Regulations for Chapter 6 of Title 54 of the FSM Code
As Enacted by Public Law No. 19-143
The Exchange of Tax Information Act of 2016

Part 1. General

1.1 Purpose. The purpose of these regulations is to carry into effect and to facilitate implementation of Chapter 6 of Title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 19-143, the Exchange of Tax Information Act of 2016, hereinafter referred to as the "Act".

1.2 Legal effect. These regulations, and any amendments thereto, shall have the force and effect of law.

1.3 Authority. Title 54, Section 609 of the Code of the Federated States of Micronesia grants the Secretary authority to make regulations carrying the force and effect of law in order to provide for the efficient and convenient implementation and enforcement of the Act. Title 54, Section 604(3) provides that the Secretary may by regulation provide for simplified accounting record retention requirements for small businesses and entities so long as such regulations meet international standards for tax transparency. Title 54, Section 116(1) authorizes the Secretary to preserve tax returns and related reports. More generally, the Secretary is responsible for carrying out the functions of the National Government relating to implementation of FSM laws with respect to tax administration, including ensuring the confidentiality of tax information and exchange of information in accordance with international standards.

1.4 Scope. These regulations prescribe rules for availability of information related to tax, access to information related to tax, exchange of information related to tax, confidentiality of information exchanged for tax purposes, and procedures and policies for administration and enforcement.

1.5 Effective date. These regulations shall take effect upon compliance with Title 17 of the Code of the Federated States of Micronesia.

1.6 Definitions. As used in these regulations, unless the context clearly requires otherwise, the following meanings apply:

a. “Business” includes any profession, trade, manufacture, or other undertaking carried on for pecuniary profit in the Federated States of Micronesia, but not including employment.

b. “Customs and Tax Administration” means the division in the Department of Finance and Administration that is charged with administration of national tax laws. It is headed by an assistant secretary.

c. “Entity” means a company, corporation, partnership, unincorporated association or other business entity, trust, or estate that:
   i. is registered in the Federated States of Micronesia as a separate legal entity, including entities registered with the national government or with a state or local government;
   ii. has a permanent establishment in the Federated States of Micronesia;
   iii. owns assets in the Federated States of Micronesia; or
   iv. in the case of a trust, has a trustee resident in the Federated States of Micronesia or is administered in the Federated States of Micronesia.

For the avoidance of doubt, a trust that meets any of the definitions of subparts 1.6(c)(i) – 1.6(c)(iii) is an entity.

d. "Pecuniary profit" includes ownership of assets for an investment purpose, but does not include ownership of property wholly located within the Federated States of Micronesia if such property is not used, either directly or indirectly, to generate revenue or for another investment purpose.

e. “Secretary” means the Secretary of the Department of Finance and Administration.

f. "Small Business" means a business or entity with annual revenues and assets less than $100,000.”

g. “Tax Information” means any fact, statement or record in any form, as may be relevant to the administration and enforcement of a tax law of the FSM or of a jurisdiction with which FSM has a treaty or agreement for exchange of information.

1.7 Construction. Public Law No. 19-143, the Exchange of Tax Information Act of 2016, declares it "to be the policy of the Federated States of Micronesia to implement international standards for transparency and exchange of tax information, and it is the intent of Congress that this chapter be implemented in accordance with the policy." In accordance with that declaration of congressional intent, these regulations shall be interpreted and construed to implement international standards for transparency and exchange of information.

1.8 Competent Authority. The Competent Authority for exchange of information for tax purposes within the Government of the Federated States of Micronesia shall be the Secretary of Finance or his or her designee.

Part 2. Availability of Information

2.1. Information available to CTA. Every Business or Entity shall maintain and make ownership and identity information available to the Division of Customs and Tax Administration, including legal and beneficial ownership information, as provided for in this Part 2.

2.2. Filing Requirement. Every Business or Entity, except for a Small Business, shall provide complete ownership and identity information, including legal and beneficial ownership information, to the Division of Customs and Tax Administration on or before January 31 each year. The information required will be set out in a form approved by the Secretary.

a. Trusts. In the case of trusts, ownership information shall cover information on the identity of the settlor, trustee(s) protector (if any), all of the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust.

2.3. Exemption. Any corporation or other Entity that has provided the information required by this Part to the FSM National Registrar of Corporations within the previous year may file for an exemption from the filing requirement on a form approved by the Secretary.

2.4. Small Businesses. Small Businesses shall not be required to file ownership and identity information with the Division of Customs and Tax Administration, but each Small Business shall maintain at its principal place of business full records containing ownership and identity information. The records shall identify both legal and beneficial owners of the Small Business. The Division of Customs and Tax Administration shall provide sample forms and public education about the requirements of this subpart, and shall review and inspect the records required by this subpart as part of its regular audit process. The ownership and identity information required by this subpart shall:

a. Be updated annually;

b. Be maintained for at least five years; and

c. Be available for inspection and copying upon request by the Division of Customs and Tax Administration.

2.5. Accounting records. Businesses and Entities shall maintain the accounting records required by Title 54, Section 604 for the required period after the date tax liability is due, and such records shall be maintained even in the event that the Business or Entity ceases to exist as a legal entity by the person responsible for the winding up of the Business or Entity.

2.6. Small Business simplified accounting records.

a. Small Businesses shall keep full and accurate records sufficient to determine tax liability and full and accurate records of each transaction engaged in by the Small Business, and such records shall be available for examination by the Secretary of Finance or his or her authorized representative for at least five years after the date of tax liability due.

b. The Division of Customs and Tax Administration shall provide sample forms and public education to Small Businesses about the requirements to maintain accounting records. The sample forms shall impose the minimum burden on Small Businesses consistent with international standards.

2.7. Preservation of tax returns. Tax returns and related reports and supporting information shall be maintained by the Division of Customs and Tax Administration for at least six years after the date of the tax liability due.

Part 3. Access to Information

3.1. Information collection power. Title 54, Section 606 of the Code of the Federated States of Micronesia provides that existing statutory powers to collect information for tax purposes may also be used to comply with a request for exchange of tax information. Such powers shall be exercised as follows:

a. The Secretary may, for the purpose of complying with a request for exchange of information, exercise statutory information collection powers. These powers shall only be exercised pursuant to the terms of an agreement or treaty that provides for the exchange of information.

b. When responding to a request for exchange of information pursuant to a treaty or agreement, the Secretary may exercise such powers notwithstanding that the information may not be needed for the Federated States of Micronesia's own tax purposes. The Secretary shall exercise such powers by notice in writing, and may require any person:

   i. to furnish such information as the Secretary may require;

   ii. to attend and give evidence concerning that person's or any other person's affairs; or

   iii. to produce all accounts, books, documents, and records (including in electronic form) in the person's custody or under the person's control that may be necessary to respond to a request for exchange of information.

c. If a notice served under this Part requires the production of accounts, books, documents, or records (including in electronic form), it is sufficient if such accounts, books, documents, or records are described in the notice with reasonable certainty.

d. A notice issued under this Part must be served personally upon the person to whom it is directed or left at the person's last known usual place of business or abode and the certificate of service signed by the person serving the notice is conclusive evidence of the facts stated therein.

e. The Secretary may require the information or evidence referred to in subpart 3.1.b.i of this section to be given on oath, verbally or in writing, and, for that purpose, the Secretary may administer the oath.

3.2. Privileges or other claims of secrecy.

a. The information collection powers of this Part shall give effect to such legal privileges as may be recognized by the FSM Supreme Court consistent with the terms of the treaty or agreement for exchange of information.

b. Any legal privileges recognized under subpart 3.2.a shall be strictly construed and limited to privileges required by the treaty or agreement pursuant to which the information is being collected.

3.3. Procedures. The Division of Customs and Tax Administration shall cooperate with the FSM Department of Justice to ensure that the exercise of the information collection powers authorized by this Part are consistent with FSM law, and to ensure timely and efficient enforcement in the event such powers are exercised.

3.4. Confidentiality. The information collected pursuant to the powers authorized by this Part are confidential and shall be subject to the confidentiality provisions contained in Part 5.

Part 4. Exchange of Information

4.1. Agreements. Exchange of information shall only take place pursuant to an agreement or treaty of the Federated States of Micronesia. The Competent Authority shall ensure that any collection or exchange of information is consistent with the requirements of the relevant agreement or treaty and with FSM laws and policies related to exchange of information for tax purposes.

4.2. Requests for information from other jurisdictions. All requests for information from another jurisdiction shall only be addressed to the competent authority of that jurisdiction and shall strictly follow requirements in the relevant exchange of information instrument.

4.3. Procedures. The Competent Authority shall adopt an Exchange of Information Manual to provide for the efficient and accurate administration of the Act and to implement the terms and provisions of any agreements or treaties that provide for exchange of information.

Part 5. Confidentiality

5.1. Application of confidentiality requirements. All Tax Information collected from within the Federated States of Micronesia through the Secretary's information collection powers, and all Tax Information received from another jurisdiction, are confidential and subject to:

a. the provisions of Section 116 of Title 54, either directly or pursuant to Section 606(2) of Title 54, and

b. to such confidentiality provisions as may be contained in the agreement or treaty pursuant to which such information has been collected and/or exchanged.

5.2. Enforcement of confidentiality requirements. Confidentiality requirements shall be strictly enforced, including through referral to the Department of Justice for criminal enforcement pursuant to Title 54 Sections 118 and 608.

5.3. Statistical information. Nothing herein shall prohibit the Secretary or Competent Authority from compiling and publishing statistics or information generally on exchange of tax information so long as there is no reference to personally identifiable information and the statistics and the information does not in effect divulge personally identifiable information.

APPROVALS

Pursuant to the authority vested in me as Secretary of the Department of Finance and Administration, I am adopting this as permanent regulation to implement Chapter 6 of Title 54 of the FSM Code. This permanent regulation is promulgated following the posting of a proposed regulation as required by the Administrative Procedure Act (Chapter 1 of Title 17 of the FSM Code) after which comments received were duly considered.

Date:________________________

Secretary Sihna Lawrence
Department of Finance & Administration

Approved as to legal sufficiency:

Date: May 18, 2017

Secretary Joses R. Gallen, Sr.
Department of Justice

Presidential approval:

By virtue of the powers vested in me, in the Constitution and the laws of the Federated States of Micronesia, including 54 F.S.M.C. §609, of the Code of the Federated States of Micronesia, I hereby approve the promulgation of this regulation.

Date: 5/25/17

H.E. Peter M. Christian
President
Federated States of Micronesia