
A BILL FOR AN ACT

To amend sections 312, 313, 314, 322, 331, 352 and 360 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 and 17-73, to include Major FSM Branches, 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.

20 (2) 'Major Corporation' means any corporation not

1 principally engaged in business in the Federated States
2 of Micronesia as a bank (as such term is defined in
3 title 29 of the Code of the Federated States of
4 Micronesia, section 102(1)), formed on or after January
5 1, 2005, and,

6 (a) whose shareholders equity [~~or paid~~] or paid-
7 [capital] Capital as of the beginning of its fiscal year
8 is \$1,000,000 or more; or

9 (b) the aggregate amount of the shareholders
10 equity or [~~paid~~] Paid-in [capital] Capital of the
11 control group is \$10,000,000 or more; or

12 (c) that is a captive insurance company licensed
13 pursuant to title 37 of the Code of the Federated States
14 of Micronesia regardless of the amount of
15 capitalization.

16 (3) 'Major FSM Branch' means any corporation not
17 principally engaged in business in the Federated States
18 of Micronesia as a bank (as such term is defined in
19 title 29 of the Code of the Federated States of
20 Micronesia, section 102(1) authorized by law to issue
21 stock, organized under laws other than the laws of the
22 Federated States of Micronesia for a purpose or purposes
23 for which a corporation may be organized under the laws
24 of the Federated States of Micronesia, section 102(1),
25 which has a Permanent Establishment in the Federated

1 States of Micronesia and whose Paid-in Capital as of the
2 beginning of its fiscal year is \$1,000,000 or more.

3 ~~[(3)]~~ (4) 'Permanent Establishment' means a fixed
4 place of business through which the business of an
5 enterprise is wholly or partly carried on.

6 ~~[(4)]~~ (5) 'Secretary' means the Secretary of the Department
7 of Finance and Administration.

8 ~~[(5)]~~ (6) 'Taxable Year' shall means the fiscal year of a
9 Major Corporation or Major FSM Branch, as the case may
10 be, as reported [to the Secretary] under section 314 of
11 this chapter.

12 ~~[(6)]~~ (7) 'Paid-in Capital' for purpose of this chapter
13 shall mean: (I) in the case of a Major Corporation, the
14 total amount of consideration contributed to the company
15 for the issuance of shares[-]; and (II) in the case of a
16 Major FSM Branch, the total amount of Domestic Capital
17 (as defined in section 314(2) registered with the
18 Registrar of Corporation."

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

22 "Section 313. Applicability of this chapter. Taxes
23 imposed under this chapter shall apply to all ~~[m]~~Major
24 ~~[e]~~Corporations [incorporated in] as defined in section
25 312. In case of conflict, this chapter shall prevail

1 over other laws or regulations of the Federated States
2 of Micronesia [~~as defined in section 312~~].

3 Section 3. Section 314 of title 54 of the Code of the
4 Federated States of Micronesia, as enacted by Public Laws Nos.
5 13-71, is hereby amended to read as follows:

6 ""Section 314. Filing of report. A major corporation
7 shall file an initial written report with the Secretary.
8 The written report shall be signed by the authorized
9 representative of the major corporation and shall state:

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

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

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

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

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

1 principal business; and

2 (f) the last day of the [m]Major [e]Corporation's
3 fiscal year. The report shall be filed by the [m]Major
4 [e]Corporation within sixty (60) days of the [m]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) its Domestic Capital which shall be
16 \$1,000,000 or more;

17 (viii) the name and branch address of the
18 licensed Bank which received the Domestic Capital;

19 (ix) the name, citizenship and business
20 address of the person residing within the Federated
21 States of Micronesia, or notices from officials of t he
22 Federated States of Micronesia, may be served;

23 (x) the last day of the corporation's fiscal
24 year; and

25 (d) filing with the Registrar of Corporations a

1 copy of the corporation's Certificate of Incorporation,
2 Charter, Articles of Association or equivalent
3 document."

4 Section 4. Section 322 of title 54 of the Code of the
5 Federated States of Micronesia, as amended by Public Law No.
6 16-52, is hereby further amended to read as follows:

7 "Section 322. Taxable income defined.

8 (1) The taxable income of a [~~m~~]Major [~~e~~]Corporation
9 equals its income, before income taxes, earned in the
10 taxable year as determined under International Financial
11 Reporting Standard ('IFRS') or Generally Accepted
12 Accounting Principles ('GAAP'), as IFRS or GAAP, as the
13 case may be, is regularly utilized to calculate taxable
14 income in the [~~m~~]Major [~~e~~]Corporation corporation's
15 principal shareholder's, if a corporation, place of
16 incorporation or, if an individual, country of primary
17 residence.

18 (2) The taxable income of a Major FSM Branch equal its
19 income, before income taxes, earned in the taxable year
20 as determined under IFRS or GAAP, as IFRS or CAAP, as
21 the case may be, is regularly utilized to calculate
22 taxable income in the place of incorporation of the
23 Major FSM Branch, and attributable to a Permanent
24 Establishment in the Federated State of Micronesia
25 through which the corporation carried on its business."

1 Section 5. Section 331 of title 54 of the Code of the
2 Federated States of Micronesia, as amended by Public Law No.
3 16-52, is hereby amended to read as follows:

4 "Section 331. Non-refundable credit for payment of
5 foreign taxes.

6 (1) In the case of a [m]Major [e]Corporation, any
7 income taxes paid or accrued on taxable income during
8 the taxable year to a foreign country shall be allowed
9 as a credit against the amount of tax imposed by section
10 321.

11 (2) In the case of a dividend received by a [m]Major
12 [e]Corporation or Major FSM Branch, a credit shall also
13 be allowed against the amount of tax imposed by section
14 321 in an appropriate amount to reflect any income taxes
15 the [m]Major [e]Corporation or Major FSM Branch, as the
16 case may be, can demonstrate have been paid with respect
17 to such dividend to any foreign country or countries.

18 (3) In no case shall a [m]Major [e]Corporation or
19 Major FSM Branch, in any taxable year, be entitled to
20 credits which, in the aggregate, exceed the amount of
21 the tax imposed, for that taxable year, under the
22 provisions of section 321 of this chapter.

23 (4) No foreign tax credit shall be permitted to create
24 a refund or credit for overpayment of tax; but any
25 amount of foreign tax not creditable by reason of this

1 provision may be carried forward as a creditable foreign
2 tax to each succeeding year until fully utilized subject
3 to the same restrictions in the succeeding years. In no
4 event, however, shall any such foreign tax credit be
5 carried forward more than seven (7) years."

6 Section 6. Section 352 of title 54 of the Code of the
7 Federated States of Micronesia, as amended by Public Law No.
8 16-52 and 17-73, is hereby further amended to read as follows:

9 "Section 352. Payment of tax due. Taxes shall be paid
10 as follows:

11 (1) [A]Each [m]Major [e]Corporation and Major FSM
12 Branch shall, pay fifty percent (50%) of the tax it paid
13 for the income of the previous fiscal year, if any,
14 hereinafter referred to as "Tax Deposit", to the FSM by
15 the end of the eighth (8th) month of the current fiscal
16 year. This is unless the Major Corporation or Major FSM
17 Branch, as the case may be, requests a reduction or
18 waiver as the Tax Deposit is rendered unnecessary
19 because the expected tax payable in the current fiscal
20 year is less than the amount of the Tax Deposit.
21 Reduction or waiver of the Tax Deposit is subject to
22 approval by the Secretary; however, such approval must
23 not be unreasonably withheld.

24 (2) A [m]Major [e]Corporation or Major FSM Branch
25 which pays an amount less than the Tax Deposit shall pay

1 interest on the delinquent tax balance of one-half of
2 one percent (0.5%) for each full month until the full
3 amount is paid unless approval is granted under
4 subsection (1) of this section).

5 (3) A [m]Major [e]Corporation that does not have a
6 previous fiscal year to determine its Tax Deposit either
7 because it is newly formed or is redomesticating into
8 the Federated States of Micronesia or a Major FSM Branch
9 that does not have previous fiscal year to determine its
10 tax Deposit because it newly created a Permanent
11 Establishment in the Federated States of Micronesia,
12 shall be exempt from the payment of Tax Deposit and any
13 filing requirements pertaining to the Tax Deposit.

14 (4) A [m]Major [e]Corporation and Major FSM Branch
15 shall complete and submit to the Department of Finance
16 and Administration an annual statement declaring the
17 taxable income with permitted deductions and exemptions,
18 hereinafter referred to as "Tax Return", by the last
19 business day of the sixth month period following the
20 last day of the fiscal year of the [m]Major
21 [e]Corporation[~~'s fiscal year~~] or Major FSM Branch,
22 respectfully. The annual statement shall be accompanied
23 by one of the following:

24 (a) Any additional tax payment, after the
25 subtraction of the Tax Deposit, due as shown on the Tax

1 Return of the [M]Major [e]Corporation or Major FSM
2 Branch, as the case may be, shall be paid by the last
3 business day of the sixth month period following the
4 last day of the fiscal year of the [M]Major
5 [e]Corporation[~~'s fiscal year~~] or Major FSM Branch,
6 respectfully.

7 (b) If the [M]Major [e]Corporation or Major FSM
8 Branch pays, including the Tax Deposit by the end of the
9 eighth (8th) month during the fiscal year, as per sub-
10 section [A]1 above, an amount less than the tax due as
11 shown on the annual tax return by the last business day
12 of the six month period following the last day of the
13 fiscal year of the [M]Major [e]Corporation[~~'s fiscal~~
14 year] or Major FSM Branch, respectfully, it shall pay
15 interest on the delinquent tax balance of one half of
16 one percent (0.5%) for each full month until the full
17 amount is paid.

18 (5) Should the Tax Deposit paid by the [M]Major
19 [e]Corporation or Major Branch exceed the total annual
20 income tax amount shown on the Tax Return resulting in
21 overpayment of tax, then the [M]Major [e]Corporation or
22 Major FSM Branch, as the case may be shall be entitled
23 to their rights conferred under section 332, chapter 3
24 of title 54 of the Code of the Federated States of
25 Micronesia. A [M]Major [e]Corporation or Major FSM

1 Branch shall apply to the Department of Finance and
2 Administration for either of the following tax treatment
3 options provided under Section 332 by indicating their
4 choice in the Tax Return form:

5 (a) To have the overpaid tax amount refunded in
6 full, in which case, the Department of Finance and
7 Administration shall credit the bank account of [m]Major
8 [e]Corporation or Major FSM Branch, as the case may be,
9 within a two (2) month period from the last business of
10 the sixth month period following the last day of the
11 fiscal year of [m]Major [e]Corporation[~~'s fiscal year~~]
12 or Major FSM Branch, respectfully;

13 (b) To have the overpaid tax amount credited to
14 any tax payments by the [m]Major [e]Corporation or the
15 Major FSM Branch, as the case may be to the Federated
16 States of Micronesia."

17 Section 7. Section 360 title 54 of the Code of the Federated
18 States of Micronesia, as amended by Public Laws Nos. 16-52 and 17-
19 73, is hereby further amended to read as follows:

20 "Section 360. Engaging in business or operating a
21 business in the Federated States of Micronesia. A Major
22 [e]Corporation incorporated in the Federated States of
23 Micronesia or a Major FSM Branch that only holds, buys,
24 sell, transfers or otherwise transacts with ~~[assets or~~
25 ~~property located outside of the FSM, including but not~~

