
A BILL FOR AN ACT

To amend sections 312, 313, 314, 322, 331 and 352 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 13-71, and as amended by Public Law Nos. 14-110, 16-19, 16-52, 17-73, to expand the definition of Major Corporations to include qualified Foreign Corporations with registered branches in the FSM, as well as Domestic Corporations, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. Section 312 of title 54 of the Code of the
2 Federated States of Micronesia, as amended by Public Laws Nos.
3 14-110 and 16-52, is hereby further amended to read as follows:

4 "Section 312. Definitions.

5 (1) 'Control group' of a corporation for purposes of
6 this chapter shall mean a group of corporations
7 comprising of:

8 (a) the corporation,

9 (b) other corporations in which the corporation
10 owns directly or indirectly 80% or more of the shares,

11 (c) other corporations that own directly or
12 indirectly 80% or more of the shares of the corporation,
13 and,

14 (d) corporations other than the corporation
15 described in paragraph (a) of this section or
16 corporations described in paragraph (b) of this section,
17 or corporations where 80% or more shares are owned
18 directly or indirectly by the corporations described in
19 paragraph (c) of this section.

1 (2) 'Major Corporation' means any ~~[corporation]~~ (I)
2 Domestic Corporation formed on or after January 1, 2005;
3 or (II) Foreign Corporation, not principally engaged in
4 business in the Federated States of Micronesia as a bank
5 (as such term is defined in title 29 of the Code of the
6 Federated States of Micronesia, section 102(1)), ~~[formed~~
7 ~~on or after January 1, 2005]~~, and,

8 (a) whose shareholders equity ~~[or paid]~~ (in the
9 case of Domestic Corporation only) or Paid-in [capital]
10 Capital as of the beginning of its fiscal year is
11 \$1,000,000 or more; or

12 (b) in the case of Domestic Corporations, the
13 aggregate amount of the shareholders equity or ~~[paid]~~
14 Paid-in [capital]Capital of the control group is
15 \$10,000,000 or more; or

16 (c) that is a captive insurance company licensed
17 pursuant to title 37 of the Code of the Federated States
18 of Micronesia regardless of the amount of
19 capitalization.

20 (3) 'Domestic Corporation' means a corporation
21 authorized by law to issue stock, organized under the
22 laws of the Federated States of Micronesia

23 (4) 'Foreign Corporation' means a corporation
24 authorized by law to issue stock, organized under laws
25 other than the laws of the Federated States of

1 Micronesia for a purpose or purposes for which a
2 corporation may be organized under the laws of the
3 Federated States of Micronesia.

4 (5) 'Permanent Establishment' means a fixed place of
5 business through which the business of an enterprise is
6 wholly or partly carried on.

7 ~~(3)~~6) 'Secretary' means the Secretary of the Department
8 of Finance and Administration.

9 ~~(4)~~7) 'Taxable Year' shall mean the fiscal year of the
10 major corporation as reported to the Secretary under
11 section 314 of this chapter.

12 ~~(5)~~8) 'Paid-in Capital' for purposes of this chapter
13 shall mean: (I) in the case of Major Corporations that
14 are Domestic Corporations, the total amount of
15 consideration contributed to the company for the
16 issuance of shares~~;~~ and
17 (II) in the case of Major Corporations that are Foreign
18 Corporations, the total amount of Domestic Capital (as
19 defined in section 314(2)) registered with the Registrar
20 of Corporations."

21 Section 2. Section 313 of title 54 of the Code of the
22 Federated States of Micronesia, as amended by Public Laws Nos.
23 14-110, 16-19 and 16-52, is hereby further amended to read as
24 follows:

25 "Section 313. Applicability of this chapter. Taxes

1 imposed under this chapter shall apply to all [m]Major
2 [e]Corporations [~~incorporated in~~] as defined in section
3 312. In case of conflict, this chapter shall prevail
4 over other laws or regulations of the Federated States
5 of Micronesia [~~as defined in section 312~~].

6 Section 3. Section 314 of title 54 of the Code of the
7 Federated States of Micronesia, as enacted by Public Law No. 13-71
8 is hereby amended to read as follows:

9 "Section 314. Filing of report.

10 (1) A [m]Major [e]Corporation that is a Domestic
11 [e]Corporation shall file an initial written report with
12 the Secretary. The written report shall be signed by
13 the authorized representative of the Major Corporation
14 and shall state:

15 ([1]a) the true and correct name of the [m]Major
16 [e]Corporation;

17 ([2]b) the taxpayer identification number or other
18 identifying number, if any, of the [m]Major
19 [e]Corporation;

20 ([3]c) the mailing and office address of the
21 [m]Major [e]Corporation;

22 ([4]d) the name, address, telephone, and fax numbers
23 of the authorized representative for the [m]Major
24 [e]Corporation;

25 ([5]e) the nature of the [m]Major [e]Corporation's

1 principal business; and

2 ([§]f) the last day of the [§]Major [e]Corporation's
3 fiscal year. The report shall be filed by the [§]Major
4 [e]Corporation within sixty (60) days of the [§]Major
5 [e]Corporation becoming subject to this chapter.

6 (2) Every Foreign Corporation which undertakes to do
7 or carry on business in the Federated States of
8 Micronesia as a Major Corporation shall be permitted to
9 do so upon:

10 (a) remitting the sum of \$1,000,000 or more (or
11 its equivalent in another currency) to a commercial bank
12 licensed to business in the Federated States of
13 Micronesia, hereinafter referred to as a "Licensed
14 Bank", as initial capital for the purpose of doing or
15 carrying on business in the Federated States of
16 Micronesia;

17 (b) registering such amount as its initial
18 domestic capital ("Domestic Capital") by filing with the
19 Registrar of Corporations a copy of a statement prepared
20 by such Licensed Bank duly confirming its receipt from
21 the corporation of such Domestic Capital;

22 (c) filing with the Registrar of Corporations a
23 declaration stating:

24 (i) the true and correct name of the
25 corporation;

1 (ii) the state or country wherein it was
2 incorporated;

3 (iii) the location and address of its
4 principal office;

5 (iv) the location and address of its branch
6 office in the Federated States of Micronesia, including
7 its mailing address;

8 (v) the names and addresses of its officers
9 and directors;

10 (vi) the nature of the corporation's
11 principal business (unless otherwise stated in the
12 Certificate of Incorporation, Charter, Articles of
13 Association or equivalent document to be filed pursuant
14 to paragraph (d) of this subsection);

15 (vii) the names and addresses of its officers
16 and directors;

17 (viii) the nature of the corporation's
18 principal business (unless otherwise stated in the
19 Certificate of Incorporation, Charter, Articles of
20 Association or equivalent document to be filed pursuant
21 to paragraph (d) of this subsection);

22 (ix) its Domestic Capital which shall be
23 \$1,000,000 or more;

24 (x) the name and branch address of the
25 Licensed Bank which received the Domestic Capital;

1 (xi) the name, citizenship and business
2 address of the person residing within the Federated
3 States of Micronesia upon whom legal notice and process
4 from the courts of the Federated States of Micronesia,
5 or notices from officials of the Federated States of
6 Micronesia, may be served;

7 (xii) the last day of the corporation's fiscal
8 year; and

9 (d) filing with the Registrar of Corporations a
10 copy of the corporation's Certificate of Incorporation,
11 Charter, Articles of Association or equivalent
12 document."

13 Section 4. Section 322 of title 54 of the Code of the
14 Federated States of Micronesia, as amended by Public Law No.
15 16-52, is hereby further amended to read as follows

16 "Section 322. Taxable income defined. The taxable
17 income of a ~~[m]Major [e]Corporation~~ equals: (I) in the
18 case of a Domestic Corporation, its income, before
19 income taxes, earned in the taxable year as determined
20 under International Financial Reporting Standard
21 (hereinafter, 'IFRS') or Generally Accepted Accounting
22 Principles (hereinafter, 'GAAP'), as IFRS or GAAP, as
23 the case may be, is regularly utilized to calculate
24 taxable income in the ~~[major corporation]~~ Corporation
25 corporation's principal shareholder's, if a corporation,

1 place of incorporation or, if an individual, country of
2 primary residence; and (II) in the case of a Foreign
3 Corporation, its income, before income taxes, earned in
4 the taxable year as determined under IFRS or GAAP, as
5 IFRS or CAAP, as the case may be, is regularly utilized
6 to calculate taxable income in the corporation's place
7 of incorporation, and attributable to a Permanent
8 Establishment in the FSM through which the corporation
9 carried on its business."

10 Section 5. Section 331 of title 54 of the Code of the
11 Federated States of Micronesia, as amended by Public Law No.
12 16-52, is hereby further amended to read as follows:

13 "Section 331. Non-refundable credit for payment of
14 foreign taxes.

15 (1) In the case of a domestic (but not a foreign)
16 [m]Major [e]Corporation, any income taxes paid or
17 accrued on taxable income during the taxable year to a
18 foreign country shall be allowed as a credit against the
19 amount of tax imposed by section 321 in an appropriate
20 amount to reflect any income taxes the [m]Major
21 [e]Cooperation can demonstrate have been paid with
22 respect to such dividend to any foreign country or
23 countries.

24 (2) In the case of a dividend received by a major
25 corporation, a credit shall also be allowed against the

1 amount of tax imposed by section 321 in an appropriate
2 amount to reflect any income taxes the [M]Major
3 [E]Corporation can demonstrate have been paid with
4 respect to such dividend to any foreign country or
5 countries.

6 (3) In no case shall a [M]Major [E]Corporation, in any
7 taxable year, be entitled to credits which, in the
8 aggregate, exceed the amount of the tax imposed, for
9 that taxable year, under the provisions of section 321
10 of this chapter.

11 (4) No foreign tax credit shall be permitted to create
12 a refund or credit for overpayment of tax; but any
13 amount of foreign tax not creditable by reason of this
14 provision may be carried forward as a creditable foreign
15 tax to each succeeding year until fully utilized subject
16 to the same restrictions in the succeeding years. In no
17 event, however, shall any such foreign tax credit be
18 carried forward more than seven (7) years."

19 Section 6. Section 352 of title 54 of the Code of the
20 Federated States of Micronesia, as amended by Public Laws Nos.
21 16-52 and 17-73, is hereby further amended to read as follows:

22 "Section 352. Payment of tax due. Taxes shall be paid
23 as follows:

24 (1) A [M]Major [E]Corporation shall, pay fifty percent
25 (50%) of the tax it paid for the income of previous

1 fiscal year, if any, hereinafter referred to as "Tax
2 Deposit" to the FSM by the end of the eighth (8th) month
3 of the current fiscal year. This is unless the [M]Major
4 [E]Corporation requests a reduction or waiver as the Tax
5 Deposit is rendered unnecessary because the expected tax
6 payable in the current fiscal year is less than the
7 amount of the Tax Deposit. Reduction or waiver of the
8 Tax Deposit is subject to approval by the Secretary;
9 however, such approval must not be unreasonably
10 withheld.

11 (2) A [M]Major [E]Corporation which pays an amount
12 less than the Tax Deposit shall pay interest on the
13 delinquent tax balance of one-half of one percent (0.5%)
14 for each full month until the full amount is paid unless
15 approval is granted under subsection (1) of this
16 section).

17 (3) A [M]Major [E]Corporation that does not have a
18 previous fiscal year to determine its Tax Deposit
19 ~~[either]~~ because it is newly formed ~~[or]~~ is
20 redomesticating into the FSM~~[7]~~ or newly created a
21 Permanent Establishment in the FSM, shall be exempt from
22 the payment of Tax Deposit and any filing requirements
23 pertaining to the Tax Deposit.

24 (4) A [M]Major [E]Corporation shall complete and
25 submit to the Department of Finance and Administration

1 an annual statement declaring the taxable income with
2 permitted deductions and exemptions, hereinafter
3 referred to as "Tax Return", by the last business day of
4 the sixth month period following the last day of the
5 [M]Major [E]Corporation's fiscal year. The annual
6 statement shall be accompanied by one of the following:

7 (a) Any additional tax payment, after the
8 subtraction of the Tax Deposit, due as shown on the Tax
9 Return of the [M]Major [E]Corporation shall be paid by
10 the last business day of the sixth month period
11 following the last day of the [M]Major [E]Corporation's
12 fiscal year.

13 (b) If the [M]Major [E]Corporation pays,
14 including the Tax Deposit by the end of the eighth (8th)
15 month during the fiscal year, as per sub-section [A]1
16 above, an amount less than the tax due as shown on the
17 annual tax return by the last business day of the sixth
18 month period following the last day of the
19 ~~[corporation's]~~ Major Corporation's fiscal year, it
20 shall pay interest on the delinquent tax balance of one
21 half of one percent (0.5%) for each full month until the
22 full amount is paid.

23 (5) Should the Tax Deposit paid by the [M]Major
24 [E]Corporation exceed the total annual income tax amount
25 shown on the Tax Return resulting in overpayment of tax,

1 then the [M]Major [E]Corporation shall be entitled to
2 their rights conferred under section 332, chapter 3 of
3 title 54 of the Code of the Federated States of
4 Micronesia. The [M]Major [E]Corporation shall apply to
5 the Department of Finance and Administration for either
6 of the following tax treatment options provided under
7 Section 332 by indicating their choice in the Tax Return
8 form:

9 (a) To have the overpaid tax amount refunded in
10 full, in which case, the Department of Finance and
11 Administration shall credit the [M]Major
12 [E]Corporation's bank account within a two (2) month
13 period from the last business day of the sixth month
14 period following the last day of the [M]Major
15 [E]Corporation's fiscal year;

16 (b) To have the overpaid tax amount credited to
17 any tax payments by the [M]Major [E]Corporation to the
18 Federated States of Micronesia."

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24 Section 7. This act shall become law upon approval by the
25 President of the Federated States of Micronesia or upon its

1 becoming law without such approval.

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3 Date: 5/15/14

Introduced by: /s/ Florencio S. Harper

Florencio S. Harper

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