

No. 12 of 2000.

*Mutual Legal Assistance in Criminal
Matters (the Government of Antigua and
Barbuda, and the Government of the United
States of America) Ratification Act 2000*

ANTIGUA
AND
BARBUDA



[L.S.]

I Assent,

James B. Carlisle,
Governor-General.

9th August, 2000.

ANTIGUA AND BARBUDA

No. 12 of 2000

AN ACT to ratify the Treaty on Mutual Legal Assistance in Criminal Matters signed on the 31st of October, 1996 by the Government of Antigua and Barbuda and the Government of the United States of America.

[10th August, 2000]

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. This Act may be cited as the Mutual Legal Assistance in Criminal Matters (the Government of Antigua and Barbuda and the Government of the United States of America) Ratification Act 2000. short title

2. In this Act —

Interpretation.

"Act" means the Mutual Legal Assistance in Criminal Matters Act, 1993; No.2 of 1993

"Treaty" means the Treaty on Mutual Legal Assistance in Criminal Matters which was signed on the 31st of October, 1996 by the Government of Antigua and Barbuda and the Government of the United States of America, the text of which is set out in the Schedule.

ANTIGUA 2 *Mutual Legal Assistance in Criminal* No. 12 of 2000.
AND
BARBUDA *Matters (the Government of Antigua and Barbuda and the Government of the United States of America) Ratification Act 2000*

Ratification
No. 2 of 1993.

3. The Treaty on Mutual Legal Assistance in Criminal Matters which was signed on the 31st of October, 1996 by the Government of Antigua and Barbuda and the Government of the United States of America is hereby ratified and is deemed to have entered into force with respect to Antigua and Barbuda on the 18th day of January 1999.

Application of
Act.
No. 2 of 1993.

4. The procedures prescribed in the Act shall apply to the execution of any request made by the Competent Authority of United States of America to the Competent Authority of Antigua and Barbuda.

Assistance under
Money Laundering
(Prevention) Act.
No. 9 of 1996.

5. Any request for assistance under the Money Laundering (Prevention) Act shall be executed in accordance with the provisions of the Treaty.

SCHEDULE

Treaty between the Government of Antigua and Barbuda and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters.

TABLE OF CONTENTS

Article 1	Scope of Assistance
Article 2	Central Authorities
Article 3	Limitation on Assistance
Article 4	Form and Contents of Requests
Article 5	Execution of Requests
Article 6	Costs
Article 7	Limitations on Use
Article 8	Testimony or Evidence in the Requested State
Article 9	Records of Government Agencies
Article 10	Testimony in the Requesting State
Article 11	Transfer of Persons in Custody
Article 12	Location or Identification of Persons or Items
Article 13	Service of Documents
Article 14	Search and Seizure
Article 15	Return of Items
Article 16	Assistance in Forfeiture Proceedings
Article 17	Compatibility with Other Arrangements
Article 18	Consultation
Article 19	Ratification, Entry Into Force, and Termination

ANTIGUA 4 *Mutual Legal Assistance in Criminal* No. 12 of 2000.
AND *Matters (the Government of Antigua and*
BARBUDA *Barbuda and the Government of the United*
States of America) Ratification Act 2000

The Government of Antigua and Barbuda and the Government of the United States of America.

Desiring to improve the effectiveness of the law enforcement authorities of both countries in the investigation, prosecution, and prevention of crime through cooperation and mutual legal assistance in criminal matters,

Have agreed as follows:

Article 1

Scope of Assistance

1. The Contracting Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the investigation, prosecution, and prevention of criminal offenses, and in proceedings related to criminal matters.

2. Assistance shall include:

- (a) taking the testimony or statements of persons;
- (b) providing documents, records, and articles of evidence;
- (c) locating or identifying persons;
- (d) serving documents;
- (e) transferring persons in custody for testimony or other purposes;
- (f) executing requests for searches and seizures;
- (g) assisting in proceedings related to immobilization and forfeiture of assets; restitution; collection of fines; and
- (h) any other form of assistance not prohibited by the laws of the Requested State.

3. Except as otherwise provided in this Treaty, assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution, or proceeding in the Requesting State would constitute an offense under the laws of the Requested State.

4. This Treaty is intended solely for mutual legal assistance in criminal matters between the Parties as set forth in paragraph (1) above. The provisions of this

Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

Article 2

Central Authorities

1. Each Contracting Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.

2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General. For the Government of Antigua and Barbuda, the Central Authority shall be the Attorney General or a person designated by the Attorney General.

3. The Central Authorities shall **communicate** directly with one another for the **purpose** of this Treaty.

Article 3

Limitations on Assistance

1. The Central Authority of the Requested State may deny assistance if:

- (a) the request relates to an offense under military law which would not be an offense under ordinary criminal law;
- (b) the execution of the request would prejudice the security or other essential public interests of the Requested State;
- (c) the request is not made in **conformity** with the Treaty;
- (d) the request relates to a political offense;
- (e) the request is made pursuant to Article 14 or 16 of this Treaty and relates to conduct which if committed in the Requested State would not be an offense in that State; or
- (f) the execution of the request would be contrary to the Constitution of the Requested State.

2. Before denying assistance pursuant to this Article, the Central Authority of the Requested State shall consult with the Central Authority of the Requesting

ANTIGUA 6 *Mutual Legal Assistance in Criminal* No. 12 of 2000.
AND *Matters (the Government of Antigua and*
BARBUDA *Barbuda and the Government of the United*
States of America) Ratification Act 2000

State to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

3. If the Central Authority of the Requested State denies assistance, it shall inform the Central Authority of the Requesting State of the basis for the denial.

Article 4

Form and Contents of Requests

1. A request for assistance shall be in writing except that the Central Authority of the Requested State may accept a request in another **form** in emergency situations. If the request is not in writing, the request shall be **confirmed** in writing within ten days thereafter unless the Central Authority of the Requested State agrees otherwise.

2. The request shall include the following:

- (a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;
- (b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including the specific criminal offenses which relate to the matter;
- (c) a description of the evidence, information, or other assistance sought; and
- (d) a statement of the purpose for which the evidence, information, or other assistance is sought.

3. To the extent necessary and possible, a request shall also include:

- (a) information on the identity and location of any person from whom evidence is sought;
- (b) information on the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;
- (c) information on the identity and whereabouts of a person to be located;
- (d) a precise description of the place or person to be searched and of the articles to be seized;

- (e) a description of the manner in which any testimony or statement is to be taken and recorded;
- (f) a list of questions to be asked of a witness;
- (g) a description of any particular procedure to be followed in executing the request;
- (h) information as to the allowances and expenses to **which** a person asked to appear in the Requesting State will be entitled; and
- (i) any other information which may be brought to the attention of the Requested State to facilitate its execution of the request.

Article 5

Execution of Requests

1. The Central Authority of the Requested State shall promptly execute the request or, when appropriate, shall transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request. The competent judicial or other authorities of the Requested State shall have power to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. The Central Authority of the Requested State shall make all necessary arrangements for and meet the costs of the representation in the Requested State of the Requesting State in any proceedings arising out of a request for assistance.

3. Requests shall be executed according to the internal laws and procedures of the Requested State except to the extent that this Treaty provides otherwise. Procedures specified in the request shall be followed except to the extent that those procedures cannot lawfully be followed in the Requested State. Where neither the Treaty nor the request specifies a particular procedure, the request shall be executed in accordance with the appropriate procedure under the laws applicable for investigations or proceedings in the Requested State.

4. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding in that State, it may postpone execution, or make execution subject to conditions determined to be necessary after consultations with the Central Authority of the Requesting State. If the Requesting State accepts the assistance subject to the conditions, it shall comply with the conditions.

5. The Requested State shall use its best efforts to keep confidential a request and its contents, if such confidentiality is requested by the Central Authority of

ANTIGUA 8 *Mutual Legal Assistance in Criminal* No. 12 of 2000.
AND *Matters (the Government of Antigua and*
BARBUDA *Barbuda and the Government of the United*
States of America) Ratification Act 2000

the Requesting State. If the request cannot be executed without breaching such confidentiality, the Central Authority of the Requested State shall so inform the Central Authority of the Requesting State, which shall then determine whether the request should nevertheless be executed.

6. The Central Authority of the Requested State shall respond to reasonable inquiries by the Central Authority of the Requesting State concerning progress toward execution of the request.

7. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of the request. If the request is denied, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State of the basis for the denial.

Article 6

Costs

The Requested State shall pay all costs relating to the execution of the request, except for the fees of expert witnesses, the costs of translation, interpretation, and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 10 and 11, which costs, fees, allowances, and expenses shall be paid by the Requesting State.

Article 7

Limitations on Use

1. The Requesting State shall not use any information or evidence obtained under this Treaty for any purposes other than for the investigation, prosecution or suppression in the territory of the Requesting State of those criminal offenses stated in the request without the prior consent of the Requested State.

2. The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential or be used only subject to terms and conditions it may specify. If the Requesting State accepts the information or evidence subject to such conditions, the Requesting State shall use its best efforts to comply with the conditions.

3. Nothing in this Article shall preclude the use or disclosure of information to the extent that there is an obligation to do so under the Constitution of the Requesting State in a criminal prosecution. The Requesting State shall notify the Requested State in advance of any such proposed disclosure and the provision of the Constitution under which such disclosure is required.

4. Information or evidence which has been made public in the Requesting State in accordance with paragraphs 1 or 2 may thereafter be used for any purpose.

Article 8

Testimony or Evidence in the Requested State

1. A person in the Requested State **from** whom testimony or evidence is requested shall be compelled, if necessary, to appear and testify or produce items, including documents, records, and articles of evidence.

2. Upon request, the Central Authority of the Requested State shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.

3. The Requested State shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to question the person giving the testimony or evidence.

4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting State for resolution by the authorities of that State.

5. Evidence produced in the Requested State pursuant to this Article or which is the subject of testimony taken under this Article may be authenticated by an attestation, including, in the case of business records, authentication in the manner indicated in Form A appended to this Treaty. Documents authenticated by Form A shall be admissible in evidence in the Requesting State.

Article 9

Records of Government Agencies

1. The Requested State shall provide the Requesting State with copies of publicly available records, including documents or information in any form, in the possession of government departments and agencies in the Requested State.

2. The Requested State may provide copies of any records, including documents or information in any form, which are in the possession of a government department or agency in that State, but which are not publicly available, to the same extent and under the same conditions as such copies **would** be available to its own law enforcement or judicial authorities. The Requested State may in its discretion deny a request pursuant to this paragraph entirely or in part.

ANTIGUA 10 *Mutual Legal Assistance in Criminal* No. 12 of 2000.
AND *Matters (the Government of Antigua and*
BARBUDA *Barbuda and the Government of the United*
States of America) Ratification Act 2000

3. Official records produced pursuant to this Article may be authenticated by the official in charge of maintaining them through the use of Form B appended to this Treaty. No further authentication shall be necessary. Documents authenticated under this paragraph shall be admissible in evidence in the Requesting State.

Article 10

Testimony in the Requesting State

1. When the Requesting State requests the appearance of a person in that State, the Requested State shall invite the person to appear before the appropriate authority in the Requesting State. The Requesting State shall indicate the extent to which the expenses will be paid. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the response of the person.

2. The Central Authority of the Requesting State shall inform the Central Authority of the Requested State whether a decision has been made by the competent authorities of the Requesting State that a person appearing in the Requesting State pursuant to this article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or convictions which preceded his departure from the Requested State.

3. The safe conduct provided for by this Article shall cease seven days after the Central Authority of the Requesting state has notified the Central Authority of the Requested State that the person's presence is no longer required, or when the person, having left the Requesting State, voluntarily returns. The competent authorities of the Requesting State may, in their discretion, extend this period for up to fifteen days if they determine that there is good cause to do so.

Article 11

Transfer of Persons in Custody

1. A person in the custody of the Requested State whose presence in the Requesting State is sought for purposes of assistance under this Treaty shall be transferred from the Requested State to the Requesting State for that purpose if the person consents and if the Central Authorities of both States agree.

2. A person in the custody of the Requesting State whose presence in the Requested State is sought for purposes of assistance under this Treaty may be transferred from the Requesting State to the Requested State for that purpose if the person consents and if the Central Authorities of both States agree.

3. For purposes of this Article:

- (a) the receiving State shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorized by the sending State;
- (b) the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed by both Central Authorities;
- (c) the receiving State shall not require the sending State to initiate extradition proceedings for the return of the person transferred; and
- (d) the person transferred shall receive credit for service of the sentence imposed in the sending State for time served in the custody of the receiving State.

Article 12

Location or Identification of Persons or Items

The Requested State shall use its best efforts to ascertain the location or identity of persons or items specified in the request.

Article 13

Service of Documents

- 1.** The Requested State shall use its best efforts to effect service of any document relating, in whole or in part, to any request for assistance made by the Requesting State under the provisions of this Treaty.
- 2.** The Requesting State shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting State a reasonable time before the scheduled appearance.
- 3.** The Requested State shall return a proof of service in the manner specified in the Request.

Article 14

Search and Seizure

- 1.** The Requested State shall execute a request for the search, seizure, and delivery of any item to the Requesting State if the request includes the information justifying such action under the laws of the Requested State.

ANTIGUA AND BARBUDA 12 *Mutual Legal Assistance in Criminal Matters (the Government of Antigua and Barbuda and the Government of the United States of America) Ratification Act 2000* No. 12 of 2000.

2. Upon request, every official who has custody of a seized item shall certify, through the use of Form C appended to this Treaty, the continuity of custody, the identity of the item, and the integrity of its condition. No further certification shall be required. The certificate shall be admissible in evidence in the Requesting State.

3. The Central Authority of the Requested State may require that the Requesting State agree to the terms and conditions deemed to be necessary to protect third party interests in the item to be transferred.

Article 15

Return of **Items**

The Central Authority of the Requested State may require that the Central Authority of the Requesting State return any items, including documents, records, or articles of evidence furnished to it in execution of a request under this Treaty as soon as possible.

Article 16

Assistance in Forfeiture Proceedings

1. If the Central Authority of one Contracting Party becomes aware of proceeds or instrumentalities of offenses which are located in the territory of the other Party and may be forfeitable or otherwise subject to seizure under the laws of that Party, it may so inform the Central Authority of the other Party. If the Party receiving such information has jurisdiction in this regard, it may present this information to its authorities for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country. The Central Authority of the Party that received the information shall inform the Central Authority of the Party that provided the information of the action taken.

2. The Contracting Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offenses, restitution to the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions. This may include action to temporarily immobilize the proceeds or instrumentalities pending further proceedings.

3. The Party that has custody over proceeds or instrumentalities of offenses shall dispose of them in accordance with its laws. Either Party may transfer all or part of such assets, or the proceeds of their sale, to the other Party, to the extent

permitted by the transferring Party's laws and upon such terms as it deems appropriate.

4. To the extent permitted under the law of the Requested State, a conviction in the Requesting State may serve as a basis for forfeiture in the Requested State.

Article 17

Compatibility with Other Arrangements

Assistance and procedures set forth in this Treaty shall not prevent either Contracting Party from granting assistance to the other Party through the provisions of other applicable international agreements, or through the provisions of its national laws. The Parties may also provide assistance pursuant to any bilateral arrangement, agreement, or practice which may be applicable.

Article 18

Consultation

The Central Authorities of the Contracting Parties shall consult, at times mutually agreed to by them, to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measures, including training and technical assistance, as may be necessary to facilitate the implementation of ~~this Treaty~~.

Article 19

Ratification, Entry Into Force, and Termination

1. This Treaty shall be subject to ratification, and the instruments of ratification shall be exchanged at Washington as soon as possible.

2. This Treaty shall enter into force upon the exchange of instruments of ratification.

3. This Treaty shall apply to any request presented after the date of its entry into force whether the relevant acts or omissions occurred prior to or after that date.

4. Either Party may terminate this Treaty by means of written notice to the other Party. Termination shall take effect six months following the date of receipt of the notification.

ANTIGUA 14 *Mutual Legal Assistance in Criminal* No. 12 of 2000.
AND *Matters (the Government of Antigua and*
BARBUDA *Barbuda and the Government of the United*
States of America) Ratification Act 2000

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments have signed this Treaty.

DONE at St. John's, in duplicate, this 31st day of October, 1996.

LESTER BIRD

FOR THE GOVERNMENT OF
ANTIGUA AND BARBUDA

JEANETTE W. HYDE

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA

Form A

CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS

I, _____, attest on penalty of
[name]

criminal punishment for false statement or attestation that I am employed by

[name of business from which documents are sought]

and that my official title is _____
[official state]

I further state that each of the records attached hereto is the original or a duplicate
of the original record in the custody of _____

[name of business from which documents are sought]

I further state that:

A) such records were made, at or near the time of the occurrence of the
matter set forth, by (or from information transmitted by) a person with knowl-
edge of those matters;

B) such records are kept in the course of a regularly conducted business
activity;

C) the business activity made such records as a regular practice; and

D) if any such record is not the original, it is a duplicate of the original

[signature]

[date]

Sworn to or affirmed before me, _____, a judi
cial officer, this _____ day of _____, 19

ANTIGUA 16 *Mutual Legal Assistance in Criminal* No. 12 of 2000.
AND *Matters (the Government of Antigua and*
BARBUDA *Barbuda and the Government of the United*
States of America) Ratification Act 2000

Form B

**ATTESTATION OF AUTHENTICITY OF FOREIGN
PUBLIC DOCUMENTS**

I, _____ attest on penalty
[name]

of criminal punishment for false statement or attestation that my position with the

Government of _____ is _____
[country] [official title]

and that in that position I am authorized by the law of _____
[country]

to attest that the documents attached and described below are true and accurate
copies of original official records which are recorded or filed in _____

[name of office or agency]

which is a government office or agency of _____
[country]

Description of Documents:

[signature]

[title]

[date]

Form C

ATTESTATION WITH RESPECT TO SEIZED ARTICLES

I, _____ attest on penalty
[name]

of criminal punishment for false statement or attestation that my position with the

Government of _____
[country]

is _____ . I
[official title]

I received custody of the articles listed below from _____

_____ on _____
[name of person] [date]

at _____ in the same condition as when I received
[place]

them (or, if different, as noted below).

Description of Articles:

Changes in condition while in my custody:

[signature]

[title]

Official Seal

[place]

[date]

ANTIGUA 18 *Mutual Legal Assistance in Criminal* No. 12 of 2000.
AND *Matters (the Government of Antigua and*
BARBUDA *Barbuda and the Government of the United*
States of America) Ratification Act 2000

**EMBASSY OF THE
UNITED STATES OF AMERICA**

No. 109

Excellency:

I have the honor to refer to the Treaty on Mutual Legal Assistance in Criminal Matters between the Government of the United States of America and the Government of Antigua and Barbuda ("the treaty") and to express the understanding of the United States regarding the application of the Treaty to criminal tax matters.

Article 1 (1) of the Treaty provides that assistance may be granted in connection with "the investigation, prosecution, and prevention of criminal offenses, and in proceedings related to criminal matters." Article 1 (4) further states: "This treaty is intended solely for mutual legal assistance in criminal matters between the parties as set forth in paragraph (1) above."

During the negotiations, the United States delegation was asked whether these provisions could be interpreted to exclude assistance under the Treaty for civil and administrative income tax matters that are unrelated to any criminal matter. The United States delegation agreed that the provisions could be so interpreted, and confirmed that the United States does not intend to seek assistance under the Treaty in the routine civil and administrative enforcement of our income tax laws, including the regulation, imposition, calculation and collection of such income taxes.

I have been advised by the Tax Division of the United States Department of Justice that criminal tax cases in the United States always involve a voluntary and international violation of a known legal duty. Under United States law, this standard entails willful conduct and would not be met where a defendant has acted negligently or carelessly. Moreover, to establish the required level of willful conduct under United States law, the Government prosecutor must show that the defendant took affirmative action, the likely effect of which was to mislead or conceal. Examples of such willful activity include keeping a double set of books, making false entries or alterations to financial records, or concealing assets or covering up sources of income.

Further, although the treaty has no general dual criminality requirement, my Government understands United States and Antiguan law to be consistent with respect to criminalizing willful, fraudulent misconduct by private persons in representations to the Government. As a result, the conduct underlying a United States Government request to Antigua and Barbuda for assistance in a criminal tax evasion case would in all likelihood also be criminalized under the law in Antigua and Barbuda.

No. 12 of 2000. *Mutual Legal Assistance in Criminal Matters (the Government of Antigua and Barbuda and the Government of the United States of America) Ratification Act 2000* 19

ANTIGUA
AND
BARBUDA

Finally, Article 9 of the treaty has additional provisions that are relevant when a Party requests Government records in a criminal taxation matter. The law and policy of both the United States and Antigua and Barbuda recognize the need in that the Requested State may provide the Requesting State with non-public records. The Requested State retains "discretion to deny a request pursuant to this paragraph entirely or in part."

I would appreciate Your Excellency confirming that the understanding described above is also the understanding of the Government of Antigua and Barbuda.

Accept, Excellency, the assurances of my highest consideration.

Jeanette W. Hyde, Ambassador

Embassy of the United States of America

Bridgetown, October 31, 1996.

ANTIGUA 20 *Mutual Legal Assistance in Criminal* No. 12 of 2000.
AND *Matters (the Government of Antigua and*
BARBUDA *Barbuda and the Government of the United*
States of America) Ratification Act 2000



GOVERNMENT OF ANTIGUA AND BARBUDA

Ministry of Foreign Affairs
Queen Elizabeth Highway
Antigua, W.I.

Telex: 2122 AK
Telephone: 809-462-1052

Fax: 809-462-2482

October 31, 1996

Her Excellency Mrs Jeanette Hyde
Ambassador of United States
of America.

Excellency:

I have the honour to acknowledge receipt of Your Excellency's Note No. 109 of today's date, which reads as follows:

"I have the honour to refer to the Treaty on Mutual Legal Assistance in Criminal Matters between the Government of the United States of America and the Government of Antigua and Barbuda ("the treaty") and to express the understanding of the United States regarding the application of the treaty to criminal tax matters.

Article 1(1) of the Treaty provides that assistance may be granted in connection with the investigation, prosecution, and prevention of criminal offences, and in proceedings related to criminal matters." Article 1(4) further states: This treaty is intended solely for mutual legal assistance in criminal matters between the parties as set forth in paragraph (1) above."

During the negotiations, the United States delegation was asked whether these Provisions could be interpreted to exclude assistance under the treaty for Civil

and administrative income **tax** matters that are unrelated to any criminal matter. The United States delegation agreed that the provisions could be so interpreted, **and** confirmed that the United States does not intend to seek assistance under the treaty in the routine civil and administrative **enforcement** of our income tax laws, including the regulation, imposition, calculation and collection of such income taxes.

I have been advised by the Tax Division of the United States Department of justice that criminal tax in the United States always involve a voluntary and **intentional** violation of a known legal duty. Under United States law, this standard entails wilful conduct and would not be met where a defendant has acted negligently or carelessly. Moreover, to establish the required level of wilful conduct under United States law, the Government prosecutor must show that the defendant took **affirmative** action, the likely effect of which was to mislead or conceal. Examples of such **wilful** activity include keeping a double set of books, making false entries or alterations to **financial** records, or covering up sources of income.

Further, although the Treaty has no general dual criminality requirement, my **Government** understands United States and Antigua law to be consistent with respect to criminalizing wilful, fraudulent misconduct by private persons in representation to the Government. As a result, the conduct underlying a United States to the **Government** request to Antigua and Barbuda for assistance in a criminal tax evasion case would in all likelihood also be **criminalized** under the law in Antigua and Barbuda.

Finally Article 9 of the Treaty has additional provisions that are relevant when a party requests Government records in a **criminal** taxation matter. The law and policy of both the United States and Antigua and Barbuda recognise the need in many cases to restrict access to information collected by revenue authorities. Article 9(2) embodies this approach that the Requested State may provide the Requesting State with non-public records. The requested State retains "discretion [to] deny a request pursuant to this paragraph entirely or in part"

I would appreciate Your Excellency **confirming that the** understanding described above is also the understanding of the Government of Antigua and Barbuda.

Accept, Excellency, the assurances of my highest consideration.

I have the further honor to **confirm** to Your Excellency that the understanding described above is also the understanding of the Government of Antigua and Barbuda,

Please accept, Excellency, the assurances of my highest consideration."

Lester **Bird**,
Minister of Foreign Affairs.

ANTIGUA 22 *Mutual Legal Assistance in Criminal* No. 12 of 2000.
AND *Matters (the Government of Antigua and*
BARBUDA *Barbuda and the Government of the United*
States of America) Ratification Act 2000

Passed the House of Representatives
this 8th day of June, 2000.

Passed the Senate this 20th day of
June, 2000.

B. Harris,
Speaker.

Senator Llewellyn Smith,
Vice President.

Yvonne Henry,
Deputy Clerk to the House of
Representatives.

Sylvia Walker,
Clerk to the Senate.

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