



Dubai
International
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Centre

CONSULTATION PAPER NO. 5

October 2017

**PROPOSED COMMON REPORTING
STANDARD LAW
DIFC LAW NO. 7 OF 2017**

CONSULTATION PAPER NO. 5
PROPOSALS RELATING TO A NEW COMMON REPORTING STANDARD LAW

Why are we issuing this paper?

1. The Dubai International Financial Centre Authority (“DIFCA”) proposes to enact a new law and regulations to enact the Common Reporting Standard Law in the DIFC. This Consultation Paper No. 5 of 2017 (“Consultation Paper”) seeks public comments on the proposed new Common Reporting Standard Law, DIFC Law No. 7 of 2017 (the “Proposed Law”) and proposed Common Reporting Standard Regulations (“Proposed Regulations”).
2. The Proposed Law follows on from UAE Cabinet Resolution No. 9 of 2016 (the “Cabinet Resolution”) in which the UAE Government committed to sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (“MAC”) and the Multilateral Competent Authority on Automatic Exchange of Financial Account Information (“MCAA”).
3. The UAE Ministry of Finance was designated in the Cabinet Resolution as the UAE Competent Authority for entry into the MCAA after receiving an official invitation to do so from the OECD in February of 2017.
4. By becoming a party to the MAC and the MCAA, the UAE Government is obliged to implement the international standards on exchange of financial account information (“EOI”) to, inter alia:
 - (a) contribute to global efforts by the OECD to curb tax evasion; and
 - (b) achieve greater international co-operation and enhanced transparency of financial information.
5. At present 53 countries have committed to undertake their first EOI’s by 2017 (see Annex C Part 1), whereas another 47 countries, inclusive of the UAE, have committed to undertake their first EOI’s by 2018 (see Annex C Part 2).
6. The ultimate objective of the UAE Government is to be classified compliant under the EOI framework of the OECD to avoid the negative consequences that may occur if classified by the OECD as non-compliant (e.g. publication of a so-called blacklist and sanctions by the G20 countries).
7. The cornerstone of a jurisdiction’s EOI obligations are contained in the so-called Standard Automatic Exchange of Financial Account Information published by the OECD, also known as the Common Reporting Standard or the CRS.

8. Article 5 of Federal Law No. 8 of 2004 Regarding the Financial Free Zones states that “*Financial Free Zones shall not do anything which may lead to a contravention of any international agreements to which the [UAE] is or shall be a party*” and it is consequently incumbent upon the DIFC to introduce Common Reporting Standard into DIFC Law, which is planned to be implemented by way of the Proposed Law and the Proposed Regulations.

Who should read this paper?

9. This Consultation Paper would be of interest to persons conducting or proposing to conduct business in the DIFC. In particular:
- (a) Reporting Financial Institutions;
 - (b) Account Holders holding Reportable Accounts with Reporting Financial Institutions;
 - (c) shareholders and members of such establishments or bodies;
 - (d) their legal advisors; and
 - (e) other persons advising Reporting Financial Institutions and Account Holders of their obligations and duties under CRS.

How to provide comments

10. All comments should be provided to the person specified below:

Jacques Visser
Chief Legal Officer
DIFC Authority
Level 14, The Gate, P. O. Box 74777
Dubai, United Arab Emirates
or e-mailed to: consultation@difc.ae

11. You may choose to identify the organisation you represent in your comments.
12. DIFCA reserves the right to publish, on its website or elsewhere, any comments you provide, unless you expressly request otherwise at the time the comments are made.

What happens next?

13. The deadline for providing comments on the proposals in this Consultation Paper is 8 November 2017.
14. Once we receive your comments, we will consider if any further refinements are required

to the Proposed Law and the Proposed Regulations annexed to this Consultation Paper at Annex A and Annex B. Once DIFCA considers the Proposed Law to be in a suitable form, it will be enacted as a new DIFC law to come in to force on a date specified and published.

15. The Proposed Law and Proposed Regulations are in draft form only. You should not act on them until formally enacted. We will issue a notice on our website when this happens. Parties should, however, take note that certain due diligence obligations under the Proposed Law and Proposed Regulations have retrospective application (see Article 6 of the Proposed Law).

Defined terms

16. Defined terms are identified throughout this paper by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the Proposed Law or the Regulations. Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

Background

17. The OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes (the "Global Forum") is a multilateral framework within which work on transparency and exchange of information for tax purposes has been carried out by both the OECD and non-OECD economies since 2000.
18. This initiative gained momentum after the global financial crisis and a call for action by the G20 against non-cooperative jurisdictions and so-called tax-havens in their quest to obtain more transparency on financial information for taxation purposes.
19. Since its restructuring, the Global Forum (with 137 members and 15 international organisations participating as observers) has become the key international body working on the implementation of international standards on tax transparency.
20. One of the key developments in the above regard was the development of the Common Reporting Standard, which was endorsed by the G20 in 2013. The following extract from the OECD's CRS Implementation Handbook on page 5 provides further background to the establishment of the Common Reporting Standard:

"Background to the creation of the Standard for Automatic Exchange

1. For many years countries around the world have been engaging in the automatic exchange of information in order to tackle offshore tax evasion and other forms of non-compliance. The OECD has been active in facilitating automatic exchange by creating the

legal framework, developing technical standards, providing guidance and training and seeking to improve automatic exchange at a practical level. As shown by the 2012 OECD report to the G20 in Los Cabos, automatic exchange of information is widely practiced and is a very effective tool to counter tax evasion and to increase voluntary tax compliance.

2. In 2010, the US enacted the laws commonly known as FATCA, requiring withholding agents to withhold 30-percent of the gross amount of certain US connected payments made to foreign financial institutions unless such financial institutions agree to perform specified due diligence procedures to identify and report information about US persons that hold accounts with them to the US tax authorities. Many jurisdictions have opted to implement FATCA on an intergovernmental basis and, more specifically, to collect and exchange the information required to be reported under FATCA on the basis of a Model 1 FATCA Intergovernmental Agreement (herein "FATCA IGA"). Many of these jurisdictions have also shown interest in leveraging the investments made for implementing the FATCA IGA to establish automatic exchange relationships with other jurisdictions, which themselves are introducing similar rules.

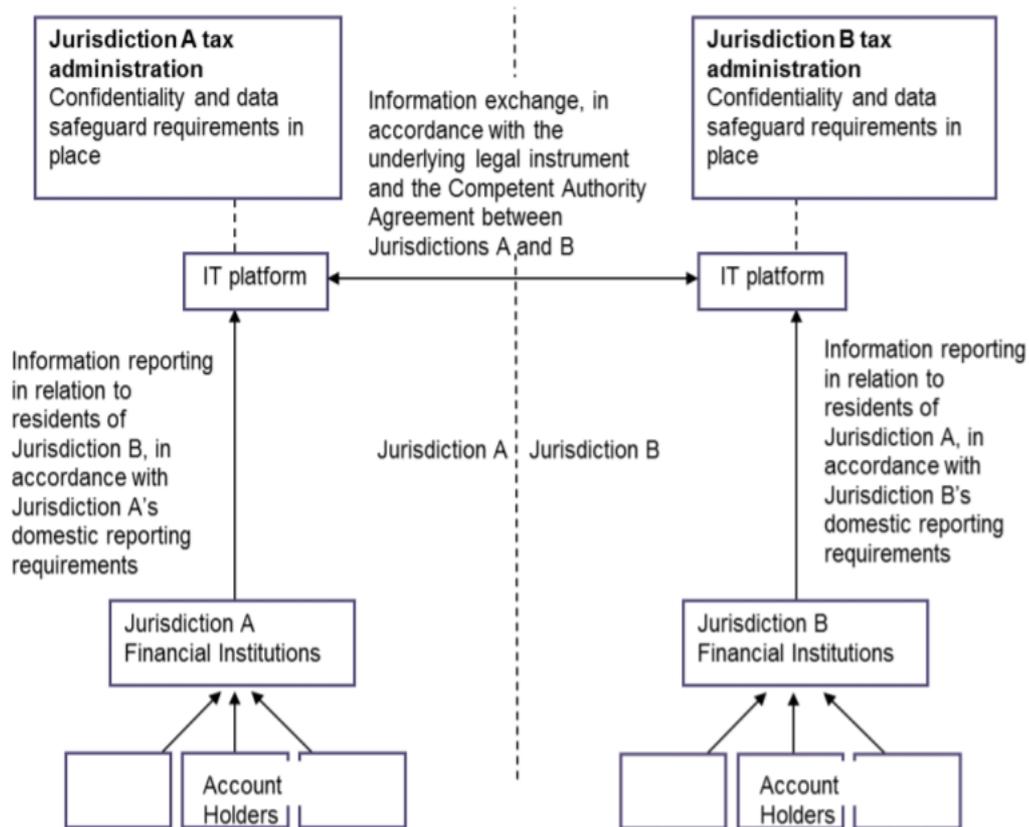
3. These countries recognise that, through the adoption of a common approach to automatic exchange of information, offshore tax evasion can be tackled most effectively while minimising costs for governments and financial institutions.

4. With the strong support of the G20, the OECD together with G20 countries and in close cooperation with the EU and other stakeholders has since developed the Standard for Automatic Exchange of Financial Account Information, or the Standard. This is a standardised automatic exchange model, which builds on the FATCA IGA to maximise efficiency and minimise costs.

5. The diagram [below] (Figure 1) depicts the automatic exchange framework for reciprocal information exchange under the Standard. In broad terms, financial institutions report information to the tax administration in the jurisdiction in which they are located. The information consists of details of financial assets they hold on behalf of taxpayers from jurisdictions with which their tax administration exchanges information. The tax administrations then exchange that information.

6. This process requires: rules on the collection and reporting of information by financial institutions; IT and administrative capabilities in order to receive and exchange the information; a legal instrument providing for information exchange between the jurisdictions; and measures to ensure the highest standards of confidentiality and data safeguards."

Figure 1: The reciprocal automatic exchange framework



21. The UAE's assessment process by the OECD for purposes of EOI started in 2014 in a phased manner:
- (a) Phase I – Assessment of the quality of a jurisdiction's legal and regulatory framework for EOI purposes 2014. The Global Forum's Peer Review Group (the "Peer Review Group") meeting held in Malta in March 2014 announced that the UAE met all the initial requirements clearing the way for a Phase II assessment.
 - (b) Phase II – Assessment of the UAE's practical implementation of the EOI framework. This assessment took place during 2016 and the UAE was declared "partially compliant" at a meeting of the Peer Review Group in Oslo on 20 June 2016.
 - (c) The UAE Competent Authority (i.e. the Ministry of Finance), established an EOI Unit in 2014, which has, since the latest set of findings by the Peer Review Group, worked on resolving the deficiencies in the UAE identified during the Phase II assessment.

22. Following on from these assessments, the UAE has since become a party to the MAC and MCAA (see numbered paragraphs 2 and 3 above) and started the process to implement the Common Reporting Standard in the UAE, initiated by the publication of the Cabinet Resolution and subsequent Guidance Notes for the Common Reporting Standard (CRS) United Arab Emirates (the “Guidance Notes”) (see Annex D).
23. The UAE Competent Authority has also been liaising by way of a steering committee (the “Steering Committee”) with the following regulators/authorities in the UAE within the context of their respective areas of responsibility in the UAE:
- (a) the UAE Central Bank;
 - (b) the Securities & Commodities Authority;
 - (c) the Insurance Authority;
 - (d) the DIFC Authority; and
 - (e) the Financial Services Regulatory Authority of the Abu Dhabi Global Market.
24. Each of the abovementioned regulators/ authorities (“Relevant Authority”) will be responsible to implement, administer and supervise the Common Reporting Standard in their respective areas of responsibility in the UAE in a manner which is very similar to the FATCA reporting requirements are currently being adhered to in each of these jurisdictions.
25. Members of the Steering Committee have cooperated over the course of 2016 and the first quarter of 2017 to ensure that the Common Reporting Standard is implemented, administered and supervised in a similar manner amongst its members, inclusive of the proposed contraventions and fines regime (see Schedule 2 of the Proposed Law) to ensure that there is no potential for regulatory arbitrage in the UAE in this regard.
26. The Common Reporting Standard allows jurisdictions certain choices (each a “Reporting Approach”) when becoming part of the OECD’s automatic exchange of information platform for tax administration purposes (“AEOI”). These can be summed up as follows:
- (a) the Narrow Reporting Approach: where Reporting Financial Institutions only review and report accounts to the Competent Authority (by way of the AEOI platform provided by the Relevant Authority) of account holders of jurisdictions that have already signed up and implemented the Common Reporting Standard (i.e. those in Annex C);

- (b) the Wide Reporting Approach: where Reporting Financial Institutions identify all accounts held with them by foreign accountholders but they only report (by way of the AEOI platform provided by the Relevant Authority) the accounts of jurisdictions that have already signed up and implemented the Common Reporting Standard; or
 - (c) the Widest Reporting Approach: where Reporting Financial Institutions identify all accounts held with them by foreign accountholders and also report (by way of the AEOI platform provided by the Relevant Authority) these accounts to the UAE Competent Authority, leaving it to the UAE Competent Authority to only report the details of those accounts to other jurisdictions once they have become a party to the MAC and MCAA.
27. The UAE opted for the Widest Reporting Approach, which means that Reporting Financial Institutions will be required under the Proposed Law to implement systems, policies and procedures to collect and report the details required in the Regulations of all foreign accountholders that qualify as Account Holders and their Reportable Accounts under the Regulations, irrespective of whether the jurisdiction concerned is already a signatory to the MAC and MCAA.

The Proposed Law

28. The Proposed Law consists of the following:
- (a) Part 1 (Articles 1 to 9) – dealing with the usual introductory clauses.
 - (b) Part 2 (Articles 10 and 11) – appointing the DIFC Registrar of Companies (“ROC”) as the Relevant Authority for the administration and enforcement of matters related to the CRS in the DIFC, also dealing with its objectives, functions and its powers. The Relevant Authority has the right in Article 11(6) to prescribe the means of reporting by Reporting Financial Institutions of information required by the Common Reporting Standard. It is planned for this to be done by way of a portal substantially similar to that currently being provided for FATCA reporting by Reporting Financial Institutions in the DIFC, or that the current reporting portal provided for FATCA is expanded for this CRS purposes as well.
 - (c) Part 3 (Articles 12 to 18) – dealing with:
 - (i) imposing certain obligations on Reporting Financial Institutions to:
 - collect and report the information required under the Common Reporting Standard to the UAE Competent Authority (i.e. the UAE Ministry of Finance) in a manner similar to those under FATCA for US Persons;

- establish and implement appropriate systems and internal procedures;
and
 - keep records;
- (ii) providing the Relevant Authority with the ability to do investigations and inspections to ensure compliance with the Proposed Law, inclusive of the right to appoint Inspectors and obtain information and documents, as well as providing remedies to the Relevant Authority in case of obstruction of Inspectors and the ability to enforce the provisions of Part 3 by way of Court orders.
- (d) Part 4 (Articles 19 and 20) – dealing with contraventions, the enforcement thereof and the appeal and review procedures relating thereto.
- (e) Schedule 1 – dealing with the rules of interpretation, references to legislation and defined terms.
- (f) Schedule 2 – stipulating the contraventions and fines, as agreed with the UAE Competent Authority and other Relevant Authorities in the UAE.
29. Some of the key part/ provisions of the Proposed Law that may require further consideration include the following:
- (a) Article 6 – Please note the retrospective effect relating to imposing due diligence requirements for Pre-existing Accounts (31 December 2016) and New Accounts (1 January 2017). The retrospective application of these requirements were necessitated by the UAE's reporting obligations under the MAC and MCAA. In anticipation of these requirements for DIFC entities, the DFSA sent out a letter in December 2016 to all DFSA Authorised Firms to inform them of these obligations and requested them to take the appropriate measures to be ready to comply with their obligations in this regard.
- (b) Article 8 – The Proposed Law is to be administered by DIFCA and the Relevant Authority is the ROC, which falls under the operational and administrative remit of DIFCA, despite the fact that it primarily concerns entities that are regulated by the DFSA (i.e. Reporting Financial Institutions). As is the case with FATCA, the DIFC centre bodies are of the view that the Common Reporting Standard serves a purpose (i.e. exchange of information for tax transparency purposes) that is not related to financial services regulation and consequently falls outside the remit of the DFSA's powers, functions and objectives under the DIFC Regulatory Law, Law

No. 1 of 2004. However, the Relevant Authority has in some cases the obligation (see Article 13(4) of the Proposed Law, or in other cases the right (see Article 19(3) of the Proposed Law), to report to the DFSA and the UAE Competent Authority any failure to comply with the requirements of the Proposed Law.

- (c) Parts 2 and 3 (Articles 12 to 18) – The provisions of these Articles largely mirror the investigation and inspection powers granted to the ROC under the new DIFC Companies Law (see Articles 158 to 164 of new DIFC Companies Law published as part of DIFCA Consultation Paper 1 of 2017). Given that ROC will also act as the Relevant Authority under the Proposed Law, it was considered appropriate to endow it with the substantially similar powers as those given to it under the DIFC Companies Law.
- (d) Article 13(3) & (4) – The Proposed Law is primarily aimed at obligating Reporting Financial Institutions to collect and report information relevant to the Common Reporting Standard. From a policy perspective, it was also agreed at Steering Committee level to follow the example of a some EU jurisdictions to restrict the contraventions and fines regime related to the Common Reporting Standard in the UAE to be only applicable to Reporting Financial Institutions (i.e. they are the only ones that can be fined under the Proposed Law), mainly because the Account Holders concerned will by their very nature be foreign persons, hence rendering enforcement difficult. Article 13(3) does expand on the above approach in that the Relevant Authority is also afforded the right to (i) request information directly from an Account Holder in connection with information and certifications provided to a Reporting Financial Institution, inclusive of requesting Accounting Records; and (ii) to request a Report Financial Institution’s assistance in doing so. This Article should be read in conjunction with Article 13(4) where the Relevant Authority is provided with the right to request Reporting Financial Institutions to block or suspend payments or close Reportable Accounts in cases where an Account Holder was not fully compliant with requests under Article 13(3). Articles 13(3) and 13(4) were added to the Proposed Law to deal with circumstances where clarification of information provided by Account Holders to Reporting Financial Institutions is required, which is not within the knowledge or possession of a Reporting Financial Institution.

Q1. Do you have any comments or concerns regarding the Proposed Law? If so, what are they, and how should they be addressed?

Q2. Do have any views regarding the issues presented by the Widest Reporting Approach elected by the UAE Competent Authority. If so, what are these, and how should they be addressed?

The Proposed Regulations

30. Apart from the introductory paragraph dealing with application and interpretation, the Proposed Regulations replicate the current version of the Common Reporting Standard insofar as it relates to the duties of persons under the Widest Reporting Approach.
31. Reporting Financial Institutions cognisant of FATCA reporting requirements will recognise that the due diligence and reporting requirement as well as the relevant definitions are substantially the same as those under FATCA.
32. DIFCA decided to publish the Common Reporting Standard as secondary legislation (i.e. as Regulations). In doing so, DIFCA followed the guidance provide by the OECD's CRS Implementation Handbook (please refer to numbered paragraphs 12 to 16 on pages 10 and 11). The primary consideration in this regard was to provide more flexibility to the Board of the DIFCA to make subsequent amendments, as and when required by the OECD, the UAE Competent Authority or practical circumstances specific to implementing the Common Reporting Standard in the DIFC, without requiring primary legislative amendments, which can be more time consuming.
33. Particular attention should also be given to Annex 1 of the Regulations, where additional details are provided, for purposes of Section VIII of the Regulations, of what constitutes the following terms in the Common Reporting Standard:
 - (a) Non-Reporting Financial Institutions;
 - (b) Excluded Accounts;
 - (c) Reportable Jurisdictions;
 - (d) Participating Jurisdictions; and
 - (e) what constitutes a Resident Person in the UAE.
34. Insofar as (c) and (d) above are concerned, these merely keep track of the progress of jurisdictions as and when they ultimately become part of the OECD's AEOI platform. Insofar as (a), (b) and (e) above are concerned, the template Common Reporting Standard provides jurisdictions with the ability to define these terms within the context of each of

their own jurisdictions. The UAE Competent Authority has the right to determine these insofar as the UAE is concerned and Annex 1 merely reflects this.

Q3. Do you have any comments or concerns regarding the Proposed Regulations? If so, what are they, and how should they be addressed?

Key Timelines

35. Interested persons should specifically note the following key timelines emanating from the Regulations:
- (a) Pre-existing Accounts to be subjected to due diligence procedures are those in existence as at 31 December 2016;
 - (b) New Accounts to be subjected to due diligence procedures are those opened on or after 1 January 2017;
 - (c) The first CRS reporting period ends on 31 December 2017
 - (d) The review of Pre-existing High Value Individual Accounts at 31 December 2016 must be completed by 31 December 2017;
 - (e) The Reportable Pre-Existing High Value Accounts need to be reported by 30 June 2018;
 - (f) The review of Pre-existing Lower Value Individual Accounts at 31 December 2016 must be completed by 31 December 2018; and
 - (g) First exchanges of information by the UAE Competent Authority to the Reportable Jurisdictions will occur on or after 30 September 2018.

Confidentiality and Data Protection

36. The UAE Competent Authority gave the following confidentiality undertaking in the Guidance Notes in respect of EOI:

“The UAE Competent Authority shall not exchange information under the CRS until it is satisfied that a [Reportable Jurisdiction] has in place adequate measures to ensure the required confidentiality and data security. These confidentiality obligations are evaluated by the Global Forum on Transparency and Exchange of Information for Tax Purposes through its implementation monitoring programme.”

37. The DIFC Commissioner of Data Protection will also provide a separate ruling regarding the data protection considerations relating to the Common Reporting Standard in the DIFC, especially insofar as it relates to the Widest Reporting Approach elected by the UAE Competent Authority.

Further Guidance

38. A number of jurisdictions have issued detailed guidance in respect of a number of key questions and issues facing parties in complying with their disclosure, certification, reporting and due diligence requirements under the Common Reporting Standard.
39. Relevant Authority has the right under Article 11(5) of the Proposed Law to issue Guidance and may do so if the need arises. In the interim, interested persons should have reference to the guidance and commentaries published by the OECD, or seek advice from their advisers if they require any further clarifications concerning their duties and obligations under the Common Reporting Standard.

Q4. Do you have any suggestions on any particular issues in the Common Reporting Standard where you would like to see Guidance being published?

Legislative Proposal

40. This legislative proposal contains the following:
- (a) the Proposed Law (at Annex A);
 - (b) the Proposed Regulations (at Annex B);
 - (c) the list of 53 jurisdictions that have committed their first exchange of information by 2017 (at Part 1 of Annex C);
 - (d) the list of 47 jurisdictions that have committed their first exchange of information by 2018 (at Part 2 of Annex C);
 - (e) the Guidance Notes issued by the UAE Competent Authority (at Annex D); and
 - (f) a table of comments to provide your views and comments on the Consultation Paper (at Annex E).