Note has not been prepared for this Order as a negligible impact on the private or voluntary sectors is foreseen.

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