

- Tax Information Exchange Agreement
- Mutual Legal Assistance (Tax Matters) Act, 2003
- EU's Alternative Investment Fund Managers Directive

## *BVI Signs Tax Information Exchange Agreement with Poland*

*The British Virgin Islands' (BVI) government entered into its twenty-fifth tax information exchange agreement (TIEA) with the Republic of Poland on 29 November 2013. The BVI-Poland TIEA supplements similar treaties entered into by the BVI in 2013 with Canada and Guernsey (Channel Islands).*

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*This TIEA represents an important step forward in consolidating the BVI's place as an important domicile for hedge funds and private equity vehicles for European investors.*

This new treaty is not presently in force but will enter into force three months after the completion of domestic implementation procedures by both the BVI and Poland. Under the BVI's domestic regime TIEAs are implemented through subsidiary legislation under the Mutual Legal Assistance (Tax Matters) Act, 2003 (“MLAT”). Past practice demonstrates that TIEAs tend to be fully implemented and come into force approximately one year following signing.

The BVI-Poland TIEA is essentially consistent with the standard model template for TIEAs endorsed by its author, the OECD. It provides for the exchange of information on request between the competent authority in the BVI, the International Tax Authority acting on behalf of the Financial Secretary and the competent authority in Poland, the Minister of Finance. Polish taxes caught include personal income tax, corporate income tax and goods and services tax.

The usual safeguards under the TIEA regime to prevent fishing expeditions are included. The authority requesting disclosure, i.e. the requesting authority, must provide the name of the authority seeking the request, the identity of the taxpayer under examination or investigation, the nature and type of information requested, the tax purpose for which the information is sought, the period of time with respect to which the information is requested, reasonable grounds for believing that the information is present in the territory of the requested party or in the possession or control of a person subject to the jurisdiction of the requested party, the name and address of the person believed to be in

possession or control of the information if known, and a declaration that the request conforms to the law and administrative practice of the requesting party. In addition the parties to the TIEA have, in the accompanying protocol, expressly reaffirmed that they are not at liberty to engage in “fishing expeditions.”

Further the BVI-Poland TIEA provides for the possibility of declining a request on a number of grounds including where the requesting party would not have authority to make such request under its own domestic laws or where the requesting party has not exhausted all other means available.

Under the framework established by the EU's Alternative Investment Fund Managers Directive (AIFMD), the BVI being a popular non-EU fund domicile, must have in place tax information exchange arrangements with EU member states in order to be able to market funds in those jurisdictions, once the third country passport is introduced. As such this TIEA represents an important step forward in consolidating the BVI's place as an important domicile for hedge funds and private equity vehicles for European investors.

Harneys is at the forefront of all developments relevant to laws and regulations governing mutual legal assistance in the BVI, Cayman Islands and Cyprus.

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