

BERMUDA SUPREME COURT

***Ministry of Finance -v- O* [2014] SC (Bda) 60
Civ (17 July 2014)**

INTERNATIONAL COOPERATION (TAX
INFORMATION EXCHANGE AGREEMENTS) ACT,
2005 (THE "2005 ACT") - COSTS

Section 6 of the 2005 Act imposes a statutory duty upon a person served with a production order to provide the information sought, provided that, it is within his possession or control. The 2005 Act is silent as to who should bear the costs of compliance.

In an earlier ruling of the Court, the Defendant, O, was ordered to produce copies of various documents to the Plaintiff. The question of who, as between the Plaintiff and the Defendant, should bear the costs of complying with the order was adjourned to this hearing.

The Judge held that competing policy considerations urged upon him by the parties, while persuasive, were evenly balanced and therefore cancelled each other out. Despite this, it was considered desirable that there should be a common approach to the costs of production orders, whether made in criminal or regulatory proceedings. In the absence of a settled practice in Bermuda, the Judge proposed to adopt the practice as to the costs of criminal production orders made in England and Wales. Thus, it was held in the case of production orders made under Tax Information Exchange Agreements and served on third parties in the financial services industry, the third party Respondent should generally bear the costs of compliance with the order. It followed that the Defendant was ordered to bear its costs of complying with the earlier production order.

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