

Tax e-Alert

16 MARCH 2018

Common Reporting Standard For The Automatic Exchange Of Financial Account Information

The global crackdown on tax evasion and avoidance has finally reached our shores. Recently, the Inland Revenue Board (IRB) announced the implementation of the Common Reporting Standard (CRS) requiring local financial institutions to register by 30 April 2018. However, the obligations under the CRS are not solely restricted to local financial institutions. Every other Malaysian entity is also required to furnish relevant tax information to the reporting financial institutions.

Background

The CRS was developed by the Organisation for Economic Co-operation and Development (OECD) as a new information-gathering and reporting requirement for financial institutions. Along with more than 100 jurisdictions, Malaysia has committed to exchange CRS information from 2018 onwards. In return, the IRB would receive financial account information on Malaysian residents from other tax authorities. The idea of CRS is to ensure that taxpayers with financial accounts in other countries comply with their domestic tax laws as a deterrent to tax evasion and avoidance.

Obligations

Under the Income Tax (Automatic Exchange of Financial Account Information) Rules 2016, reporting financial institutions must identify the reportable account from the financial account maintained by them by applying the due diligence procedure as specified in the OECD's CRS guidelines.

Every reporting financial institution is required to furnish a return to the IRB on or before 31 July of the year following the calendar year (commencing calendar year 2017) setting out the information as specified in the CRS in relation to every reportable account it maintains at any time during a calendar year. The CRS will inevitably place an onerous burden on the Malaysian financial institutions that already have to contend with the various cumbersome regulatory obligations under the anti-money laundering regime.

In addition, under the Income Tax (Automatic Exchange of Financial Account Information) (Amendment) Rules 2017, when an account is closed, a Malaysian financial institution has no obligation to report

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the account balance or value before or at closure, but it must report that the account was closed. Further, every reporting financial institution is required to keep and retain records that it obtains for at least seven years.

As for all Malaysian entities, the implementation of CRS does not only concern financial institutions. In fact, each entity must ascertain its tax residency status and supporting documents that comprise the tax residency information and submit the relevant information to the relevant reporting financial institution.

For certain types of entities, i.e. a Passive Non-Financial Entity or an Investment Entity managed by another Financial Institution in a Non-Participating Jurisdiction, the entity is required to disclose the identity of individuals who exercise control over the entity, trust or legal arrangement. In short, Malaysian entities are required to cooperate with reporting financial institutions in submitting the relevant information to the IRB.

The IRB has stipulated a strict timeline that reporting financial institutions must comply with:

Subject	Timeline
Pre-existing Accounts cut-off date	30 June 2017
New account	Opened on or after 1 July 2017
Determination date whether Pre-existing Individual Account meet the high value threshold (exceeds USD1,000,000)	30 June 2017, 31 December 2017 and 31 December of subsequent calendar years
Determination date whether Pre-existing Entity Account meet the threshold for review (exceeds USD250,000)	30 June 2017, 31 December 2017 and 31 December of subsequent calendar years
Review of Pre-existing High Value Individual Account must be completed by	30 June 2018
Review of Pre-existing Lower Value Individual Account must be completed by	30 June 2019
Review of Pre-existing Entity Accounts must be completed by	30 June 2019
Reporting to IRB	31 July 2018* 31 July 2019* 30 June 2018 and 30 June of subsequent years

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	*Reporting for 2018 and 2019 for all accounts extended to 31 July to be in line with the special provision for Pre-existing Individual Accounts reporting requirement
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Under Sections 113A and 119B of the Income Tax Act 1967, it is an offence for any person to make an incorrect or false return, or fail to comply with any rules made to implement or facilitate the operation of any mutual administrative assistance arrangement (including the legislation stated above).

Any person who is convicted for an offence under the provisions will be liable to a fine of not less than RM20,000 and not more than RM100,000 and/or imprisonment for a term not exceeding six months.

Under the Labuan Business Activity Tax (Automatic Exchange of Financial Account Information) Regulations 2018, any Labuan reporting financial institution that fails to file the CRS return on time, or gives incorrect information, or fails to comply with the obligations under the regulation may be subjected to a fine of up to RM1 million and/or imprisonment for a term not exceeding two years.

Observations

While the implementation of CRS aims to enhance tax transparency, they come at a cost. Compliance costs for reporting financial institutions will increase following these requirements for due diligence exercise and reporting. Reporting financial institutions must also make a concerted effort to enhance their risk management policy and procedures to avoid unnecessary civil and/or criminal sanction.

This will also dampen the flexibility of high net worth individuals (HNWIs) or corporations that use offshore financial centres for their less-stringent banking regulations, banking secrecy and anonymity. In fact, this flexibility has nothing to do with tax evasion. The introduction of the CRS will certainly restrict such flexibility.

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Further, as the IRB will be receiving financial account information on taxpayers resident in Malaysia from their foreign counterparts, it will lead to the disclosure of offshore financial assets belonging to such residents. As such, taxpayers resident in Malaysia, especially HNWI's and businesses, should review their tax affairs and offshore financial assets. They must be prepared to support their tax position in the event that such information is sought by the IRB.

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