

BY EMAIL

22 December 2016

To the Senior Executive Officers of DFSA Authorised Firms

RE: Organization for Economic Cooperation and Development (OECD), Common Reporting Standard (CRS) Reporting Obligations

Dear SEO,

This is in regard to the most recent developments in CRS obligations which will become applicable to all financial institutions in the UAE, including those operating in or from the DIFC. Although certain due dates noted below might seem distant, the amount of review and preparation to your systems and controls for these reporting obligations might be significant. We encourage you to carefully review your ability comply with the CRS reporting obligations at the earliest possible time.

As I am sure you are aware, the CRS was developed following the implementation of the US Foreign Account Tax Compliance Act (FATCA) in an effort to curb global tax evasion. The CRS was approved by the OECD Council on 15 July 2014, and set out a reporting scheme to facilitate the collection of relevant information from financial institutions and automatically exchange this information in a common format with other jurisdictions on an annual basis. The CRS also defines applicable financial accounts, common due diligence requirements as well as the process for exchange of information.

Pursuant to the above, the UAE Federal Government passed Cabinet Resolution 9 of 2016 on 8 December 2016, in which the UAE Government has committed to sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC) and the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (MCAA). The MCAA contains rules on the exchange of information between the UAE Competent Authority (the UAE Ministry of Finance (MOF) as per the above Cabinet Resolution) and the Competent Authorities of partner jurisdictions. These agreements are international agreements and form legal instruments for the implementation of CRS in the UAE.

The DIFC is required under Article 5 of UAE Federal Law 8 of 2004 to not do anything which may lead to the contravention of any international agreements to which the UAE is or shall be a party. Consequently, the required regulations to meet the UAE's obligations in the above regard will also be implemented in the DIFC during the course of 2017.

Overall the Standard consists of four key parts:

- a model Competent Authority Agreement (CAA) providing the international legal framework for the automatic exchange of CRS information;
- the CRS itself;
- the commentaries on the CAA and the CRS; and
- the CRS XML Schema User Guide.

The MOF has since published its own regulations on 8 December 2016 (the UAE CRS Regulations) following a UAE Federal Cabinet Resolution (see the Guidance Notes and UAE CRS Regulations attached). These regulations will also form the basis of DIFC regulations in the above regard. In this context, it is important to note that the MOF considers the Common Reporting Standard Commentary published by the OECD to form an integral part of the CRS and accordingly to apply in the UAE for the purposes of automatic exchange of financial account information.

Financial institutions in the DIFC are therefore advised to consult the following documentation issued by the OECD for clarification and commentary in the above regard:

- Standard for Automatic Exchange of Financial Account Information in Tax Matters;
- Standard for Automatic Exchange of Financial Account Information in Tax Matters – Implementation Handbook;
- CRS FAQ's; and
- CRS XML Schema User Guide.

These documents are available at <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/>

The following key timelines are evident from the MOF's Guidance Notes attached, which will also be applicable to Reporting Financial Institutions in the DIFC:

- Pre-existing Accounts subject to due diligence are those in existence at **31 December 2016**;
- New Accounts to be subjected to due diligence procedures are those opened on or after **1 January 2017**;
- the first CRS reporting period ends on **31 December 2017**;
- the review of Pre-existing High Value Individual Accounts at 31 December 2016 must be completed by **31 December 2017**;
- the Reportable Pre-existing High Value Accounts need to be reported by **30 June 2018**; and
- the review of Pre-existing Lower Value Individual Accounts at 31 December 2016 must be completed by **31 December 2018**.

The first reporting date for Reporting Financial Institutions for CRS in the UAE has been determined by MOF to be **30 June 2018** and consequently by 30 June of each subsequent year.

The reporting framework for Reporting Financial Institutions in the DIFC under CRS will be the same as FATCA where all entities in the DIFC will be reporting through the Registrar of Companies who, in turn, will provide such information to MOF *via* a secure portal to be created for this purpose. The competent authority in the DIFC in dealing with the implementation of CRS will be the DIFC Authority.

In so far as the confidentiality of the information exchanged with MOF is concerned, it has declared in the Guidance Notes attached not to exchange information under the CRS until it is satisfied that a Reportable partner jurisdiction has in place adequate measures to ensure the confidentiality and data security of any information exchanged, as evaluated by the Global Forum on Transparency and Exchange of Information for Tax Purposes through its CRS implementation monitoring programme.

Reporting Financial Institutions in the DIFC should also note that they will be required to perform due diligence and report information on **all accounts** held by **accountholders who are residents for tax purposes in a jurisdiction other than the US or the UAE** (i.e. the US being excluded on account of reporting requirements under FATCA), irrespective of the fact of whether countries where those accountholders are tax resident have as yet signed up to the treaties referred to above or not. We understand that a ruling will be sought from the DIFC Commissioner of Data Protection to ensure that the provisions of the DIFC Data Protection Law, Law 1 of 2007, are also being properly considered in this regard. The details of this ruling and other developments, such as the applicable legal framework in the DIFC and peripheral guidance, will be communicated to you in due course.

At this point, it is important for all regulated entities to determine the applicability of these standards to their operations and take appropriate measures to be ready to comply with the due diligence and reporting requirements in accordance with the key timelines provided for in the Guidance Notes attached hereto. Similar to FATCA, the Authorised Firms may wish to seek appropriate legal advice, if necessary.

Please note that all capitalised terms not defined herein were used as defined in the relevant CRS documentation referred to above.

Sincerely,



Bryan Stirewalt
Managing Director

Copy to: All Compliance Officers

Attachments:

Guidance Notes for the Common Reporting Standard (CRS)
Automatic Exchange of Financial Account Information Regulation