

ANTIGUA AND BARBUDA



**AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION
REGULATIONS, 2017**

STATUTORY INSTRUMENT

2017, No. 18

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AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION
REGULATIONS 2017

ARRANGEMENT

REGULATIONS

1. Short title
2. Interpretation
3. Due diligence obligations
4. Modifications to due diligence procedures
5. Reporting obligation
6. Electronic return system
7. Records
8. Inspection of books and provision of information and assistance
9. Third party service providers

Schedule 1 – Excluded Accounts

Schedule 2 – Non-Reporting Financial institutions

Schedule 3 – Participating Jurisdictions

Schedule 4 – Reportable Jurisdictions

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No. 18 of 2017

The Automatic Exchange of Financial Account Information Regulations 2017 made by the Minister under section 18 of the Automatic Exchange of Financial Account Information Act, 2016.

1. Short title and commencement

These Regulations may be cited as the Automatic Exchange of Financial Account Information Regulations 2017.

2. Interpretation

(1) In these regulations the several words, terms and phrases in the Act shall carry the same meaning in these regulations as ascribe to them in the Act.

(2) In these regulations unless the context otherwise requires –

“**Act**” means the Automatic Exchange of Financial Account Information Act, 2016;

“**designated officer**” means an officer of the Department of Inland Revenue designated by the Department to exercise the powers conferred in these regulations.

“**excluded account**” means

(a) an account as defined in subparagraphs C(17)(a) to (j) of Section VIII of the Standard; or

(b) an account listed as an excluded account in Schedule 1 of these Regulations.

“**exempt collective investment vehicle**” means an investment entity that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle are held by or through individuals or entities that are not reportable persons, except a passive NFE with controlling persons who are reportable persons. An investment entity that is regulated as a collective investment vehicle does not fail to qualify as an exempt collective investment vehicle, solely because the collective investment vehicle has issued physical shares in bearer form, provided that

(a) the collective investment vehicle has not issued, and does not issue, any physical shares in bearer form after 31 December 2016;

(b) the collective investment vehicle retires all such shares upon surrender;

- (c) the collective investment vehicle performs the due diligence procedures set forth in Sections II to VII of the Standard and reports any information required to be reported with respect to any such shares when such shares are presented for redemption or other payment; and
- (a) the collective investment vehicle has in place policies and procedures to ensure that such shares are redeemed and immobilised as soon as possible, and in any event prior to 31 December 2016.

“**high value account**” means a pre-existing individual account with an aggregate balance or value that exceeds US\$ 1,000,000 as of 31 December 2016 or 31 December of any subsequent year.

“**lower value account**” means a pre-existing individual account, which is not a high value account, with an aggregate balance or value as of 31 December 2017 that does not exceed US\$ 1,000,000.

“**new account**” means a financial account maintained by a reporting financial institution opened on or after 01 January 2017, unless it is treated as a pre-existing account under paragraph (b) of the definition “pre-existing account”.

“**non-reporting financial institution**” means –

- (a) a financial institution as defined in subparagraphs B(1)(a), (b), (a) and (e) of Section VIII of the Standard; or
- (b) an entity listed in Schedule 2 of these Regulations.

“**participating jurisdiction**” means a jurisdiction which is listed in Schedule 3 of these Regulations.

“**pre-existing account**” means

- (a) a financial account maintained by a reporting financial institution as of 31 December 2016, or
- (b) any financial account of an account holder, regardless of the date such financial account was opened if:
 - (i) the account holder also holds with the reporting financial institution (or with a related entity within the same jurisdiction as the reporting financial institution) a financial account that is a pre-existing account under paragraph (a) of this definition;
 - (ii) the reporting financial institution (and, as applicable, the related entity within the same jurisdiction as the reporting financial institution) treats both of the aforementioned financial accounts, and any other financial accounts of the account holder that are treated as pre-existing accounts under this paragraph, as a single financial account for purposes of satisfying the standards of knowledge requirements set forth in paragraph A of Section VII of the

- Standard, and for purposes of determining the balance or value of any of the financial accounts when applying any of the account thresholds;
- (iii) with respect to a financial account that is subject to AML/KYC procedures, the reporting financial institution is permitted to satisfy such AML/KYC procedures for the financial account by relying upon the AML/KYC procedures performed for the pre-existing account described in paragraph (a) of this definition; and
 - (iv) the opening of the financial account does not require the provision of new, additional or amended customer information by the account holder other than for purposes of the Standard;

“**Due diligence procedures**” means a mechanism used to classify establishments by business type for purposes other than tax purposes;

“**US\$**” means United States Dollars, the official currency of the United States of America;

(3) For the purposes of these Regulations, the Standard is to be read as if the definition “Related Entity” in subparagraph E(4) of Section VIII of the Standard read as follows:

“An Entity is a “Related Entity” of another Entity if (a) either Entity controls the other Entity; (b) the two Entities are under common control; or (c) the two Entities are Investment Entities described in subparagraph A(6)(b), are under common management, and such management fulfils the due diligence obligations of such Investment Entities. For this purpose control includes direct or indirect ownership of more than 50% of the vote and value in an Entity.”

(4) For the purposes of applying

- (a) the due diligence procedures described in Sections II to VII of the Standard and sections 3 and 4 of these Regulations, the definition “reportable jurisdiction” in subparagraph D(4) of the Standard is to be read as follows:

“4. The term “Reportable Jurisdiction” means any jurisdiction other than the United States of America or Antigua and Barbuda.”

- (b) Section I of the Standard and sections 5 to 9 of these Regulations, the definition “reportable jurisdiction” in subparagraph D(4) of the Standard is to be read as follows:

“4. The term “Reportable Jurisdiction” means any jurisdiction which is listed in Schedule 4 of these Regulations.”

(4) For the purposes of these Regulations, the date specified in the definition “Qualified Credit Card Issuer” in subparagraph B(8) of Section VIII of the Standard is 01 January 2017.

(5) Subject to subsections (1) to (3), any term which is defined in the Standard but not in section 2 of the Act or in these Regulations has the same meaning in these Regulations as in the Standard.

3. Due diligence obligations

(1) Every reporting financial institution shall establish, maintain and document the procedures described in sections 3 to 5 that are designed to identify reportable accounts maintained by the institution

(2) Every reporting financial institution shall

- (a) identify reportable accounts maintained by the institution by applying the due diligence procedures described in Sections II to VII of the Standard, and
- (b) the due diligence procedures shall be applied as if the date specified in
 - (i) subparagraph C(6) of Section III of the Standard were 31 December 2016;
 - (ii) paragraph D of Section III of the Standard were 31 December 2017 in respect of high value accounts and 31 December 2018 in respect of lower value accounts;
 - (iii) paragraph A of Section V of the Standard were 31 December 2016;
 - (iv) paragraph B of Section V of the Standard were 31 December 2016 in both the first and second instances;
 - (v) subparagraph E(1) of Section V of the Standard were 31 December 2016 in the first instance, and 31 December 2018 in the second instance; and
 - (vi) subparagraph E(2) of Section V of the Standard were 31 December 2016

(3) An account is treated as a reportable account beginning as of the date it is identified as such pursuant to the due diligence procedures described in Sections II to VII of the Standard and, unless otherwise provided, information with respect to a reportable account must be reported annually in the calendar year following the year to which the information relates.

(4) For the purposes of these Regulations, an account with a balance or value that is negative is deemed to have a balance or value equal to nil.

(5) For the purposes of the Standard and these Regulations, a financial account held by an individual as a partner of a partnership is deemed to be an entity account.

4. Modifications of due diligence procedures

(1) A reporting financial institution may apply, for a calendar year,

- (a) the residence address procedure, as described in subparagraph B(1) of Section III of the Standard, to a lower value account, provided the address is current and based documentary evidence, otherwise the electronic indicia search shall be performed;

- (b) the due diligence procedures for a high value account, described in paragraph C of Section III of the Standard, to a lower value account, otherwise if the financial institution performs the due diligence procedure for the lower value account and at the end of the subsequent calendar year the balance of the value in the said account exceeds US\$1 million, then the due diligence procedure for high value account would become applicable and the financial institution will be mandated to perform the due diligence procedure anew; or
- (c) paragraphs A to C of Section V of the Standard to determine whether a pre-existing entity account is subject to the due diligence procedures described in Section V of the Standard, that is to say, a financial institution is excluded for its due diligence procedures for pre-existing entity accounts with an aggregate account balance of value of US\$250,000; however if at the end of the subsequent calendar year, the aggregate account balance or value exceeds US\$250,000 the financial institution shall perform the due diligence procedure to identify whether the account is a Reportable Account.

(2) Subject to subsections (3) and (4), a reporting financial institution may apply, for a calendar year, the due diligence procedures for a new account, described in paragraph A of Section IV or VI of the Standard, to a pre-existing account.

(3) Where a reporting financial institution applies the due diligence procedures for a new account to a pre-existing account, the procedures described in subparagraph B(1) of Section III and paragraphs C of Section I, A of Section III and A of Section V of the Standard shall apply to the new account.

(4) A reporting financial institution may not apply the due diligence procedures for a new account to a pre-existing account unless the institution applies the procedures to all pre-existing accounts it maintains or a clearly identifiable group of pre-existing accounts.

(5) A reporting financial institutions may, with respect to a pre-existing entity account, use as documentary evidence any classification in the institution's records with respect to the account holder that was determined based on a standardised industry due diligence procedures, that was recorded by the institution consistent with its normal business practices for purposes of AML/KYC procedures or another regulatory purposes (other than for tax purposes) and that was implemented by the institution prior to the date used to classify the financial account as a pre-existing account, provided that the institution does not know or does not have reason to know that such classification is incorrect or unreliable.

(6) With respect to new entity accounts, for the purposes of determining whether a controlling person of a passive NFE is a reportable person, a reporting financial institution may only rely on a self-certification from either the account holder or the controlling person.

5. Reporting obligation

(1) A reporting financial institution shall, in respect of the calendar year 2017 and every following calendar year, file with the Comptroller an information return setting out the information required to be reported described in paragraphs A and B of Section I of the Standard, subject to paragraphs C to E in Section I of the Standard, in relation to every financial account identified as a reportable account that is maintained by the institution at any time during a calendar year.

(2) For the purposes of subsection (1), subparagraph A (4) of Section I of the Standard is to be read as follows:

“4. the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) during the relevant calendar year, if the account was closed during such year or period, the closure of the account;”

(3) If a reporting financial institution applies the due diligence procedures described in section 3 for a calendar year and no account is identified as a reportable account, the institution shall file an information return which provides that the institution maintains no such reportable accounts in respect of that year.

(4) An information return, required to be filed by this section, shall be submitted electronically in accordance with section 6 on or before 31st May of the year following the calendar year to which the return relates.

6. Electronic return system

An information return, required to be filed by section 5, shall be filed electronically using such technology as may be approved or provided by the Department of Inland Revenue, and in such form as the Department may require.

7. Records

(1) Every reporting financial institution shall keep records that the institution obtains or creates for the purpose of complying with these Regulations, including self-certifications and records of documentary evidence.

(2) Every reporting financial institution required by these Regulations to keep records that does so electronically shall retain them in an electronically readable format for the retention period referred to in subsection (4).

(3) Every reporting financial institution that obtains or creates records, as required under these Regulations, in a language other than English shall, upon request, provide an English translation to the Comptroller.

(4) Every reporting financial institution that is required to keep, obtain or create records under these Regulations shall retain those records for a period of at least six years following

- (a) in the case of a self-certification, the last day on which a related financial account is open; and

- (b) in any other case, the end of the last calendar year in respect of which the record is relevant.

8. Inspection of books, and provision of information and assistance

- (1) A designated officer may, by notice in writing, require a financial institution to give the officer within such time, not being less than 14 days, as may be provided by the notice, such information (including copies of any relevant books, records or other documents) as the officer may reasonably require for any purpose relating to the administration or enforcement of these Regulations.
- (2) A designated officer may require a financial institution to produce books, records or other documentation; to provide information, explanations and particulars; and to give all assistance which the officer may reasonably require relating to the administration or enforcement of these Regulations.
- (3) A designated officer may make extracts from or copies of all or any part of the books, records or other documents or other material made available to the officer or require that copies of books, records or other documents be made available to the officer for any purpose relating to the administration or enforcement of these Regulations.

9. Third party service providers

- (1) A reporting financial may appoint a third party as its agent to carry out the duties and obligations imposed on it by these Regulations.
- (2) Where a third party is appointed by a reporting financial institution, in accordance with subsection (1),
 - (a) the institution shall, at all times, have access to and be able to produce, where so requested by the Competent Authority, the records and documentary evidence used to identify and report on reportable accounts, and
 - (b) the institution is responsible for any failure of that third party to carry out the obligations of the institution and subsection 6(4) and section 9 of the Act will apply to the institution notwithstanding that
 - (i) the actions were the action of that third party, or
 - (ii) the failure to act was the failure by that third party to act.

SCHEDULE 1**EXCLUDED ACCOUNTS***(Section 2)*

For the purposes of the Standard the following are excluded accounts.

- a) Retirement and pension accounts;
- b) Non-retirement tax-favoured accounts;
- c) Term life insurance contracts;
- a) Estate accounts;
- e) Escrow accounts established in connection with any of the following:
 - i) a court order or judgment.
 - ii) a sale, exchange, or lease of real or personal property, provided that the account satisfies all the requirements listed in subparagraph C(17)(e)(ii) of the Standard.
 - iii) an obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time.
 - iv) an obligation of a Financial Institution solely to facilitate the payment of taxes at a later time.
- j) Depository Accounts due to not-returned overpayments; and
- g) Low-risk excluded accounts: provided that:
 - i) the account presents a low risk of being used to evade tax;
 - ii) the account has substantially similar characteristics to any of the accounts described in subparagraphs C(17)(a) through (j);
 - iii) the account is defined in domestic law as an Excluded Account; and
 - iv) the status of the account as an Excluded Account does not frustrate the purposes of the Common Reporting Standard.

SCHEDULE 2

NON-REPORTING FINANCIAL INSTITUTIONS

(Section 2)

For the purposes of the Standard, the following are non-reporting financial institutions.
means any Financial Institution that is:

a) a Governmental Entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution;

b) a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; a Pension Fund of a Governmental Entity, International Organisation or Central Bank; or a Qualified Credit Card Issuer;

c) any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described in subparagraphs B(1)(a) and (b) of the Standard, and is defined in domestic law as a Non-Reporting Financial Institution, provided that the status of such Entity as a Non-Reporting Financial Institution does not frustrate the purposes of the Common Reporting Standard;

a) an Exempt Collective Investment Vehicle; or

e) a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to Section I of the Standard with respect to all Reportable Accounts of the trust.

SCHEDULE 3**PARTICIPATING JURISDICTIONS***(Section 2)*

For the purposes of the Standard, the following are participating jurisdictions, means a jurisdiction

- (i) with which an agreement is in place pursuant to which it will provide the information specified in Section I of the Standard, and
- (ii) which is identified in a published list as follows:

Albania	Andorra
Anguilla	Aruba
Argentina	Austria
Australia	Bahrain
Bahamas	Belgium
Belize	Bermuda
Brazil	British Virgin Islands
Canada	Bulgaria
Chile	Cayman Islands
Columbia	China
Costa Rica	Cook Islands
Curacao	Croatia
Czech Republic	Cyprus
Dominica	Denmark
France	Finland
Germany	Gibraltar
Greece	Grenada
Hong Kong, China	Iceland
India	Indonesia
Italy	Ireland
Israel	Japan
Jersey	Korea
Luxembourg	Mexico
Montserrat	Netherlands
New Zealand	Norway
Panama	Poland

Portugal	Romania
Russia	St. Kitts and Nevis
Saint Lucia	St Vincent and the Grenadines
Saudi Arabia	Singapore
Saint Maarten	South Africa
Spain	Sweden
Switzerland	Trinidad and Tobago
Turks and Caicos Islands	United Arab Emirates
United Kingdom	

MADE this 15th day of March, 2017

Hon. Gaston Browne,
Prime Minister
Minister of Finance and Corporate Governance
And the Minister with responsibility for the administration of
the Automatic Exchange of Financial Account Information Act, 2016.