

**AUTOMATIC EXCHANGE OF FINANCIAL
ACCOUNT INFORMATION (AMENDMENT) BILL,
2017**

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

**A BILL FOR AN ACT TO AMEND THE AUTOMATIC EXCHANGE OF
FINANCIAL ACCOUNT INFORMATION ACT TO STRENGTHEN
COMPLIANCE AND ENFORCEMENT WITH RESPECT TO THE
COMMON REPORTING STANDARD; TO REFLECT THE BAHAMAS'
ADOPTION OF THE MULTILATERAL APPROACH TO THE
AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT
INFORMATION; TO FACILITATE THE BAHAMAS' ACCESSION TO
AND COMPLIANCE WITH THE MULTILATERAL CONVENTION ON
MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS AND
FOR CONNECTED MATTERS**

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) 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) This Act shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

2. Amendment of section 2 of the principal Act.

Section 2 of the principal Act is amended by —

¹No. 37 of 2016.

- (a) the deletion of the word “Agreement” together with its definition 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;
 - (c) a multilateral intergovernmental agreement or treaty, or regional (i.e. Caricom) legislation, 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) the deletion of the term “Common Reporting Standard” together with its definition 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) the deletion of the term “Competent Authority” together with its definition and the substitution of the following —
- “**Competent Authority**” means the Minister of Finance or the representative of the Minister duly authorised in writing;”;
- (d) 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 guidelines issued under section 10A by the Competent Authority in respect of a matter under this Act involving the Common Reporting Standard and includes —
- (a) CRS Guidance Notes;

- (b) CRS Recommended Practices and Procedures;
- (c) CRS Practice Directions;

“CRS Rules” means rules, having the force of law, issued under section 10A by the Competent Authority in respect of a matter under this Act involving the Common Reporting Standard;

“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 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;”.

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 the Act.

The purpose of this Act is to —

- (a) establish the requisite legislative framework for implementation of the Common Reporting Standard in accordance with the Convention;
- (b) underpin and reflect the multilateral approach to the automatic exchange of financial account information, taken by The Bahamas becoming/being 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

²No. 18 of 2010.

- (d) facilitate The Bahamas accession to the Convention and, thereafter, the fulfilment of The Bahamas undertaking to commence automatic exchange of financial account information in 2018 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 purposes 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 marginal note, by the deletion of the words “obtain and”; and
- (b) in subsection (1), by the deletion of the word “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 a new section 6A as follows —

“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 the Competent Authority.

The functions of the Competent Authority are to —

- (a) administer the implementation of the Common Reporting Standard and the automatic exchange of financial account information in relation to any Agreement;
- (b) agree by mutual consent with exchange partners under an Agreement that bilateral automatic exchange takes place;
- (c) issue CRS Rules and CRS Guidelines; and
- (d) administer and enforce compliance with —
 - (i) this Act, the regulations and CRS Rules; 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 a new section 10A as follows —

“10A. CRS Rules and CRS Guidelines.

- (1) The Competent Authority may, in performing the functions of the Competent Authority in the administration of this Act, make rules 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 Rules —
 - (a) have the force of law and must be published in the Gazette;
 - (b) come into force on such date as may be specified in the CRS Rules and, in the absence of such date, on the date published in the Gazette; and
 - (c) are subject to the Act and the regulations and, where a rule conflicts with a regulation, the regulation made by the Minister prevails.

- (3) The Competent Authority may by order, published in the Gazette, amend CRS Rules.
- (4) The Competent Authority may from time to time publish CRS Guidelines to clarify, explain, illustrate or illuminate any procedure, process or matter in respect of the administration and enforcement of this Act, the regulations and CRS Rules.
- (5) CRS Guidelines must be published in accordance with the regulations.”.

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 a new sections 15A and 15B into the principal Act.

The principal Act is amended by the insertion, immediately after section 15, of a new sections 15A and 15B as follows —

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; and
- (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; and
 - (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) (f) (g) and (h) —

- “(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 or regional jurisdiction (i.e. Caricom) legislation under section 2 of this Act;
- (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”.

OBJECTS AND REASONS

The purposes of the amendment Bill are to clarify and expand the existing legislative framework to enable the better implementation of the Common Reporting Standard (CRS), to facilitate The Bahamas becoming a Convention Party, and to reflect The Bahamas adoption of the multilateral approach to the implementation of the CRS and the automatic exchange of financial account information (AEOI).

On 30th June, 2017 The Bahamas advised of its decision to adopt the multilateral approach and to become a signatory to the Multilateral Convention on Automatic Exchange of Financial Account Information (MCAA).

Clause 1 of the Bill provides for its short title and empowers the Minister to appoint a date for its commencement once enacted.

Clause 2 amends section 2 of the principal Act to correct or clarify key words or phrases used in the Act and to include in the Act additional words and phrases and their definitions —

- the definition of “Agreement” is amended to clarify the types of governing agreements that provide a legal basis for the implementation of the CRS and AEOI under the Act;
- the definition of “Common Reporting Standard” is expanded to include the Commentaries and make them binding for the interpretation of the standard;
- the definition of “Competent Authority” is amended to replace the Financial Secretary with the Minister or the Ministers duly authorised representative in writing;
- the words and phrases “Multilateral Competent Authority Agreement” and “Convention” are introduced and defined to reflect the intent and purposes of the Bill and the commitment of The Bahamas to fully implement the CRS and adopt the multilateral approach to AEOI. Pending the accession of The Bahamas to the Convention, CRS implementation will continue to take place on a bilateral basis under new or amended TIEAs (CRS TIEAs). On The Bahamas becoming a Party to the Convention, and having already become a signatory to the MCAA, implementation of AEOI between competent authorities will then take place bilaterally through mutual consent with participating jurisdiction partners. It is noteworthy that a signatory to the MCAA may not undertake actual AEOI until it becomes a Convention Party.

It is anticipated that the use of CRS TIEAs after The Bahamas becomes a Convention Party and an MCAA signatory will be, by necessity, limited. To date there are 61 signatories to the MCAA and all financial centre

jurisdictions of note have signed onto it. Thus, the predominant legal instrument facilitating AEOI in the future will be the Convention and MCAA, and not the CRS TIEA. The draft Bill therefore retains the CRS TIEA primarily as a transitional Agreement. A competent authority agreement for AEOI under an existing CRS TIEA with a foreign state, where that foreign state is or becomes an MCAA signatory and Convention Party, will need to comply with the provisions of the framework MCAA and so may require amendment/conversion (equivalent to a bilateral CAA).

Finally, paragraph (c) of the definition upholds the principle of national sovereignty and accommodates other multilateral international or regional treaties to which The Bahamas is or becomes a Party and which provide for AEOI under the CRS;

- the definition of “regulations” is included to limit all references to same to those regulations made under or pursuant to the Act; and
- **CRS Rules and CRS Guidelines are defined and included as key components of the legislative framework for CRS/AEOI implementation.**

Clause 3 repeals and replaces section 3 of the principal Act to clarify and expand the purposes of the Act vis-a-vis The Bahamas commitment to joining the Convention, putting in place the requisite legal framework for CRS implementation, adopting the multilateral approach to AEOI and becoming a signatory to the MCAA.

Clause 4 repeals and replaces section 5 of the principal Act to clarify and limit the due diligence obligations of Reporting Financial Institutions in their identification of Reportable Accounts. For purposes of AEOI, due diligence obligations as expounded in the CRS are paramount.

Clause 5 amends section 6 of the principal Act to correct a minor error by removal of the word “obtain” where it appears in the section, reflecting that the duty to obtain the information is integral to the section 5 obligation to identify Reportable Accounts.

Clause 6 inserts a new section 6A into the principal Act to impose on an Account Holder and Controlling Person an obligation to provide a true and accurate self-certification when requested or required to do so by a Reporting Financial Institution under this Act.

Clause 7 amends section 7 of the principal Act to correct minor clerical and other errors.

Clause 8 repeals and replaces section 9 of the principal Act to expand and clarify the functions of the Competent Authority.

Clause 9 amends section 10 of the principal Act to clarify the obligations of the Competent Authority in relation to AEOI. The annual exchange takes place

automatically pursuant to and in accordance with the Act and the relevant Agreement and is confined to the information filed on an Information Return.

Clause 10 inserts a new section 10A into the principal Act to provide for an expanded legislative framework that enables the issuance of CRS Rules and Guidelines by the Competent Authority.

Clause 11 provides for a consequential amendment to section 11 of the principal Act.

Clause 12 amends section 15 of the principal Act to expand the application of the section by replacing “Reportable Financial Institution” with the broader term “person”.

Clause 13 inserts a new section 15A into the principal Act to strengthen compliance and enforcement by creating offences and penalties in relation to specified breaches of the Act. To ensure consistency within our tax information exchange regime, the offences and penalties mirror those already provided for within existing legislation i.e. The International Tax Cooperation Act, 2010 and, additionally, have been benchmarked vis-a-vis our competitor jurisdiction, Cayman Islands.

Clause 14 amends section 16 of the principal Act to expand the specified regulation-making powers of the Minister to include *inter alia* the power of the Minister to create new offences under the regulations and to give effect to new treaty arrangements for AEOI under CRS.