

## SAMOA

### Arrangement of Provisions

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**2012, No. 3****AN ACT to provide for international co-operation with  
Competent Authorities under agreements facilitating  
exchange of tax information, and for related purposes.***[26<sup>th</sup> January 2012]*

**BE IT ENACTED** by the Legislative Assembly of Samoa in  
Parliament assembled as follows:

**PART I  
PRELIMINARY**

**1. Short title and commencement-**(1) This Act may be cited  
as the Tax Information Exchange Act 2012.

(2) This Act commences on the date of assent by the Head of  
State.

**2. Interpretation-**(1) In this Act, unless the context otherwise  
requires:

“agreement” means an agreement between the Government  
of Samoa and a foreign government including the  
following types of agreements listed in Schedule 1:

- (a) tax information exchange agreement;
- (b) double taxation agreement containing a provision  
for exchange of tax information.

“Commissioner” has the same meaning as in section 2 of the  
Income Tax Administration Act 1974;

“competent authority” means the authority designated by the  
Government of a foreign state in an agreement;

“controller” has the same meaning as in section 2 of the  
International Banking Act 2005;

“Court” means the Supreme Court of Samoa;

“information” includes a fact, statement, document or record  
in any form;

“Inspector” means the Inspector of International Banks  
appointed under the International Banking Act 2005;

“international financial services” has the same meaning as in section 2 of the Samoa International Finance Authority Act 2005;

“international financial services legislation” has the same meaning as in section 2 of the Samoa International Finance Authority Act 2005;

“Minister” means the Minister responsible for Revenue;

“Ministry” means the Ministry responsible for Revenue;

“Registrar”, where appropriate, means the following:

- (a) the Registrar of International and Foreign Companies appointed under the International Companies Act 1988;
- (b) the Registrar of International Trusts appointed under the International Trusts Act 1988;
- (c) the Registrar of Insurance appointed under the International Insurance Act 1988;
- (d) the Registrar of International Partnerships appointed under the International Partnership and Limited Partnership Act 1998.

“regulated person” means a person authorised, licensed or registered or required to be authorised, licensed or registered under an international financial services legislation.

(2) In accordance with section 16, this Act is one (1) of the Inland Revenue Acts within the meaning of section 2(1) of the Income Tax Administration Act 1974.

**3. Agreements-**(1) Without limiting section 53 of the Income Tax Act 1974, the Minister may enter into an agreement for exchange of information in relation to the following:

- (a) taxes on income or profits;
- (b) taxes on capital;
- (c) taxes on net wealth;
- (d) estate, inheritance or gift taxes;
- (e) any other identical or substantially similar taxes of Samoa or the other country or territory with a view to assisting in the determination, assessment

and collection of taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.

(2) A lawful obligation as to secrecy, confidentiality or other restriction on the disclosure of information does not prevent the Commissioner from disclosing information required to be disclosed under an agreement to an authorised officer of a competent authority.

(3) An arrangement made under sections 52 and 53 of the Income Tax Act 1974 may be added, by regulations, to the list of agreements in Schedule 1.

## **PART II REQUEST FOR ASSISTANCE**

**4. Receipt of a request** - Upon receipt of a request for assistance, the Commissioner must provide a copy of the request to the Attorney General before acting on the request.

**5. Approval of a request**-(1) Subject to section 6, the Commissioner may approve a request for assistance received under section 4 before exercising his or her powers and carrying out his or her duties under sections 7 and 8 if the Commissioner is satisfied that the request:

- (a) is made by a competent authority; and
- (b) conforms with the relevant agreement; and
- (c) sets out the information prescribed in Schedule 2.

(2) The Commissioner may request further information from the competent authority if the request for assistance does not adequately provide all the information prescribed in Schedule 2.

**6. Decline of a request** - The Commissioner may decline a request for assistance if he or she is satisfied that the request:

- (a) may impose an obligation to disclose trade, business, industrial, commercial or professional secrets or trade process provided that information held by a person referred to in section 7(1)(a) is not treated as a secret or trade process merely because it is held by such a person; or

- (b) may enforce or administer a provision of the tax law of the country of the competent authority which discriminates against a national of Samoa as compared with a national of Samoa as compared with a national of the country of the competent authority in the same circumstances; or
- (c) concerns information that, if disclosed, would be contrary to public policy.

### **PART III COLLECTION OF INFORMATION**

**7. Collection of information by notice-**(1) Subject to section 5, the Commissioner may, by notice in writing:

- (a) require one (1) or more of the following to provide the information specified in the notice -
    - (i) a regulated person, including a person who ceased to be a regulated person on or before the date of the issuing of the notice;
    - (ii) a person carrying on international financial services;
    - (iii) a financial institution under the Financial Institutions Act 1996;
    - (iv) a person acting in an agency or fiduciary capacity including nominees and trustee;
    - (v) to a person reasonably believed to have the information to which the notice relates; and
  - (b) specify the place where, and the period within which, the information is to be provided or produced.
- (2) The Commissioner may require information provided under this section to be:
- (a) in a form approved by the Commissioner; and
  - (b) verified or authenticated to the satisfaction of the Commissioner.
- (3) The Commissioner or an officer of the Ministry authorised by the Commissioner, may make copies or extracts of information provided under this section.

(4) Where a person claims a lien on information, the production of the information under this section is without prejudice to that person's lien.

(5) For the purposes of this section, section 10 of the Income Tax Administration Act 1974 applies.

**8. Service of notice-**(1) For information that is protected from unauthorised disclosure, the Commissioner must serve notice of the request on:

- (a) the person identified in the request as the person in relation to whom the information is sought; and
- (b) the person identified in the request as the person who is believed to have possession or control of the information.

(2) The Commissioner may decline to serve notice of the request where the Commissioner:

- (a) does not have any information of the person referred to in subsection (1); or
- (b) is of the opinion that it is likely to prevent or unduly delay the effective exchange of information under an agreement; or
- (c) is of the opinion that this is likely to prejudice an investigation into an alleged breach of any law relating to tax of the country whose government the exchange of information agreement was made.

(3) Notices must be served as prescribed by regulation or, in the absence of regulations, in accordance with the Income Tax Administration Act 1974.

**9. Powers of inspection-**(1) The Commissioner may exercise the powers of inspection in section 9 of the Income Tax Administration Act 1974 for the purpose of administration of this Act if the Commissioner is satisfied that:

- (a) a person has failed to comply or has only partly complied with a notice issued under section 7; or
- (b) a notice would not be complied with and the information to which the notice relates may be removed, tampered with or destroyed.

(2) For the purpose of this section, “places” in section 9 of the Income Tax Administration Act 1974 includes a vehicle, a vessel or an aircraft.

**10. Secrecy and confidentiality obligations overridden-**(1) Subject to subsection (2), the provisions of this Part has effect despite an obligation as to secrecy, confidentiality or other restriction upon the disclosure of information imposed by any law or otherwise on the persons referred to in section 7(1)(a).

(2) A person is not required to disclose or produce information that he or she would be entitled to refuse to disclose or produce on the grounds of legal professional privilege, except that a legal practitioner may be required to provide the name and address of his or her client.

#### **PART IV DISCLOSURE OF INFORMATION**

**11. Restriction on the disclosure of information-**(1) The following information must be treated as confidential:

- (a) information that is supplied by a competent authority in connection with a request for assistance;
- (b) information that is obtained by virtue of the exercise of the powers under this Act;
- (c) information that is provided by the Commissioner to the Attorney-General under section 4.

(2) Information treated as confidential must not be disclosed except:

- (a) to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the agreement under which the request was made and for the collection or recovery of any duty or tax due to Government under any of the Inland Revenue Acts; or

- (b) for the purpose of administration of this Act, to another person, entity, authority or jurisdiction, with express written consent of the competent authority.

## **PART V MISCELLANEOUS**

**12. Offences-**(1) A person who does any of the following commits an offence:

- (a) contravenes section 11;
- (b) fails to comply with a notice issued under section 7(1); or
- (c) makes a representation or submits information to the Commissioner in response to a notice issued under section 7 that the person knows or ought to know to be false;
- (d) intentionally removes, tampers, or destroys information requested under this Act;
- (e) intentionally acts to prevent or impede submission of information requested under this Act.

(2) A person who commits an offence under subsection (1) is liable upon conviction to a fine not exceeding 250 penalty units or to imprisonment for a term not exceeding five (5) years, or both.

**13. Criminal liability of directors, officers, abettors, and others-**(1) Where an offence was committed by a company and it is proved that the offence was committed with the consent or connivance of, or attributable to a neglect on the part of, any director, chief executive, controller, manager, secretary or other similar officer of the company or a person purporting to act in any such capacity, the person as well as the company is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a company are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the company.



(3) Where an offence is committed by a partnership, or by an unincorporated association and is proved to have been committed with the consent or connivance of, or is attributable to the failure to exercise due diligence by, a partner in the partnership or, a person concerned in the management or control of the association, that person, as well as the partnership or association, is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) A person who knowingly and wilfully aids, abets, counsels, causes, procures or commands the commission of an offence may be proceeded against and punished as a principal offender.

**14. Immunity** - No action is to lie against the Government, the Minister, a Registrar, an Inspector, or a person exercising a power or performing a function under this Act in respect of anything done or omitted to be done by or on behalf of that person in good faith in the exercise of that power or performance of that function.

**15. Regulations** - The Head of State, acting on the advice of Cabinet, may make regulations providing for such matters as are contemplated by or necessary for giving full effect to this Act including but not limited to amendment of the Schedules.

**16. Consequential amendment** – In the First Schedule to the Income Tax Administration Act 1974, after “The Value Added Goods and Services Tax Act 1992/1993 except sections 13 and 14” insert “Tax Information Exchange Act 2012”.

**SCHEDULE 1  
AGREEMENTS****(Section 3)**

<b>Country</b>	<b>Date of Execution</b>
1. San Marino	1 September 2009
2. Principality of Monaco	7 September 2009
3. Kingdom of the Netherlands	14 September 2009
4. Ireland	8 December 2009
5. Australia	16 December 2009
6. Sweden	16 December 2009
7. Finland	16 December 2009
8. Greenland	16 December 2009
9. Iceland	16 December 2009
10. Norway	16 December 2009
11. Faroes	16 December 2009
12. Denmark	16 December 2009
13. New Zealand	16 December 2009

**SCHEDULE 2  
INFORMATION IN A REQUEST FOR ASSISTANCE****(Section 5(1)(c) and 5(2))**

1. The tax purpose for which the information is sought.
2. The identity of the competent authority.
3. The identity of the person under examination or investigation.
4. A statement of the information sought including its nature, the relevance of the information to the purpose of the request and the form in which the competent authority wishes to receive the information from the Commissioner.

5. Grounds for believing that the information requested is held by the Ministry, or is in the possession or control of a person within Samoa.
6. To the extent known, the name and address of any person believed to be in possession or control of the requested information.
7. A statement that the request is in conformity with the law and administrative practices of the country and that the competent authority is authorised to obtain the requested information under the laws of that country or in the normal course of administrative practice and that it is in conformity with an agreement to which this relates.
8. A statement that the competent authority has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
9. An undertaking from the requesting competent authority that all information provided in relation to the request must be kept confidential and must not, without prior written consent, be disclosed to a third party, transmitted or used for the purposes of investigations or proceedings other than those stated in the request.

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**The Tax Information Exchange Act 2012  
is administered by the Ministry for Revenue.**

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