



Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION ACT 2016

Sponsored by:

HON. MINISTER BRENSON S. WASE

Approved:

HON. SPEAKER KENNETH A. KEDI /s/

**NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
37TH CONSTITUTIONAL REGULAR SESSION, 2016**



Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

**AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT
INFORMATION ACT 2016**

Index

Section **Page**

**AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION
ACT 2016** **1**

BILL NO.48 **ERROR! BOOKMARK NOT DEFINED.**

§501.	Short title.	5
§502.	Interpretation.	5
§503.	Objectives.	7
§504.	Powers of the Minister.....	7
§505	Agreement – force of law.	7
§506.	Inconsistent laws.	7
§507.	Information returns by financial institutions.	8
§508.	Functions and powers of the Secretary	8
§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.....	11
§516.	Anti-avoidance.....	12
§517.	Regulations.....	12
§518.	Interpretation.	13
§519	Effective Date	13

1

**NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
37TH CONSTITUTIONAL REGULAR SESSION, 2016**

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Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

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**AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT
INFORMATION ACT 2016**

5

A BILL FOR 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.

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

9

§501. Short title.

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

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§502. Interpretation.

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

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(a) **“agreement”** means:

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(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

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- 1 (ii) any other agreement or arrangement between the
2 Government of the Republic of the Marshall Islands and
3 the government of another country which makes
4 provisions corresponding, or substantially similar, to
5 that made by the agreement referred to in paragraph
6 (1)(a)(i), including an intergovernmental agreement
7 between the Government of the Republic of the
8 Marshall Islands and the Government of the United
9 States of America to implement FATCA;
- 10 (b) “**designated person**” means, with respect to any function,
11 the person of the Ministry of Finance designated to carry out
12 that function;
- 13 (c) “**FATCA**” means the provisions commonly known as the
14 Foreign Account Tax Compliance Act, within the United States
15 of America Hiring Incentives to Restore Employment Act;
- 16 (d) “**information return**” means a report, setting out certain
17 information as specified by regulations made under this
18 Chapter, which a reporting financial institution is required to
19 file with the Secretary;
- 20 (e) “**Minister**” means the Minister of Finance or his designee,
21 including but not limited to the Secretary of Finance;
- 22 (f) “**Secretary**” means the Secretary of Finance;
- 23 (g) “**Standard**” or “**CRS**” means the Common Reporting
24 Standard, including the Commentaries thereon, approved by
25 the Council of the Organisation for Economic Co-operation
26 and Development on 15 July 2014, which contains reporting
27 and due diligence procedures for the exchange of information
28 on an automatic basis, as amended from time to time.
- 29 (2) In this Chapter, “**financial account**” has the meaning given that
30 expression by Section VIII of the Standard.
- 31 (3) For the purposes of this Chapter, the Standard is to be read as if the
32 definition “**Reporting Financial Institution**” in subparagraph A(1) of
33 Section VIII of the Standard read as follows:
- 34 (4) The term “**Reporting Financial Institution**” means any Republic of
35 the Marshall Islands Financial Institution that is not a non-reporting
36 financial institution. The term “**Republic of the Marshall Islands**

1 **Financial Institution**” means: (i) any Financial Institution that is
2 resident in Republic of the Marshall Islands, but excludes any branch
3 of that Financial Institution that is located outside of Republic of the
4 Marshall Islands; and (ii) any branch of a Financial Institution that is
5 not resident in Republic of the Marshall Islands, if that branch is
6 located in Republic of the Marshall Islands.

7

8 **§503. Objectives.**

9 The objectives of this Chapter are:

- 10 (a) to provide for the implementation of the CRS and automatic
11 exchange of information between the Government of the
12 Republic of the Marshall Islands and any other government
13 with which it reached an agreement;
- 14 (b) to provide for the implementation of the Republic of the
15 Marshall Islands FATCA agreement with the United States of
16 America; and
- 17 (c) otherwise to facilitate the automatic exchange of information
18 between the Government of the Republic of the Marshall
19 Islands and other foreign governments.

20 **§504. Powers of the Minister.**

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

23 **§505 Agreement – force of law.**

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

26 **§506. Inconsistent laws.**

27 In the event of any inconsistency between the provisions of this Chapter or
28 an agreement and the provisions of any other law, the provisions of this
29 Chapter or the agreement prevail to the extent of the inconsistency.
30

1 **§507. Information returns by financial institutions.**

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

5 **§508. Functions and powers of the Secretary**

6 (1) The Secretary, subject to the general directions of the Minister, shall
7 generally administer and enforce compliance with the provisions of
8 the agreement, this Chapter, and any regulations made pursuant to
9 this Chapter.

10 (2) The Secretary may exercise all powers vested in him or her under
11 Title 48 of the Marshall Islands Revised Code, the tax laws of the
12 Republic of the Marshall Islands, to administer and enforce
13 compliance with the provisions of the agreement, this Chapter, and
14 any regulations made pursuant to this Chapter.

15 (3) The Secretary may delegate, in writing, to any designated person any
16 power or duty conferred on the Secretary by this Chapter.

17 (4) The Secretary or any designated person may request information
18 from and, at all reasonable times, enter any premises or place of
19 business of a reporting financial institution for the purposes of:

20 (a) determining whether information:

21 (i) included in an information return made under the
22 regulations by the reporting financial institution is
23 correct and complete; or

24 (ii) not included in an information return was correctly not
25 included; or

26 (b) examining the procedures put in place by the reporting
27 financial institution for the purposes of ensuring compliance
28 with that institution's obligations under this Chapter and the
29 regulations.

30 **§509. Confidentiality.**

31 (1) The Income Tax Act, 48 MIRC Chapter 1, Banking Act, 17 MIRC
32 Chapter 1, or any other law relating to confidentiality shall not apply
33 to the disclosure of information by a reporting financial institution to

1 the Secretary that is required to be included in an information return
2 filed under this Chapter or the regulations made pursuant to this
3 Chapter and, accordingly, this section shall apply to information to
4 which, but for this subsection, the said Acts or other law would
5 apply.

6 (2) Every person – having an official duty or being employed in the
7 administration or enforcement of this Chapter or the regulations
8 made under this Chapter or any person who formerly had a duty or
9 was formerly so employed in the administration or enforcement of
10 this Chapter or the regulations made under this Chapter – shall treat
11 information received from a reporting financial institution under this
12 Chapter or those regulations as confidential and shall only disclose
13 such information as may be necessary for the purpose of the
14 administration or enforcement of the agreement, this Chapter, or
15 under those regulations.

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

22 §510. Penalties.

23 (1) Every person who fails to comply with a duty or obligation imposed
24 by this Chapter or under regulations made pursuant to this Chapter
25 is liable to a penalty of \$500 for each such failure, and the product
26 obtained when \$25 is multiplied by the number of days, not
27 exceeding 30 days, during which the failure continues.

28 (2) Every reporting financial institution who fails to file an information
29 return as and when required under this Chapter or under the
30 regulations made under this Chapter is liable to a penalty of \$500 for
31 each such failure.

32 (3) Every person who makes a false statement or omission in respect of
33 any information required to be included on an information return,
34 under this Chapter or under the regulations made under this
35 Chapter, is liable to a penalty of \$500 for each such failure, unless in
36 the case of information required in respect of another person, a

1 reasonable effort was made by the person to obtain the information
2 from the other person.

3 (4) Every reporting financial institution that fails to file an information
4 return in the manner required under this Chapter or under the
5 regulations made pursuant to this Chapter is liable to a penalty of
6 \$500 for each such failure.

7 (5) Every person who does not comply with the requirement of the
8 Secretary or a designated person in the exercise or performance of the
9 Secretary or designated person's powers or duties under this Chapter
10 or under any regulations made under this Chapter is liable to a
11 penalty of \$500 for each such failure.

12 **§511. Liabilities to penalties.**

13 (1) Liability to a penalty under §510 does not arise if the person satisfies
14 the Secretary or designated person that there is a reasonable
15 justification for the failure.

16 (2) For the purposes of this Chapter neither of the following is a
17 reasonable excuse:

18 (a) that there is an insufficiency of funds to do something; or

19 (b) that a person relies upon another person to do something.

20 (3) If a person had a reasonable excuse for a failure but the excuse has
21 ceased, the person is to be treated as having continued to have the
22 excuse if the failure is remedied without unreasonable delay after the
23 excuse ceased.

24 **§512. Assessment of penalties.**

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

28 (2) An assessment of a penalty under §510(1), (2), (4), or (5) shall be made
29 within the period of 12 months beginning with the date on which the
30 person became liable to the penalty.

31 (3) Assessment of a penalty under §510(3) must be made:

- 1 (a) within the period of 12 months beginning with the date on which the
2 inaccuracy first came to the attention of the Secretary or designated
3 person; and
- 4 (b) within the period of 6 years beginning with the date on which the
5 person became liable to the penalty.
6

7 **§513. Right to appeal against penalties.**

8 A person may appeal against a penalty assessment:

- 9 (a) on the grounds that liability to a penalty under §510 does not
10 arise; or
11 (b) as to the amount of such a penalty.
12

13 **§514. Procedure on appeal against penalty.**

- 14 (1) Notice of an appeal under §513 shall:
- 15 (a) be provided to the Secretary, in writing, before the end of the
16 period of 30 days beginning with the date on which
17 notification under §512 was provided; and
18 (b) set out the grounds of appeal.
- 19 (2) On an appeal under §513(a) that is notified to the Secretary, the
20 Secretary may confirm or cancel the assessment.
- 21 (3) On appeal under §513(b) that is notified to the Secretary, the
22 Secretary may confirm the assessment or substitute another
23 assessment that the Secretary had power to make.
- 24 (4) Subject to §514 and §515, the provisions of the Income Tax Act, 48
25 MIRC Chapter 1, relating to appeals shall apply in relation to appeals
26 under §513 as they apply in relation to an appeal against a tax
27 assessment.
28

29 **§515. Enforcement of penalties.**

- 30 (1) A penalty under this Act shall be paid to the Ministry of Finance
31 within 30 days after:

- 1 (a) the date on which notification under §512 is provided in
2 respect of the penalty; or
- 3 (b) the date on which an appeal against a penalty assessment
4 pursuant to §510 is finally determined or withdrawn.
- 5 (2) If any amount in respect of a penalty is not paid by the due date
6 described in subsection (1), interest on the amount owing shall be
7 charged for the period during which that amount is outstanding.
- 8 (3) The rate of interest charged under subsection (2) shall be 3% per
9 annum.
10

11 **§516. Anti-avoidance.**

12 If a person enters into any arrangements or engages in a practice, the main
13 purpose or one of the main purposes of which can reasonably be considered
14 to be to avoid an obligation imposed under this Chapter or regulations
15 made pursuant to this Chapter, the person is subject to the obligation as if
16 the person had not entered into the arrangement or engaged in the practice.
17

18 **§517. Regulations.**

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

- 22 (a) requiring a reporting financial institution to file an information
23 return on certain financial accounts held, managed, or
24 administered by that reporting financial institution;
- 25 (b) determining the date by which an information return shall be
26 filed with the Secretary;
- 27 (c) prescribing the manner in which an information return is to be
28 filed;
- 29 (d) specifying the information to be reported in an information
30 return in relation to certain financial accounts and, where
31 different information is to be reported for different years,
32 specifying the information to be reported for each of those
33 years;

- 1 (e) requiring reporting financial institutions to identify certain
2 financial accounts;
- 3 (f) specifying the records and documents that must be examined
4 or the procedures to obtain records and documents by the
5 reporting financial institution to enable the institution to
6 identify certain financial accounts;
- 7 (g) specifying the records and documents used to identify certain
8 financial accounts that must be retained by the reporting
9 financial institution;
- 10 (h) setting out the conditions under which a reporting financial
11 institution may appoint a third party as its agent to carry out
12 the duties and obligations imposed on it by the regulations;
- 13 (i) in relation to any of the matters specified in the preceding
14 paragraphs, determining the manner of keeping records and
15 setting the period for the retention of records so kept;
- 16 (j) enabling the authorisation of designated persons requiring the
17 production of books, records, or other documents and the
18 provision of information in relation to financial accounts
19 within such time as may be specified in the regulations; and
- 20 (k) generally to carry out the purposes and provisions of the
21 agreement or this Chapter.
22

23 **§518. Interpretation.**

24 Any word or expression which has a meaning given to it by the Standard
25 shall, where it is used in this Chapter or regulations made under this
26 Chapter and unless the contrary intention appears, have the same meaning
27 in this Chapter or those regulations as it has in the Standard.
28

29 **§519. Savings**

30 The provision of this Chapter shall not repeal, modify, or otherwise impact
31 the provisions of the Tax Information Exchange Agreement Act 2010, 48
32 MIRC Chapter 4 or the Tax Information Agreement (Implementation) Act
33 1989, 41 MIRC Chapter 4.

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§520. Effective Date

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

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NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
37TH CONSTITUTIONAL REGULAR SESSION, 2016

**AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT
INFORMATION ACT 2016**

BILL SUMMARY

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

The Republic of the Marshall Islands (“RMI”) is a member of the Organization for Economic Cooperation and Development (“OECD”) Global Forum and has committed to the new international standard of automatic exchange of information (“AEOI”). The proposed bill will establish the necessary legislative framework to allow the RMI to meet its commitment with regard to AEOI and, more generally, its international obligations regarding tax transparency.

The proposed bill is adapted from sample legislation drafted by the OECD Global Forum. As recommended by the Global Forum, the proposed bill provides a broad legislative framework that will be further developed through regulations. The stated objectives include implementation of the AEOI standards as well as implementation of an intergovernmental agreement with the United States pursuant to the Foreign Account Tax Compliance Act (otherwise known as “FATCA”).

The proposed bill requires reporting financial institutions to “collect and report certain information in respect of certain financial accounts” as specified in regulations. It grants the Secretary of Finance the authority to administer and enforce compliance with its provisions, and further contains applicable confidentiality and penalty provisions.

As an active member of the international community that has committed to AEOI, the RMI is obligated to take steps to implement AEOI, including the adoption of a legislative framework. By adopting the proposed bill the RMI will honor its

1 commitment to AEOI, and remain in good standing with both the OECD Global
2 Forum and the international community as a whole.

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1 NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
2 37TH CONSTITUTIONAL REGULAR SESSION, 2016

**AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT
INFORMATION ACT 2016**

3 **SIGNATURES**

4 **DATE:** *_AUG 22 16* **INTRODUCED BY** *_HON MIN MATTLAN ZACKHRAS_**JS/*

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