



AUTOMATIC EXCHANGE OF INFORMATION



Issue No. 38

January 2016

In this Issue:

- ◆ *Automatic Exchange of Financial Account Information*
- ◆ *Multilateral Convention on Mutual Administrative Assistance in Tax Matters*
- ◆ *A Preview into the 2016 AML/CFT Seminar*

AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION

Developed countries around the world have been engaging in automatic exchange of information ("AEOI") for many years to tackle tax evasion. The Organisation for Economic Co-operation and Development ("OECD") has been active in facilitating AEOI by creating the legal framework, developing technical standards, providing guidance and training. As stated in the 2012 OECD Progress Report to the G20 in Los Cabos, Mexico, AEOI is widely practiced and is a tool to counter tax evasion and to increase voluntary tax compliance.

In 2010, the US enacted the Foreign Account Tax Compliance Act (FATCA), requiring withholding agents to withhold 30-percent of the gross amount of certain US connected payments made to foreign financial institutions unless such financial institutions agree to perform specified due diligence procedures to identify and report information about US persons that hold accounts with them to the US tax authorities. Many jurisdictions have opted to implement FATCA on an intergovernmental basis and, more specifically, to collect and exchange the information required to be reported under FATCA on the basis of a Model 1 FATCA Intergovernmental Agreement ("FATCA IGA").

Many of these jurisdictions have also shown interest in leveraging the investments made for implementing the FATCA IGA to establish automatic exchange relationships with other jurisdictions, which themselves are introducing similar rules. These countries recognise that, through the adoption of a common approach to AEOI, tax evasion can be tackled most effectively while minimising costs for governments and financial institutions.

With the strong support of the G20, the OECD together with G20 countries and in close co-operation with the EU and other stakeholders has since developed the "**Standard for Automatic Exchange of Financial Account Information**", or the **Common Reporting Standard ("CRS")**. This is a standardised automatic exchange model, which builds on the FATCA IGA to maximise efficiency and minimise costs seeking to improve automatic exchange at a practical level.

Whilst FATCA requires financial institutions to report information based on nationality (US person), the CRS is based on a person's residence.

Therefore, countries would have reporting obligations in respect to all non-residents save for US persons.

At the recently held 8th Meeting of the Global Forum on Transparency and Exchange of Information for Tax Purposes ("Global Forum") in Barbados, 96 member jurisdictions committed to automatically exchange information beginning 2017 or 2018. St. Kitts and Nevis is committed to exchange information by 2018.

For the approximately 50 jurisdictions who will be reporting in 2017, financial account information should be collected as from 1st January, 2016. Such jurisdictions have revised their domestic laws and administrative practices to ensure that their financial institutions report information on non-residents.

The Government Authorities in St. Kitts and Nevis are in the process of reviewing their internal procedures in preparation for AEOI Implementation. During the period January 26—28, 2016 in Basseterre, St. Kitts, the Global Forum conducted a Caribbean AEOI Implementation Seminar that was attended by over 50 government officials throughout the Caribbean who are involved in the implementation of the CRS. In particular, the workshop focused on aspects covering policy decisions, legislative drafting, Information technology, security and data protection, confidentiality and exchange of information.

The link below are the comments of Prime Minister, Dr. The Honourable Timothy Harris at the recently concluded Automatic Exchange of Information (AEOI) Implementation Seminar.

<http://www.sknevibes.com/news/newsdetails.cfm/94938>

In St. Kitts and Nevis currently, information to be exchanged for tax purposes are primarily facilitated on request through Tax Information Exchange Agreements (TIEAs) and Double Taxation Conventions (DTCs). To date, St. Kitts and Nevis has signed 24 TIEAs, 13 DTCs and 1 FATCA IGA – a total of 38 exchange of information mechanisms.

In order to provide a legal basis for AEOI and to establish automatic exchange relationships, St. Kitts and Nevis can either enter into bilateral negotiations with each existing and future TIEA and DTC treaty partner to amend these exchange of information mechanisms or sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters ("MAC") and the Multilateral Competent Authority Agreement ("MCAA"). The MCAA provides for the modalities of the exchange to ensure the appropriate flows of information.

What is the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC)?

The Convention is a freestanding multilateral agreement designed to promote international co-operation for a better operation of national tax laws, while respecting the fundamental rights of taxpayers. The Convention provides for all possible forms of administrative co-operation between the parties in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion. The Convention was amended by a Protocol which entered into force on 1 June 2011. This brings the Convention in line with the international standard and opens it for signature by all countries.

What are the key benefits?

Assistance covered - Exchange of Information (including on request, spontaneous and automatic), simultaneous tax examinations, tax examinations abroad, assistance in recovery and measures of conservancy, and the service documents. It can also facilitate joint audits.

Taxes covered - All forms of compulsory payments to the general government except for customs duties. It applies to taxes on income, profits, capital gains, and net wealth levied at the central government level. It also covers local taxes, compulsory social security contributions, estate, inheritance or gift taxes, etc.

Rights and safeguards - Generally, rights and safeguards under national law remain applicable and the Convention expressly recognises a number of limitations to the obligation to provide assistance.

Confidentiality - Very high standards of confidentiality and protection of personal data.

Co-ordinating Body - Made up of representatives of each of the Parties, it monitors the implementation of the Convention. States which have signed but not yet ratified the Convention also participate in the meetings of the Co-ordinating Body as observers.

Flexibility - The Convention lists reservations which States may make regarding the taxes covered (e.g. local taxes) and the type of assistance to be provided (e.g. assistance in collection). Reservations can be made at the time of signature or when depositing the instrument of ratification and they can also be made or withdrawn at a later stage. Certain forms of co-operation such as automatic exchange of information and tax examinations abroad require the previous consent of the relevant Parties.

Use of information to combat serious crimes - Information obtained under the Convention may be relevant for other purposes such as pursuing serious financial crimes. The Convention permits such other use when (i) such information may be used for such other purposes under the laws of the supplying Party and (ii) the competent authority of that Party authorizes such use.

Why should a State become a party to the Convention if it already has a network of bilateral agreements?

The Convention covers a much wider range of taxes than bilateral treaties (e.g. it covers VAT/GST and social security contributions). In addition, the Convention provides a single legal basis for multilateral country co-operation in tax matters and sets up a body that can, at the request of a Party, furnish opinions on the interpretation and application of the Convention. Further, it specifies uniform procedures for various forms or mutual assistance such as service of documents, simultaneous tax examinations and tax examinations abroad.

Does the convention allow for automatic exchange of information?

Yes, It can be established through an administrative agreement between the competent authorities of the Parties, willing to provide each other information automatically. Examples of such agreements are the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (CRS MCAA) and the Multilateral Competent Authority Agreement on Country by Country Reporting (CbC MCAA).

For more information, visit www.oecd.org/tax/exchange-of-tax-information



Regulated Entities are kindly reminded that the licencing process is currently ongoing for the Annual Renewal of Licences to operate as a Registered Agent, Insurance Manager and Compliance/Reporting Officer for 2016.

Registered Agents are also reminded that in order to conduct business at the Financial Services Department's Companies Registry, their license(s) must be first renewed for 2016.

The Nevis Financial Services Regulation and Supervision Department will be hosting its annual AML/CFT Seminar and Training Workshop on **Monday, 21st March and Tuesday, 22nd March 2016** at the prestigious Four Seasons Resort Nevis.

This year's theme:

"Powerful Insights, Practical Ideas, Real Solutions: Financial Crime Prevention—the Way Forward."

The Agenda, Topics and supporting information will be forwarded to all stakeholders shortly.

In anticipation of the high interest, the Workshop's Flyer and Registration Form can be accessed on the home page of our website: www.nevisfsrc.com.

Register Now!

SOURCES

⇒ **Standard for Automatic Exchange of Financial Information -The CRS Implementation Handbook by the OECD**

⇒ **OECD's Website: www.oecd.org/tax/transparency**

