

No. 4 of 2022

VIRGIN ISLANDS
MUTUAL LEGAL ASSISTANCE (TAX MATTERS)
(AMENDMENT) ACT, 2022
ARRANGEMENT OF SECTIONS

SECTION

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No. 4 of 2022

**Mutual Legal Assistance (Tax Matters)
(Amendment) Act, 2022**

**Virgin
Islands**

I ASSENT



Governor.

1 June, 2022



VIRGIN ISLANDS

No. 4 of 2022

AN ACT TO AMEND THE MUTUAL LEGAL ASSISTANCE (TAX MATTERS) ACT, REVISED EDITION 2020.

[Gazetted _____, 2022]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title

1. This Act may be cited as the Mutual Legal Assistance (Tax Matters) (Amendment) Act, 2022.

Long title amended

2. The Mutual Legal Assistance (Tax Matters) Act, Revised Edition 2020, (hereinafter referred to as the Principal Act) is amended by deleting the long title and replacing it with the following:

“AN ACT TO MAKE PROVISION FOR GIVING EFFECT TO THE TERMS OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, INCLUDING THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS, FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES, AND ANY SIMILAR AGREEMENT TO WHICH THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS IS A PARTY, FOR GIVING EFFECT TO THE COMMON REPORTING STANDARD, THE FOREIGN ACCOUNT TAX COMPLIANCE ACT AS IT RELATES TO THE MODEL 1 INTERGOVERNMENTAL AGREEMENT ENTERED INTO BETWEEN THE UNITED STATES OF AMERICA AND THE BRITISH VIRGIN ISLANDS, THE BASE EROSION AND PROFIT SHIFTING ACTION 13: COUNTRY-BY-COUNTRY REPORTING, AND ALL MATTERS CONNECTED THEREWITH.”

Section 2 amended

3. The principal Act is amended in section 2 by deleting the definition of “Authority” and replacing it with the following:

““Authority” means the International Tax Authority established under section 3 of the International Tax Authority Act, Revised Edition 2020;”

Section 4 amended

4. The principal Act is amended in section 4

- (a) in subsection (1), by deleting the words “Financial Secretary” and replacing it with the words “International Tax Authority”; and
- (b) by deleting subsections (2) and (3).

Section 5 amended

5. The principal Act is amended in section 5 by deleting subsection (1) and replacing it with the following subsection:

“(1) The Authority may, for the purposes of complying with a request, by notice in writing, require any person or entity, including but not limited to any person or entity acting as a nominee or trustee or in an agency or fiduciary capacity, to provide such information as may be specified in the notice, provided that the person or entity is reasonably believed to be in the possession or control of the information to which the notice relates.”.

Section 7 amended

6. The principal Act is amended in section 7

- (a) by deleting subsection (1) and substituting with the following:

“(1) Where the competent authority of a requesting party requests that its Representative interview, or examine the records of, a person in the Virgin Islands and the person concerned notifies the Authority, in writing, that he consents to the interview or examination, the Representative may interview, or examine the records of, the person in the Virgin Islands at such time and place as are agreed upon, in writing, by the Authority and the person concerned.”;

- (b) by inserting after subsection (1) the following new subsection:

“(1A) The Authority may conduct an interview or examination of any person in the Virgin Islands at such time and place as prescribed by the Authority.”;

- (c) by deleting subsection (2) and substituting the following:

“(2) In conducting an interview or examination under subsection (1) or (1A), a Representative or the Authority may

- (a) take statements from the person being interviewed; or

- (b) with the consent of the person being interviewed, make copies, or take extracts from, any record.”;
- (d) in subsection (4) by inserting the words “or the Authority” after the words “a Representative”;
- (e) in subsection (5) by inserting the words “or the Authority” after the words “a Representative”; and
- (f) in subsection (6) by inserting the words “or a member of the Authority” after the words “a Representative”.

Section 10 amended

7. The principal Act is amended by repealing section 10 and replacing it with the following section:

“Service of documents

10. (1) For the purpose of this Part and the Agreement, the service of a notice or document shall be sufficient

- (a) in the case of a Company, by addressing the notice or document to the Company and delivering same by hand, or sending it by registered post or by any other way allowed by any enactment, to the Company’s registered office or the office of the Company’s registered agent;
- (b) in the case of a body corporate or any association of persons, by delivering same by hand, or sending the notice or document, by registered post or by any other way allowed by an enactment, to the registered or principal office of the body corporate or association of persons;
- (c) in the case of a limited partnership, by delivering the document or notice to the office of the registered agent of the limited partnership or by delivering the document to the general partner;
- (d) in the case of an individual, service of the notice or document may be effected either by
 - (i) personal service;
 - (ii) registered post;
 - (iii) direct delivery; or
 - (iv) any other way allowed by an enactment,
 to the usual or last known place of abode or business of the addressee.

(2) For the purpose of subsection (1), where a document or notice is required to be sent by post, service of the document or notice may be effected by properly addressing the document or notice to the addressee

on whom the document or notice is to be served and posting an envelope containing the document or notice to the address for service.

(3) For the purpose of subsection (1), where a document is required to be sent to the registered or principal office address of the addressee, service of the document or notice may be effected by delivering the document or notice to the secretary or clerk of the registered or principal office.

(4) Where a document is served by

- (a) post, the document shall, unless the contrary is proved, be deemed to have been served at the time when the enveloped would have been received in the ordinary course of post;
- (b) personal service, the document is considered served, at the time when the document is received by the person on whom it is served, whether or not receipt of the document has been signed for;
- (c) direct delivery, the document is considered served on the secretary or clerk at the time when the secretary or clerk receives it, whether or not a receipt of the document has been signed for.

(5) For the purpose of this Part and the Agreement, where proof of service of a notice or document is required, an affidavit of service of the delivery of the notice or document made by the person who served the notice or document shall be deemed sufficient.”.

Section 10A inserted

8. The principal Act is amended by inserting after section 10, the following new section:

“Service of overseas documents in the Virgin Islands

10A (1) Where the competent authority of a requesting party requests that the Authority serve upon the addressee documents, including those relating to judicial decisions, which emanate from the requesting states and which relate to taxes covered by the Agreement, the Authority may

- (a) cause the document to be served by post;
- (b) where a particular method is requested by the requesting state, cause the document to be served in the particular method or the closest to such method available under the laws of the Virgin Islands; or
- (c) where a request is made for personal service, cause the document to be served by a member of the Authority or request the assistance of the Commissioner of Police to cause it to be personally served on the addressee.

(2) Where the assistance of the Commissioner of Police is requested under this section to cause any document to be served,

- (a) he shall after it has been served forthwith inform the Authority, in writing when and how it was served and, where possible, furnish the Authority with a receipt signed by the person on whom it was served; and
- (b) if the Commissioner of Police has been unable to cause the document to be served, he shall forthwith inform the Authority of that fact and of the reason.

(3) Where proof of service is required, then an affidavit made by the person who served the document, shall be deemed sufficient of such proof.

(4) An affidavit under subsection (3) should contain though not limited to, an exhibited copy of the document, details of the method of service used and the date and time when service was effected.”.

Part II repealed and replaced

9. The principal Act is amended by repealing PART II and replacing it with the following:

“PART II

FOREIGN ACCOUNT TAX COMPLIANCE ACT AS IT RELATES TO THE MODEL 1
INTERGOVERNMENTAL AGREEMENT ENTERED INTO BETWEEN THE UNITED STATES
OF AMERICA AND THE BRITISH VIRGIN ISLANDS

Interpretation for Part II

11. (1) In this Part, unless the context otherwise requires

“Active NFFE” means any NFFE that meets any of the following criteria

- (a) less than fifty percent of the NFFE’s gross income for the preceding calendar year or other appropriate reporting period is passive income and less than fifty percent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
- (b) the stock of the NFFE is regularly traded on an established securities market or the NFFE is a related Entity of an Entity the stock of which is traded on an established securities market;
- (c) the NFFE is organised in a United States territory and all of the owners of the payee are bona fide residents of that United States territory;
- (d) the NFFE is a government, a political subdivision of a government (which includes a state, province, county or municipality), an international organisation, a non-U.S. central bank of issue, or an entity wholly owned by one or more of the foregoing;
- (e) substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries

that engage in trades or businesses other than the business of a Financial Institution, except that an entity shall not qualify as an NFFE status if the entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;

- (f) the NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFFE shall not qualify for this exception after the date that is twenty-four months after the date of the initial organisation of the NFFE;
- (g) the NFFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- (h) the NFFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing and hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution;
- (i) the NFFE is an “excepted NFFE” as described in relevant United States Treasury Regulations; or
- (j) the NFFE meets all of the following requirements
 - (i) it is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes;
 - (ii) it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
 - (iii) it is exempt from income tax in its jurisdiction of residence;
 - (iv) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
 - (v) the applicable laws of the NFFE’s jurisdiction of residence or the NFFE’s formation documents do not permit any income or assets of the NFFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFFE’s charitable activities, or as payment of reasonable

compensation for services rendered, or as payment representing the fair market value of property which the NFFE has purchased; and

- (vi) the applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents require that, upon the NFFE's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organisation, or escheat to the government of the NFFE's jurisdiction of residence or any political subdivision thereof;

"Agreement" means the Agreement entered into between the Government of the British Virgin Islands and the Government of the United States of America to improve International Tax Compliance and to implement FATCA, signed on 30th June, 2014;

"Competent Authority" means the International Tax Authority established under section 3 of the International Tax Authority Act, Revised Edition 2020;

"Controlling Persons" means the natural persons who exercise control over an Entity and

- (a) in the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust; and
- (b) in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions.

The term "Controlling Persons" shall also be interpreted in a manner consistent with the Financial Action Task Force Recommendations;

"Entity" means a legal person or a legal arrangement such as a trust;

"Financial Institution" means

- (a) a custodial institution;
- (b) a depository institution;
- (c) an investment Entity; or
- (d) a specified insurance company.

"Global Intermediary Identification Number" hereinafter referred to as GIIN means a number allocated to a Financial Institution by the Internal Revenue Service of the United States of America for FATCA purposes;

"NFFE" means any Non-United States Entity that is not a Foreign Financial Institution as defined in the relevant U.S. Treasury Regulations or is an Entity described in subparagraph (j) of the definition of Active NFFE, and also includes any Non-U.S. Entity that is established in the Virgin Islands or another Partner Jurisdiction that is not a Financial Institution;

“Nonparticipating Financial Institution” means a nonparticipating FFI as that term is defined in relevant U.S. Treasury Regulations, but does not include a Virgin Islands Financial Institution or other Partner Jurisdiction Financial Institution other than Financial Institution treated as Nonparticipating Financial Institution pursuant to subparagraph 2(b) of Article 5 of the Agreement or the corresponding provision in an agreement between the United States and a Partner Jurisdiction;

“Non-Reporting Virgin Islands Financial Institution” means any Virgin Islands Financial Institution, or other Entity organised under the Laws of the Virgin Islands, that is described in Annex II of the Agreement as a Non-Reporting Virgin Islands Financial Institution or that otherwise qualifies as a deemed-compliant Foreign Financial Institution or an exempt beneficial owner under the relevant United States Treasury Regulations;

“Partner Jurisdiction” means a jurisdiction that has in effect an agreement with the United States to facilitate the implementation of FATCA and the IRS shall publish a list identifying all Partner Jurisdictions;

“Passive NFFE” means any NFFE that is not

(a) an Active NFFE; or

(b) a withholding foreign partnership or withholding foreign trust, pursuant to relevant United States Treasury Regulations;

“Registered Deemed-Compliant Financial Institution” means a Non-Reporting Virgin Islands Financial Institution to which a Global Intermediary Identification Number has been properly allocated;

“Reporting Virgin Islands Financial Institution” means any Virgin Islands Financial Institution that is not a Non-Reporting Virgin Islands Financial Institution;

“Specified U.S. Person” means a U.S. person, other than

(a) a corporation, the stock of which is regularly traded on one or more established securities markets;

(b) any corporation that is a member of the same expanded affiliated group, as defined in section 1471(e)(2) of the U.S. Internal Revenue Code, as a corporation described in clause (a);

(c) the United States or any wholly owned agency or instrumentality thereof;

(d) any State of the United States, any U.S. Territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing;

(e) any organisation exempt from taxation under section 501(a) of the U.S. Internal Revenue Code or an individual retirement plan as defined in section 7701(a)(37) of the U.S. Internal Revenue Code;

- (f) any bank as defined in section 581 of the U.S. Internal Revenue Code;
- (g) any real estate investment trust as defined in section 856 of the U.S. Internal Revenue Code;
- (h) any regulated investment company as defined in section 851 of the U.S. Internal Revenue Code or any entity registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-64);
- (i) any common trust fund as defined in section 584(a) of the U.S. Internal Revenue Code;
- (j) any trust that is exempt from tax under section 664(c) of the U.S. Internal Revenue Code or that is described in section 4947(a)(1) of the U.S. Internal Revenue Code;
- (k) a dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State;
- (l) a broker as defined in section 6045(c) of the U.S. Internal Revenue Code; or
- (m) any tax-exempt trust under a plan that is described in section 403(b) or section 457(b) of the U.S. Internal Revenue Code.

“U.S. Person” means a U.S. citizen or resident individual, a partnership or corporation organized in the United States or under the laws of the United States or any State thereof, or a trust if

- (a) a court within the United States would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust; and
- (b) one or more U.S. persons have the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the United States;

This definition shall be interpreted in accordance with the U.S. Internal Revenue Code;

“U.S. Reportable Account” means a Financial Account maintained by a reporting Virgin Islands Financial Institution and held by one or more Specified U.S. Persons or by a Non-U.S. Entity with one or more controlling persons that is a Specified U.S. Person, provided that an account shall not be treated as a Reportable Account if such account is not identified as a Reportable Account after application of the due diligence procedures outlined in Annex I of the Agreement;

“United States Treasury Regulations” means the regulations made under chapter 4 of Subtitle A, sections 1471 to 1474, of the Internal Revenue Code of 1986 of the United States of America regarding information reporting by foreign Financial Institutions with respect to United States accounts and withholding on certain payments for foreign

Financial Institutions to other persons, which are commonly referred to as

- (a) the Foreign Account Tax Compliance Act; or
- (b) FATCA;

“Virgin Islands Financial Institution” means

- (a) any Financial Institution organised under the laws of the Virgin Islands or resident in the Virgin Islands, but excluding any branch of such Financial Institution that is located outside of the Virgin Islands; and
- (b) any branch of a Financial Institution not organised under the laws of the Virgin Islands, if such branch is located in the Virgin Islands.

(2) For the purposes of this Part, a word or expression which is defined in the Agreement has the same meaning in this Part as it does in that Agreement except to the extent that a Virgin Islands Financial Institution may use as an alternative a definition in

- (a) the United States Treasury Regulations; or
- (b) the Common Reporting Standard for Automatic Exchange of Financial Account Information published by the Organisation for Economic Co-operation and Development,

in so far as the use of the definitions would not frustrate the purposes of the Agreement.

(3) In determining whether or not the use of a definition referred to in subsection (2) would frustrate the purposes of the Agreement, a Virgin Islands Financial Institution shall take account of any guidance issued or approved by the Competent Authority.

Reporting Virgin Islands Financial Institution to establish and maintain arrangements

12. (1) A Reporting Virgin Islands Financial Institution shall establish and maintain arrangements that are designed to identify U.S. Reportable Accounts and accounts held by Nonparticipating Financial Institutions.

(2) The due diligence requirements for the purposes of this Part, are as set out in Annex 1 of the Agreement and shall be applied in relation to each category of U.S. Reportable Account;

(3) A Reporting Virgin Islands Financial Institution is taken to comply with the obligation to establish and maintain arrangements within subsection (1) only if

- (a) the arrangements meet the due diligence requirements as set out in Annex I of the Agreement; and
- (b) the arrangements secure that the evidence used or a record of the steps taken in accordance with this Part is kept for a period of six years beginning with the end of the year in which the arrangements applied to the financial accounts.

(4) As an alternative to the procedures set out in Annex 1 of the Agreement, this Part provides for a Reporting Virgin Islands Financial Institution to rely on the procedures described in the relevant U.S. Treasury Regulations to establish whether a financial account is a U.S. Reportable Account or an account held by a Nonparticipating Financial Institution.

(5) An election made under subsection (4) can be made separately for each section of Annex 1 of the Agreement either with respect to all relevant Financial Accounts or, separately, with respect to any clearly identified group of such accounts (such as by line of business or the location of where the account is maintained).

(6) An election made under subsection (4) or (5),

- (a) shall be made to the Competent Authority;
- (b) shall be made in a form determined by the Competent Authority;
- (c) shall be made on or before the reporting date under section 13(5) for the calendar year in question; and
- (d) has effect in relation to the calendar year in respect of which the election is made and all later calendar years, unless the election is withdrawn.

(7) A Reporting Virgin Islands Financial Institution may rely on due diligence procedures performed by third parties, for the purposes of this Part, to the extent provided in the relevant US Treasury Regulations, regardless of whether an election is made under Annex 1 of the Agreement.

Registration requirements

13. (1) Every Registered Deemed-Compliant Financial Institution shall register with the Internal Revenue Services of the United States of America (IRS) FATCA registration website to obtain a Global Intermediary Identification Number (GIIN) or be registered with the IRS by another entity.

(2) A Reporting Virgin Islands Financial Institution shall

- (a) in respect of 2014 and every following calendar year, prepare the required information as set out in the Agreement at Article 2 paragraph 2 in relation to every U.S. Reportable Account that is maintained by the Reporting Virgin Islands Financial Institution at any time during the calendar year in question; and
- (b) in respect of each of the calendar years 2015 and 2016 prepare the required information as set out in the Agreement at Article 4 paragraph 1(b) in relation to the Nonparticipating Financial Institutions.

(3) A Reporting Virgin Islands Financial Institution shall comply with the registration requirements on the IRS FATCA registration website and obtain a GIIN from the IRS and the GIIN shall be included in the required information prepared.

(4) A Reporting Virgin Islands Financial Institution shall comply with the registration requirements of the Competent Authority in order to submit

the required information to the Competent Authority as outlined in subsection (5).

(5) The information required under subsection (2) must be submitted to the Competent Authority,

(a) in relation to the reporting year 2014, on or before 30th June, 2015; and

(b) in relation to all subsequent years, on or before 31st May.

(6) The modification to the required information to be reported for the years 2014 to 2016 applies, as set out in Article 3 paragraph 3 of the Agreement.

(7) A Reporting Virgin Islands Financial Institution shall implement arrangements to obtain the taxpayer identifying number (TIN) of every Specified U.S. Person who is the account holder of a U.S Reportable account and provide the TIN with the required information to the Competent Authority

(a) in the case of pre-existing accounts, from 1st January, 2017; and

(b) in the case of new accounts opened on or after 1st July, 2014, from that date.

(8) A Reporting Virgin Islands Financial Institution on submission of the required information on an annual basis shall comply with the requirements determined by the Competent Authority.

(9) A Reporting Virgin Islands Financial Institution submitting information to the Competent Authority

(a) in the year 2015, shall register with the Competent Authority no later than 1st June, 2015; and

(b) in relation to subsequent years, shall register with the Competent Authority no later than 1st April in the first calendar year in which it is required to comply with the reporting obligations under this Part,

and registration is only required once and remains valid unless revoked by way of notification from the Financial Institution to the Competent Authority.

(10) A Virgin Islands Financial Institution shall notify the Competent Authority immediately of any changes to the information provided under subsection (7), including any changes to the details of its primary point of contact.

Reporting Virgin Islands Financial Institution may appoint third party

14. (1) A Reporting Virgin Islands Financial Institution may appoint a person as its agent to carry out the duties and obligations imposed on it by this Part or by the Agreement.

(2) Where a person is appointed under subsection (1) the Reporting Virgin Islands Financial Institution

- (a) shall, at all times, have access to and be able to provide, where so requested by the International Tax Authority, the records and documentary evidence used to identify and report on reportable accounts; and
- (b) is responsible for any failure of that person to carry out its obligations notwithstanding that the actions were the actions of that person or that the failure to act was the failure by that person to act.

Compliance Measures

15. (1) For the purposes of determining whether any information submitted by a Reporting Virgin Islands Financial Institution in furtherance of the requirements of this Part, are correct and complete, the Competent Authority may require a Reporting Virgin Islands Financial institution

- (a) to provide to the Competent Authority, within a time specified by the Competent Authority, the information, including copies of any relevant books, documents or other records, or any electronically stored information, that the Competent Authority may reasonably require; or
- (b) to make available to the Competent Authority for inspection, at the time specified by the Competent Authority, all copies of books, documents or other records, or any electronically stored information, the Reporting Virgin Islands Financial Institution's possession or under its control; or
- (c) to provide or make available any other such information as the Competent Authority may determine relevant or necessary to determine if the information is correct and complete.

(2) Where any information which is required to be provided to or inspected by the Competent Authority is located outside of the Virgin Islands in any manner whatsoever, the Reporting Virgin Islands Financial Institution shall take all necessary steps to bring the information to the Virgin Islands within the time specified by the Competent Authority in writing to enable the Reporting Virgin Islands Financial Institution to comply with the requirements of the Competent Authority under this Part.

(3) The Competent Authority may inspect the due diligence procedures implemented by a Virgin Islands Financial Institution or perform an inquiry into the due diligence procedures of the Virgin Islands Financial Institution.

(4) A Reporting Virgin Islands Financial Institution shall retain for a period of six years all books, documents and other records, including those stored by electronic means, which relate to the information required to be reported to the Competent Authority after the period within which the Reporting Virgin Islands Financial Institution must report for the purposes of this Part.

Obligation to report

16. (1) A Reporting Virgin Islands Financial Institution shall in respect of each of the calendar years 2015 and 2016 report to the Competent Authority

- (a) the names of the non-participating Financial Institutions to whom payments have been made in the year in question; and
- (b) the aggregate value of payments made to each of the non-participating Financial Institutions in question.

(2) In determining the total amount of those payments the special rules and definitions at paragraph I.B (1) and paragraph VI.C of Annex I of the Agreement shall be applied.

(3) If for a calendar year no payments are identified as referred to in subsection (1), the Reporting Financial Institution shall report that fact to the Competent Authority.

(4) The Reporting Virgin Islands Financial Institution shall report the information required under this section to the Competent Authority on or before 30th June of the year following the calendar year to which the information relates, in the form the Competent Authority requires, whether electronically or otherwise.

Treatment of negative account values

17. For the purposes of applying paragraph VI.C of Annex I of the Agreement as required by this Part, an account balance that has a negative value is treated as having a nil value.

Avoidance and circumvention requirement

18. If

- (a) a person enters into any arrangement; and
- (b) the main purpose, or one of the main purposes, of the person in entering into the arrangements is to avoid or circumvent any obligation under this Part,

this Part is to have effect as if the arrangement had not been entered into.

Penalties

19. (1) A Reporting Virgin Islands Financial Institution which

- (a) without reasonable excuse, fails to comply with a requirements of the Competent Authority under section 15;
- (b) without reasonable cause, fails to make a report required under this Part;
- (c) fraudulently or negligently makes a false report, whether in its entirety or in any particular part;

- (d) fails to implement arrangements or procedures in order to comply with this Part;
- (e) with intent to avoid the provision of this Part, alters, destroys, mutilates, defaces, hides or removes any document or information, including documents or information electronically held; or
- (f) wilfully obstructs an inquiry by the International Tax Authority under section 15,

commits an offence and is liable on summary conviction to a fine of five thousand dollars, or in the case of subsection (1) (a), (c), (d), (e) and (f) to imprisonment for a term of two years, or to both such fine and imprisonment.

(2) Subject to subsection (1), where an obligation is created under this Part or the Agreement the general penalty section of the Principal Act applies to this Part and the Agreement.

Power to issue guidance

20. The Competent Authority shall issue guidance from time to time and in a form considered appropriate by the International Tax Authority for the purposes of aiding compliance with this Part.”.

Part III amended

10. The principal Act is amended by inserting the words “COMMON REPORTING STANDARD” directly after the words “PART III”.

Section 21 amended

11. The principal Act is amended in section 21 by

- (a) inserting the definition below in its correct alphabetical position;

“Non-reporting Financial Institution” means any Financial Institution that is

 - (a) a Governmental Entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution;
 - (b) a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund a Pension Fund of a Governmental Entity, International Organisation or Central Bank or a Qualified Credit Card Issuer;
 - (c) any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described in subparagraphs B(1)(a) and (b) of the Common Reporting Standard, and is identified in this Act as a Non-Reporting Financial Institution, provided that the status of such Entity as a Non-Reporting

Financial Institution does not frustrate the purposes of the Common Reporting Standard;

- (d) an Exempt Collective Investment Vehicle; or
 - (e) a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to Section I with respect to all Reportable Accounts of the trust.”;
- (b) by deleting the definition of “Reporting Financial Institution” and replacing it with the following:
- ““Reporting Financial Institution” means a Virgin Islands Financial Institution that is not a Non-Reporting Financial Institution;”;
- (c) by deleting the full stop following the definition of “Standardised Industry Coding System” and replacing it with “; and”.

Section 22 amended

12. The principal Act is amended by repealing section 22 and replacing with the following:

“Competent Authority

22. The International Tax Authority shall be the competent authority for the purposes of this Part and in relation to the implementation of the Common Reporting Standard.”.

Section 27 amended

13. The principal Act is amended by repealing section 27 and its marginal note and replacing it with the following:

“Policies and procedures to be established by Reporting Financial Institutions

27. (1) A Reporting Financial Institution shall establish, implement and maintain written policies and procedures to comply with this Act.

(2) The policies and procedures established pursuant to subsection (1) shall provide for the following:

- (a) identifying each jurisdiction in which an Account Holder or a Controlling Person is resident for income tax or corporation tax purposes or for the purposes of any tax imposed by the law of the jurisdiction that is of a similar character of either of those taxes;
- (b) applying the due diligence procedures set out in the Common Reporting Standard; and
- (c) ensuring that any information obtained in accordance with this Act and a record of the steps taken to comply with this Act in respect of a Financial Account is kept for

at least five years after the period within which the Reporting Financial Institution must report.

(3) A Reporting Financial Institution is deemed to have contravened the policies and procedures relating to self-certification or to documentary evidence if the Reporting Financial Institution

(a) knows, or has reason to believe, the self-certification or documentary evidence is inaccurate in a material way from its policies and procedures; and

(b) it files a return that relies on the accuracy of such a self-certification or based on documentary evidence.

(4) A Reporting Financial Institution that fails to establish and maintain policies and procedures designed to identify Reportable Accounts in accordance with this section commits an offence and is liable on conviction on indictment to a fine not exceeding one hundred thousand dollars.”.

Section 28 amended

14. The principal Act is amended in section 28

(a) in subsection (2)

(i) in paragraph (b) by deleting the word “and” after the semi-colon;

(ii) in paragraph (c) by deleting the full stop and substituting the words “; and”;

(iii) by inserting after paragraph (c) the following

“(d) any other information in such form as required by the ITA.”; and

(b) in subsection (5) by inserting the word “with” after the words “must register”.

Section 29 amended

15. The principal Act is amended in section 29

(a) in subsection (3) by deleting the words “make a return” and replacing them with the words “file a return”; and

(b) in subsection (5) by deleting the words “fails to register” and replacing them with the words “fails to file a return”.

Section 32 amended

16. The principal Act is amended in section 32(6) by adding the words

“and is liable

(a) on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both; or

- (b) on conviction on indictment, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years, or both.”

after the words “commits an offence”.

Section 32A amended

17. The principal Act is amended in section 32A by deleting all occurrences of the words “Virgin Islands Financial Institution” and substituting with the words “Reporting Financial Institution”.

Part IV amended

18. The principal Act is amended by inserting the words “COUNTRY BY COUNTRY REPORTING” directly after the words “PART IV”.

Section 35 amended

19. The principal Act is amended in section 35

- (a) by inserting subsection “(1)” directly after the number “35”;
- (b) by inserting the definition below in its correct alphabetical position:

““Resident for tax purposes in the Virgin Islands” means

- (a) being incorporated or established in the Virgin Islands;
- (b) having a place of effective management in the Virgin Islands; or
- (c) being subject to financial supervision in the Virgin Islands.”; and

- (c) by inserting the following new subsection (2)

“(2) For the purposes of the definitions of “Group” and “Ultimate Parent Entity” public securities exchange means any recognised exchange listed by the Financial Services Commission by notice under section 2(1) of the Regulatory Code, Revised Edition 2013.”.

Section 37 amended

20. The principal Act is amended by deleting section 37 and replacing it with the following:

“Obligation to file country by country report

37. (1) Each Ultimate Parent Entity of an MNE Group that is resident for tax purposes in the Virgin Islands shall file a country-by-country report conforming to the requirements of section 39 with the Competent Authority with respect to its Reporting Fiscal Year on or before the date specified in section 40.

(2) A Surrogate Parent Entity shall file a country-by-country report conforming to the requirements of section 39 with the Competent

Authority with respect to the Reporting Fiscal Year of an MNE Group of which it is a Surrogate Parent if

- (a) the entity is resident for tax purposes, in the Virgin Islands; 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 Virgin Islands is a party but does not have a Qualifying Competent Authority Agreement in effect to which the Virgin Islands is a party by the time specified in section 40 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 Competent Authority to the Constituent Entity resident for tax purposes in the Virgin Islands.”.

Section 38 amended

21. The principal Act is amended in section 38(4) by inserting the word “with” after the words” shall register”.

Schedule 2 repealed

22. The principal Act is amended by repealing Schedule 2.


Schedule 3 repealed


23. The principal Act is amended by repealing Schedule 3.

Schedules 4, 5 and 6 renumbered

24. The principal Act is amended by renumbering “Schedule 4, Schedule 5 and Schedule 6” to now be “Schedule 2, Schedule 3 and Schedule 4” respectively.

Passed by the House of Assembly this 3rd day of May, 2022.


Neville A. Smith,
Deputy Speaker.


Phyllis Evans,
Clerk of the House of Assembly.

LEGAL REPORT

This Act seeks to amend the Mutual Legal Assistance (Tax Matters) Act, Revision Edition 2020, hereinafter referred to as the principal Act.

Section 1 provides for the short title.

Section 2 seeks to amend the Long title of the Act, by replacing it with “An Act to make provision for giving effect to the terms of the Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, including the Government of the British Virgin Islands, for the exchange of information relating to taxes, and any similar agreement to which the Government of the British Virgin Islands is a party, for giving effect to the Common Reporting Standard, the Foreign Account Tax Compliance Act as it relates to the Model 1 Intergovernmental Agreement entered into between the United States of America and the British Virgin islands, the Base Erosion and Profit Shifting Action 13: Country-by-Country Reporting, the Mandatory Disclosure Rules, and all matters connected therewith.”

Section 3 seeks to amend section 2 of the principal Act by deleting the definition of “Authority” and replacing it with a new definition.

Section 4 seeks to amend section 4 of the principal Act by deleting the words “Financial Secretary” and replacing it with the words “International Tax Authority”; and also, by deleting subsections (2) and (3).

Section 5 seeks to amend section 5 of the principal Act by substituting subsection (1) to provide for the power of the Authority to request information.

Section 6 seeks to amend section 7 of the principal Act by providing for the insertion of a new subsection (1A) that allows the Authority the power to conduct an interview or examination of any person in the Virgin Islands at such time and place as prescribed by the Authority. This section also provided for other minor amendments to subsections (2) and (4) to (6).

Section 7 repeals and replaces section 10 of the principal Act to provide for cases where a Company, body corporate or any association of persons, limited partnership and individuals as it relates to the service of a notice or document shall be seen as sufficient.

Section 8 provides for the insertion of section 10A, to provide for the service of overseas documents in the Virgin Islands and the requirement of proof of service, when an affidavit is made by the person who served the document, shall be seen as sufficient of such proof.

Section 9 seeks to repeal PART II of the principal Act and replace the Part to now address “Foreign Account Tax Compliance Act as it relates to the Model 1

Intergovernmental Agreement entered into between the United States of America and the British Virgin Islands”. The new sections 11 to 20 provide for the Interpretation for Part II, Reporting Virgin Islands Financial Institution to establish and maintain arrangements, Registration requirements, Reporting Virgin Islands Financial Institution may appoint third party, Compliance measures, obligation to report, treatment of negative account values, Avoidance and circumvention requirement, penalties and power to issue guidance.

Section 10 amends PART III of the principal Act by inserting the words “COMMON REPORTING STANDARD” directly after the words “PART III”.

Section 11 provides for amendments to the definitions in section 21 of the principal Act.

Section 12 repeals section 22 of the principal Act and replaces it with “The International Tax Authority shall be the competent authority for the purposes of this Part and in relation to the implementation of the Common Reporting Standard.”

Section 13 repeals section 27 of the principal Act and replaces it with provisions setting out the policies and procedures to be established by Reporting Financial Institutions.

Section 14 provides minor amendments to section 28 of the principal Act.

Section 15 seeks to amend section 29 of the principal Act to provide in subsection (3) for the filing of a return and in subsection (5) to provide for the offence on the failure to file a return.

Section 16 seeks to amend section 32(6) of the principal Act to provide for a penalty for the commission of that offence.

Section 17 provides for minor amendments to section 32A of the principal Act.

Section 18 seeks to amend PART IV of the principal Act by inserting the words “COUNTRY BY COUNTRY REPORTING” directly after the words “PART IV”.

Section 19 amends section 35 of the principal Act by inserting a new definition of “Resident for tax purposes in the Virgin Islands” and by inserting a new subsection (2) which provides for the definitions of “Group” and “Ultimate Parent Entity” public securities exchange which means any recognised exchange listed by the Financial Services Commission by notice under section 2(1) of the Regulatory Code, Revised Edition 2013.

Section 20 amends section 37 of the principal which provides for a Surrogate Parent Entity to file a country-by-country report conforming to the requirements

of section 39 with the Competent Authority with respect to the Reporting Fiscal Year of an MNE Group.

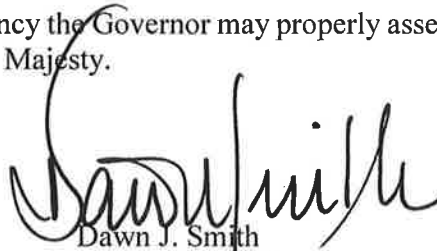
Section 21 provides for minor amendments to section 38(4) of the principal Act.

Sections 22 and 23 seeks to repeal Schedules 2 and 3 of the principal Act.

Section 24 rennumbers “Schedule 4, Schedule 5 and Schedule 6” to “Schedule 2, Schedule 3 and Schedule 4” respectively of the principal Act.

This Act was introduced in the House of Assembly on the 10th day of March, 2022 taken through its remaining stages and passed on the 3rd day of May, 2022.

In my opinion, His Excellency the Governor may properly assent to this Act in the name and on behalf of Her Majesty.

A handwritten signature in black ink, appearing to read 'Dawn J. Smith', is written over the printed name.

Dawn J. Smith
Attorney General
24th May, 2022

