

**NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
39TH CONSTITUTION REGULAR SESSION, 2018**



Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

COUNTRY BY COUNTRY REPORTING ACT, 2018

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COUNTRY BY COUNTRY REPORTING ACT, 2018

AN ACT to implement country-by-country reporting in furtherance of the Republic of the Marshall Islands' international commitments as Chapter 6 of Title 48 of the Republic of the Marshall Islands Revised Code.

BE IT ENACTED BY THE NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS

§601. Short title.

This Act is cited as the Country-by-Country Reporting Act 2018.

§602. Definitions.

For purposes of this Chapter, the following terms have the following meanings unless the context otherwise requires:

- (a) "Group" means a collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange;
- (b) "MNE Group" means any Group that (i) includes two (2) or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction, and (ii) is not an Excluded MNE Group;

- (c) “Excluded MNE Group” means, with respect to any Fiscal Year of the Group, a Group having total consolidated group revenue of less than \$850 million during the Fiscal Year immediately preceding the Reporting Fiscal Year as reflected in its Consolidated Financial Statements for such preceding Fiscal Year;
- (d) “Constituent Entity” means (i) any separate business unit of an MNE Group that is included in the Consolidated Financial Statements of the MNE Group for financial reporting purposes, or would be so included if equity interests in such business unit of an MNE Group were traded on a public securities exchange; (ii) any such business unit that is excluded from the MNE Group’s Consolidated Financial Statements solely on size or materiality grounds; and (iii) any permanent establishment of any separate business unit of the MNE Group included in (i) or (ii) above provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes;
- (e) “Reporting Entity” means the Constituent Entity that is required to file a country-by-country report conforming to the requirements in §605 of this Chapter in its jurisdiction of tax residence on behalf of the MNE Group. The Reporting Entity may be the Ultimate Parent Entity, the Surrogate Parent Entity, or any entity described in subsection (2) of §603 of this Chapter;
- (f) “Ultimate Parent Entity” means a Constituent Entity of an MNE Group that meets the following criteria:
 - (i) it owns directly or indirectly a sufficient interest in one or more other Constituent Entities of such MNE Group such that it is required to prepare Consolidated Financial Statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence; and
 - (ii) there is no other Constituent Entity of such MNE Group that owns directly or indirectly an interest described in

paragraph (i) above in the first mentioned Constituent Entity;

- (g) “Surrogate Parent Entity” means one Constituent Entity of the MNE Group that has been appointed by such MNE Group, as a sole substitute for the Ultimate Parent Entity, to file the country-by-country report in that Constituent Entity’s jurisdiction of tax residence, on behalf of such MNE Group, when one or more of the conditions set out in paragraph (b) of subsection (2) of §603 of this Chapter applies;
- (h) “Fiscal Year” means an annual accounting period with respect to which the Ultimate Parent Entity of the MNE Group prepares its financial statements;
- (i) “Reporting Fiscal Year” means that Fiscal Year the financial and operational results of which are reflected in the country-by-country report defined in §605 of this Chapter;
- (j) “Qualifying Competent Authority Agreement” means an agreement (i) that is between authorised representatives of those jurisdictions that are parties to an International Agreement and (ii) that requires the automatic exchange of country-by-country reports between the party jurisdictions;
- (k) “International Agreement” shall mean the Multilateral Convention for Mutual Administrative Assistance in Tax Matters, any bilateral or multilateral Tax Convention, or any Tax Information Exchange Agreement to which the Republic is a party, and that by its terms provides legal authority for the exchange of tax information between jurisdictions, including automatic exchange of such information;
- (l) “Consolidated Financial Statements” means the financial statements of an MNE Group in which the assets, liabilities, income, expenses and cash flows of the Ultimate Parent Entity and the Constituent Entities are presented as those of a single economic entity;
- (m) “Systemic Failure” with respect to a jurisdiction means that a jurisdiction has a Qualifying Competent Authority Agreement in effect with the Republic, but has suspended automatic exchange (for reasons other than those that are in accordance with the terms of that Agreement) or otherwise persistently

failed to automatically provide to the Republic country-by-country reports in its possession of MNE Groups that have Constituent Entities in the Republic;

- (n) "Republic" means the Republic of the Marshall Islands; and
- (o) "Ministry" means the Ministry of Finance of the Republic.

§603. Filing obligation.

- (1) Each Ultimate Parent Entity of an MNE Group that is resident for tax purposes in the Republic shall file a country-to-country report conforming to the requirements of §605 of this Chapter with the Ministry with respect to its Reporting Fiscal Year on or before the date specified in §606 of this Chapter.
- (2) A Constituent Entity which is not the Ultimate Parent Entity of an MNE Group shall file a country-by-country report conforming to the requirements of §605 of this Chapter with the Ministry with respect to the Reporting Fiscal Year of an MNE Group of which it is a Constituent Entity, on or before the date specified in §606 of this Chapter, if the following criteria are satisfied:
 - (a) the entity is resident for tax purposes in the Republic; and
 - (b) one of the following conditions applies:
 - (i) the Ultimate Parent Entity of the MNE Group is not obligated to file a country-by-country report in its jurisdiction of tax residence; or
 - (ii) the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the Republic is a party but does not have a Qualifying Competent Authority Agreement in effect to which the Republic is a party by the time specified in §606 of this Chapter for filing the country-by-country report for the Reporting Fiscal Year; or
 - (iii) there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified by the Ministry to the Constituent Entity resident for tax purposes in the Republic.

Where there are more than one Constituent Entities of the same MNE Group that are resident for tax purposes in the

Republic and one or more of the conditions set out in paragraph (b) above apply, the MNE Group may designate one of such Constituent Entities to file the country-by-country report conforming to the requirements of §605 of this Chapter with Ministry with respect to any Reporting Fiscal Year on or before the date specified in §606 of this Chapter and to notify the Ministry that the filing is intended to satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in the Republic.

- (3) Notwithstanding the provisions of subsection (2) of this section, when one or more of the conditions set out in paragraph (b) of subsection (2) of this section apply, an entity described in subsection (2) of this section shall not be required to file a country-by-country report with Ministry with respect to any Reporting Fiscal Year if the MNE Group of which it is a Constituent Entity has made available a country-by-country report conforming to the requirements of §605 of this Chapter with respect to such Fiscal Year through a Surrogate Parent Entity that files that country-by-country report with the tax authority of its jurisdiction of tax residence on or before the date specified in §606 of this Chapter and that satisfies the following conditions:
- (a) the jurisdiction of tax residence of the Surrogate Parent Entity requires filing of country-by-country reports conforming to the requirements of §605 of this Chapter;
 - (b) the jurisdiction of tax residence of the Surrogate Parent Entity has a Qualifying Competent Authority Agreement in effect to which the Republic is a party by the time specified in §606 of this Chapter for filing the country-by-country report for the Reporting Fiscal Year;
 - (c) the jurisdiction of tax residence of the Surrogate Parent Entity has not notified the Ministry of a Systemic Failure;
 - (d) the jurisdiction of tax residence of the Surrogate Parent Entity has been notified in accordance with subsection (1) of §604 of this Chapter by the Constituent Entity resident for tax purposes in its jurisdiction that it is the Surrogate Parent Entity; and

- (e) a notification has been provided to Ministry in accordance with subsection (2) of §604 of this Chapter.

§604. Notification.

- (1) Any Constituent Entity of an MNE Group that is resident for tax purposes in the Republic shall notify the Ministry whether it is the Ultimate Parent Entity or the Surrogate Parent Entity, no later than the last day of the Reporting Fiscal Year of such MNE Group.
- (2) Where a Constituent Entity of an MNE Group that is resident for tax purposes in the Republic is not the Ultimate Parent Entity nor the Surrogate Parent Entity, it shall notify the Ministry of the identity and tax residence of the Reporting Entity, no later than the last day of the Reporting Fiscal Year of such MNE Group.

§605. Country-by-country report.

- (1) For purposes of this Chapter, a country-by-country report with respect to an MNE Group is a report containing:
 - (a) aggregate information relating to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE Group operates; and
 - (b) an identification of each Constituent Entity of the MNE Group setting out the jurisdiction of tax residence of such Constituent Entity, and where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such Constituent Entity is organised, and the nature of the main business activity or activities of such Constituent Entity.
- (2) The country-by-country report shall be filed in a form identical to and applying the definitions and instructions contained in the standard template set out at Annex III of the Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report published by the OECD.

§606. Timing for filing.

The country-by-country report required by this Chapter shall be filed no later than 12 months after the last day of the Reporting Fiscal Year of the MNE Group.

§607. Use and confidentiality of country-by-country report information.

- (1) The Ministry shall use the country-by-country report for purposes of assessing high-level transfer pricing risks and other base erosion and profit shifting related risks in the Republic, including assessing the risk of non-compliance by members of the MNE Group with applicable transfer pricing rules, and where appropriate for economic and statistical analysis. Transfer pricing adjustments by the Ministry will not be based on the country-by-country report.
- (2) The Ministry shall preserve the confidentiality of the information contained in the country-by-country report at least to the same extent that would apply if such information were provided to it under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

§608. Penalties.

Any person who fails to comply with any obligation under this Chapter commits an offense and, upon conviction, is liable to a fine not exceeding \$10,000, to imprisonment for a term not exceeding six (6) months, or to both.

§609. Effective date.

This Chapter is effective for Reporting Fiscal Years of MNE Groups beginning on or after January 1, 2019.

CERTIFICATE

I hereby certify:

1. That Nitijela Bill No: 143 was passed by the Nitijela of the Republic of the Marshall Islands on the 2nd day of November 2018; and
2. That I am satisfied that Nitijela Bill No: 143 was passed in accordance with the relevant provisions of the Constitution of the Republic of the Marshall Islands and the Rules of Procedures of the Nitijela.

I hereby place my signature before the Clerk this 22nd day of November 2018.



Hon. Kenneth A. Kedi
Speaker
Nitijela of the Marshall Islands

Attest:



Morean S. Watak
Clerk
Nitijela of the Marshall Islands