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INTERNATIONAL COMPANIES (AMENDMENT) ACT
NO. 4 OF 2016

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INTERNATIONAL TAX COOPERATION ACT NO. 7
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REPUBLIC OF VANUATU

INTERNATIONAL TAX COOPERATION ACT NO. 7 OF 2016

Arrangement of Sections

1	Purpose of the Act	2
2	Interpretation	2
3	Functions and powers of the Competent Authority	3
4	Power to require production of information	4
5	Declining a request	5
6	Service of documents	5
7	Automatic exchange of information with respect to reportable accounts	6
8	Search warrants	6
9	Entry and search under warrant	7
10	Seized articles, documents or information	7
11	Offence	8
12	Confidentiality	9
13	Protection of persons disclosing confidential information	9
14	Prohibition on disclosure	10
15	Immunity	10
16	Overriding effect of this Act	11
17	Regulations	11
18	Commencement	11

REPUBLIC OF VANUATU

Assent: 27/06/2016
Commencement: 07/07/2016

INTERNATIONAL TAX COOPERATION ACT NO. 7 OF 2016

An Act to implement International Agreements between the Republic of Vanuatu and foreign States providing for cooperation in tax matters including the exchange of information, and for related purposes.

Be it enacted by the President and Parliament as follows-

1 Purpose of the Act

The purpose of this Act is to enforce and implement the terms of any Agreement and requiring the provision of information from any person.

2 Interpretation

(1) In this Act, unless the context otherwise requires:

Agreement means a treaty, convention or any international agreement that makes provision for the exchange of information with respect to tax matters including the automatic exchange of information between a foreign State and Vanuatu;

automatic exchange of information means the systematic and periodic communication of pre-defined information on residents of a foreign State with which Vanuatu has an Agreement without prior request;

Competent Authority means the Minister of Finance and Economic Management or a person or State agency appointed by the Minister as the Competent Authority in relation to an Agreement;

Competent Authority Agreement means a bilateral or multilateral agreement, between the Competent Authority and a foreign State to clarify or interpret the provisions of an Agreement or facilitate the automatic exchange of information under an Agreement;

financial institution means any body corporate that carries on banking business and includes a custodial institution, a depository institution, an investment entity, or an insurance company;

information means any fact, statement, document or record in any form whatsoever, and includes any or all of the following:

- (a) any fact, statement, document or record held by banks, other financial institutions, or any persons, including nominees and trustees, acting in an agency or fiduciary capacity;
- (b) any fact, statement, document or record regarding the beneficial ownership of companies, partnerships and other persons, including:
 - (i) in the case of collective investment funds - information on shares, units and other interests; or
 - (ii) in the case of trusts - information on settlers, trustees and beneficiaries;

party means a party to an Agreement;

person includes an individual, partnership, corporation, trust, estate, association or other legal entity;

premises means a residential, commercial, industrial or other premises of any kind;

request means an application made by a party to another party, pursuant to an Agreement;

requesting State means the party making a request to be supplied with information.

- (2) The provisions of this Act must be read and interpreted in conjunction with the terms of any Agreement and its commentaries.

3 Functions and powers of the Competent Authority

- (1) The Competent Authority has the following functions and powers:

- (a) to carry out requests, including but not limited to:
 - (i) taking statements from any person; and
 - (ii) providing information and articles of evidence to any person who requires access to that information for the purposes of this Act; and

- (iii) serving of documents; and
 - (iv) executing searches and seizures; and
 - (b) to facilitate the automatic exchange of information for tax purposes in accordance with an Agreement and any implementing arrangements made under a Competent Authority Agreement; and
 - (c) to ensure compliance with the Agreements; and
 - (d) to make determinations under the terms of any Agreement as to any costs and the apportionment of such costs relating to or arising from any request; and
 - (e) to enter into a Competent Authority Agreement or Memorandum of Understanding with a Competent Authority of a foreign State specified under the Agreement on matters relating to the operation of the Agreement or issuing operating procedures to other Competent Authorities; and
 - (f) to perform such other functions as may be prescribed under this or any other Act.
- (2) The Competent Authority is to assist a requesting State in accordance with the terms of the Agreement with that State.

4 Power to require production of information

- (1) If upon receiving a request, the Competent Authority determines that the request complies with the relevant Agreement, the Competent Authority is to execute the request in accordance with the relevant Agreement and this Act.
- (2) The Competent Authority may request additional information from the requesting State as may be necessary to assist it in considering the request.
- (3) If upon receiving a request the Competent Authority considers it necessary to obtain specified information or information of a specified description from any person, it is to notify that person of the information required from him or her.
- (4) A notice issued under subsection (3) is to require that the information be:
 - (a) provided within a specified time; and

- (b) provided in such form as the Competent Authority requires including original documents or copies of original documents; and
 - (c) verified or authenticated in such manner as the Competent Authority requires.
- (5) If a request so requires, the Competent Authority is to obtain the information in the form of deposition of witnesses given under oath.
- (6) The period to be specified in a notice under subsection (4) must not be more than 14 days, unless it appears to the Competent Authority that a longer or shorter period is appropriate.
- (7) If an information is produced:
 - (a) the Competent Authority may retain the information; and
 - (b) the Competent Authority may take copies or extracts of any information.
- (8) A notice under this section does not confer any right to the production of, or the access to, items that are subject to legal privilege
- (9) If the information to which a notice relates is maintained as an electronic record, it must be reproduced in a form which is visible, clear and can be taken.
- (10) For the purposes of subsection (9), **electronic record** means a record processed and maintained by electronic means.

5 Declining a request

- (1) If upon receiving a request, the Competent Authority determines that the request does not comply with the relevant Agreement, the Competent Authority is to decline that request and notify the requesting State accordingly.
- (2) If a request is declined, the Competent Authority and the requesting State must act in accordance with the terms of the relevant Agreement to resolve the matter.

6 Service of documents

A document or notice may be served on a person by hand or by posting it to the person's postal address or be served in any manner prescribed by the Minister.

7 Automatic exchange of information with respect to reportable accounts

- (1) The Competent Authority may require any financial institution to furnish to it at a time and in such manner, any information required for the proper discharge of its functions in relation to automatic exchange of information under an Agreement or a Competent Authority Agreement.
- (2) For the purposes of this section, the Minister may, by Regulation specify any or all of the following:
 - (a) the financial institutions required to report information;
 - (b) the content of information to be reported and the manner in which it will be reported, including in electronic format;
 - (c) the standard of accuracy and completeness of the information to be reported;
 - (d) the penalties for contravening or failing to comply with the Regulations made under this section;
 - (e) such other matters deemed necessary for the proper administration and enforcement of this Act and the relevant Agreements relating to the automatic exchange of information.

8 Search warrants

- (1) The Competent Authority may apply to the Supreme Court for the issue of a warrant authorising entry onto a premises for the purposes of searching for and seizing, any article or document specified in the application.
- (2) The Court may issue a search warrant, if it is satisfied by information given on oath by the Competent Authority or an authorised officer, that:
 - (a) there are reasonable grounds to suspect that an offence against this Act has been, or is being, or is about to be committed; or
 - (b) a request might be seriously prejudiced unless a secure immediate access to the information is made.
- (3) In issuing a warrant, the Court may impose such conditions or restrictions on the execution of the warrant as he or she considers necessary.

9 Entry and search under warrant

- (1) A search warrant issued under section 8, may authorise the Competent Authority or an authorised officer to:
 - (a) enter the premises, if necessary by force, to search for and seize, any article, document or information of a specified description; or
 - (b) enter and search the premises on 1 occasion within 10 working days from the date the warrant is issued, and at any time that is reasonable in the circumstances, but subject to any conditions or restrictions imposed under subsection 8(3); or
 - (c) use such assistance as is reasonable in the circumstances; or
 - (d) use such equipment necessary to enforce the warrant.
- (2) In addition to searching and seizing any article, document or information that is subject to a warrant, the Competent Authority or authorised officer may also whilst on the premises executing the warrant, seize any other thing that the officer finds and has reasonable cause to suspect may be evidence of the commission of an offence in respect of which that officer could have obtained a warrant under subsection 8(2).
- (3) The Competent Authority or an authorised officer who enters a premises that is unoccupied or the occupier is temporarily absent by virtue of a warrant issued under this section, must ensure that upon leaving the premises, the premises is effectively secured against trespassers as reasonably similar to the manner as he or she found it.
- (4) For the purposes of this section, and section 10, **authorised officer** means any person authorised by the Competent Authority or the Court to execute a warrant issued under section 8.

10 Seized articles, documents or information

- (1) Any article, document or information seized by virtue of a warrant must be delivered to the office of the Competent Authority.
- (2) The Competent Authority or authorised officer must prepare a list of any article, document, information or anything seized when executing a warrant issued under section 8.
- (3) The Competent Authority or an authorised officer must provide a copy of the list prepared under subsection (2), if requested to do so by:

- (a) the occupier of the premises; or
 - (b) the person who had possession or custody of the article, document or information immediately before its seizure.
- (4) If an article, document or information is seized under the authority of a warrant and it is shown that access to the article, document or information is required for the conduct of the business or affairs of any person, the Competent Authority is to provide that person reasonable access to such article, document or information.

11 Offence

- (1) A person who is required to report or produce any information which is in his or her possession or control and:
- (a) without lawful excuse fails to do so within such time as required by the Competent Authority; or
 - (b) alters, destroys, mutilates, defaces, hides or removes any information or makes a wilful attempt to do so,
- commits an offence punishable on conviction by a fine of not more than VT1,000,000 or by a term of imprisonment not exceeding 2 years, or both.
- (2) A person who obstructs the Competent Authority or an authorised officer:
- (a) in performing his or her functions under this Act; or
 - (b) in executing a warrant under section 8,
- commits an offence punishable on conviction by a fine of not more than VT1,000,000, or by a term of imprisonment not exceeding 2 years, or both.
- (3) A person who knowingly makes a false declaration to the Competent Authority or an authorised officer is commits an offence punishable on conviction by a fine of not more than VT1,000,000, or by a term of imprisonment not exceeding 2 years, or both.
- (4) A person who directly or indirectly discloses to any person any information in contravention of this Act or an Agreement, commits an offence punishable on conviction by a fine not exceeding VT5,000,000 or by a term of imprisonment not exceeding 5 years, or both.

- (5) If a body corporate commits an offence under this Act, any director, general manager, secretary or other senior officer of that body corporate or any person acting or purporting to act in any such capacity who authorised, assented to or participated in the commission of the offence:
- (a) is a party to and may be found guilty of such offence; and
 - (b) is to be liable to the penalty provided for such offence.

12 Confidentiality

- (1) Subject to subsection (2), any information provided to or received by the Competent Authority pursuant to an Agreement or this Act is confidential.
- (2) The Competent Authority may provide information obtained in the performance of his or her functions to the Department of Customs and Inland Revenue, for the purposes of administering and enforcing its tax laws.

13 Protection of persons disclosing confidential information

- (1) Subject to subsection (3), a person who:
- (a) divulges any confidential information; or
 - (b) provides articles or documents; or
 - (c) gives any testimony in conformity with an order or notice issued pursuant to a request; or
 - (d) provides information pursuant to the Regulations to facilitate the automatic exchange of information; or
 - (e) otherwise provides information,

to the Competent Authority or an authorised recipient for tax purposes pursuant to a requirement of this Act, does not commit any offence under any other law for the time being in force in Vanuatu, by reason only of such disclosure or the giving of such testimony or the provision of such information.

- (2) If a person provides information under subsection (1):

- (a) he or she is not in breach of any confidential relationship between him or her and any other person; and
 - (b) a civil or criminal liability action is not to be taken against him or her or his or her employer by reason of complying with the order or notice.
- (3) This section does not provide protection from civil or criminal action in respect of the provision of any information that is subject to legal privilege.

14 Prohibition on disclosure

- (1) A person who:

- (a) is notified of a request; or
- (b) is required to take any action; or
- (c) is required to produce any document or supply any information,

pursuant to any matter relating to a request, must not disclose to any other person, the fact of receiving the request including any information or any other matter which would likely prejudice the implementation of that request.

- (2) Despite subsection (1), a person may disclose information relating to a request to his or her solicitor, legal representative or such other persons as the Competent Authority may authorise, for such period as notified by the Competent Authority.
- (3) A person who discloses information contrary to this section, commits an offence punishable on conviction by a fine of not more than VT1,000,000, or by imprisonment for a term not exceeding 2 years, or both.

15 Immunity

The Competent Authority, any authorised officer or any other person authorised by the Competent Authority is not liable for any criminal action or any civil proceedings for damages for or in respect of an act done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance of a function or power conferred on him or her by this Act.

16 Overriding effect of this Act

The provisions of this Act have effect despite any obligation as to confidentiality or other restriction for the disclosure of information imposed by any other Act.

17 Regulations

The Minister may make Regulations not inconsistent with this Act, prescribing matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

18 Commencement

This Act commences on the day on which it is published in the Gazette.