

税法热点问题

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2017年5月19日,中国公开发布了由国家税务总局、财政部、中国人民银行、中国银行业监督管理委员会、中国证券监督管理委员会、中国保险监督管理委员会联合制定的《非居民金融账户涉税信息尽职调查管理办法》(以下简称“《管理办法》”)。在《管理办法》征求意见稿于2016年10月14日发布后,历经九个多月,《管理办法》终于出台,并将自2017年7月1日起施行。《管理办法》旨在履行金融账户涉税信息自动交换国际义务,规范金融机构对非居民金融账户涉税信息的尽职调查行为。

一、出台背景

1、经济合作与发展组织(OECD)受G20委托,于2014年7月发布金融账户涉税信息自动交换标准(Standard for Automatic Exchange of Financial Information in Tax Matters,简称“**AEOI标准**”)。AEOI标准主要由主管当局间协议范本(Model Competent Authority Agreement,简称“**MCAA**”)和通用报告标准(Common Reporting Standard,简称“**CRS**”)两部分内容组成。其中MCAA是规范各国(地区)税务主管当局之间如何开展金融账户涉税信息自动交换的操作性文件;CRS规定了金融机构需要履行识别和申报义务,并收集和报送外国税收居民个人和企业账户信息给本国主管税务机关的相关要求和程序。AEOI标准旨在通过加强各国金融账户涉税信息交换,提高税收透明度,被称为全球版的

FATCA(Foreign Account Tax Compliance Act),与美国的FATCA内容上大体相同,但细节上存在差异。目前已有100个国家(地区)承诺实施AEOI标准。

- 2、2014年9月,我国向G20承诺实施AEOI标准,首次对外交换信息的时间为2018年9月。
- 3、2015年7月,我国批准《多边税收征管互助公约》,于2016年2月对我国生效,为我国实施AEOI标准奠定了法律基础。
- 4、2015年12月,国家税务总局签署了《金融账户涉税信息自动交换多边主管当局间协议》,为我国实施AEOI标准提供了操作层面的依据。

在征求意见稿的基础上正式发布的《管理办法》,是中国版的CRS,为金融机构履行尽职调查程序,收集、报告中国非居民金融账户信息提供了法律依据和操作指引。

二、主要内容

《管理办法》按照CRS的主要内容制定,共7章44条,包括3个附表,基本维持了征求意见稿的内容,并无实质变化,除了一些细节上的调整,如:以美元代替人民币作为计算账户余额的计量单位,并明确了对非美元货币的折算方法,即应按照计算日当日中国人民银行公布的外汇中间价折合为美元。

《管理办法》主要规定了我国境内金融机构识别非居民账户并收集相关信息的原则和程序，包括对基本定义的解释、个人账户与机构账户的尽职调查程序、无需开展尽职调查的金融机构和金融账户的范围、金融机构需收集和报送的信息范围，以及对违规金融机构和客户的处罚措施等。结合发布机构的官方解读，《管理办法》主要有以下内容值得关注：

- 1、从2017年7月1日起，我国境内金融机构将对存款账户、托管账户、投资机构的股权权益或债权权益以及具有现金价值的保险合同或年金合同开展尽职调查。这些账户不论金额大小，都应通过尽职调查识别账户持有人是否为非居民。
- 2、除银行、证券公司、期货公司、保险公司、信托公司等传统金融机构外，证券投资基金管理公司、私募基金管理公司、从事私募基金管理业务的合伙企业，也被视为金融机构，需要履行尽职调查和信息报送义务。金融租赁公司、财务公司、金融资产管理公司等不属于《管理办法》规定的金融机构，不是尽职调查义务主体，但是需要作为非金融机构申报纳税居民地位。
- 3、尽职调查程序：《管理办法》将账户分为个人和机构两类账户，每类账户又以2017年6月30日为时间点划分为新开账户和存量账户。不同类别账户的尽职调查要求和程序有所不同。新开账户尽职调查要求相对严格，需要开户人提供其税收居民身份声明文件，金融机构根据开户资料进行合理性审核。存量账户尽职调查程序相对简易，金融机构主要依据留存资料进行检索。
- 4、尽职调查的含义：指金融机构按照规定的程序，了解账户持有人或者有关控制人的税收居民身份，识别非居民金融账户，收集并记录相关账户信息。
- 5、金融机构可以委托第三方开展尽职调查和信息报送，但相关责任仍由金融机构承担。基金、信托等属于投资机构的，可以分别由基金管理

公司、信托公司作为第三方完成尽职调查相关工作。

- 6、符合条件的退休金账户、社会保障类账户、定期人寿保险合同、休眠账户以及其他符合条件的账户可以免于尽职调查。
- 7、金融机构应当于2017年12月31日前登陆国家税务总局网站办理注册登记，并且于每年5月31日前按要求报送信息。
- 8、账户持有人为中国税收居民个人的，金融机构不会收集和报送相关账户信息，也不会交换给其他国家（地区）。账户持有人同时构成中国税收居民和其他国家（地区）税收居民的，其中国境内的账户信息将会交换给相应税收居民国（地区）的税务当局，其境外的账户信息交换给国家税务总局。

三、主要影响

- 1、《管理办法》规定的金融机构自2017年7月1日起，需要履行尽职调查和信息报送义务。因此，相关金融机构需要尽快做好相应的准备工作，建立必要的内部机制和流程，更新相关开户文件。
- 2、《管理办法》对在中国境内开立账户的非居民或者有非居民控制人的消极非金融机构影响较大。他们在开立金融账户时，需要详细填写账户持有人或控制人的税收居民身份声明文件，包括姓名（名称）、现居地址、税收居民国（地区）、居民国（地区）纳税人识别号、出生地、出生日期等信息，并确保信息真实、准确。该信息报送到相关部门后，由国家税务总局按照我国对外签订的协议交换给账户持有人居民国税务主管当局。
- 3、《管理办法》对中国税收居民的影响较小。
- 4、实施CRS是各国(地区)之间加强跨境税源管理的一种手段，不会增加纳税人本应履行的纳税义务。依法诚信申报纳税的纳税人无须担心因信息交换而增加税收负担。

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Tax

China Released CRS, Effective July 1, 2017

On May 19, 2017, the State Administration of Taxation ("SAT"), the Ministry of Finance, the People's Bank of China ("PBOC"), the China Banking Regulatory Commission, the China Securities Regulatory Commission and the China Insurance Regulatory Commission jointly released the Administrative Measures on Due Diligence of Non-resident Financial Account Information in Tax Matters (the "Administrative Measures"). The Administrative Measures were published after over nine months following the release of the Draft Administrative Measures on Due Diligence of Non-resident Financial Account Information in Tax Matters (the "Draft Measures") on October 14, 2016, and will go into effect on July 1, 2017. The Administrative Measures are intended to comply with the international obligations for automatic exchange of the financial information in tax matters and regulate the financial institutions in conducting due diligence on non-resident financial account information in tax matters.

I. Background

1. In July 2014, upon commissioning by G20, the OECD released the Standards for Automatic Exchange of Financial Information in Tax Matters ("AEOI Standard").

The AEOI Standards are comprised of two parts: the Model Competent Authority Agreement ("MCAA") and the Common Reporting Standard ("CRS"). The MCAA is the operational document on how to conduct the automatic exchange of information among tax authorities in different jurisdictions. The CRS stipulates the identification requirements and reporting obligations of financial institutions, as well as the related requirements and procedures on collecting and reporting information of foreign tax-resident individuals and entities to domestic tax authorities. The AEOI Standard aims to increase tax transparency by strengthening the exchange of financial account information in tax matters internationally, which is called global FATCA and similar to the US FATCA rules in general with certain difference in details. Currently, 100 countries (regions) have committed to implementing the AEOI Standard.

2. In September 2019, China committed to implementing the AEOI Standard starting with the exchange of the first batch of information in September 2018.
3. In July 2015, the Chinese Government

approved the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which came into force in China in February 2016. It laid the legal foundation for China's implementation of the AEOI Standards.

4. In December 2015, the SAT signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information in Tax Matters, which provided the basis from an operational perspective.

The formally published Administrative Measures are China's CRS, providing the legal basis and operational guidelines for financial institutions to conduct due diligence in the collection and reporting of information of foreign tax-resident individuals and entities.

II. Highlights

The Administrative Measures were enacted based on the main contents of CRS, and consist of 7 sections and 44 articles with 3 attachments. It basically keeps the contents of the Draft Measures, with no material changes except for some minor alterations of the details, e.g. US dollar is adopted as the measuring unit instead of RMB. It also provides that other currencies shall be converted to US dollars on the basis of the middle price of the foreign exchange rate published by PBOC on the computation date when total accounts' balances are added.

The Administrative Measures mainly stipulate the principles and procedures for PRC financial institutions to follow in identifying non-resident accounts and collecting the relevant financial information, including the basic definition, the procedures of due diligence on personal accounts and institutional accounts, the scope of financial institutions and the accounts that are exempted from the due diligence process, the

required information to be collected and reported by the financial institutions and punitive measures for violations. With reference to the official interpretation made by the issuing authorities, the following highlights of the Administrative Measures are worth noting:

1. From July 1, 2017, PRC financial institutions should conduct due diligence on deposit accounts, custodian accounts, the equity interest and debt interest of the investment institutions and the insurance contracts or annuity contracts with cash values. The due diligence shall be conducted to all the above accounts to identify whether the account holders are non-residents regardless of the size of such accounts.
2. In addition to the traditional financial institutions (including banks, security companies, futures companies, insurance companies, and trust companies), the security investment fund management companies, private equity fund management companies, and partnerships engaging in private equity funds management are also considered financial institutions subject to due diligence and information reporting obligations. However, financial lease companies, finance companies, and financial assets management companies are not financial institutions stipulated in the Administrative Measures and are not required to conduct due diligence but should report tax resident status as the non-financial institutions.
3. The procedures of due diligence: the Administrative Measures divide accounts into two types, i.e. personal accounts and institutional accounts, each of which is classified into newly-opened accounts and pre-existing accounts as of June 30, 2017.

The requirements and procedures of due diligence for different types of accounts are not the same. The due diligence for newly-opened accounts is comparatively stricter, requiring the account opener to provide a declaration of tax residency status and the financial institutions to carry out the review of the account opening materials on a reasonable basis. The due diligence for pre-existing accounts is comparatively simpler. Financial institutions will conduct searches based on the retained materials.

4. Due diligence under the Administrative Measures refers to the procedures which financial institutions should conduct to identify the tax residency status of account holders or related controllers, identify the non-resident financial accounts and collect and record relevant account information.
5. Financial institutions may entrust third parties to conduct due diligence and the information reporting but will still assume ultimate responsibilities. As to funds and trusts that are investment entities, the due diligence can be conducted by the fund management companies, and trust companies as third parties.
6. The qualified retirement accounts, social security accounts, term insurance contracts, dormant accounts and other qualified accounts are exempted from the due diligence.
7. Financial institutions should log in the website of SAT to complete registration by December 31, 2017 and report the required information before May 31 of each year.
8. Where an account holder is a PRC tax resident individual, the financial institutions will not collect and report the related account

information, nor exchange with other jurisdictions. Where an account holder is both a tax resident of China and another jurisdiction, the account information within the territory of China will be exchanged with the competent tax authority in the corresponding tax jurisdiction and the overseas account information would be exchanged with the SAT.

III. Major Impacts

1. The financial institutions are required to conduct due diligence and information reporting from July 1, 2017 pursuant to the Administrative Measures. Therefore, relevant financial institutions need to make all necessary preparations, formulate necessary internal mechanisms and procedures and update their related account opening documents as soon as possible.
2. The Administrative Measures have a relatively high impact on the non-resident or passive non-financial institutions with non-resident controller which open accounts in China. When they open financial accounts, they should fill in the declaration of tax residency status of the account holder or controller, including name, current address, the tax jurisdiction, the taxpayer's tax number, birth place, birth date and other information which should be verified true and accurate. After such information is reported to the related authorities, the SAT will exchange the information with the competent tax authorities of account holders in accordance with the agreement signed with relevant jurisdictions.
3. The Administrative Measures have a relatively low impact on PRC tax residents.
4. The implementation of CRS is a measure to

enhance cross-border tax source administration which will not increase the tax burden of the taxpayer. The tax payers who make tax declarations in compliance

with the tax regulations and in good faith do not need to be concerned that their tax burden may increase due to the information exchange.

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