



EXPLANATION OF THE LIST OF AMENDMENTS TO THE TAX INFORMATION EXCHANGE AGREEMENT BILL, 2016 & RESPONSES TO THE OPPOSITION'S PROPOSED AMENDMENTS

The Tax Information Exchange Agreement Bill, 2016 complies with the Model 1 reciprocal agreement approved by the former government in May and October 2013.

with the requirements of the United States Foreign Account Tax Compliance Act (FATCA) and

The former People's Partnership Government - via its Cabinet - agreed by minutes dated May 2013 and October 2013 respectively that:

2. the Minister of Finance would enter into a Model 1 IGA reciprocal with the USA.

1. Trinidad and Tobago adopt the Model 1 option of the Inter-Governmental Agreement (IGA) with the United States of America (USA) which enables compliance

The following table explains the list of amendments made to the Tax Information Exchange Agreement Bill, 2016 in response to the Opposition's concerns which were presented in a September 2016 Express Advertisement.

Clause of the Bill	Description of Amendment in List of Amendment considered at the HOR sitting on December 12, 2016	Rationale for Amendment	Opposition's concern addressed (Express Article)	Opposition's suggested amendments (Rec'd from BATT)	Comments on the suggested amendments
Preamble	The words "other States" replaced with "United States of America"	To clearly indicate that the scope of the Bill is now confined to the exchange of tax information between the USA and Trinidad and Tobago	Objection to clause 5 addressed (when read together with amendments to clause 4)		
Clause 1	ditto	ditto	Objection to clause 5 addressed (when read together with amendments to clause 4)		
New Clause 2	A commencement date to be fixed by Proclamation inserted	To provide for a delayed commencement in order to address matter required for the operationalization of the legislation.		The insertion of a similar clause as that proposed in the List of Amendments was suggested as a new Clause 1A. The only difference being the provision of a specified date by which the Act shall be commenced (i.e. 31 st March, 2017)	Commencement provision included. While the commencement of the legislation as soon as possible is intended, specifying a date is not advisable.
Clause 3 (as renumbered)	The insertion of the words "shall have effect even though it"	This is the language used in section 13 of the Constitution which provides for an Act that is inconsistent with section 4 and 5 of the Constitution to declare this fact. Section 13 states: "An Act to which this section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5... "		The insertion of the exact words was proposed. (as Clause 2)	Suggested amendment already addressed in List of Amendments
Clause 4 (as renumbered)	The following definitions were deleted: "competent authority" "Contracting State" The definition of "declared agreement" is replaced The word "Information" was inserted in the definition of "former Act" The definition of "Minister" amended	Competent authority specifically defined and the Board of Inland Revenue in Parts II and III in respect of the 1989 TIEA and 2016 IGA, respectively. No longer applicable since only State for which the Bill now makes provision is the United States of America. "Declared agreement" now only refers to the 1989 TIEA and the 2016 IGA. No other agreement is provided for in this Bill To correct an error in the reference to the TIEA Act of 1989 (Chap. 76:51) To refer to Minister instead of member of Parliament	Objection to clause 5 addressed. Objection to clause 5 addressed. Objection to clause 5 addressed.	The Opposition suggested the amendment of this definition to specify the Board as the competent Authority Suggested the deletion of the word "President" to remove the power of the agreements The exact amendment was suggested The exact amendment was suggested	The deletion of this definition and amendment of the definitions for "competent authority" achieves this suggested amendment The effect of the suggested amendment achieved by the new definition. No other agreements will be declared by the President. The suggested amendment already addressed in List of Amendments The suggested amendment already addressed in List of Amendments

**EXPLANATION OF THE LIST OF AMENDMENTS TO THE TAX INFORMATION EXCHANGE AGREEMENT BILL, 2016
& RESPONSES TO THE OPPOSITION'S PROPOSED AMENDMENTS**

Clause of the Bill	Description of Amendment in List of Amendment considered at the HOR sitting on December 12, 2016	Rationale for Amendment	Opposition's concern addressed (Express Article)	Opposition's suggested amendments (Rec'd from BATT)	Comments on the suggested amendments
Clause 4 (original)	Clause 4 deleted	To remove the power of the Minister to authorize a competent authority. The competent authority is defined to be the Board of Inland Revenue	General objection to the Bill giving "wide and intrusive powers to the Minister/ politician" addressed.	An amendment to this clause was suggested to mandate the Minister to authorize the Board of Inland Revenue as the competent authority	The effect of this suggestion was addressed by deleting this clause and deleting the definition of "competent authority" in the renumbered clause 4
Clause 5 (original)	Clause 5 deleted	To remove the provision for the declaration of tax information exchange agreements by Order under this Act	Objection to clause 5 addressed.	An amendment was suggested for the order to be made by the Minister, subject to the affirmative resolution of Parliament	The amendment is unnecessary given the deletion of clause 5. Agreements will not be declared by Order under the Act
Clauses 6 and 7 (original)	Clauses 6 and 7 deleted	To remove various powers of the minister in the implementation of declared agreements	Objection to Clauses 6 and 7 addressed	The deletion of clause 6 and clause 7(1) and (2) was suggested. Also, it was suggested that clause (3) to substitute the Board for the Minister	The suggested amendments are addressed by the List of Amendments.
Clause 8 (original)	Clause 8 deleted	The clause was deleted in the original Part II but is re-inserted (with amendments) in the renumbered Part II to apply specifically to the 1989 TIEA. That is, it is effectively deleted with respect to other agreements.	The Opposition's objection to clause 8 was its effect "[w]hen read together with clause 7". Since clause 7 is deleted, the objection to clause 8 is addressed.	The Opposition suggested that clause 8(1) be deleted. The Opposition also suggested that clause 8(2) be amended to increase the penalty for unauthorized disclosure under this Act.	This clause is in effect deleted. The original clause 8 applied to "declared agreements" as previously defined. The new clause applies to the 1989 TIEA only. This suggested amendment may be considered in the new inserted clause 8.
Clause 5 (as renumbered)	In clause 5 as renumbered (original clause 9) the definition of " competent authority " is amended The definition of " national " is deleted, and The definition of " tax " is amended	To remove the words which may suggest that the Board is the representative of the Minister To remove the definition of a word that is not used in that part of the Bill. It is used in the Agreement (1989 TIEA) and is defined in the agreement To change the cross-reference to another section that will be renumbered as a consequence of deletions and insertions.		The Opposition suggested an amendment to the definition of "national"	This definition is not required as the word was not used in the Bill. The term is used and defined in the 1989 TIEA. The definition in the TIEA cannot be amended in this Bill.
Clause 6 (as renumbered)	No amendment to this clause (original clause 10) was proposed in the List of Amendments			The Opposition suggested the deletion of the words "or substantially similar" tax. The position is that these words are "unsuitably vague"	The obligation of T&T as stated in Article 2.2 of the TIEA is in respect of "any identical or substantially similar tax". If deleted the legislation will not be giving full effect to the obligation.
Clause 7 (as renumbered)	This clause (original clause 11) was by deleting some references to the "Treasury Department" and replacing it with "the Secretary to the Treasury" Subclause (5) was deleted and replaced Subclause (7) was amended to delete the words "in the administration of Trinidad and Tobago"	To refer specifically to the person/ office who will be the subject/ object of the exchange of information under the agreement versus the entity To better clarify the obligation with respect to the form and manner in which information is to be provided This was amended since the Board as the competent authority is not engaged in the administration of Trinidad and Tobago and therefore will not obtain information in the normal course of doing same. This is the language of the agreement in respect of Trinidad and Tobago's obligation, not the Board's		The Opposition suggested the insertion of the words "subject to the laws of Trinidad and Tobago" in subclauses (2), (3) and (4)	Subclause (7)(b) as amended already limits the supply of information to that which is obtainable under the laws of Trinidad and Tobago. The insertions suggested will restrict the exchange of information to an extent that exceeds the obligation in the agreement.

**EXPLANATION OF THE LIST OF AMENDMENTS TO THE TAX INFORMATION EXCHANGE AGREEMENT BILL, 2016
& RESPONSES TO THE OPPOSITION'S PROPOSED AMENDMENTS**

<i>Clause of the Bill</i>	<i>Description of Amendment in List of Amendment considered at the HOR sitting on December 12, 2016</i>	<i>Rationale for Amendment</i>	<i>Opposition's concern addressed (Express Article)</i>	<i>Opposition's suggested amendments (Rec'd from BATT)</i>	<i>Comments on the suggested amendments</i>
New Clause 8	This clause inserts a slight variation of the original clause 8 in respect of the 1989 TIEA only.	This clause provides for disclosure of information for the purpose of the 1989 TIEA despite the secrecy provision of the Income Tax Act and some provisions of the Data Protection Act. Similar provision is made in Part III for the purpose of the 2016 IGA. The clause also creates an offence for unauthorized disclosure		The Opposition suggested that clause 8(2) be amended to increase the penalty for unauthorized disclosure under this Act.	Consideration may be given to increasing this penalty. If this amendment is undertaken, the penalty for the comparable offence in section 4 of the Income Tax Act should be considered. Also, consideration should be given to including this offence in Part V (Miscellaneous) to apply to unauthorized disclosure in the Act generally versus only Part II (1989 TIEA)
Clause 9 (as renumbered)	This clause (original clause 12) was amended to make typographical corrections and to amend the definition of "competent authority"	"competent authority" was defined to be the Board of Inland Revenue		The Opposition made a few suggested amendments which it considered to be corrections of typographical errors	These were not typographical errors. The singular form of words was used to include the plural. Section 16(2) of the Interpretation Act applies.
Clauses 10, 11 & 12 (as renumbered)				The Opposition suggested that these provisions (original clauses 13 to 15) which concern the processing, receipt and disclosure of information for the purpose of the IGA be "Subject to the laws of Trinidad and Tobago"	The obligation under the IGA is for automatic sharing of information without consent. If the sharing is subject to other laws, the Data Protection Act will apply and sharing could only then occur with consent. This is inconsistent with the obligation. T&T will not be compliant
Clause 12 (as renumbered)	This clause (original clause 16) is amended to include a subclause (2)	The new subclause provides for the automatic disclosure of information on an annual basis		The Opposition suggested that this provisions (original clauses 16) in respect to the forwarding of information by a financial institution to the competent Authority (the Board) be "Subject to the laws of Trinidad and Tobago" The Opposition also suggested the insertion of language to address the non-liability of financial institution when information is forwarded to the competent authority in good faith	This limitation is inconsistent with the objects of the legislation and the obligations under the Agreement. Consideration may be given to this insertion. Alternatively, the issue of non-liability could be considered in the specific legislation that regulates the FI
Clause 18 (as renumbered)	This clause (original clause 21) is amended to delete the words "Memorandum of Understanding" and replace with the word "Agreement"	To mandate the Board to enter into an Agreement with the competent authority of the United States of America with respect to procedural matters	Objection to clause 21 not addressed.	The Opposition suggested the insertion of the words "has made a payment with respect to a reportable account" The Opposition also suggested that the MOU be subject to the affirmative Resolution of Parliament prior to execution The Opposition also suggested that a new clause 21A be inserted for the Minister to make Regulations, subject to the affirmative resolution of parliament, to give effect to rules and procedures referred to in clause 21. That is, the rules and procedures in the MOU (or Agreement) for the collaboration between the Secretary to US State Treasury and the Board on compliance with matters arising under the Bill.	The intention and purpose of this suggestion is unclear and was not addressed in the Opposition's Explanatory Note. An MOU is not a legislative instrument. The reason for the MOU (or Agreement) is to address procedural not substantive matters. The requirement for a resolution of Parliament will adversely affect the Board's responsiveness and administrative flexibility in operationalizing the legislation ditto

**EXPLANATION OF THE LIST OF AMENDMENTS TO THE TAX INFORMATION EXCHANGE AGREEMENT BILL, 2016
& RESPONSES TO THE OPPOSITION'S PROPOSED AMENDMENTS**

Clause of the Bill	Description of Amendment in List of Amendment considered at the HOR sitting on December 12, 2016	Rationale for Amendment	Opposition's concern addressed (Express Article)	Opposition's suggested amendments (Rec'd from BATT)	Comments on the suggested amendments
Clause 22 (as renumbered)	This clause (original clause 25) is deleted here but re-inserted as clause 27 in Part V- Miscellaneous	This clause addresses the power of the Minister to amend the IGA	Objection to clause 25 not addressed.	The Opposition suggested that this power be subject to affirmative resolution of Parliament	The making and amendment of international agreements is an executive function. These agreements are not automatically incorporated into the domestic laws. It is the Parliament's function to give effect to these agreements and their amendments through legislation. The amendment of the agreement does not have the effect of making law to which the Opposition objects
New Clause 22	Amends the Income Tax Act to delete the existing section 117(6) and insert a new section 117A	To delete from section 117, the existing provision [subsection (6)] in the Income Tax Act. This which currently empowers the Board to require information from a bank for the purpose of a TIEA. However, the subclause seems to be misplaced as section 117 generally concerns a domestic situation where there is an objection to an assessment. Section 117A is therefore inserted to specifically address the collection of information for TIEA purposes.			
New Clause 23	Amends the Central Bank Act to empower the Central Bank	To expressly provide for the CBTT to supervise financial institutions and insurance companies in the implementation of declared agreements (1989 TIEA and 2016 IGA)			
Clauses 24 to 26 (as renumbered)	Amends the Financial Institutions Act, the Securities Act and the Insurance Act to - (1) amend the definition of "declared agreement" and (2) make provision for the Minister's approval of guideline			The Opposition suggested some deletions of the word "word" and substitution of the word "punctuation" or "full stop". These were indicated as typographical corrections	Section 15(2) of the Interpretation Act provides that "words" includes figures and punctuation marks. The use of "word" is not a typographical error.
New Clause 27	Inserts (re-inserts) the renumbered clause 22 (original clause 25) with respect to the Minister's power to amend the Schedule/ IGA by Order		Objection to clause 25 not addressed.		See comments at renumbered clause 22 (above)
New Clause 28	Inserts a new clause 28 to provide immunity from suit for the Board in the performance under the Act as the competent authority.				