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White Paper
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Common Reporting Standards: The Structure of the Agreements

Overview

Executive Summary	In July 2014, the Organisation for Economic Cooperation and Development ("OECD") published the Standard for Automatic Exchange of Information ("AEoI") in tax matters (the "Standard"). The goal of the Standard is to improve cooperation between tax administrations, to protect the integrity of tax systems and to clamp down on offshore tax evasion. In order to implement the Standard and for the AEoI to become effective a number of steps must be taken. • Translating the reporting and due diligence rules into domestic law; • Agreements between countries as a legal basis for the AEoI between these specific countries; • Putting in place the administrative and IT infrastructure to collect and exchange information under the Standard. Singapore has agreed to work towards implementing AEoI Standards by 2018.

The New Rules

OECD Common Reporting Standards

In July 2014, the Organisation for Economic Cooperation and Development ("OECD") published the Standard for Automatic Exchange of Information ("AEoI") in tax matters (the "Standard"). The goal of the Standard is to improve cooperation between tax administrations, to protect the integrity of tax systems and to clamp down on offshore tax evasions. In broad terms, financial institutions ("FIs") report information to the tax administration in the jurisdiction in which they are located. The information consists of details of financial assets they hold on behalf of taxpayers from jurisdictions with which their tax administration exchanges information. The tax administration then shares that information with the tax administration of the taxpayer.

The Standard builds on the Model 1 Foreign Account Tax Compliance Act ("FATCA") Intergovernmental Agreement ("IGA") - which Singapore and the US signed on 9 December 2014 - to maximise efficiency and reduce costs for both governments and financial institutions.

Singapore committed to implement the OECD AEoI Standard by 2018. Implementing the Standard involves the following four steps, which can be done in any order including being pursued in parallel:

Translating the reporting and due diligence rules into domestic law

The first core requirement for exchanging information automatically under the Standard is to require financial institutions to collect and report the specified information to the tax administration in the jurisdiction in which they are located. The tax administrations are then able to exchange that information with their automatic exchange partners.

The Standard provides a standardised set of detailed due diligence and reporting rules for financial institutions to ensure consistency in the scope and quality of information exchanged. These due diligence and reporting rules are the Common Reporting Standard ("CRS"). Essentially, the requirements specify the financial institutions that need to report, the accounts they need to report on, the due diligence procedures to determine which accounts they need to report, and the information to be reported. There are areas where the Standard provides optional approaches for jurisdictions to adopt the option best suited to their circumstances. For example, each jurisdiction may allow Reporting FIs to use service providers to fulfil the reporting and due diligence obligations imposed on such Reporting FIs.

Where respective regulations do not already exist, jurisdictions will need to translate the CRS into domestic law. The reporting requirements and due diligence procedures under the CRS are very similar to those under FATCA in terms of the financial institutions covered by the requirements, the information they are required to report and the due diligence procedures they are expected to follow. However while a large proportion of the Standard precisely mirrors the FATCA IGA, there are also areas of difference. For example, several categories of entities that are treated as Non-Reporting FIs and are thus excluded from reporting under FATCA are simply not included excluded in the Standard and thus also not subject to reporting obligations.

Singapore will be introducing draft regulations for public consultation including the due diligence and reporting requirements to implement the CRS by the second quarter of 2016.

Selecting a legal basis for the automatic exchange of information

Once Singapore has translated the CRS reporting and due diligence requirements into domestic law, it needs to permit the automatic exchange of the information which has been reported by the FIs to the tax administrations of their clients.

The legal instruments permitting the automatic exchange of information include:

- Double Taxation Agreements containing the standard OECD Model Article 26;
- The Multilateral Convention on Mutual Administrative Assistance in Tax Matters, Article 6 of which specifically provides for the optional use of automatic exchange;
- Tax Information Exchange Agreements ("TIEAs") that provide for the automatic exchange of information.

Singapore signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the "Convention") on 29 May 2013. Singapore deposited its instrument of ratification for the Convention on 20 January 2016. According to a press release issued by the Singapore Ministry of Finance, "Ratifying the Convention reflects Singapore's commitment to effective exchange of information based on international Standards". The Convention will enter into force on 1 May 2016.

Information exchanges will then be carried out on a bilateral basis with jurisdictions with which Singapore has signed a Competent Authority Agreement ("CAA"). CAAs

are agreements that the jurisdictions' competent authorities need to sign to set out the modalities of the exchange of information. These agreements specify the following information:

- the underlying legal instrument under which the information will be exchanged;
- the precise information to be exchanged and the time and manner of that exchange;
- the format and transmission methods, and provisions on confidentiality and data safeguards;
- details on collaboration on compliance and enforcement; and
- details of entry into force, amendments to, suspension and cancellation of the CAA.

Jurisdictions are free to specify other provisions.

There are three Model CAAs in the Standard, each developed to suit a different scenario:

1. The first Model CAA is a bilateral and reciprocal model. It is designed to be used in conjunction with Article 26 of the OECD Model Double Taxation Agreement.
2. The second Model CAA is a multilateral CAA that could be used to reduce the cost of signing multiple bilateral agreements (although the actual information exchange would still be on a bilateral basis). It could be used in conjunction with the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the "Convention").
3. Finally the third Model CAA is a non-reciprocal model provided for use where appropriate (e.g. where a jurisdiction does not have any income tax).

A very significant number of jurisdictions have already used the second Model CAA by signing a multilateral competent authority agreement to automatically exchange information under the CRS (the "CRS MCAA"), based on Article 6 of the Convention. Malaysia became a signatory of the CRS MCAA on 27 January 2016, bringing the current total number of signatories to 79. As of now, Singapore is not a signatory.

The MCAA is a framework agreement and does not become operational until domestic legislation is in place and the requirements on data protection/confidentiality are met. It can be signed with any intended exchange dates, which are specified at the time of signing. The exchange of information between two signatories starts once they both provide a subsequent notification stating they wish to exchange with each other.

Jurisdictions could also enter into a multilateral intergovernmental agreement or multiple intergovernmental agreements that would be international treaties in their own right or regional legislation covering both the reporting obligations and due diligence procedures coupled with a more limited competent authority agreement.

Singapore has reiterated that it will carry out automatic exchange of information subject to the following conditions:

- There is a level playing field among all major financial centres, including Hong Kong, Dubai, Switzerland and Luxembourg, to minimise regulatory arbitrage;
- Singapore will only engage in AEoI with jurisdictions that have a strong rule of law and can ensure the confidentiality of information exchanged and prevent its unauthorised use. This is particularly important as AEoI entails the transmission of sensitive taxpayer information which should be safeguarded.

In this regard, Singapore will prioritise AEoI of CRS information with jurisdictions with strong rule of law, such as the UK and France;
- There must be reciprocity with any future AEoI partners in terms of information exchanged.

Putting in place the administrative and IT infrastructure to collect and exchange information under the Standard

The Standard includes a transmission format (the "CRS Schema") to be used for exchanging the information. The CRS schema is virtually identical to the FATCA schema in terms of structure and content.

Protecting confidentiality and data safeguards

The Standard contains detailed rules on confidentiality and data safeguards which need to be in place both on a legal and operational level. These are essentially the same as those applicable for the FATCA IGA.

Effective Date

More than 90 countries have signalled their intentions to adopt the Standard and more than half of these commit to be early adopters (e.g. UK, Germany and France). These early adopters have selected 1 January 2016 as the date from which the Financial Institutions in their jurisdiction apply the New Account procedures (with any account open at 31 December 2015 being subject to the procedures in relation to Preexisting Accounts). They have committed to undertake first exchanges of information by 2017.

Singapore is not an early adopter but has agreed to work towards implementing AEoI Standards by 2018. Thus, the timeline will be one year delayed from the early adopters. The following timeline is to be expected:

- 1 January 2017: New account opening procedures to record tax residence and entity status to be in place;
- 31 December 2017: Due diligence procedures for identifying high-value pre-existing individual accounts (with a balance or value of more than USD 1,000,000 as of 31 December 2016) to be completed;
- 31 December 2018: Due diligence procedures for identifying lower-value pre-existing individual accounts (with a balance or value of USD 1,000,000 or less as of 31 December 2016) to be completed.
- 31 December 2018: Review of pre-existing entity accounts with balance or value of more than USD 250,000 as of 31 December 2016 to be completed.
- 31 December 2018 or later: Review of pre-existing entity accounts with balance or value of USD 250,000 or less as of 31 December 2016 but exceeding USD 250,000 as of 31 December of 2017 or any subsequent year to be completed on 31 December of the following calendar year in which the account balance or value exceeds USD 250,000 for accounts.

The exact dates for the AEoI between two countries will depend on the agreement between these countries.

For more information or further discussions, please contact Water Dragon Solutions Pte Ltd, the Compliance Practice of Maroon: **compliance@maroonanalytics.com**.