

Implementation of the OECD Standard for Automatic Exchange of Financial Account Information in The Bahamas

Information on Automatic Exchange of Financial Account Information reporting

A) Legal provisions and context of the Automatic Exchange of Financial Account Information in Bahamas

The Government of The Bahamas has recently indicated its intention to implement the Automatic Exchange of Information on a non-reciprocal basis by way of the Multilateral Convention on the Mutual Administrative Assistance in Tax Matters (the “Multilateral Convention”). This is a diversion from the original intention to implement the exchange of information by way of separate bilateral agreements with selected partner jurisdictions. Upon the execution of the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information of 29 October 2014 (the “Agreement”) by The Bahamas, Bahamas Financial Institutions, such as Pictet Bank & Trust Limited, will be required to report information regarding certain accounts and follow related due diligence procedures, consistent with the scope of exchange contemplated by the Agreement, as well as by other applicable bilateral Agreements in which The Bahamas intends to enter into.

The Automatic Exchange of Financial Account Information Act, 2016 (the “AEI Act”) and The Automatic Exchange of Financial Account Information Regulations, 2017 are currently in force in The Bahamas although as The Bahamas will now adopt the Multilateral Convention, changes to such legislation will be enacted shortly. The AEI Act is the legal basis for implementing the AEI Standard in The Bahamas.

The Bahamas will adopt the “wider approach” meaning that Bahamas Financial Institutions will be required to collect and retain documentation relating to the AEI Standard for all account holders. Financial Institutions will therefore be required to carry out due diligence procedures for accounts even if the account holder/controlling person is tax resident in a jurisdiction which is not in a reportable jurisdiction, although in such case no reporting will be required.

B) Information to be reported

The reportable information includes personal data and information concerning the reportable account. The Bank must report the following information with respect to each reportable account to The Bahamas Competent Authority (the “BCA”):

- Name, address and date of birth of the account holder, the beneficial owner and/or the controlling person;
- Tax Identification Number (“TIN”) of the account holder, the beneficial owner and/or the controlling person;
- Number of the account held by the reporting Bank;
- Name and identification number (where available) of the reporting Bank;
- Account balance as at year-end or the indication that the account was closed if the account was closed in the course of the year;
- Total gross amount of dividends, interest and other income as well as gross proceeds from the sale or redemption of financial assets paid or credited to the account.

¹The TINs to be reported is the TINs assigned to the account holder or to the controlling person by its reportable jurisdiction of residence. Information on the TINs (the type and the format) of the jurisdictions which have implemented the AEI is available on the OECD’s website: <https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/>. It has to be noted that some jurisdictions do not assign TINs.

C) The Bahamas' partner jurisdictions

Reporting Bahamas Financial Institutions are required to report information on reportable accounts held by reportable persons annually to the BCA. After receiving this information, the BCA exchanges it with the reportable person's country of residence. Information is only exchanged with partner jurisdictions.

On 20th June, 2017 The Bahamas Government released the initial list of countries it intends to Automatically Exchange Financial Account Information with under the Automatic Exchange of Financial Information Act, 2016. The aforesaid list of countries and The Bahamas's approach to CRS and the relevant timelines can be found on www.taxreporting.finance.gov.bs, though this list is subject to change.

D) Confidentiality and data safeguards

Generally, the information exchanged may only be made available to tax authorities of a partner jurisdiction in which the reportable person is resident and may only be used for tax purposes referred to the Agreement and the Multilateral Convention.

In principle, it is prohibited for the receiving partner jurisdiction to forward the received information to another jurisdiction, and it must treat the information as confidential.

Generally, the receiving partner jurisdiction may only make the information exchanged available to persons and authorities responsible for handling or supervising taxation in that country.

All information exchanged is subject to the confidentiality rules and other safeguards provided for in the Multilateral Convention, including the provisions limiting the use of the information exchanged and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by The Bahamas as required under its domestic law and listed in the annex of the Agreement.

E) Protection of personal data

Concerning the information collected by the Bank and the transmission of such information to the competent authorities of the partner jurisdictions, the reportable persons have the rights defined in the Data Protection Act (the "DPA") as follows:

- **Vis-à-vis the Bank**

The reportable person is entitled to the full extent of legal protection offered by the DPA vis-à-vis the Bank. In particular, under the DPA, a reportable person has the right to request what personal information has been collected about him and will be reported under the AEI Act.

The Bank must provide the reportable person with a copy of its report to the BCA on request. In this regard, it must be noted that the information about the reportable person that is collected and reported may differ from its tax relevant information.

Moreover, the reportable person is also entitled to request that incorrect data in the Bank's systems be corrected.

- **The BCA**

The only right of the reportable person vis-à-vis the BCA is the right to access information. Such person is entitled to request that incorrect data resulting from errors in the exchange process be corrected.

The reportable person does not have the general right to (i) access BCA records or (ii) block the disclosure of personal details to the BCA. In addition, the reportable person has no right to demand that information submitted to the BCA be reviewed or blocked for illegal disclosure or to demand the destruction of data reported without a sufficient legal basis.