

Taiwan: Ministry of Finance releases draft regulation on Common Reporting Standard

8 August 2017

In brief

In response to the increasing global demand for tax transparency, the Taiwan government recently added two new articles (5-1 and 46-1) to the Tax Collection Act to provide a legal basis to implement the global standard on the Automatic Exchange of Information (“AEOI”), including financial account information in tax matter.

The revised law took effect on June 2017 and authorises the Ministry of Finance (“MOF”) to negotiate reciprocal AEOI arrangements with other jurisdictions. The ministry has since produced a draft regulation on implementation of the Common Reporting Standard (“CRS”) and released it for public consultation on 11 August 2017. Based on the draft Regulation, Taiwan will adopt CRS from 2019, and the first information exchange will be in 2020.

In detail

Background

The new Articles 5-1 and 46-1 (“Articles”) of Taiwan’s Tax Collection Act that took effect on June 2017 authorise the MOF to, on a reciprocal basis, conclude a convention or an agreement to implement an exchange of information, including financial account information, in conformity with the new international standard on information transparency, and to provide administrative assistance to enhance tax cooperation.

Under to the new Articles, Financial Institutions (“FIs”) and government authorities have the right to collect and dispatch certain information

without being obliged to comply with personal data protection requirements provided under various laws such as the Banking Act and the Insurance Act, etc. Also, Article 46-1 introduces monetary penalties for non-compliance by account holders and reporting FIs.

Draft CRS Regulation

On 8 August 2017, the MOF releases a draft regulation (“Regulation”) on CRS implementation, which establishes the sub-laws relating to the scope of information exchange, the standards for due diligence procedures and reporting obligations, timeframe, and governing procedures, etc.

The Regulation outlines five procedural steps, as below:

1. Defining the scope of Reporting Financial Institutions

“Reporting Financial Institutions” include domestic FIs and the branches of foreign FIs located in Taiwan, but excludes the overseas branches of domestic FIs. The reporting FIs include depository institutions, custodial institutions, investment entities, and specified insurance companies.

2. Defining the scope of Financial Accounts

“Financial Accounts” refer to accounts managed by the aforementioned FIs, and include depository accounts, custodial accounts, equity and debt interests in certain

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investment entities, and cash value insurance contracts and annuity contracts.

Certain low risk accounts are excluded from the scope of financial accounts, such as specified retirement or pension accounts, specified regulated accounts, life insurance contracts, specified custodian and depository accounts, estate accounts, etc.

3. Defining the scope of "Reportable Accounts"

"Reportable Accounts" are defined as accounts held by one or more Reportable Persons, or by a Passive Non-Financial Entity ("Passive NFE") with one or more controlling persons who are Reportable Persons.

A "Reportable Person" is an individual or entity that is a resident for tax purposes in a Reportable Jurisdiction. A Reportable Person does not include listed companies and related entities, government entities, international organisations, and FIs that are considered to bear low risks of being sued by non-residents to evade tax.

A "Reportable Jurisdiction" refers to jurisdictions with which Taiwan has entered into a convention or an agreement to implement exchange of information (including financial account information), and which is identified in a published list announced by the MOF.

The Regulation requires and empowers all Reporting FIs to establish the tax residence(s) of all their non-resident account holders, instead of only for account holders that are tax residents of Reportable Jurisdictions (the "Wider Approach").

4. Performing Due Diligence

The due diligence procedures include obtaining self-certifications from account holders, performing reasonableness tests on the self-certifications, conducting residence address test, electronic record search, paper record search, and executing other review procedures as necessary, etc.

The MOF has not yet issued any standard template for self-certification forms, but it may do so at a later date.

Once the Regulation is finalised and takes effect, the first stage of due diligence procedures--i.e., for new accounts and pre-existing high-value individual accounts (with balances over USD 1 million as of 31 December 2018)--should be completed by 31 December 2019, and the second stage of due diligence procedures -- i.e., for pre-existing lower-value individual accounts (with balances below USD 1 million as of 31 December 2018)--should be completed by 31 December 2020.

Based on the proposed timeline, Taiwan will

implement the first exchange of information with other jurisdictions in 2020.

5. Reporting the relevant required information

Reporting FIs must report information related to Reportable Accounts to the Taiwan tax authority by 31 May each year, including: (a) name, (b) address, (c) jurisdiction of residence, (d) tax identification number, and the date and place of birth (for individuals) of the account holder; (e) the account number; (f) the account balance or value; and (g) income (e.g. interest, dividends, proceeds from sale/redemption of financial assets) paid into the account.

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Key takeaways

1. To coordinate with the rising international trend, the MOF intends to follow the international standard for information exchange, so the rules and standards in the draft Regulation are highly aligned with the OECD's CRS. Having mentioned so, it's also expected there will be further discussions with the Financial Supervisory Commission and various financial industry associations to clarify more details about the due diligence procedures and reporting requirements.

2. It is expected that Taiwan will seek to implement AEOI via signing bilateral Competent Authority Agreements ("CAAs"). The 32 jurisdictions with which Taiwan currently has tax treaties, including Singapore, Canada, and Australia, will likely be the priority focus for the MOF when negotiating CAAs.

3. Pursuant to the Executive Yuan's administrative rules, detailed regulations for new laws have to be promulgated within six months of the effective date of such laws. With the public consultation process expected to take around two months up to 11th October, the CRS regulation will likely be finalised by the end of 2017. After that, financial institutions will have approximately one-year

time to prepare for CRS implementation.

4. Comparing CRS with FATCA, there are several differences that FIs should be aware of, including: (a) a new self-certification form must to be duly signed by customers upon opening new financial accounts, (b) no de minimis threshold for individual account, (c) no recalcitrant account, (d) FIs need to perform reasonableness test upon receiving self-certification from account holders, and most important of all, (e) FIs, unlike requirements under FATCA searching for only US indicia, now need to identify indicia of every tax jurisdictions. Additional policies and procedures, IT system enhancements, staff trainings required for compliance with CRS may be more challenging comparing to the implementation of FATCA. FIs are urged to plan and allocate their resource for the implementation of CRS.

5. Taiwan has introduced Controlled Foreign Companies ("CFC") and Place of Effective Management ("PEM") rules in July 2016. From thereon, the MOF has taken a further step and the announcement of the draft CRS Regulation suggests that more complete measures for anti-tax avoidance are now in place, awaiting the formal

promulgation before these measures all come into effect.

Multinational companies should closely monitor the development of these new anti-tax avoidance measures, and re-examine the adequacy of their group investment structures and transaction models in order to manage their group tax exposures.

Endnotes

The list of the 32 tax treaty countries can be found at: <http://www.mof.gov.tw/Eng/Pages/Detail.aspx?nodeid=264&pid=57796>

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Let's talk

For a deeper discussion about how the significant CRS issue might affect your business, please contact a member of PwC Taiwan's Financial Services practice team, as below:

Jessie Chen

Common Reporting Standard Leader
PricewaterhouseCoopers Taiwan
tel: +886 2 2729 5360
jessie.chen@tw.pwc.com

Richard Watanabe

Financial Services Leader
PricewaterhouseCoopers Taiwan
tel: +886 2 2729 6704
richard.watanabe@tw.pwc.com

Ryan Lee

Financial Services Deputy Leader
PricewaterhouseCoopers Taiwan
tel: +886 2 2729 6613
ryan.c.lee@tw.pwc.com

Vickie Lin

Partner – Financial Services Advisory
PricewaterhouseCoopers Taiwan
tel: +886 2 2729 6033
vickie.c.lin@tw.pwc.com

Hung-Lieh Liang

Partner – Financial Services Legal
PricewaterhouseCoopers Legal Taiwan
tel: 886-2-2729 5350
hung-lieh.liang@tw.pwc.com

Kuan-Ping Chang

Director – Financial Services Tax
PricewaterhouseCoopers Taiwan
tel: 886-2-27296666 ext. 23666
kuan-ping.chang@tw.pwc.com

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