

Taiwan: Ministry of Finance releases Regulations on Common Reporting Standard

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In brief

Following amendments to Taiwan's Tax Collection Act on 14 June 2017, which introduced two new articles (5-1 and 46-1) providing a legal basis to implement the global Common Reporting Standard ("CRS") on tax transparency, the Ministry of Finance ("MOF") on 16 November 2017 promulgated the "Regulations Governing the Implementation of the Common Reporting Standard and Due Diligence for Financial Institutions" ("Regulations"). According to these Regulations, Taiwan will formally adopt the CRS from 2019, and commence its first exchange of information with other jurisdictions by 2020.

In detail

Background

Compared with the previous draft Regulations announced on 8 August 2017, the final version removes ambiguity, and incorporates comments from the public consultation.

The newly promulgated Regulations provide clear guidance, in line with international practice, for reporting financial institutions ("Reporting FIs") operating in Taiwan.

The key differences between the draft and final versions of the Regulations are summarised as follows.

Key differences with previous draft Regulations

Revised deadlines for completion of due diligence procedures and CRS return filing

The MOF has extended the deadline for the completion of due diligence ("DD") on entity accounts to 31 December 2020, one year later than the previous deadline of the end of 2019.

As the due date for filing income tax returns in Taiwan falls in May, and Reporting FIs may need more time to gather account information, the MOF has deferred the timing for filing CRS returns by Reporting FIs on reportable accounts to 1-30 June from 1-31 May.

For Reporting FIs with no reportable accounts in the last fiscal year, they must still submit a nil return. In addition, if Reporting FIs maintains undocumented account (i.e. specific indicia cannot be identified and documentary evidence cannot be obtained), they should report that undocumented account, too.

Options available for due diligence procedures

The Regulations also allow Reporting FIs to adopt DD procedures in favour of their operating process, for example, Reporting FIs can apply the DD requirements for new accounts to pre-existing accounts, and for high value accounts to lower value accounts.

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Furthermore, the Regulations do not provide the options for Reporting FIs to conduct DD in advance for excluded accounts, such as dormant accounts and entity accounts with balances under a threshold of USD 250,000.

Alignment with international standards

The definitions for “Custodial Institution”, “Investment Entity,” and “Active Non-Financial Entities” (“NFE”) have been revised in line with international standards.

Wider approach confirmed

The Regulations require and empower all Reporting FIs to determine every tax residence(s) of all the account holders, and not just for account holders who are tax residents of Reportable Jurisdictions (the so-called “wider approach”).

Nevertheless, they only need to report “Reportable Accounts.” These are defined as accounts held by one or more Reportable Persons (i.e., tax residents of Reportable Jurisdictions), or by a Passive NFE with one or more controlling person that are Reportable Persons.

A “Reportable Jurisdiction” refers to jurisdiction with which Taiwan subsequently enters into a convention or an agreement to implement an exchange of information (including financial account information). These will be

identified in a public list announced by the MOF.

Items pending further announcement by the MOF

In addition to the list of Reportable Jurisdictions, the following items are pending further announcement: entities that present a low risk of being used for tax evasion; the revenue threshold for entities conducting trust business to be regarded as a Custodial Institution; and the starting reporting period for gross proceeds from the sale of financial assets in relation to custodial accounts.

Also, the MOF is expected to soon release self-certification form templates for the guidance of Reporting FIs.

Key takeaways

As Taiwan will implement the CRS, Reporting FIs should revise all their operating procedures for onboarding new account and reviewing pre-existing account. They should also routinely monitor any dormant accounts and entity accounts with balances below the exemption threshold and take timely action if their circumstances change.

The Regulations do not indicate how Reporting FIs should respond, or whether they are allowed to reject client onboarding, in the situation that a self-

certification form or documentary evidence cannot be obtained, or self-certification does not pass a reasonableness test.

As Reporting FIs have to comply with multiple regulatory and compliance requirements, including AML, and additional CRS procedures, it is advisable to integrate effectively these operating processes.

Compared with FATCA, there are several differences under CRS that Reporting FIs should be aware of, as below:

- a) a new self-certification form must be duly signed by the customer upon opening a new account;
- b) no *de minimis* threshold for individual accounts;
- c) no recalcitrant accounts;
- d) Reporting FIs must conduct a reasonableness test on a self-certification form completed by an account holder; and
- e) Reporting FIs have to identify indicia for every tax jurisdiction, unlike under FATCA which requires only US indicia.

Reporting FIs should plan their resources for CRS implementation to ensure the readiness of new client onboarding procedures by 1 January 2019. This will require the development of additional policies and procedures, upgrading IT systems and training staff to ensure CRS compliance.

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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:

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