

BULLETIN

The Bahamas Passes the Automatic Exchange of Financial Account Information Act, 2016

The Automatic Exchange of Financial Account Information Act, 2016 ("Act") came into force in The Bahamas on 1st January, 2017. The Act facilitates the implementation and enforcement in The Bahamas of the Common Reporting Standard ("CRS") as developed by the Organization for Economic Cooperation and Development ("OECD"). The CRS marks a global shift toward automatic exchange of tax information between jurisdictions as opposed to the exchange of information based on a request made by one jurisdiction to another.

The Financial Secretary in the Ministry of Finance is designated as the Competent Authority for the purposes of the Act, and is empowered to: (i) enter into Agreements with other countries for the automatic exchange of financial information in tax matters (in accordance with the bilateral approach to the implementation of CRS adopted by the Bahamas Government), (ii) receive and exchange information reported under the Act; and (iii) enforce compliance with the provisions of the Act and its regulations ("Regulations").

The Act imposes four key obligations on Reporting Financial Institutions ("RFIs"):

1. Registration – RFIs must apply to the Competent Authority to be registered by 30th March, 2017;
2. Identification of Reportable Accounts – RFIs must identify Account Holders of any Reportable Accounts by applying the due diligence rules and procedures under CRS, the Bahamian anti-money laundering regime or similar requirements to which the RFI is subject;
3. Obtain and file Information Returns – RFIs are required to obtain and file Information Returns relating to Financial Accounts maintained with them; and
4. Keeping of Reports – RFIs are required to: (i) keep reports that will be prescribed in the Regulations; and (ii) hold those reports for a minimum of 5 years.

Generally, RFIs include custodial institutions, depository institutions, investment entities and specified insurance companies that are: (i) organized under the laws of The Bahamas, but excluding any branches outside of The Bahamas; or (ii) organized under a foreign law, with a branch in The Bahamas.

It is anticipated that more detailed requirements relating to each of these obligations, including, the procedure and timeline for filing Information Returns and due diligence procedures, will be set out in the Regulations. In any event, once the necessary bi-lateral agreements are entered into, the first reporting will occur in 2018, based on 2017 financial information.

The Act also incorporates the anti-avoidance provision mandated by the OECD. This provision specifies that any arrangement entered into or any practice engaged in for the purpose of (or one of the purposes of which is) avoiding the obligations imposed by the Act or Regulations will be ineffective to avoid such obligations.

With the publication of the Regulations expected in the near future, financial institutions in The Bahamas are encouraged to review their client account opening forms and internal policies and procedures to ensure their compliance with the Act and Regulations.

For more information, contact:-



Christel Sands-Feaste
Practice Group Chair
Financial Services, Insurance Law
& Regulation Practice Group
csands-feaste@higgsjohnson.com



Paul Davis
Partner
Private Client & Wealth Management
Practice Group
pdavis@higgsjohnson.com

The information contained in this bulletin is provided for the general interest of our readers, but is not intended to constitute legal advice. Clients and the general public are encouraged to seek specific advice on matters of concern. This bulletin can in no way serve as a substitute in such cases. Copyright ©2017 Higgs & Johnson. All rights reserved.