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PUBLICATION

Canada, Others, Taking New Steps to Thwart Global Tax Evasion

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As the pace of globalization and cross-border business and investment activity accelerates, collaboration among tax administrators and authorities across the world is increasing equally fast.

Billions of tax dollars are lost each year to individuals and entities engaging in tax evasion. As such, the Organization for Economic Co-operation and Development (OECD) and the countries of the G20 are taking decisive action to address tax avoidance through the Automatic Exchange of Information (AEOI). The AEOI is designed to shine a new light on “offshore” investments and bank accounts, as it requires countries to automatically and annually exchange financial account information of non-residents with the account holder’s country of residence.

The AEOI attempts to ensure all taxpayers pay their fair share of tax to the correct jurisdictions by:

- Revealing undetected tax evasion;
- Allowing governments to recover lost tax revenue;
- Deterring the use of shell companies, and
- Encouraging taxpayers to voluntarily report all relevant financial information.

Common Reporting Standard

The AEOI functions under the Common Reporting Standard (CRS), an international policy that governs how financial and banking account data are exchanged among participating countries. In order to achieve complete transparency, financial information is shared without having to request it. The CRS draws upon existing international anti-money laundering criteria for information gathering procedures, and includes:

- Thorough model agreements;
- Guidance for government implementation;
- Standards for coordinated information and technical modality, and
- Models and requirements for secure data transmission.

The CRS sets out for all jurisdictions participating in the AEOI:

- The different types of accounts (trusts, foundations, etc.) to be disclosed;
- The different types of taxpayers (individuals and entities) to be disclosed;
- The financial information to be exchanged;
- The various financial institutions (banks, custodial institutions, investment entities, insurance companies) required to report account information to tax administrations, and
- Diligence procedures financial institutions must follow.

Under the CRS, the financial account information (for individuals and investment vehicles) acquired from financial institutions will include, but not be limited to:

- Bank balances;
- Dividend payments;
- Interest earned;
- Financial annuities, and
- Other sources of income.

An account is deemed reportable by a financial institution to the local tax authority if the account is held by a foreign individual or entity. The local tax authority then encrypts and transmits the following information to the account holder's country of residence:

1. The account owner's name, address, date and place of birth;
2. Tax payer identification number;
3. Account number;
4. Name and identifying number of the reporting financial institution, and
5. Account balance at the end of the relevant calendar or on the date the account was closed.

When this information is received, it is analyzed and compared with domestic records by the resident country, thus enabling a heightened level of scrutiny and revealing any fraudulent behavior.

Not even multinational enterprises can remain anonymous from the AEOI, as the CRS also includes a framework, the Multilateral Competent Authority Agreement (MCAA), with minimum standards for ensuring multinational enterprises pay appropriate levels of tax. Financial information provided in the context of such specific tax investigations can serve as the basis for a tax audit and expose companies that have engaged in tax evasion.

Canadian AEOI Relationships

Canada and more than 100 other countries have signed the CRS as the approved global standard for the AEOI, including common tax havens such as Barbados, Bermuda, Cayman Islands, and Panama. Jamaica, however, has refused to join.

Tax havens are incentivised to join the CRS both by intensifying international pressure and their desire to be viewed as compliant jurisdictions. As such, these countries continue to take substantial steps to adopt more stringent rules and achieve a truly transparent global exchange network.

As of April, 2018, more than 2,700 bilateral exchange relationships have been activated through the Canada Revenue Agency (CRA), with the first exchanges occurring in June, 2018. AEOI relationships for CRS information exist between Canada and the following countries:

Australia	Estonia	Isle of Man	Malta	Slovenia
Austria	Finland	Italy	Mauritius	South Africa
Belgium	France	Japan	Mexico	Spain
Bermuda	Germany	Jersey	Netherlands	Sweden
Brazil	Greece	Korea	New Zealand	Switzerland
Cayman Islands	Guernsey	Latvia	Norway	United Kingdom
Chile	Hungary	Liechtenstein	Poland	United States
Colombia	Iceland	Lithuania	Portugal	Uruguay
Czech Republic	India	Luxembourg	Singapore	
Denmark	Ireland	Malaysia	Slovak Republic	

Implementation and Monitoring

In order for there to be co-operation among tax authorities, committed countries must implement the CRS. As the world's largest international tax organization, the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) specifically drives implementation through:

- Reviewing the confidentiality rules and practices in place in applicable jurisdictions;
- Ensuring the timely implementation of the CRS across the world;
- Working with the OECD to create resources, training materials, and implementation events, and
- Confirming that the AEOI takes place in a secure environment.

Following implementation, the Global Forum will also periodically monitor and review countries' compliance with the CRS through its own assessments and peer reviews.

Developing Countries

While all countries are invited to join the CRS, the Global Forum acknowledges that developing countries face barriers in regards to:

- Knowledge;
- Political will;
- Information technology;
- Human resources;
- Legal frameworks;
- Data protection safeguards, and
- Tax reform priorities.

As such, many developing nations are unable to implement the CRS at the same pace as developed nations, especially given the need to invest in data encryption software that ensures confidentiality of transmitted data.

Implications

With the creation of the CRS and the compliance of common tax havens, income secrecy is being minimized significantly. Indeed, participating countries are witnessing significant shifts from offshore to onshore wealth management, as millions of people are motivated towards tax transparency for fear of exposure.

Could this be the end of tax havens? Maybe not. While the CRS and AEOI are certainly huge steps towards eliminating tax evasion, they are not without flaws. Major concerns include the need to properly determine the residency of account holders as well as the inability to gain access to financial information of developing countries that are unable to implement the CRS.

In terms of residency, if an account holder is able to deceive a bank regarding country of residence, the financial information will be sent to the wrong country, and will remain unknown to the actual resident authorities.

Additionally, some tax havens that have joined the CRS are selling residency certificates to wealthy individuals, such that it appears to financial institutions that buyers are residents, and thus automatically become “non-reportable” people.

Finally, countries such as the Cayman Islands have chosen “voluntary secrecy” under the CRS, which means they are sending but not receiving financial information. As the Cayman Islands is also selling certificates, tax dodgers in this country will neither have their information sent nor collected, and therefore will be able to remain completely anonymous. Through these methods, tax havens are able to comply with the G20 and OECD, but continue ensuring the secrecy of foreign wealth.

In summary, while the AEOI has brought heightened disclosure of even the highest net worth individuals and families, it is evident that further due diligence measures must be put in place to fully eliminate tax evasion across the world.

If you are uncertain about how the new policies and practices will influence your financial planning, you are encouraged to consult with a Blaney McMurtry LLP lawyer for further guidance.

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