

MONTSERAT

**TAX INFORMATION EXCHANGE (AMENDMENT) ACT  
2015**

No. 11 of 2015

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Tax Information Exchange (Amendment) Act, 2015  
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I ASSENT

(Sgd.) Elizabeth Carriere  
Governor

DATE:19.08.15

M O N T S E R R A T

No. 11 of 2015

AN ACT TO AMEND THE TAX INFORMATION EXCHANGE ACT (CAP. 17.24).

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Montserrat, and by the authority of the same as follows:—

**1 Short title**

This Act may be cited as the Tax Information Exchange (Amendment) Act, 2015.

**2 Interpretation**

In this Act “**principal Act**” means the Tax Information Exchange Act (Cap. 17.24).

**3 Section 2 amended**

Section 2 of the principal Act is amended—

(a) in the definition of “**effective date**” by deleting paragraph (a) and substituting the following:

“(a) in relation to a scheduled agreement, the date the scheduled agreement came into force;”;

(b) by deleting the definitions of “**scheduled agreement**” and “**taxation matter**” and substituting the following definitions:

“ “**scheduled agreement**” means a tax information exchange agreement which is given legal effect in Montserrat under section 5;”;

“**taxation matter**” includes a matter related to—

(a) the automatic exchange of information; and

(b) the collection, calculation or assessment of a tax covered by a scheduled agreement or by the scheduled country requirements;”;

(c) by inserting the following definitions in the correct alphabetical sequence:

“ “**automatic exchange of information**”

means the systematic and periodic exchange of information for tax purposes between parties in the manner agreed between the parties or their competent authorities;”;

“**Confidential Information Act**”

means the Confidential Information Act (Cap. 11.25);

**“tax information exchange agreement”**

means an agreement for the provision of information on tax matters, including an agreement for the automatic exchange of information, to which Montserrat is a party;”.

**4 Section 3 amended**

Section 3(a) of the principal Act is deleted and the following is substituted:

“(a) provide for the implementation of a tax information exchange agreement; and”.

**5 Section 4 amended**

Section 4(4) of the principal Act is deleted and the following is substituted:

“(4) This Act, a scheduled agreement and the scheduled country requirements are to be construed as requiring the provision solely of information on taxation matters in the country of a designated competent authority respecting—

(a) a person who is subject to or potentially subject to a tax covered by or a reporting requirement under the scheduled agreement or the scheduled country requirements; and

(b) property relevant to the taxation matter.”.

**6 Part 2 heading amended**

Part 2 of the principal Act is amended in the heading by deleting “BILATERAL AND UNILATERAL”.

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**7 Section 5 amended**

Section 5 of the principal Act is deleted and the following is substituted:

**“5. Implementation of tax information exchange agreement**

- (1) Subject to subsection (3), the Governor acting on the advice of Cabinet may—
  - (a) by Order, make a declaration as to the effective date of a tax information exchange agreement; or
  - (b) make Regulations to implement obligations arising under a tax information exchange agreement.
- (2) Regulations made under this section may provide for offences and the imposition of penalties including administrative monetary penalties for the contravention of the regulations.
- (3) Subordinate legislation made under this section is subject to a negative resolution.”.

**8 Section 5A inserted**

The principal Act is amended by inserting the following as section 5A:

**“Scheduled agreements**

- 5A.(1)** The Governor acting on the advice of Cabinet shall, by Order, set out at Part A of the Schedule, the following particulars in relation to each scheduled agreement:
- (a) the citation of the implementing enactment;
  - (b) the parties;
  - (c) the effective date;

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(d) the designated competent authority.

(2) The Governor acting on the advice of Cabinet may, by Order, amend the Schedule.”.

**9 Section 14 amended**

Section 14(5) of the principal Act is deleted and the following is substituted:

“(5) If a judge makes an order under subsection 2(b) in relation to information held on any premises, the judge may, on the application of the Authority, issue a warrant for the Authority accompanied by a police officer, to enter the premises to gain access to and seize information on taxation matters.”.

**10 Section 15 amended**

Section 15 of the principal Act is amended by deleting “section 13 or 14” between “under” and “exists” and substituting “sections 12, 13 or 14”.

**11 Section 17 amended**

Section 17(1) of the principal Act is deleted and the following is substituted:

“(1) If the Authority is satisfied that there are reasonable grounds to believe that information on taxation matters is being held on any premises, the Authority shall apply to the High Court for a warrant for the Authority, accompanied by a police officer, to—

- (a) enter and search the premises; and
- (b) seize information on taxation matters.”.

**12 Section 19 amended**

Section 19 of the principal Act is amended by deleting subsection (1) and substituting the following as subsections (1), (1A) and (1B):

“(1) Subject to subsections (1A) and (1B), if the Authority knows the whereabouts or address of a person who is the subject of a request which is solely in relation to a matter that is not a criminal matter or an alleged criminal matter, the Authority shall serve the person with a notice of the request.

(1A) A notice under subsection (1) shall set out the following particulars:

- (a) that a request identifying that person as the subject of the request has been made;
- (b) the name of the country making the request; and
- (c) the nature of the information being requested.

(1B) The Authority is not required to serve a notice under subsection (1) if the requesting country certifies that—

- (a) the request is urgent; or
- (b) serving the notice is likely to prejudice the investigation undertaken in the requesting country.”.

**13 Section 22 amended**

Section 22 of the principal Act is deleted and the following is substituted:

**“22. Protection of persons disclosing confidential information**

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(1) A person does not commit an offence under the Confidential Information Act or any other law in Montserrat if he—

- (a) discloses confidential information or testifies in compliance with an order or notice issued under Part 4; or
- (b) provides information to the Authority to facilitate the automatic exchange of information or for other tax purposes.

(2) A person who discloses confidential information, testifies or provides information to the Authority under subsection (1), does not breach a confidential relationship between that person and another person and no civil claim or action shall lie against that person, his principal or his employer by reason only of the disclosure or provision of information.

**14 Section 23 amended**

Section 23 of the principal Act is deleted and the following is substituted:

**“23. Restriction on application of Confidential Information Act**

Section 4 of the Confidential Information Act does not apply to information given—

- (a) by a person in conformity with an order or notice issued on a request under this Act; or
- (b) to the Authority by a person to facilitate the automatic exchange of information or for other tax purposes.”.

**15 Section 24 amended**

Section 24 of the principal Act is deleted and substituted by the following:

**“24. Confidentiality with regard to the provision of information**

“(1) Subject to this Act, a person shall treat as confidential the particulars of and matters related to a request, the automatic exchange of information and the provision of information for other tax purposes.

(2) A person who is notified of a request or is required to take action, produce a document or supply information respecting a request, the automatic exchange of information or the provision of information for other tax purposes, shall not disclose the fact of the receipt of the request, the particulars required, the documents produced or the information supplied to another person, except—

(a) that person’s legal representative;  
and

(b) any other person that the Authority may authorise

for the period that the person may be notified by the Authority.

(3) This section is binding on the legal representative of a person to whom subsection (2) applies as if he were that person.

(4) Subject to this Act, the Authority shall hold information received as confidential and the proceedings of the Authority shall accordingly be closed to a person who is not authorised by the Authority or by this Act to be present at the proceedings.”.

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**16 Schedule amended**

Part A of the Schedule is amended by deleting “**Order No.**” where it appears in column 2 and substituting “**Citation of implementing enactment**”.

(Sgd.) Shirley Osbourne

**SPEAKER**

Passed by the Legislative Assembly this 4th day of August, 2015

(Sgd.) Shivonne R. White

**CLERK OF THE LEGISLATIVE ASSEMBLY (Ag.)**