



FSI Tax Update

Automatic Exchange of Financial Account Information: No Longer When but with Which Countries?

By Chee Pei Pei and Mohd Fariz Mohd Faruk

Background

Common Reporting Standard ("CRS") on Automatic Exchange of Information ("AEOI") has been introduced by the Organisation for Economic Co-operation and Development ("OECD") as a worldwide tax transparency regime coming into force in Malaysia in 2017. Under the CRS, governments agree to exchange information automatically with one another on tax residents maintaining financial accounts in each other's jurisdictions. As the world becomes increasingly globalised and cross-border activities become the norm, tax administrations need to work together to ensure that taxpayers pay the right amount of tax to the right jurisdiction.

Malaysian-based Financial Institutions ("MYFIs"), will need to identify and document individual and entity Account Holders, including certain Controlling Persons behind entity Account Holders. Based on this documentation, Reporting MYFIs will need to report such persons to the Malaysian Inland Revenue Board ("MIRB") which will then exchange the information with the relevant foreign tax authorities.

The concepts and mechanics of CRS may be familiar from FATCA. Whilst CRS is based on FATCA and uses many similar concepts, there are also significant differences between the two regimes. The US currently is not planning to implement CRS, and thus FATCA continues in parallel requiring reporting of US Persons to the US.

Development of CRS in Malaysia

In furtherance to OECD's effort to combat tax avoidance and evasion at the international level, the MoF has issued the long-awaited Rules and Orders on 23 December 2016 to enable the implementation of CRS in Malaysia as follows:-

1. Income Tax (Convention on Mutual Administrative Assistance in Tax Matters) Order 2016 ("MAA Order 2016")

2. Income Tax (Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information) Order 2016 ("MCAA Order 2016").
3. Income Tax (Automatic Exchange of Financial Account Information) Rules 2016 ("CRS Rules")

MAA Order 2016

Under the MAA Order 2016, the Ministry of Finance ("MoF") has declared that the Government of Malaysia has signed the Convention on Mutual Administrative Assistance in Tax Matters ("MAA") to foster all forms of administrative assistance in matters concerning taxes. Such administrative assistance comprises:-

- Exchange of information (i.e. including on request and automatic), simultaneous tax examinations and participation in tax examinations abroad;
- Assistance in recovery of tax claims (i.e. any amount of tax, as well as interest thereon, related administrative fines and costs incidental to recovery, which are owed and not paid), including measures of conservancy; and
- Service of documents.

For Malaysia, the existing taxes to which the Convention shall apply are income tax, petroleum income tax and tax on property profits.

MCAA Order 2016

There are more than 100 jurisdictions that have committed to implement CRS, including Malaysia. Committed jurisdictions must implement CRS into local law to set up the legal framework under which information will be collected and potentially exchanged. Accordingly, different rule sets may be applicable.

Although two jurisdictions may have implemented CRS locally, it does not necessarily mean that they will exchange information with one another. The exchange of information happens only once there is an agreement in place between two jurisdictions.

There are two types of agreements: Either (1) Two jurisdictions sign a bilateral agreement; or (2) Jurisdictions may agree to exchange information under the multilateral competent authority agreement, known as the MCAA. The MCAA is a framework to which jurisdictions sign up. Neither a general commitment to CRS nor signing the MCAA automatically leads to an automatic exchange of information. Bilateral activation is required before an exchange of information may take place. Local tax administrations will publish the lists of jurisdictions with which they exchange information.

Malaysia has signed the MCAA on 27 January 2016, confirming its commitment to implement automatic exchange of financial account information in time to commence exchanges in 2018, Malaysia is the 79th jurisdiction to sign the agreement. As a continuity to the MAA entered into by the Government of Malaysia, the MoF has issued the MCAA Order 2016 to declare that the Government of Malaysia has signed the Multilateral Competent Authority Agreement on Automatic

Exchange of Financial Account Information (“MCAA”) with a view of exchanging information relating to taxation with other countries that have signed the MCAA. The signing of the MCAA by the Government of Malaysia establishes a bilateral CRS exchange relationship between the participating nations to the MCAA. At the moment, we are still awaiting the list of the intended exchange partner jurisdiction to be issued by the Government of Malaysia under Section 7 of the MCAA.

AEoI Rules

In addition to the above, the MoF issued the long-awaited AEOI Rules which came into operation on 1 January 2017. Under the AEOI Rules, every reporting financial institution shall identify the reportable account from the financial account maintained by the reporting financial institution by applying the due diligence procedure as specified in the CRS issued by the OECD.

As a 2018 adopter, CRS was supposed to go live in Malaysia on 1 January 2017. However, based on the AEOI Rules, the “go-live” date in Malaysia shall be 1 July 2017. The due diligence procedures shall be applied on all new financial accounts opened on or after 1 July 2017 and pre-existing financial accounts maintained by the reporting MYFIs as of 30 June 2017. Every reporting MYFI is required to furnish a return to the Malaysian Inland Revenue Board on or before 30 June 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 MIRB has issued the following timeline that must be adhered by MYFIs:

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 meets the high value threshold (exceeding USD1,000,000)	30 June 2017, 31 December 2017 and 31 December of subsequent calendar years
Determination date whether Pre-existing Entity Account meets the threshold for review (exceeding 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 MIRB	30 June 2018 and 30 June of subsequent years

The MIRB has indicated that they will issue Guidance Notes on CRS. Pending such issuance, MYFIs shall place reliance on the following documents issued by the OECD on top of the MCAA Order and AEOI Rules as guidance for CRS implementation:

- CRS
- Commentaries on the CRS and Model Competent Authority Agreement
- CRS Implementation Handbook
- Guidance on Technology Solutions

List of Participating Jurisdictions

Under the CRS, a professionally managed Investment Entity that is not a Participating Jurisdiction Financial Institution shall be treated as a Passive Non-Financial Entity (Passive NFE). As a result of this, MYFIs will have to “look-through” the entity to identify its controlling persons and report each reportable controlling person to the MIRB.

For the purpose of this “look-through”, the MIRB has issued its List of Participating Jurisdictions as at 30 December 2016. This list will be updated from time to time where necessary.

This list should not be confused with the list of the intended exchange partner jurisdiction to be issued under Section 7 of the MCAA.

Implications of CRS on MYFIs

Every entity is required to assess its CRS status in order to understand whether it has obligations under the CRS regime. If an entity is an FI, it will have to perform certain activities in order to comply with CRS.

In addition, an FI will have to perform a review of its preexisting accounts, as well as implement onboarding procedures for new accounts. Once all accounts are classified, an FI will need to implement monitoring processes to capture changes in CRS statuses. Depending on the network of CRS agreements and the domestic CRS rules, Reporting FIs will report their accounts to the local tax authorities.

Finally, a Reporting FI must ensure it has established a compliance framework enabling it to comply with its CRS obligations. As Reporting FIs are acting as reporting agents under CRS, they must identify Reportable Persons for the exchange of information.

Implications of CRS on Malaysian tax residents having offshore financial assets

The AEOI will lead to the disclosure of offshore financial assets of Malaysian tax residents by the relevant participating jurisdictions’ tax authorities to the MIRB. The MIRB will have access to information on Malaysian tax residents’ financial assets kept outside Malaysia.

Malaysian tax residents, especially high net worth individuals and businesses, should review their tax affairs and assess their offshore financial assets and be prepared to support their tax position in the event that such information is queried by the MIRB. They must be able to provide evidence to support/ defend their tax position if questioned by the MIRB in anticipation of the big change in the tax transparency landscape globally.

Chee Pei Pei is the Financial Services & Insurance (FSI) Tax Leader of Deloitte Tax Malaysia and Mohd Fariz Mohd Faruk is the Associate Director (FSI) of Deloitte Tax Malaysia. Chee Pei Pei and Mohd Fariz Mohd Faruk are both experts in the financial services and insurance industry.

How Deloitte Malaysia's Tax Team can help you

The Deloitte FSI Malaysian tax team has hands-on industry experience and thorough knowledge of CRS and the local business environment. We would be able to assist MYFIs to implement CRS. Our service offerings on CRS consist mainly of, but are not limited to:

- CRS technical advisory support
- CRS project management and implementation support
- CRS gap assessment review
- Design and review of CRS compliance program
- Tailored CRS education sessions for employees, customers and other stakeholders
- Post-CRS implementation review
- CRS IT advisory support

The Deloitte FSI Malaysian tax team will be organising an event on the current tax development and updates concerning players in the financial services industry. Stay tuned for more information on this event.

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