

TITLE 48 - TAXATION
CHAPTER 5 - AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT
INFORMATION ACT 2016



Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

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Index

Section	Page
§501. Short title.	3
§502. Interpretation.	3
§503. Objectives.	5
§504. Powers of the Minister.	5
§505. Agreement – force of law.	6
§506. Inconsistent laws.	6
§507. Information returns by financial institutions.	6
§508. Functions and powers of the Secretary.	6
§508A. Audits.	7
§509. Confidentiality.	8
§510. Penalties.	9
§511. Liabilities to penalties.	10
§512. Assessment of penalties.	10
§513. Right to appeal against penalties.	11
§514. Procedure on appeal against penalty.	11
§515. Enforcement of penalties.	12
§516. Anti-avoidance.	12
§517. Regulations.	12
§518. Interpretation.	13
§519. Effective Date.	13

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AN ACT to implement the RMIs obligations arising under an agreement for the implementation of the international standards of automatic exchange of information in Tax Matters.

Commencement:

October 18, 2016

Source:

P.L. 2016-27

P.L. 2024-10

§501. Short title.

This Act may be cited as the Automatic Exchange of Financial Account Information Act 2016.

§502. Interpretation.

(1) In this Chapter, unless the context otherwise requires:

(a) **“agreement”** means:

- (i) the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended by the 2010 Protocol, and the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information, which together provide for the exchange of information on an automatic basis as described in the Standard, signed by the Government of

- the Republic of the Marshall Islands, as amended from time to time; or
- (ii) any other agreement or arrangement between the Government of the Republic of the Marshall Islands and the government of another country which makes provisions corresponding, or substantially similar, to that made by the agreement referred to in paragraph (1)(a)(i), including an intergovernmental agreement between the Government of the Republic of the Marshall Islands and the Government of the United States of America to implement FATCA;
- (b) “designated auditor” means an independent third party designated by the Secretary to conduct audits to verify the compliance of reporting financial institutions with their obligations under the agreement, this Chapter, and any regulations made pursuant to this Chapter;
 - (c) “**designated person**” means, with respect to any function, the officer of the Ministry of Finance, or other government agency subject to that agency’s consent, designated to carry out that function, and with respect to compliance audits, any designated auditor(s) designated by the Secretary to carry out that function;
 - (d) “**FATCA**” means the provisions commonly known as the Foreign Account Tax Compliance Act, within the United States of America Hiring Incentives to Restore Employment Act;
 - (e) “**information return**” means a report, setting out certain information as specified by regulations made under this Chapter, which a reporting financial institution is required to file with the Secretary;
 - (f) “**Minister**” means the Minister of Finance or his designee, including but not limited to the Secretary of Finance;
 - (g) “**Secretary**” means the Secretary of Finance;
 - (h) “**Standard**” or “**CRS**” means the Common Reporting Standard, including the Commentaries thereon, approved by the Council of the Organisation for Economic Co-operation and Development on 15 July 2014, which contains reporting and due diligence procedures for the exchange of information

on an automatic basis, as amended from time to time.[Amended by P.L. 2024-10]

- (2) In this Chapter, “**financial account**” has the meaning given that expression by Section VIII of the Standard.
- (3) For the purposes of this Chapter, the Standard is to be read as if the definition “**Reporting Financial Institution**” in subparagraph A(1) of Section VIII of the Standard read as follows:
- (4) The term “**Reporting Financial Institution**” means any Republic of the Marshall Islands Financial Institution that is not a non-reporting financial institution. The term “**Republic of the Marshall Islands Financial Institution**” means: (i) any Financial Institution that is resident in Republic of the Marshall Islands, but excludes any branch of that Financial Institution that is located outside of Republic of the Marshall Islands; and (ii) any branch of a Financial Institution that is not resident in Republic of the Marshall Islands, if that branch is located in Republic of the Marshall Islands.

§503. Objectives.

The objectives of this Chapter are:

- (a) to provide for the implementation of the CRS and automatic exchange of information between the Government of the Republic of the Marshall Islands and any other government with which it reached an agreement;
- (b) to provide for the implementation of the Republic of the Marshall Islands FATCA agreement with the United States of America; and
- (c) to facilitate the automatic exchange of information between the Government of the Republic of the Marshall Islands and other foreign governments.

§504. Powers of the Minister.

The Minister shall have the authority to take any and all steps necessary to implement the objectives of this Chapter.

§505 Agreement – force of law.

Any properly executed agreement shall have the force of law in the Republic of the Marshall Islands.

§506. Inconsistent laws.

In the event of any inconsistency between the provisions of this Chapter or an agreement and the provisions of any other law, the provisions of this Chapter or the agreement prevail to the extent of the inconsistency.

§507. Information returns by financial institutions.

Every reporting financial institution shall collect and report certain information in respect of certain financial accounts as specified by regulations made pursuant to this Chapter.

§508. Functions and powers of the Secretary.

- (1) The Secretary, subject to the general directions of the Minister, shall generally administer and enforce compliance with the provisions of the agreement, this Chapter, and any regulations made pursuant this Chapter.
- (2) The Secretary may exercise all powers vested in him under Title 48 of the Marshall Islands Revised Code, the tax laws of the Republic of the Marshall Islands, to administer and enforce compliance with the provisions of the agreement, this Chapter, and any regulations made pursuant to this Chapter.
- (3) The Secretary may delegate, in writing, to any designated person any power or duty conferred on the Secretary by this Chapter.
- (4) The Secretary or any designated person may request information from and, at all reasonable times, enter any premises or place of business of a reporting financial institution for the purposes of:
 - (a) determining whether information:
 - (i) included in an information return made under the regulations by the reporting financial institution is correct and complete; or

- (ii) not included in an information return was correctly not included; or
- (b) examining the procedures put in place by the reporting financial institution for the purposes of ensuring compliance with that institution's obligations under this Chapter and the regulations.

§508A. Audits.

- (1) Risk-based audits shall be conducted to verify that reporting financial institutions comply with the agreement, this Chapter, and any regulations made pursuant to this Chapter. The audits shall be conducted by the Secretary or by a designated person or designated auditor pursuant to delegation by the Secretary.
- (2) To be eligible for delegation by the Secretary as a designated auditor, a firm must demonstrate:
 - (a) that it is in good standing, is duly authorized to provide audit services, and conforms with any relevant standards of professional conduct and practice;
 - (b) that it has expertise with respect to the standard and the obligations of reporting financial standards under the Standard and is otherwise competent to perform audit to this section;
 - (c) that it has the capacity to perform audits pursuant to this section as delegated by the Secretary;
 - (d) that it maintains adequate liability insurance; and
 - (e) that it satisfies any other criteria required by the Secretary.
- (3) Designated auditors must be independent from the reporting financial institutions subject to audit under this Section.
- (4) Designated auditors must carry out audits in accordance with the instructions of the Secretary and are obliged to:
 - (a) submit an audit report to the Secretary, which must be truthful and include all material facts, within the time prescribed by the Secretary;
 - (b) comply with all principles and guidelines established by the Secretary for audits pursuant to this section;

- (c) provide to the Secretary, upon request and within the time prescribed by the Secretary:
 - (i) all working papers prepared as part of an audit pursuant to this section; and
 - (ii) all information, records, and other documents the Secretary requires to carry out his or her functions under the agreement and this Chapter; and
 - (d) make audit documents and date available in the Republic of the Marshall Islands for ten (10) years following the completion of an audit.
- (5) Designated auditors are subject to the confidentiality obligations and penalties under Section 509, except that fines may be up to \$50,000 for violations by designated auditors.
- (6) The fees for audits by designated auditors must be paid by the reporting financial institutions being audited. Upon request, a designated auditor must provide a fee estimate before commencing an audit. The fees must be reasonable, based on relevant market rates, and proportionate to the audit performed.
- (7) Reporting financial institution must grant Secretary, or any designated person or designated auditor performing an audit pursuant to this section, unrestricted access to the information and premises specified under section 508(4) and any regulations made pursuant to this Chapter to the extent necessary for the audit. [This section is inserted by P.L. 2024-10]

§509. Confidentiality.

- (1) The Income Tax Act, 48 MIRC Chapter 1, Banking Act, 17 MIRC Chapter 1, or any other law relating to confidentiality shall not apply to the disclosure of information by a reporting financial institution to the Secretary that is required to be included in an information return filed under this Chapter or the regulations made pursuant to this Chapter and, accordingly, this section shall apply to information to which, but for this subsection, the said Acts or other law would apply.
- (2) Every person – having an official duty or being employed in the administration or enforcement of this Chapter or the regulations made under this Chapter or any person who formerly had a duty or

was formerly so employed in the administration or enforcement of this Chapter or the regulations made under this Chapter – shall treat information received from a reporting financial institution under this Chapter or those regulations as confidential and shall only disclose such information as may be necessary for the purpose of the administration or enforcement of the agreement, this Chapter, or under those regulations.

- (3) A person who discloses or divulges any information or produces any document relating to the information received from a reporting financial institution under this Chapter or the regulations made pursuant to this Chapter in contravention of subsection (2) commits an offence and is liable to a fine of \$1,000, or to a term of imprisonment not exceeding one year, or both.

§510. Penalties.

- (1) Every reporting financial institution that fails to file an information return as and when required under this Chapter or under the regulations made under this Chapter is liable to a penalty of up to \$2,500 for each such failure, and the product obtained when \$25 is multiplied by the number of days, not exceeding 100 days, during which the failure continues.
- (2) Every person who makes a false statement or omission in respect of any information required to be included on an information return, under this Chapter or under the regulations made under this Chapter, is liable to a penalty of up to \$10,000 for each such failure.
- (3) Every person who makes a false statement or omission in respect of information in a self-certification made for the purposes of the due diligence procedures described in the Standard is liable to a penalty of up to \$10,000 for each such failure.
- (4) Every person who does not comply with the requirement of the Secretary or a designated person in the exercise or performance of the Secretary or designated person's powers or duties under this Chapter or under regulations made under this Chapter, or who impedes or prevents the proper conduct of an audit pursuant to Section 508A, is liable to a penalty of up to \$5,000 for each such failure.
- (5) Every designated auditor that:

- (a) makes untrue statements or conceals material facts in an audit report or otherwise in connection with an audit under Section 508A is liable to a penalty for each such failure of up to \$25,000 if wilful, or \$10,000 if negligent;
 - (b) fails to provide information or documents to the Secretary as required under Section 508A is liable to a penalty for each such failure of up to \$10,000 if wilful, or \$5,000 if negligent; and
 - (c) fails to submit an audit report as required under Section 508A or fails to comply with the audit principles and guidelines established by the Secretary under Section 508A is liable to a penalty for each such failure of up to \$10,000 if wilful, or \$5,000 if negligent; and
- (6) Every person who fails to comply with a duty or obligation imposed by this Chapter or under regulations made under this Chapter that is not otherwise described in this section is liable to a penalty of up to \$5,000 for each such failure. [Amended by P.L.2024-10]

§511. Liabilities to penalties.

- (1) Liability to a penalty under §510 does not arise if the person satisfies the Secretary or designated person that there is a reasonable justification for the failure.
- (2) For the purposes of this Chapter neither of the following is a reasonable excuse:
 - (a) that there is an insufficiency of funds to do something; or
 - (b) that a person relies upon another person to do something.
- (3) If a person had a reasonable excuse for a failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

§512. Assessment of penalties.

- (1) If a person becomes liable to a penalty under §510, the Secretary or designated person may assess the penalty and, if the penalty is assessed, must notify the person of the assessment.

- (2) An assessment of a penalty under §510(1), (2), (4), or (5) shall be made within the period of 12 months beginning with the date on which the person became liable to the penalty.
- (3) Assessment of a penalty under §510(3) must be made:
 - (a) within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of the Secretary or designated person; and
 - (b) within the period of 6 years beginning with the date on which the person became liable to the penalty.

§513. Right to appeal against penalties.

A person may appeal against a penalty assessment:

- (a) on the grounds that liability to a penalty under §510 does not arise; or
- (b) as to the amount of such a penalty.

§514. Procedure on appeal against penalty.

- (1) Notice of an appeal under §513 shall:
 - (a) be provided to the Secretary, in writing, before the end of the period of 30 days beginning with the date on which notification under §512 was provided; and
 - (b) set out the grounds of appeal.
- (2) On an appeal under §513(a) that is notified to the Secretary, the Secretary may confirm or cancel the assessment.
- (3) On appeal under §513(b) that is notified to the Secretary, the Secretary may confirm the assessment or substitute another assessment that the Secretary had power to make.
- (4) Subject to §514 and §515, the provisions of the Income Tax Act, 48 MIRC Chapter 1, relating to appeals shall apply in relation to appeals under §513 as they apply in relation to an appeal against a tax assessment.

§515. Enforcement of penalties.

- (1) A penalty under this Act shall be paid to the Ministry of Finance within 30 days after:
 - (a) the date on which notification under §512 is provided in respect of the penalty; or
 - (b) the date on which an appeal against a penalty assessment pursuant to §510 is finally determined or withdrawn.
- (2) If any amount in respect of a penalty is not paid by the due date described in subsection (1), interest on the amount owing shall be charged for the period during which that amount is outstanding.
- (3) The rate of interest charged under subsection (2) shall be 3% per annum.

§516. Anti-avoidance.

If a person enters into any arrangements or engages in a practice, the main purpose or one of the main purposes of which can reasonably be considered to be to avoid an obligation imposed under this Chapter or regulations made pursuant to this Chapter then the Chapter regulations have effect as if the person had not entered into the arrangement or engaged in the practice. [Amended by P.L.2024-10]

§517. Regulations.

The Minister may make any regulations that are necessary for carrying out the agreement, this Chapter, or for giving effect to any of the provisions of the agreement or this Chapter, including regulations:

- (a) requiring a reporting financial institution to file an information return on certain financial accounts held, managed, or administered by that reporting financial institution;
- (b) determining the date by which an information return shall be filed with the Secretary;
- (c) prescribing the manner in which an information return is to be filed;
- (d) specifying the information to be reported in an information return in relation to certain financial accounts and, where different information is to be reported for different years,

- specifying the information to be reported for each of those years;
- (e) requiring reporting financial institutions to identify certain financial accounts;
 - (f) specifying the records and documents that must be examined or the procedures to obtain records and documents by the reporting financial institution to enable the institution to identify certain financial accounts;
 - (g) specifying the records and documents used to identify certain financial accounts that must be retained by the reporting financial institution;
 - (h) setting out the conditions under which a reporting financial institution may appoint a third party as its agent to carry out the duties and obligations imposed on it by the regulations;
 - (i) in relation to any of the matters specified in the preceding paragraphs, determining the manner of keeping records and setting the period for the retention of records so kept;
 - (j) enabling the authorisation of designated persons requiring the production of books, records, or other documents and the provision of information in relation to financial accounts within such time as may be specified in the regulations; and
 - (k) generally to carry out the purposes and provisions of the agreement or this Chapter.

§518. Interpretation.

Any word or expression which has a meaning given to it by the Standard shall, where it is used in this Chapter or regulations made under this Chapter and unless the contrary intention appears, have the same meaning in this Chapter or those regulations as it has in the Standard.

§519 Effective Date

This Act shall take effect in accordance with the Constitution and the Rules of Procedures of the Nitijela.

