

AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION REGULATIONS, 2017

Arrangement of Regulations

Regulation

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**AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT
INFORMATION ACT, 2016
(NO. 37 OF 2016)**

**AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT
INFORMATION REGULATIONS, 2017**

The Minister, in exercise of the powers conferred by section 16 of the Automatic Exchange of Financial Account Information Act, 2016, makes the following regulations —

1. Citation.

These Regulations may be cited as the Automatic Exchange of Financial Account Information Regulations, 2017.

2. Interpretation.

(1) In these Regulations —

“**Act**” means the Automatic Exchange of Financial Account Information Act, 2016 (*No. 37 of 2016*);

“**applicable date**” means the end of calendar year prior to the effective date of any Bilateral Agreement, Competent Authority Agreement or Treaty with the relevant jurisdiction;

“**Controlling Persons**” mean the natural persons who exercise control over an Entity and —

(a) in the case of a trust, the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust,

(b) in the case of a legal arrangement other than a trust, persons in equivalent or similar positions,

a person will be treated as being a beneficiary of a trust if such person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or has received, directly or indirectly, in the relevant reporting period, a discretionary distribution from a trust; and

(c) in the case of any other entity, such definition or procedure contained in applicable AML and KYC procedures, as amended;

“effective date” means the date on which automatic exchange of financial account information commences pursuant to the Competent Authority Agreement with a relevant jurisdiction;

“Equity Interest” means —

- (a) in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership;
- (b) in the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust,

a Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or has received, directly or indirectly, in the relevant reporting period a discretionary distribution from the trust;

- (c) in the case of any other entity, such definition or procedure contained in applicable AML and KYC procedures, as amended;

“Group Annuity Contract” means an Annuity Contract under which the obligees are individuals who are affiliated through an employer, trade association, labour union, or other association or group;

“Group Cash Value Insurance Contract” means a Cash Value Insurance Contract that —

- (a) provides coverage on individuals who are affiliated through an employer, trade association, labour union, or other association or group; and
- (b) charges a premium for each member of the group (or member of a class within the group) that is determined without regard to the individual health characteristics other than age, gender, and smoking habits of the member (or class of members) of the group;

“High Value Account” means a Preexisting Individual Account with an aggregate balance or value that exceeds USD 1 000 000 as of the applicable date;

“Lower Value Account” means a Preexisting Individual Account, which is not a High Value Account, with an aggregate balance or value as of the applicable date that does not exceed USD 1 000 000;

“New Account” means a Financial Account maintained by a Reporting Financial Institution opened After the applicable date, unless it is

treated as a Preexisting Account under paragraph (b) of the definition “Preexisting Account”;

“Non-Reporting Financial Institution” means —

- (a) a Financial Institution as specified under subparagraph B(1) of Section VIII of the Common Reporting Standard; or
- (b) an entity under regulation 10;

“Participating Jurisdiction” means a jurisdiction specified in the First Schedule;

“Passive NFE” means any —

- (i) NFE that is not an Active NFE; or
- (ii) an Investment Entity described in subparagraph A(6)(b) of Section VIII of the Common Reporting Standard that is not a Participating Jurisdiction Financial Institution;

“Preexisting Account” means —

- (a) a Financial Account maintained by a Reporting Financial Institution as of the applicable date; or
- (b) a Financial Account of an Account Holder, despite the date the Financial Account was opened, if —
 - (i) the Account Holder also holds a Financial Account that is a Preexisting Account under subparagraph (a) with a Reporting Financial Institution (or with a Related Entity within the same jurisdiction as the Reporting Financial Institution);
 - (ii) the Reporting Financial Institution (and, as applicable, the Related Entity within the same jurisdiction as the Reporting Financial Institution) treats the Financial Accounts under subparagraph (a) and this subparagraph, and any other Financial Account of the Account Holder treated as Preexisting Accounts under this subparagraph, as a single Financial Account for the purposes of —
 - (aa) satisfying the standards of knowledge requirements specified in paragraph A of Section VII of the Common Reporting Standard; and
 - (bb) determining the balance or value of any of the Financial Accounts when applying any of the account thresholds;

- (iii) for a Financial Account that is subject to AML/KYC procedures, the Reporting Financial Institution is permitted to satisfy the AML/KYC procedures for the Financial Account by relying on the AML/KYC procedures performed for the Preexisting Account described in subparagraph (a); and
- (iv) the opening of the Financial Account does not require the provision of new, additional or amended customer information by the Account Holder other than for purposes of the Common Reporting Standard;

“Preexisting Entity Account” means a Preexisting Account held by one or more Entities;

“Preexisting Individual Account” means a Preexisting Account held by one or more Individuals;

“Related Entity” means an Entity of another Entity if —

- (a) either Entity controls the other Entity;
- (b) the two Entities are under common control, for this purpose control includes direct or indirect ownership of more than 50 per cent of the vote and value in an Entity; or
- (c) the two Entities are Investment Entities described in subparagraph A(6)(b) of the Common Reporting Standard, are under common management, and such management fulfils the due diligence obligations of such Investment Entities.

“Reportable Jurisdiction” means a jurisdiction specified in the Second Schedule;

“standardised industry coding system” means a coding system used to classify establishments by business type for purposes other than tax purposes;

“USD” or **“United States Dollars”** means the official currency of the United States of America.

- (2) For the purposes of these Regulations, the date specified in the definition “Qualified Credit Card Issuer” in subparagraph B(8) of Section VIII of the Common Reporting Standard is as of the applicable date.
- (3) Any word or expression used in these Regulations which has a meaning given to it by the Act or by the Common Reporting Standard, respectively, shall, unless the contrary intention appears herein, have the same meaning in these Regulations as it has in the Act or in the Common Reporting Standard.

3. Due diligence obligations.

- (1) A Reporting Financial Institution shall establish, maintain and document the procedures under these Regulations.
- (2) A Reporting Financial Institution shall —
 - (a) identify Reportable Accounts maintained by the Financial Institution by applying the due diligence procedures described in Sections II to VII of the Common Reporting Standard; and
 - (b) apply the due diligence procedures to subparagraph C(6) and paragraph D of Section III, paragraphs A and B of Section V, and subparagraphs E(1) and E(2) of Section V, of the Common Reporting Standard on the applicable date.
- (3) An account is treated as a Reportable Account as of the date it is identified as a Reportable Account pursuant to the due diligence procedures described in Sections II to VII of the Common Reporting Standard and, unless otherwise provided, information relating to a Reportable Account shall be reported annually in the calendar year following the year to which the information relates.
- (4) For the purposes of these Regulations —
 - (a) an account with a balance or value that is negative is deemed to have a balance or value equal to nil;
 - (b) in determining the balance or value of an account denominated in a currency (other than USD), the Financial Institution shall translate the relevant USD threshold amount described in the Common Reporting Standard or in these Regulations into the other currency by reference to the spot rate of exchange on the date for which the Financial Institution is determining the threshold amounts;
 - (c) a Financial Account held by an individual as a partner of a partnership is deemed to be an Entity Account.

4. Modifications to due diligence procedures.

- (1) A Reporting Financial Institution may, for a calendar year, apply —
 - (a) the residence address procedure, as described in subparagraph B(1) of Section III of the Common Reporting Standard, to a Lower Value Account;
 - (b) the due diligence procedures for a High Value Account, described in paragraph C of Section III of the Common Reporting Standard, to a Lower Value Account; or
 - (c) paragraphs A to C of Section V of the Common Reporting Standard to determine whether a Preexisting Entity Account is subject to the

due diligence procedures described in Section V of the Common Reporting Standard.

- (2) Subject to paragraphs (3) and (4), a Reporting Financial Institution may apply, for a calendar year, the due diligence procedures for a New Account, described in paragraph A of Section IV or VI of the Common Reporting Standard, to a Preexisting Account.
- (3) Where a Reporting Financial Institution applies the due diligence procedures for a New Account to a Preexisting Account, the procedures described in subparagraph B(1) of Section III, paragraph C of Section I, paragraph A of Section III and paragraph A of Section V of the Common Reporting Standard shall apply.
- (4) A Reporting Financial Institution may not apply the due diligence procedures for a New Account to a Preexisting Account unless the Reporting Financial Institution applies the procedures to all Preexisting Accounts it maintains or a clearly identifiable group of Preexisting Accounts.
- (5) A Reporting Financial Institution may —
 - (a) for Preexisting Entity Accounts, without knowledge of a classification being incorrect, use as documentary evidence any classification in the Reporting Financial Institution's records relating to the Account Holder that —
 - (i) was determined based on a standardised industry coding system;
 - (ii) was recorded by the Reporting Financial Institution consistent with its normal business practices for purposes of AML/KYC procedures or other regulatory purposes (other than for tax purposes); or
 - (iii) was implemented by the Reporting Financial Institution prior to the date used to classify the Financial Account as a Preexisting Account; and
 - (b) for New Entity Accounts, for the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, only rely on a self-certification from either the Account Holder or the Controlling Person.

5. Reporting obligation.

- (1) Pursuant to section 4 of the Act, a Reporting Financial Institution may apply to be registered with the Competent Authority, if the Reporting Financial Institution maintains one or more Reportable Accounts.

- (2) Where a Reporting Financial Institution has registered with the Competent Authority but no longer maintains any Reportable Accounts, the Reporting Financial Institution shall apply to de-register as a Reporting Financial Institution within 90 days of the end of the calendar year.
- (3) A Reporting Financial Institution shall, in respect of the applicable date and subsequent years after that date, file with the Competent Authority an Information Return setting out the information required to be reported described in paragraphs A and B of Section I of the Common Reporting Standard, subject to paragraphs C to E of Section I of the Common Reporting Standard, in relation to a Financial Account identified as a Reportable Account that is maintained by the Reporting Financial Institution at any time during a calendar year or other appropriate reporting period.
- (4) An Information Return under paragraph (3) shall be submitted to the Competent Authority in accordance with regulation 7 on or before the effective date.
- (5) A Preexisting Entity Account with an account balance or value that does not exceed USD 250 000 before the applicable date is not required to be reviewed, identified, or reported as a Reportable Account until the aggregate account balance or value exceeds USD 250 000 as of the last day of any subsequent calendar year, except where the Reporting Financial Institution elects otherwise, either with respect to all Preexisting Entity Accounts; or separately, to any clearly identified group of such accounts.
- (6) A Preexisting Individual Account with an account balance or value that does not exceed USD 50 000 before the applicable date, is not required to be reviewed, identified, or reported as a Reportable Account until the aggregate account balance or value exceeds USD 50 000 as of the last day of any subsequent calendar year, except where the Reporting Financial Institution elects otherwise, either with respect to all Preexisting Individual Accounts; or separately, to any clearly identified group of such accounts.

6. Procedures for Cash Value Insurance or Annuity Contracts, etc.

- (1) A Reporting Financial Institution shall comply with the procedures for Cash Value Insurance or an Annuity Contract in paragraph B of Section VII of the Common Reporting Standard.
- (2) A Reporting Financial Institution may treat a Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract as a Financial Account that is not a Reportable Account until the date on which an amount is payable to the employee or certificate

holder or beneficiary, if the Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract meets the following requirements —

- (a) the Group Cash Value Insurance Contract or Group Annuity Contract is issued to an employer and covers 25 or more employees or certificate holders;
- (b) the employees or certificate holders are entitled to receive any contract value related to their interests and to name beneficiaries for the benefit payable on the employee's death; and
- (c) the aggregate amount payable to any employee or certificate holder or beneficiary does not exceed USD 1 000 000.

7. Electronic return system.

- (1) Pursuant to regulation 5, an Information Return shall be filed electronically using the technology approved by the Competent Authority, and in the form determined by the Competent Authority.
- (2) An Information Return required to be filed under paragraph (1), shall be submitted electronically on or before 30th September of the year following the calendar year to which the return relates.

8. Record keeping.

Pursuant to section 7 of the Act, a Reporting Financial Institution that maintains records in a language other than English shall, upon request, provide an English translation to the Competent Authority.

9. Inspection of books, etc.

For the purposes of these Regulations, the Competent Authority may, in the performance of its duties under the Act, require a Reporting Financial Institution —

- (a) by notice in writing, to provide information or explanations requested in the notice within 14 days from the date of the notice;
- (b) to make copies of books, records or other documents provided to the Competent Authority;
- (c) where the Competent Authority conducted an inquiry, to provide books, records or other documents relating to the inquiry.

10. Non-Reporting Financial Institution.

A Non-Reporting Financial Institution includes an Entity established in The Bahamas —

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- (a) solely for the purposes described in Section VIII C 1(a) of the Common Reporting Standard which renders investment advice to, and acts on behalf of, or manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than such Entity; or
- (b) that performs or executes executive functions on behalf of a Reporting Financial Institution.

FIRST SCHEDULE

(regulation 2)

PARTICIPATING JURISDICTIONS

For the purposes of the Common Reporting Standard, the following are Participating Jurisdictions —

1. Albania
2. Andorra
3. Anguilla
4. Antigua and Barbuda
5. Argentina
6. Aruba
7. Australia
8. Austria
9. Barbados
10. Belgium
11. Belize
12. Bermuda
13. Brazil
14. British Virgin Islands
15. Brunei Darussalam
16. Bulgaria
17. Canada
18. Cayman Islands
19. Chile
20. China
21. Colombia
22. Cook Islands
23. Costa Rica
24. Croatia
25. Curaçao
26. Cyprus
27. Czech Republic
28. Denmark
29. Dominica
30. Estonia

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31. Uruguay
32. Faroe Islands
33. Finland
34. France
35. Germany
36. Ghana
37. Gibraltar
38. Greece
39. Greenland
40. Grenada
41. Guernsey
42. Hong Kong (China)
43. Hungary
44. Iceland
45. India
46. Indonesia
47. Ireland
48. Isle of Man
49. Israel
50. Italy
51. Japan
52. Jersey
53. Korea
54. Latvia
55. Liechtenstein
56. Lithuania
57. Luxembourg
58. Macao (China)
59. Malaysia
60. Malta
61. Marshall Islands
62. Mauritius
63. Mexico
64. Monaco
65. Montserrat
66. Netherlands
67. New Zealand
68. Niue

69. Norway
70. Panama
71. Poland
72. Portugal
73. Qatar
74. Romania
75. Russia
76. Saint Kitts and Nevis
77. Saint Lucia
78. Saint Vincent and the Grenadines
79. Samo
80. San Marino
81. Saudi Arabia
82. Seychelles
83. Singapore
84. Sint Maarten
85. Slovak Republic
86. Slovenia
87. South Africa
88. Spain
89. Sweden
90. Switzerland
91. The Bahamas
92. Trinidad and Tobago
93. Turkey
94. Turks and Caicos Islands
95. United Arab Emirates
96. United Kingdom
97. United States of America

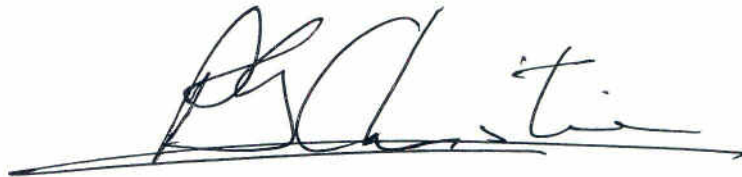
SECOND SCHEDULE

(regulation 2)

REPORTABLE JURISDICTIONS

AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT
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Dated this 7th day of March, 2017.

A handwritten signature in black ink, appearing to read 'A. A. ...', written over a horizontal line.

MINISTER OF FINANCE