

**CHAPTER 4.****TAX INFORMATION EXCHANGE AGREEMENT (IMPLEMENTATION) ACT**

## ARRANGEMENT OF SECTIONS

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An Act to provide for implementation of the Tax Information Exchange Agreement between the Government of the Republic of the Marshall Islands and the Government of the United States of America.

Commencement: September 18, 1989  
 Source: P.L. 1989-64

**§401. Short title.**

This Act may be cited as the "Tax Information Exchange Agreement (Implementation) Act of 1989". [P.L. 1989-64, §1.]

**§402. Definitions.**

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

- (a) "the Agreement" means the Agreement between the Government of the Republic of the Marshall Islands and the Government of the United States of America for the Exchange of Information With Respect to Taxes and accompanying diplomatic notes substantially in the form of that presented to the Nitijela in connection with its consideration of this Act;
- (b) "Article" means an Article of the Agreement;
- (c) "business" includes any profession or trade;
- (d) "document" includes any book, paper, statement, account, writing or record, and any device by means of which material is recorded or stored;
- (e) "information" includes any documents or any other data received by, recorded by, prepared by, furnished to, or collected by employees of the Internal Revenue Service in the

case of the Government of the United States of America and by employees of the Ministry of Finance in the case of the Government of the Republic of the Marshall Islands;

- (f) “judge” means a Justice of the High Court;
- (g) “the Minister” has the meaning given by Subsection (2) of this Section;
- (h) “premises” includes any place whatsoever and any means of transport;
- (i) “regulation” means a regulation made under Section 412 of this Act; and
- (j) “request” means an application made, pursuant to the first sentence of Article 5 of the Agreement, for assistance.

(2) In this Act, a reference to “the Minister” means the Minister of Finance, or such person, being an officer or servant, or an agency, of the Government of the Republic of the Marshall Islands, as the Minister may designate to perform (with or without a duty to refer back to the Minister) the function in his stead as his delegate.

(3) A reference in this Act to the performance of a function includes reference to the performance of a duty or the exercise of a power or right. [P.L. 1989-64, §2. Reference to “Article “ in Subsection (1)(j) was changed making reference to the “Agreement “ for purposes of clarification.]

#### **§403. Legal effect of this Act.**

(1) This Act has effect for the purpose of enforcing the giving of assistance by persons in the Republic of the Marshall Islands in connection with the performance of the obligations assumed by the Government of the Republic of the Marshall Islands under the Agreement.

(2) The Minister, in performing his functions under this Act, is not restricted by any law or rule of law relating to confidentiality of information held by any person, except as expressly provided in the Agreement. [P.L. 1989-64, §3.]

#### **§404. Procedure in respect of a request.**

(1) A request must be in writing.

(2) A request must be signed by an official designated by the Government of the United States of America.

(3) A request shall contain particulars indicating:

(a) that by the request the Government of the United States seeks information identified in the request;

(b) that a person in the Republic of the Marshall Islands has or may have that information in his possession, custody or control;

(c) that the information relates to the carrying Out of the laws of the United States of America mentioned in Article 2 of the Agreement;

(d) that the information relates to the affairs of a taxpayer in respect of whom the request has been made under the Agreement;

(e) that the United States of America has a valid tax purpose in making the request;

(f) whether or not the taxpayer about whom the request is made is a resident of the United States of America or of the Republic of the Marshall Islands; and

(g) the period under examination by the Government of the United States of America, the period covered by the request, and that the period of the request relates to the period under examination. [P.L. 1989-64, §4.][ Reference to “Article” in Subsection (3)(c) was modified by reference to the “Agreement “for purposes of clarification.]

**§405. Power to require production of information.**

(1) Subject to this Section, where the Minister has received a request with respect to which the requirements of Section 404 of this Act are fulfilled, he shall by notice in writing under this Section served upon the person referred to in Section 404(3)(b) of this Act, direct him to deliver to the Minister the information referred to in that Paragraph.

(2) A notice under this Section must:

(a) specify the information requested and the period for which it has been requested; and

(b) specify the time within which the information sought by the request is to be delivered to the Minister.

(3) The time to respond specified in such a notice must be at least twenty-eight (28) days commencing on the day on which the notice was served, or such lesser number of days as the Minister may require.

(4) Subject to Subsections (5) and (6) of this Section, a person who is directed by such a notice to provide information to the Minister shall provide it to the Minister in accordance with the notice if he has the information in his possession, custody or control.

(5) A person complies with a duty under this Section to provide information to the Minister if he makes the information available to him.

(6) After a notice has been served, the Minister may in any case enlarge the time specified in the notice, either before or after that time has expired, if in his opinion the circumstances warrant.

(7) A direction given in a notice under this Section to a person is an absolute defense to any claim brought against him in respect of any act of his that was done, or any omission of his that was made, in good faith, in obedience to the direction.

(8) Any person receiving such a notice shall have the right to commence an action, not later than twenty (20) days after the day such notice was given, to challenge production of the requested action on any appropriate basis recognized by any law or rule of law. However, the fact that information was received in a confidential relationship (other than one described in the Agreement) shall not constitute an appropriate basis for failing to produce information. [P.L. 1989-64, §5. Grammatical changes were made to Subsection (1).]

**§406. Power to enter premises to obtain information.**

(1) An officer of the Department of Public Safety may make an application to a judge under and in accordance with the provisions of this Section for the issuance of a warrant authorizing entry upon premises.

(2) An officer of the Department of Public Safety who makes such an application must produce a minute signed by the Minister himself authorizing the officer to make the application in that particular case.

(3) If on information given on oath by such an officer, a judge is satisfied that there is a reasonable ground for suspecting that an offense against this Act has been, is being, or is about to be committed on any premises, being an offense by reason of which the supply to the Minister of information sought by a request is endangered, then the judge may issue a warrant in writing authorizing the officer to enter the premises, if necessary by force, at any time within fourteen (14) days commencing on the day of the issuance of the warrant, and search such premises.

(4) In issuing a warrant under this Section, the judge may impose such restrictions upon the

execution of the warrant as he may deem proper in the circumstances.

(5) An officer entering premises by virtue of this Section may take such other persons and equipment with him as he thinks necessary; and on leaving the premises entered by virtue of a warrant under this Section, shall, if they are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.

(6) On entering premises by virtue of this Section, the officer may seize and remove any things, whatsoever, found there which he has reasonable cause to believe may contain information sought by the request and shall deliver any things so seized and removed to the Minister.

(7) Where entry to premises has been made with a warrant under this Section and the officer making the entry has seized any things under the authority of the warrant, he shall prepare a list of them, and if so requested by a person showing himself either to be the occupier of the premises, or to have had possession or custody of those things immediately before the seizure, provide that person with a copy of the list.

(8) Where things are seized under the authority of a warrant and it is shown that access to those things is required for the continued conduct of the business or affairs of any person, the Minister shall afford to that person reasonable access to those things. [P.L. 1989-64, §6. Grammatical changes were made to Subsection (3) and the format of Subsection (7) was changed for consistency with the format and style of the Code.]

#### **§407. Supplementing provisions to Section 406.**

Where the Minister obtains material by virtue of Section 406 of this Act, he shall:

(1) in any event, for twenty (20) days commencing on the day on which he obtained the material, unless he returns it pursuant to Subsection (3) of this Section, not disclose or reveal to any person the contents or import of the material and, in particular, if the material in his opinion contains information sought by a request, not, as respects that material, comply with the request, except that the Minister may shorten the twenty (20) day period if in his opinion the requested material is needed by the Government of the United States of America before the expiration of twenty (20) days and the interests of justice require the speedy transmission of the requested information;

(2) if the material in his opinion contains information sought by a request, be entitled to make copies of it and keep them and also make them available to others in furtherance of the request; and

(3) whether or not the material contains information sought by a request, return the material as soon as practicable to the person from whom he obtained it. [P.L. 1989-64, §7.]

#### **§408. Service of Documents.**

(1) A document to be served under this Act by one person (“the server”) on another person (“the subject”) is to be treated as properly served on the subject if dealt with as provided for in this Section.

(2) The document may be delivered or sent by mail to the subject or addressed to him by name and left at his proper address.

(3) For the purposes of Subsection (2) of this Section, a document sent by mail to, or left at, the address last known to the server as a person’s address shall be treated as sent by mail to or left at his proper address.

(4) References in this Section to the serving of a document on a person include the giving of the document to him. [P.L. 1989-64, §8.]

**§409. Offenses.**

- (1) A person who:
  - (a) contravenes Subsection 405(4) of this Act; or
  - (b) willfully obstructs an officer executing a warrant under Section 406 of this Act or a person lawfully accompanying him pursuant to Subsection 406(5) of this Act, is guilty of a criminal offense.
- (2) If any person, in or in connection with delivering information pursuant to Subsection 405(4) of this Act, willfully tampers with it or alters it so that the information is false when received by the Minister, he is guilty of a criminal offense.
- (3) If any person without a reasonable excuse destroys or damages any information which he knows that the Minister by a notice under Section 405 of this Act has directed should be provided to the Minister, he is guilty of an offense.
- (4) A person guilty of a criminal offense may be proceeded against summarily and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding five thousand dollars (US \$5,000), or both. [P.L. 1989-64, §9. Modifications made to Subsections (1) and (4) for clarity.]

**§410. Depositions, etc.**

- (1) Where a request so stipulates, the Minister shall obtain information sought by the request in the form of:
  - (a) depositions of witnesses;
  - (b) copies of documents (including books, papers, statements, records, accounts and writings); or
  - (c) in any other form or in any other manner specified in the Agreement, including those listed in Article 4, Paragraph 5 of the Agreement.
- (2) Regulations shall be made conferring such functions on such persons as the regulations may specify, so that full effect can be given to Subsection (1) of this Section. [P.L. 1989-64, §10. Reference to "Article" in Subsection (1)(c) was modified by reference to the "Agreement" for purposes of clarification.]

**§411. Judicial review.**

For the avoidance of any doubt, it is hereby declared that nothing in this Act excludes or restricts the right of any person aggrieved by the performance of the Minister or any other person of any function under this Act to challenge the performance of that function, insofar as it affects him, by seeking review of it by the High Court. [P.L. 1989-64, §11.]

**§412. Regulations.**

- The Cabinet may make regulations:
- (1) prescribing anything that is required or permitted by this Act to be prescribed, or that is in the opinion of the Cabinet necessary or convenient to be prescribed for carrying out this Act or giving effect to it;
  - (2) prescribing the conditions, methods and techniques for providing the information and assistance necessary to carry out the fiscal laws of the respective covered jurisdictions; and
  - (3) creating offenses and prescribing penalties (including if thought fit, imprisonment) for such offenses but not exceeding the penalties fixed by Section 409 of this Act. [P.L. 1989-64, §12.]

