

No. 8 of 2018

VIRGIN ISLANDS

**MUTUAL LEGAL ASSISTANCE (TAX MATTERS) (AMENDMENT)
ACT, 2018**

ARRANGEMENT OF SECTIONS

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No. 8 of 2018

**Mutual Legal Assistance (Tax Matters)
(Amendment) Act, 2018**

**Virgin
Islands**

I Assent

**(Sgd.) Augustus J. U. Jaspert,
Governor.
17th September, 2018**

VIRGIN ISLANDS

No. 8 of 2018

An Act to amend the Mutual Legal Assistance (Tax Matters) Act, 2003 (No. 18 of 2003).

[Gazetted 4th October, 2018]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and
commencement.

1. (1) This Act may be cited as the Mutual Legal Assistance (Tax Matters) (Amendment) Act, 2018.

(2) Part IV of this Act shall be deemed to have come into force on the 1st day of January 2018.

General
amendments.
No. 18 of 2003

2. The Mutual Legal Assistance (Tax Matters) Act, 2003 (referred to in this Act as “the principal Act”) is amended

(a) in the long title by inserting after the words “for giving effect to the Common Reporting Standard,” the words “for giving effect to the Base Erosion and Profit Shifting Action 13: Country-By-Country Reporting;” and

(b) by renumbering the first reoccurring section 21 (General Penalty) as section 42.

Section 21
amended.

3. Section 21 (Interpretation for Part III) of the principal Act is amended by inserting in their proper alphabetical order, the following definitions:

““Virgin Islands Financial Institution” means

- (a) any Financial Institution that is resident in the Virgin Islands, but excludes any branch of that Financial Institution that is located outside the Virgin Islands; and
- (b) any branch of a Financial Institution that is not resident in the Virgin islands, if that branch is located in the Virgin Islands;

“Group Annuity Contract” means an Annuity Contract under which the obligees are individuals who are affiliated through an employer, trade association, labour union, or other association or group;

“Group Cash Value Insurance Contract” means a Cash Value Insurance Contract that

- (a) provides coverage on individuals who are affiliated through an employer, trade association, labour union, or other association or group; and
- (b) charges a premium for each member of the group (or member of a class within the group) that is determined without regard to the individual health characteristics other than age, gender, and smoking habits of the member (or class of members) of the group;

“Pre-existing Account” means

- (a) a Financial Account maintained by a Reporting Financial Institution as of 31st December 2015;
- (b) any Financial Account of an Account Holder, regardless of the date such Financial Account was opened, if
 - (i) the Account Holder also holds with the Reporting Financial Institution (or with a Related Entity within the same jurisdiction as the Reporting Financial Institution) a Financial Account that is a Pre-existing Account under subparagraph C(9)(a) of Section VIII of the Common Reporting Standard;

- (ii) the Reporting Financial Institution (and, as applicable, the Related Entity within the same jurisdiction as the Reporting Financial Institution) treats both of the aforementioned Financial Accounts, and any other Financial Accounts of the Account Holder that are treated as Pre-existing Accounts under subparagraph C(9)(a) of Section VIII of the Common Reporting Standard, as a single Financial Account for purposes of satisfying the standards of knowledge requirements set forth in paragraph A of Section VII of the Common Reporting Standard, and for purposes of determining the balance or value of any of the Financial Accounts when applying any of the account thresholds;
- (iii) with respect to a Financial Account that is subject to AML/KYC Procedures, the Reporting Financial Institution is permitted to satisfy such AML/KYC Procedures for the Financial Account by relying upon the AML/KYC Procedures performed for the Pre-existing Account described in subparagraph C(9)(a) of Section VIII of the Common Reporting Standard; and
- (iv) the opening of the Financial Account does not require the provision of new, additional or amended customer information by the Account Holder other than for the purposes of the Common Reporting Standard;

“Related Entity” in relation to two Entities, means

- (a) either Entity controls the other Entity;
- (b) the two Entities are under common control; or
- (c) the two Entities are Investment Entities described in subparagraph A(6)(b) of Section VIII of the Common Reporting Standard, are under common management, and such management fulfils the due diligence obligations of such Investment Entities. For this purpose control includes direct or indirect ownership of more than 50 % of the vote and value

in an Entity;

“Reporting Financial Institution” means a Financial Institution that is not a Non-Reporting Financial Institution; and

“Standardised Industry Coding System” means a coding system used to classify establishments by business type for purposes other than tax purposes.

4. Section 25 of the principal Act is amended in subsection (3) by inserting after the words “list of participating jurisdictions” the words “and Reportable Jurisdictions”. Section 25 amended.

5. Section 26 of the principal Act is amended by inserting the following new subsections: Section 26 amended.

“(3) All Virgin Islands Financial Institutions shall apply the Common Reporting Standard in accordance with this Act.

(4) Where this Act is silent the Common Reporting Standard shall apply.”.

6. Section 27 of the principal Act is replaced with the following: Section 27 replaced.

“Policies and procedures to be established by Virgin Islands Financial Institutions.

27. (1) A Virgin Islands Financial Institution shall establish, implement and maintain written policies and procedures to comply with this Act.

(2) The policies and procedures established pursuant to subsection (1) shall provide for the following:

- (a) identifying each jurisdiction in which an Account Holder or a Controlling Person is resident for income tax or corporation tax purposes or for the purposes of any tax imposed by the law of the jurisdiction that is of a similar character of either of those taxes;
- (b) applying the due diligence procedures set out in the

Common Reporting
Standard; and

- (c) ensuring that any information obtained in accordance with this Act or a record of the steps taken to comply with this Act in respect of a Financial Account is kept for at least six years from the end of the year to which the information relates or during which the steps were taken.

(3) A Virgin Islands Financial Institution is deemed to have contravened the policies and procedures relating to self-certification or to documentary evidence if the Virgin Islands Financial Institution

- (a) knows, or has reason to believe, the self-certification or documentary evidence is inaccurate in a material way from its policies and procedures; and
- (b) it files a return that relies on the accuracy of such a self-certification or based on documentary evidence.

(4) A Virgin Islands Financial Institution that fails to establish and maintain policies and procedures designed to identify Reportable Accounts in accordance with this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars.”.

Section 28
amended.

- 7. Section 28 of the principal Act is amended
 - (a) in the marginal note, by replacing the word “notify” with the word “register”;
 - (b) by replacing subsection (1) with the following:

“(1) A Virgin Islands Financial Institution shall register with the Competent Authority.”;

- (c) in subsection (2), by replacing all occurrences of the words “Reporting Financial Institution” with the words “Virgin Islands Financial Institution”;
- (d) by replacing subsection (3) with the following:

“(3) Existing Virgin Islands Financial Institutions shall register with the Competent Authority by 30th April, 2019 or if a Virgin Islands Financial Institution became a Virgin Islands Financial Institution after the coming into force of this Act, it shall register with the Competent Authority by the 30th April in the first calendar year following which the Virgin Islands Financial Institution became a Virgin Islands Financial Institution.”;

- (e) in subsection (4), by replacing all occurrences of the words “Reporting Financial Institution” with the words “Virgin Islands Financial Institution”;
- (f) in subsection (5), by replacing the word “notify” with the word “Register”; and
- (g) by inserting after subsection (5) the following new subsection:

“(6) A Virgin Islands Financial Institution that fails to register with the Competent Authority in accordance with this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars”.

8. Section 29 of the principal Act is amended

Section 29 amended.

- (a) in the marginal note, by replacing the word “make” with the word “file”;
- (b) by replacing subsection (1) with the following:

“(1) A Virgin Islands Financial Institution shall, in respect of each calendar year following the coming into force of this Act, file a return

- (a) setting out the information required to be reported under the Common Reporting Standard in respect of each Reportable Account maintained by the Virgin Islands Financial Institution at any time during that year; or
- (b) if no Reportable Account is maintained, a nil return.”;
- (c) by deleting subsection (2);
- (d) by renumbering subsections (3), (4) and (5) as subsections (2), (3) and (4) respectively; and
- (e) by replacing subsection (4) as renumbered with the following:

“(4) A Virgin Islands Financial Institution shall file a return under this Part on or before 31st May of each calendar year following the calendar year to which the return relates.”; and
- (f) by inserting after subsection (4) as renumbered the following new subsection:

“(5) A Virgin Islands Financial Institution that fails to register with the Competent Authority in accordance with this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars.”.

Section 30 amended.

9. Section 30 of the principal Act is amended

- (a) by replacing all occurrences of the words “Reporting Financial Institution” with the words “Virgin Islands Financial Institution”;
- (b) by replacing all occurrences of the word “made” with the word “filed”; and
- (c) by replacing the words “must make a return” with the words “shall file a return”.

10. Section 31 of the principal Act is amended by replacing all occurrences of the words “Reporting Financial Institution” with the words “Virgin Islands Financial Institution”. Section 31 amended.

11. Section 32 of the principal Act is amended Section 32 amended.

(a) by replacing all occurrences of the words “Reporting Financial Institution” with the words “Virgin Islands Financial Institution”;

(b) by inserting in subsection (1)(a) after the words “to provide to it information, including” the words “but not limited to,”; and

(c) by inserting after subsection (3) the following new subsections:

“(4) The Competent Authority may inspect the due diligence procedures implemented by a Virgin Islands Financial Institution or perform an inquiry into the due diligence procedures of the Virgin Islands Financial Institution.

(5) Where the Competent Authority inspects or performs an inquiry on a Virgin Islands Financial Institution in accordance with subsection (4) it may where necessary, advise the Financial Services Commission.

(6) Any person who wilfully or knowingly signs (or otherwise positively affirms) a false self-certification commits an offence.”.

12. The principal Act is amended by inserting after section 32, the following new section: Section 32A inserted.

“Rules for applying the Common Reporting Standard.

32A. (1) A Virgin Islands Financial Institution may apply the due diligence procedures under the Common Reporting Standard for

(a) New Accounts to Pre-existing Accounts; and

(b) High Value Accounts to Lower Value Accounts.

(2) Where a Virgin Islands Financial Institution applies the due diligence procedures in accordance with subsection (1) it may do so either with respect to all relevant Pre-existing Accounts or, separately, with respect to any clearly identified group of such accounts (such as by line of business or the location where the account is maintained).

(3) Where a Virgin Islands Financial Institution applies the due diligence procedures in accordance with subsection (1)(a) the rules otherwise applicable to Pre-existing Accounts outlined in the Common Reporting Standard continue to apply.

(4) A Virgin Islands Financial Institution may apply

(a) either the residence address test or the electronic record search set forth in subparagraphs B(2) through (6) of Section III of the Common Reporting Standard; or

(b) only the electronic record search.

(5) Where a Virgin Islands Financial Institution applies the residence address test in accordance with subsection (4) it shall apply such a test with respect to each Lower Value Account or clearly identified group of such accounts as permitted by law.

(6) Where a Virgin Islands Reporting Financial Institution does not apply the residence address test in accordance with subsection (4) or one or more of the test requirements are not satisfied, then the Virgin Islands Financial Institution shall perform the electronic record search with respect to the Lower Value Account.

(7) A Virgin Islands Financial Institution may exclude from its due diligence procedures Pre-existing Accounts for an entity with an account balance or value that does not exceed of two hundred and fifty thousand dollars as of the 31st December, 2015 and if, at the end of a subsequent calendar year, the account balance or value exceeds two hundred and fifty thousand dollars, the Virgin Islands Financial Institution shall apply the due diligence procedures.

(8) A Virgin Islands Financial Institution may treat a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract as a Financial Account that is not a Reportable Account until the date on which an amount is payable

to the employee or beneficiary, if the Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract meets the following requirements

- (a) the Group Cash Value Insurance Contract or Group Annuity Contract is issued to an employer and covers twenty-five or more employees;
- (b) the employees are entitled to receive any contract value related to their interest and to name beneficiaries for the benefit payable upon the employee's death; and
- (c) the aggregate amount payable to any employee or beneficiary does not exceed one million dollars.

(9) A Virgin Islands Financial Institution may use as Document Evidence any classification in the Financial Institution's records with respect to the Account Holder that was determined based on a standardised industry coding system, that was recorded by the Virgin Islands Financial Institution consistent with its normal business practices for purposes of AML/KYC Procedures or another regulatory purpose (other than for tax purposes) and that was implemented by the Virgin Islands Financial Institution prior to the date used to classify the Financial Account as a Pre-existing Account, provided that the Virgin Islands Financial Institution does not know or have reason to know that such classification is incorrect or unreliable.

(10) For the purposes of this part a Virgin Islands Financial Institution may align the scope of the beneficiary of a trust treated as a Controlling Person of the trust with the scope of the beneficiary of a trust treated as a Reportable Person of a trust that is a Virgin Islands Financial Institution.

(11) A Virgin Islands Financial Institution acting pursuant to subsection (10) must ensure that the Virgin Islands Financial Institution have appropriate procedures in place to identify when a distribution is made to a discretionary beneficiary of the trust in a given year that enable the trust to report such beneficiary as a Controlling Person.

(12) A Virgin Islands Financial Institution exercising any options under this section shall keep an internal record of such

an option as part of the policies and procedures which they are required to have in place in accordance with section 27.”.

Section 42 amended.

13. Section 42 of the principal Act as renumbered is amended

(a) by inserting the following new subsection after subsection (1)

“(1A) Any person who willfully or knowingly provides any false or inaccurate information to the Competent Authority commits an offence.”;

(b) in subsection (2) by replacing the words “subsection (1)” with the words “subsections (1) and (1A)”.

Part IV inserted.

14. The principal Act is amended by inserting after section 34 the following new Part:

“PART IV

Interpretation for Part IV.

35. In this Part, unless the context otherwise requires,

“Consolidated Financial Statements” means the financial statements of an MNE Group in which the assets, liabilities, income, expenses and cash flows of the Ultimate Parent Entity and the Constituent Entities are presented as those of a single economic entity;

“Constituent Entity” means

(a) any separate business unit of an MNE Group that is included in the Consolidated Financial Statements of the MNE Group for financial reporting purposes, or would be so included if equity interests in such business unit of an MNE Group were traded on a public securities exchange;

(b) any such business unit that is excluded from the MNE Group’s Consolidated Financial Statements solely on size or materiality grounds; and

(c) any permanent establishment of any separate business unit of the MNE Group included in paragraph (a) or (b) provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting,

regulatory, tax reporting, or internal management control purposes;

“Excluded MNE Group” means, with respect to any Fiscal Year of the Group, a Group having total consolidated group revenue of less than 750 million Euro during the Fiscal Year immediately preceding the Reporting Fiscal Year as reflected in its Consolidated Financial Statements for such preceding Fiscal Year;

“Fiscal Year” means an annual accounting period with respect to which the Ultimate Parent Entity of the MNE Group prepares its financial statements;

“Group” means a collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange;

“International Agreement” means the Multilateral Convention for Mutual Administrative Assistance in Tax Matters, any bilateral or multilateral Tax Convention, or any Tax Information Exchange Agreement to which the Virgin Islands is a party, and that by its terms provides legal authority for the exchange of tax information between jurisdictions, including automatic exchange of such information;

“Multinational Enterprises (MNE) Group” means any Group that

- (a) includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction; and
- (b) is not an Excluded MNE Group;

“Qualifying Competent Authority Agreement” means an agreement

- (a) that is between authorised representatives of those jurisdictions that are parties to an International Agreement; and
- (b) that requires the automatic exchange of country-by-country reports between the party jurisdictions;

“Reporting Entity” means the Constituent Entity that is required to file a country-by-country report conforming to the requirements in section 39 in its jurisdiction of tax residence on behalf of the MNE Group, and such entity may be the Ultimate Parent Entity, the Surrogate Parent Entity, or any entity described in section 37(2)(b);

“Reporting Fiscal Year” means that Fiscal Year, on or after the 1st January, 2018, the financial and operational results of which are reflected in the country-by-country report defined in section 39;

“Surrogate Parent Entity” means one Constituent Entity of the MNE Group that has been appointed by such MNE Group, as a sole substitute for the Ultimate Parent Entity, to file the country-by-country report in that Constituent Entity’s jurisdiction of tax residence, on behalf of such MNE Group, when one or more of the conditions set out in section 37(2)(b) applies;

“Systemic Failure” with respect to a jurisdiction, means that a jurisdiction has a Qualifying Competent Authority Agreement in effect with the Virgin Islands, but has suspended automatic exchange (for reasons other than those that are in accordance with the terms of that Agreement) or otherwise persistently failed to automatically provide to the Virgin Islands’ country-by-country reports in its possession of MNE Groups that have Constituent Entities in the Virgin Islands;

“Ultimate Parent Entity” means a Constituent Entity of an MNE Group that meets the following criteria:

- (a) it owns directly or indirectly a sufficient interest in one or more other Constituent Entities of such MNE Group such that it is required to prepare Consolidated Financial Statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so

required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence; and

- (b) there is no other Constituent Entity of such MNE Group that owns directly or indirectly an interest described in paragraph (a) in the first mentioned Constituent Entity.

36. The International Tax Authority shall be the Competent Authority for the purposes of this Part and in relation to the implementation of Base Erosion and Profit Shifting in the Virgin Islands. Competent Authority.

37. (1) Each Ultimate Parent Entity of an MNE Group that is resident for tax purposes in the Virgin Islands shall file a country-by-country report conforming to the requirements of section 39 with the Competent Authority with respect to its Reporting Fiscal Year on or before the date specified in section 40. Obligation to file: Country-by-Country reports.

(2) A Constituent Entity which is not the Ultimate Parent Entity of an MNE Group shall file a country-by-country report conforming to the requirements of section 39 with the Competent Authority with respect to the Reporting Fiscal Year of an MNE Group of which it is a Constituent Entity, on or before the date specified in section 40, if the following criteria are satisfied:

- (a) the entity is resident for tax purposes, in the Virgin Islands; and
- (b) one of the following conditions applies:
 - (i) the Ultimate Parent Entity of the MNE Group is not obligated to file a country-by-country report in its jurisdiction of tax residence; or
 - (ii) the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the Virgin Islands is a party but does not have a Qualifying Competent Authority Agreement in effect to which the Virgin Islands is a party by the time specified in section 40 for filing the country-by-country report for the Reporting Fiscal Year; or

- (iii) there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified by the Competent Authority to the Constituent Entity resident for tax purposes in the Virgin Islands.

(3) Where there are more than one Constituent Entities of the same MNE Group that are resident for tax purposes in the Virgin Islands and one or more of the conditions set out in subsection (2)(b) applies, the MNE Group may designate one of the Constituent Entities to file the country-by-country report conforming to the requirements of section 39 with the Competent Authority with respect to any Reporting Fiscal Year on or before the date specified in section 40 and to notify the Competent Authority that the filing is intended to satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in the Virgin Islands.

(4) Notwithstanding subsection (2), when one or more of the conditions set out in subsection (2)(b) applies, an entity described in subsection (2) shall not be required to file a country-by-country report with the Competent Authority with respect to any Reporting Fiscal Year if the MNE Group of which it is a Constituent Entity has made available a country-by-country report conforming to the requirements of section 39 with respect to such Fiscal Year through a Surrogate Parent Entity that files that country-by-country report with the tax authority of its jurisdiction of tax residence on or before the date specified in section 40 and that satisfies the following conditions:

- (a) the jurisdiction of tax residence of the Surrogate Parent Entity requires filing of country-by-country reports conforming to the requirements of section 39;
- (b) the jurisdiction of tax residence of the Surrogate Parent Entity has a Qualifying Competent Authority Agreement in effect to which the Virgin Islands is a party by the time specified in section 40 for filing the country-by-country report for the Reporting Fiscal Year;

- (c) the jurisdiction of tax residence of the Surrogate Parent Entity has not notified the Competent Authority of a Systemic Failure;
- (d) the jurisdiction of tax residence of the Surrogate Parent Entity has been notified in accordance with section 38(1) by the Constituent Entity resident for tax purposes in its jurisdiction that it is the Surrogate Parent Entity; and
- (e) a notification has been provided to the Competent Authority in accordance with section 38(2).

38. (1) Any Constituent Entity of an MNE Group that is resident for tax purposes in the Virgin Islands shall register with the Competent Authority whether it is the Ultimate Parent Entity or the Surrogate Parent Entity, no later than the last day of the Reporting Fiscal Year of such MNE Group.

Registration Requirement.

(2) Where a Constituent Entity of an MNE Group that is resident for tax purposes in the Virgin Islands is not the Ultimate Parent Entity nor the Surrogate Parent Entity, it shall register with the Competent Authority of the identity and tax residence of the Reporting Entity, no later than the last day of the Reporting Fiscal Year of such MNE Group.

(3) A Constituent Entity of an MNE Group shall do so electronically in a form required by the Competent Authority.

(4) A Constituent Entity of an MNE Group shall register the Competent Authority immediately of any change to the information provided under subsection (2).

(5) A Constituent Entity of an MNE which fails to register with the Competent Authority in accordance with this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars.

39. (1) For purposes of this Part, a country-by-country report with respect to an MNE Group is a report containing:

Country-by-Country Report.

- (a) aggregate information relating to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated

capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE Group operates.

- (b) an identification of each Constituent Entity of the MNE Group setting out the jurisdiction of tax residence of such Constituent Entity, and where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such Constituent Entity is organised, and the nature of the main business activity or activities of such Constituent Entity.

(2) The country-by-country report shall be filed in a form identical to and applying the definitions and instructions contained in the standard template set out at Annex III of Chapter V of the OECD Final Report.

Time for Filing.

40. The country-by-country report required for this Part shall be filed no later than twelve months after the last day of the Reporting Fiscal Year of the MNE Group.

Use of Confidentiality of Country-by-Country Report Information.

41. (1) The Competent Authority shall use the country-by-country report as necessary for purposes of assessing high-level transfer pricing risks and other base erosion and profit shifting related risks in the Virgin Islands, including assessing the risk of non-compliance by members of the MNE Group with applicable transfer pricing rules, and where appropriate for economic and statistical analysis, if applicable.

(2) For the purposes of subsection (1), transfer pricing adjustments by the Competent Authority will not be based on the country-by-country Report.

(3) Notwithstanding subsection (1), the Competent Authority shall use the country-by-country Report and any other information obtained pursuant to this Act for the purposes of collaboration on compliance and enforcement with other Competent Authorities pursuant to a Qualifying Competent Authority Agreement.

(4) The Competent Authority shall preserve the confidentiality of the information contained in the country-by-

country report at least to the same extent that would apply if such information were provided to it under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.”.

15. Schedule 6 to the principal Act is amended in subsection (2) by replacing paragraph (c) as follows: Schedule 6 amended.

“(c) notwithstanding the provisions of the Dormant Accounts Act, 2011, the account is treated as dormant under the Virgin Islands Financial Institutions normal operating procedures that are consistently applied for all accounts maintained provided that such are in line with the definition of a dormant account found in the CRS Commentary on Section III paragraph 9; and” No. 12 of 2011

Passed by the House of Assembly this 14th day of August, 2018.

(Sgd.) Archibald Christian,
Deputy Speaker.

(Sgd.) Phyllis Evans,
Clerk of the House of Assembly.