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Tax Analysis

China CRS Rules Apply as from 1 July 2017

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Long-awaited rules implementing the OECD common reporting standard (CRS) in China will apply as from 1 July 2017. The final rules ("Due Diligence Procedures on Financial Account Information in Tax Matters for Nonresidents"[1]) were issued by the State Administration of Taxation (SAT), the Ministry of Finance and financial regulatory bodies on 19 May 2017. The rules address financial institution (FI) reporting, reportable financial accounts and due diligence procedures.

Background

In 2014, the OECD published the Automatic Exchange of Financial Information in Tax Matters (AEOI) in response to the growing concern that taxpayers were concealing reportable income in offshore assets and accounts in order to evade tax in their home jurisdiction(s). The AEOI was modeled on the inter-governmental agreement (IGA) framework under the US Foreign Account Tax Compliance Act (FATCA). In September 2014, China committed to the implementation of the AEOI, and in December 2015, China signed the Model Competent Authority Agreement (MCAA), which was developed to provide a standardized and efficient mechanism to facilitate the AEOI—the MCAA avoids the need for multiple bilateral agreements to be concluded. On 14 October 2016, the SAT published a draft version of the CRS rules for public consultation.

The final rules implementing CRS in China generally are similar to the draft rules released by the SAT with respect to the procedures for assessment and identification of FIs and financial accounts, etc. The final rules require FIs to undertake due diligence procedures to identify specified financial accounts held by nonresidents and report specific information on the accounts to the SAT. The SAT then will exchange the information with the tax authorities of jurisdictions in which the account holders are resident. Notably, the final rules make some changes to the draft rules, e.g. by requiring the total aggregate balance in the financial account to be in USD, defining

[1] See full text in Chinese: http://www.chinatax.gov.cn/n810341/n810755/c2623078/content.html

the conversion rule for currencies other than USD, adjusting some of the key dates, setting out the requirements for registration on the SAT website and specifying measures for noncompliance.

Reporting entity: Financial institution

FIs include depository institutions, custodial institutions, investment entities, specified insurance companies and their affiliates. Financial institutions in Mainland China include:

- Commercial banks, rural credit unions, other financial institutions for taking public deposits and policy banks;
- Security companies;
- Futures companies;
- Securities investment fund management companies, private equity fund management companies/partnerships;
- Insurance companies that issue cash value insurance and/or annuity contracts, insurance asset management companies;
- Trust companies; and
- Other qualifying institutions, such as entities engaged in investment, reinvestment, trading of financial assets, etc. (including securities investment funds, private equity funds, etc.).

Due diligence: Financial accounts

Beginning on 1 July 2017, affected FIs must undertake due diligence procedures and identify reportable information for both pre-existing and new financial accounts belonging to entities and individuals. Accounts that are opened on or before 30 June 2017 will be treated as pre-existing accounts. Accounts that are opened on or after 1 July 2017 generally will be treated as new accounts; however, if the account holder has other accounts with the same FI on 30 June 2017 and these accounts meet certain other criteria, they could be treated as pre-existing accounts.

The definition of financial accounts for these purposes generally follows the OECD definition and includes three categories of accounts:

- Depository accounts;
- Custodial accounts (e.g. securities brokerage accounts, wealth management accounts, fund accounts, trust programs, collective asset management programs, etc.); and
- Other accounts (e.g. cash value insurance contracts, partnership interests in private equity funds, etc.)

Due diligence procedures and timelines

The CRS rules set out different due diligence procedures and timelines for different categories of financial accounts:

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Type of account			Description	Due diligence procedure	Timeline
Individuals	New		Opened on or after 1 July 2017	Obtain self-certification from account holder and make reasonable review of certification	Beginning on 1 July 2017
	Pre-existing	Low value accounts	Aggregate account balance on 30 June 2017 does not exceed USD 1 million	Perform electronic search of information maintained by FI	By 31 December 2018
		High value accounts	Aggregate account balance on 30 June 2017 exceeds USD 1 million	Perform electronic and paper record search of information maintained by FI and request that customer managers identify their residence status	By 31 December 2017
Entities	New		Opened on or after 1 July 2017	Obtain self-certification from account holder and make reasonable review of certification	Beginning on 1 July 2017
	Pre-existing	De minimis	Aggregate account balance on 30 June 2017 does not exceed USD 250,000	No action required (subject to change in circumstances and ongoing monitoring)	None
		Non-de minimis	Aggregate account balance on 30 June 2017 exceeds USD 250,000	Perform search of information maintained by FI and obtain self-certification from account holder in certain cases	By 31 December 2018

Reporting requirements

FIs must register on the SAT website by 31 December 2017 and report the relevant account information of nonresidents by 31 May of each year. The SAT will be issuing further detailed guidance on the reporting requirements.

Deloitte observation and suggestions

FIs have less than a month to implement China's CRS procedures, especially with respect to gathering self-certifications and making the required checks. Affected institutions should take immediate steps to perform compliance obligations in order to mitigate any risk of noncompliance. The following actions are recommended:

- **Conduct a comprehensive review of the existing account management system and identify any underlying potential risk. The review should focus on existing products and services and identify financial accounts that are subject to the due diligence requirement; and the impact on the existing account management process, business systems and policy.**
- **Establish a due diligence policy and procedure for new accounts and revise existing account opening procedures, including relevant forms and documents, due diligence procedures when an account is opened (such as know-your-customer procedures), and other procedures to meet the requirements to identify tax residence status and the collection of relevant information.**
- **Collect relevant CRS information, conduct the due diligence procedures as stipulated in the new rules, and update or document information for pre-existing clients.**
- **Develop adequate operating guidance and modify existing systems to enable the FI to comply with the requirements for reporting financial account information in a timely manner.**

In the longer term, FIs should continue to improve their compliance procedures and mechanisms, update their IT systems and train personnel to enable compliance with the CRS rules.

Deloitte has conducted a thorough interpretation of the China's CRS rule and has extensive experience in assisting financial institutions in implementing CRS compliance. If you would like to receive more information, please read our past tax analysis[2] and contact one of the professionals in Deloitte's FATCA/CRS service team.

[2] Deloitte Tax Analysis: SAT released draft "Due Diligence Procedures on Financial Account Information in Tax Matters for Non-residents" Are you ready?"
https://www2.deloitte.com/content/dam/Deloitte/cn/Documents/tax/ta-2016/deloitte-cn-tax-tap2472016-en-161021.pdf

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