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AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION (AMENDMENT) ACT, 2017

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No. 18 of 2017

AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION (AMENDMENT) ACT, 2017

AN ACT TO AMEND THE AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION ACT TO STRENGTHEN COMPLIANCE AND ENFORCEMENT WITH RESPECT TO THE COMMON REPORTING STANDARD

[Date of Assent - 11th December, 2017]

Enacted by the Parliament of The Bahamas

1. Short title.

This Act, which amends the Automatic Exchange of Financial Account Information Act¹, may be cited as the Automatic Exchange of Financial Account Information (Amendment) Act, 2017.

2. Amendment of section 2 of the principal Act.

(1) Section 2 of the principal Act is amended —

- (a) in subsection (1), by the deletion of the definition “Agreement” and the substitution of the following —

“**Agreement**” means the legal instrument providing the basis for the automatic exchange of financial account information under this Act and includes —

- (a) the Convention, together with the MCAA;
- (b) a CRS TIEA together with a competent authority agreement;

¹No. 37 of 2016.

- (c) a multilateral intergovernmental agreement or treaty binding on The Bahamas, for the exchange of information in tax matters that provides for the automatic exchange of financial account information under the CRS, together with a limited competent authority agreement;”;
- (b) by the deletion of the definition “Common Reporting Standard” and the substitution of the following —
 - “ **“Common Reporting Standard”** or **“CRS”** means the standard for the automatic exchange of financial account information approved by the Council of the Organisation for Economic Co-operation and Development on 15th July, 2014 as amended from time to time, as set out in the Schedule, and includes the Commentaries on the CRS published by the OECD for the purpose of assisting with the interpretation of the standard;”;
- (c) by the deletion of the definition “Competent Authority” and the substitution of the following —
 - “ **“Competent Authority”** means the Minister of Finance or the representative of the Minister duly authorised in writing;”;
- (d) by the insertion in the appropriate alphabetical order of the following words and phrases and their definitions —
 - “ **“Convention”** means the multilateral Convention on Mutual Administrative Assistance in Tax Matters developed jointly by the OECD and the Council of Europe in 1988 and amended by Protocol in 2010 to provide for the automatic exchange of financial account information under the Common Reporting Standard;”
 - “ **“CRS Guidelines”** means the guidelines issued by the Competent Authority under section 10A and includes —
 - (a) CRS Guidance Notes;
 - (b) CRS Recommended Practices and Procedures;
 - (c) CRS Practice Directions;”
 - “ **“CRS TIEA”** means a bilateral agreement under the International Tax Cooperation Act, 2010² for the exchange of information with respect to tax matters between The Bahamas and a foreign state that adopts, or has been amended to adopt, Article 5A of the OECD Model Protocol to permit the

²No. 18 of 2010.

automatic exchange of financial account information under the Common Reporting Standard;”

“Multilateral Competent Authority Agreement” or “MCAA” means the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information, a framework agreement based on Article 6 of the Convention to facilitate broad implementation of the automatic exchange component of the Common Reporting Standard, and opened for signature in Berlin on 29th October, 2014;”

“regulations” means regulations made under or pursuant to this Act;”

- (b) by the insertion immediately after subsection (2) the following subsection (3) —

“(3) Where in the Schedule to this Act, a reference is made to a date that is not specified therein, such date may be as is provided for in regulations.”.

3. Repeal and replacement of section 3 of the principal Act.

Section 3 of the principal Act is repealed and replaced as follows —

“3. Purpose of Act.

The purpose of this Act is —

- (a) to establish the requisite legislative framework for implementation of the Common Reporting Standard in accordance with the Convention;
- (b) to underpin and reflect the multilateral approach to the automatic exchange of financial account information, taken by The Bahamas on becoming a signatory to the MCAA ;
- (c) to confer the necessary powers on the Competent Authority to enter into an Agreement with the government of another country for the automatic exchange of financial account information in tax matters; and
- (d) to facilitate The Bahamas accession to the Convention and, thereafter, the fulfilment of The Bahamas' undertaking to commence the automatic exchange of financial account information with participating jurisdictions under the MCAA.”.

4. Repeal and replacement of section 5 of the principal Act.

Section 5 of the principal Act is repealed and replaced as follows —

“5. Identification of Reportable Accounts.

For the purpose of identifying Reportable Accounts maintained by a Reporting Financial Institution, the Reporting Financial Institution shall apply the due diligence rules and procedures under the Common Reporting Standard.”.

5. Amendment of section 6 of the principal Act.

Section 6 of the principal Act is amended —

- (a) in the section head note, by the deletion of the words “obtain and”; and
- (b) in subsection (1), by the deletion of the words “obtain, ”.

6. Insertion of a new section 6A into the principal Act.

The principal Act is amended by the insertion immediately after section 6 of the following new section —

“6A. Duty to self-certify.

Where a Reporting Financial Institution requests or is required to obtain a self-certification from an Account Holder or Controlling Person, the Account Holder or Controlling Person shall provide a true and accurate self-certification to the Reporting Financial Institution.”.

7. Amendment of section 7 of the principal Act.

Section 7 of the principal Act is amended —

- (a) in subsection (1)(b)(i), by the deletion of the word “opened” and the substitution of the word “closed”;
- (b) in subsection (3)(a), by the deletion of the words “state the procedures” and the substitution of the words “document the procedures as prescribed in regulations”; and
- (c) by the deletion of subsection (4).

8. Repeal and replacement of section 9 of the principal Act.

Section 9 of the principal Act is repealed and replaced as follows —

“9. Functions of Competent Authority.

The functions of the Competent Authority are —

- (a) to administer the implementation of the Common Reporting Standard and the automatic exchange of financial account information in relation to any Agreement;
- (b) to agree by mutual consent with exchange partners under an Agreement that bilateral automatic exchange takes place;
- (c) to issue CRS Guidelines; and

- (d) to administer and enforce compliance with —
 - (i) this Act, any regulations or CRS Guidelines made thereunder; and
 - (ii) any Agreement.”.

9. Amendment of section 10 of the principal Act.

Section 10 of the principal Act is amended by the deletion of paragraph (b) and the substitution of the following —

- “(b) in accordance with this Act and the governing Agreement, annually exchange the information on the Information Return filed with the Competent Authority within nine months after the end of the calendar year to which the information relates.”.

10. Insertion of a new section 10A into the principal Act.

The principal Act is amended by the insertion immediately after section 10 of the following new section —

“10A. CRS Guidelines.

- (1) The Competent Authority may, in performing its functions in the administration of this Act, issue guidelines providing for such matters as may be necessary or expedient for giving effect to such functions and to the intent and purposes of this Act.
- (2) CRS Guidelines —
 - (a) may clarify, explain, illustrate or illuminate any procedure, process or matter in respect of the administration and enforcement of this Act and any regulations made thereunder; and
 - (b) shall be subject to the Act and any regulations made thereunder and, where a guideline conflicts with a regulation, the regulation shall prevail.
- (3) CRS Guidelines must be published in such manner as the Competent Authority may determine.
- (4) The Competent Authority may, from time to time, amend the CRS Guidelines.”.

11. Amendment of section 11 of the principal Act.

Section 11 of the principal Act is amended by the deletion of subsection (2) and the substitution of the following —

- “(2) Without prejudice to subsection (1), the Competent Authority may delegate, in writing, to a Designated Officer any function conferred on the Competent Authority under this Act and the regulations.”.

12. Amendment of section 15 of the principal Act.

Section 15 of the principal Act is amended by the deletion, wherever they appear in the section, of the words “Reporting Financial Institution” and the substitution of the word “person”.

13. Insertion of new sections 15A and 15B into the principal Act.

The principal Act is amended by the insertion immediately after section 15, of the following new sections —

“15A. Compliance notice by Competent Authority.

Without prejudice to any other action that may be instituted by the Competent Authority, if at any time it appears to the Competent Authority that—

- (a) a Reporting Financial Institution;
- (b) an Account Holder or Controlling person;
- (c) an Entity, or a director, officer or agent of that Entity; or
- (d) any other person,

has failed to comply with any of the requirements under this Act, the Competent Authority may, by written notice, direct any person referred to in paragraphs (a) through (d) to comply with the requirement within such period and on such terms and conditions as the Competent Authority may specify and such person shall comply with the notice.

15B. Administrative penalty.

- (1) The Competent Authority may in its discretion impose an administrative penalty upon —
 - (a) a Reporting Financial Institution;
 - (b) an Account Holder or Controlling person;
 - (c) an Entity, or a director, officer or agent of that Entity; or
 - (d) any other person,who fails to comply with a notice of the Competent Authority.
- (2) If the Competent Authority considers in the public interest so to do, the Competent Authority may, upon a settlement or after a period of thirty days, order any person referred to in paragraphs (a) – (d) of subsection (1) that has breached any provision of this Act to pay to the Competent Authority an administrative penalty not exceeding three hundred thousand dollars for each contravention.

- (3) If any person referred to in paragraphs (a) – (d) of subsection (1) in breach of any provision of the Act solely by reason of failing to file with or deliver to the Competent Authority a document within the required time period, such person shall be subject to an administrative penalty of up to one thousand dollars, for every day from the date the document was required to be filed or delivered to the day the document was filed or delivered.”.

14. Amendment of section 16 of the principal Act.

Section 16 of the principal Act is amended by the insertion immediately after paragraph (d) of the following new paragraphs —

- “(e) prescribing offences in relation to a contravention of or non-compliance with —
- (i) a provision of this Act, including penalties not exceeding twenty-five thousand dollars to be imposed for such offences, and a further fine not exceeding one thousand dollars per day or part thereof where the offence continues after conviction;
 - (ii) a provision of a regulation made under or pursuant to this Act, including penalties not exceeding five thousand dollars to be imposed for such offences, and a further fine not exceeding seven hundred and fifty dollars per day or part thereof where the offence continues after conviction;
- (f) prescribing the confidentiality and data protection requirements to govern the automatic exchange of financial account information with exchange partners pursuant to the MCAA;
- (g) giving effect to a multilateral intergovernmental agreement or treaty referred to in section 2;
- (h) prescribing the manner of carrying out all or any of the purposes of, or any matter requisite or convenient to give effect to this Act.”.