

BELIZE:

MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS
(AMENDMENT) ACT, 2022

ARRANGEMENT OF SECTIONS

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BELIZE:

BILL

for

AN ACT to amend the Mutual Administrative Assistance in Tax Matters Act, Chapter 103:03 of the Substantive Laws of Belize, Revised Edition 2020; to increase the statutory period for retention of records by reporting financial institutions; to impose civil sanctions on reporting financial institutions for failure to apply due diligence procedures on persons for providing false self-certifications; to provide a threshold for controlling persons and to provide for matters connected therewith or incidental thereto.

(Gazetted....., 2022)

BE IT ENACTED, by and with the advice and consent of the House of Representatives and the Senate of Belize and by the authority of the same as follows:

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Short title.

1. This Act may be cited as the

MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS
(AMENDMENT) ACT, 2022,

Act No. 18
of 2017.
Act No. 4
of 2020.

and shall be read and construed as one with the Mutual Administrative Assistance in Tax Matters Act, Act No. 15 of 2014, which, as amended from time to time, is hereinafter referred to as the principal Act.

Amendment
of Section 9.

2. The principal Act is amended at Section 9(1) of **Part III Automatic Exchange of Financial Account Information** by inserting in its appropriate alphabetical order the following term and corresponding definition:

““Financial Action Task Force” or “FATF” means the Financial Action Task Force that was established at the Group of 7 Summit in Paris in 1989, and the FATF Recommendations refer to the international standards on combating money

laundrying and the financing of terrorism & proliferation adopted by the FATF Plenary in February 2012 and updated October 2020.”

3. The principal Act is amended at Section 13, subsection (2) of **Part III Automatic Exchange of Financial Account Information** by repealing paragraph (c) thereof and replacing it with the following:

Amendment
of Section 13.

“(c) ensure 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 a period of at least six years from the 31st day of March of the year following the calendar year to which the record or the relevant information return filed by the reporting financial institution relates.”

4. The principal Act is amended by repealing and replacing Section 20 with the following:

Repeal and
replacement of
Section 20.

**Administrative
Penalties**

“20-(1) Every reporting financial institution who fails to file an information return in the time and manner required under this Act or the regulations made thereunder is liable to a penalty of \$10,000 for each such failure.

(2) Every reporting financial institution who fails to conduct the due diligence procedures required under this Act or the regulations made thereunder is liable to a penalty of \$10,000 for each such failure.

(3) Every reporting financial institution who fails to retain for the statutory period the information obtained in accordance with this Act or the regulations made thereunder or the record of the steps taken to comply with this Act or the regulations in respect of a financial account is liable to a penalty of \$10,000 for each such failure, unless the reporting financial institution establishes that it made a reasonable effort to retain the information or record for the statutory period.

(4) Every person who knowingly and wilfully makes a false statement or omission in respect of any material particular or consequential information required to be included on an information return or self-certification under this Act or the regulations made thereunder, is liable to a penalty of \$5,000 for each such false or deceptive return or self-certification,

PROVIDED that a person shall not be liable to a penalty under this paragraph if, in the case of information required in respect of another person, that person made a reasonable effort to obtain the information from the other person.

(5) Every person who does not comply with the requirement of the competent authority in the exercise or performance of the competent authority's powers or duties under this Act or regulations made thereunder is liable to a penalty of \$5,000 for each such failure."

Amendment of
Section 25.

5. The principal Act is amended at Section 25 by deleting the phrase "Income Tax Appeal Board established under the Income and Business Tax Act" and replacing it with the phrase "the Board of Tax Appeals established under the Tax Administration and Procedure Act".

Act No. 8 of
2019.

6. The principal Act is amended at Section 26:

- (a) by replacing the term "Income Tax Appeal Board" wherever it occurs with the term "Board of Tax Appeals"; and,
- (b) at subsection (4), by replacing the term "Income and Business Tax Act" with the term "Tax Administration and Procedure Act".

Amendment of
Section II
of Schedule 3.

7. The principal Act is amended at **Section II: General Due Diligence Requirements of Schedule 3 Common Standard on Reporting and Due Diligence for Financial Account Information** by:

(a) repealing paragraph D and replacing it with the following paragraph-

"D. A Reporting Financial Institution may use service providers to fulfil the reporting and due diligence obligations imposed on such Reporting Financial Institution but these obligations shall remain the responsibility of the Reporting Financial Institution."

(b) inserting the following new paragraph E immediately after paragraph D-

"E. A Reporting Financial Institution may apply the due diligence procedures for New Accounts to Pre-existing Accounts, and the due diligence procedures for High Value Accounts to Lower Value Accounts. Where a Reporting Financial Institution uses New Account due diligence procedures for Pre-existing Accounts, the rules otherwise applicable to Pre-existing Accounts continue to apply."

Amendment of
Section VIII
of Schedule 3.

8. The principal Act is amended at **Section VIII: Defined Terms of Schedule 3 Common Standard on Reporting and Due Diligence for Financial Account Information** by:

(1) Repealing subsection A and replacing it with the following-

“A. Reporting Financial Institution

1. The term “Reporting Financial Institution” means any Participating Jurisdiction Financial Institution that is not a Non-Reporting Financial Institution.
2. The term “Participating Jurisdiction Financial Institution” means (i) any Financial Institution that is resident in a Participating Jurisdiction, but excludes any branch of that Financial Institution that is located outside such Participating Jurisdiction, and (ii) any branch of a Financial Institution that is not resident in a Participating Jurisdiction, if that branch is located in such Participating Jurisdiction.
3. The term “Financial Institution” means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.
4. The term “Custodial Institution” means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity’s gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20% of the Entity’s gross income during the shorter of: (i) the three-year period that ends on 31 December prior to the year in which the determination is being made; or (ii) the period during which the Entity has been in existence.
5. The term “Depository Institution” means any Entity that accepts deposits in the ordinary course of a banking or similar business.

6. The term “Investment Entity” means any Entity:
- (a) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:
 - (i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
 - (ii) individual and collective portfolio management; or
 - (iii) otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; or
 - (b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph A(6)(a).

An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph A(6)(a), or an Entity’s gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for purposes of subparagraph A(6)(b), if the Entity’s gross income attributable to the relevant activities equals or exceeds 50% of the Entity’s gross income during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or (ii) the period during which the Entity has been in existence. The term “Investment Entity” does not include an Entity that is an Active NFE because it meets any of the criteria in subparagraphs D(9)(d) through (g).

This paragraph shall be interpreted in a manner consistent with similar language set forth in the definition of “financial institution” in the Financial Action Task Force Recommendations.

7. The term “Financial Asset” includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract. The term “Financial Asset” does not include a non-debt, direct interest in real property.
8. The term “Specified Insurance Company” means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.”

(2) Amending subsection D at Paragraph 6 by inserting the following new sentence after the last period at the end of that paragraph-

“For the purposes of the Standard, the threshold for “controlling ownership interest” in a legal person is ten percent (10%)”.

(3) Amending subsection E by-

(a) repealing paragraph 6 and replacing it with the following-

“6(1). - The term “Documentary Evidence” includes any of the following:

- (a) a certificate of residence issued by an authorised government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a resident.
 - (b) with respect to an individual, any valid identification issued by an authorised government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes.
 - (c) with respect to an Entity, any official documentation issued by an authorised government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the jurisdiction in which it claims to be a resident or the jurisdiction in which the Entity was incorporated or organised.
 - (d) any audited financial statement, third-party credit report, bankruptcy filing, or securities regulator's report.
- (2) With respect to a Pre-existing Entity Account, Reporting Financial Institutions may use as Documentary Evidence any classification in the Reporting Financial Institution's records with respect to the Account Holder that was determined based on a standardized industry coding system, that was recorded by the Reporting Financial Institution consistent with its normal business practices for purposes of AML/KYC Procedures or another regulatory purposes (other than for tax purposes) and that was implemented by the Reporting Financial Institution prior to the date used to classify the Financial Account as a Pre-existing Account, provided that the Reporting Financial Institution does not know or does not have reason to know that such classification is incorrect or unreliable. The term "standardised industry coding system" means a coding system used to classify

establishments by business type for purposes other than tax purposes.”

(b) Repealing paragraphs 7, 8, 9, 10 and 11.

Commencement 9. This Act shall come into operation immediately on the passing hereof.