KPMG

Income Tax (Common Reporting Standard) Regulations

KPMG in Nigeria

January 2020

Income Tax (Common Reporting Standard) Regulations

The Federal Inland Revenue Service (FIRS) recently issued the Income Tax (Common Reporting Standards) Regulations, 2019 ("CRS Regulations") pursuant to its powers under Section 61 of the FIRS (Establishment) Act, 2007. The CRS Regulations commenced on 1 July 2019 and will apply from calendar year ending 31 December 2019 onwards.

The CRS Regulations gives effect to the:

a. Multilateral Convention on Mutual Administrative Assistance in Tax Matters and the Multilateral Competent Authority Agreement (MCAA) on Automatic Exchange of Financial Information (AEOI) signed by the Federal Republic of Nigeria on 17 August 2017;

b. Common Reporting Standards (CRS) and its Commentaries contained in the Standard for AEOI in Tax Matters approved by the Organization for Economic Co-operation and Development (OECD) on 15 July 2014.

The CRS Regulations aims to improve international tax transparency and reduce tax evasion among taxable Nigerian residents with income from other jurisdictions.

The FIRS has further published the Income Tax (Common Reporting Standard) Implementation and Compliance Guidelines, 2019 (the CRS Guidelines) to supplement the CRS Regulations.

The CRS Regulations apply to Nigeria Financial Institutions (NFIs), which are defined by the CRS Guidelines as:

(a) a custodial institution

(b) a depository institution

(c) an investment entity

(d) a specified insurance company (i.e., an insurance company that issues cash value insurance contracts or annuity contracts)

The key provisions of the CRS Regulations are highlighted below:

1. Scope

This includes:

- matters that the CRS foresees to be specific to Nigeria with respect to Financial Institutions' implementation and compliance with AEOI
- requirements regarding the due diligence procedures with respect to financial accounts and the reporting of financial account information to the FIRS that Financial Institutions shall comply with when implementing and applying the Guidelines; and
- requirements with respect to the effective implementation of the CRS and its Commentaries in Nigeria.

2. Due diligence requirements

NFIs are required to establish, maintain and document due diligence procedures to identify Reportable Accounts maintained by the Institution. Information with respect to a Reportable Account must be reported annually in the calendar year following the year to which the information relates.

The due diligence procedures entail review of all pre-existing accounts to determine Reportable Accounts, determine low and high value accounts which are reportable, obtain self-certifications for new and existing accounts, perform residence test for lower value accounts, among others. The CRS Guidelines contains further details on specific due diligence procedures.

Although the CRS Regulations permits NFIs to engage third-party service providers to fulfil their reporting and due diligence obligations, these obligations remain those of the NFIs.

3. Reporting requirements

NFIs are obligated to file certain information on Reportable Accounts maintained during the year ended 31 December 2019 and subsequent calendar years, with the FIRS. Information to be reported by NFIs include name, address, tax identification number, place of birth, account balance/value of reportable persons, gross total amount of interest paid into each account during the year and other information specified in the CRS Guidelines.

Where a Reporting Financial Institution has identified no Reportable Account in a year, the Regulations requires such Institution to file an Information Return with the FIRS disclosing that fact.

Although the CRS Regulations states that CRS Returns

are to be filed electronically using technology approved or provided by the FIRS, the Guidelines specify that the returns should be in accordance with the CRS schema which is the extensible mark-up language.

The due date for submission of returns is 31 May of the year following the calendar year to which the Returns relate. As such, NFIs would be required to file their first CRS Returns by 31 May 2020.

4. Record keeping requirements

NFIs are required to keep records of documents obtained or created for the purpose of complying with the Regulations. Such records should be kept in electronically readable format for a minimum of six (6) years.

5. Penalties for non-compliance

The CRS Regulations stipulates onerous penalties for non-compliance. These are:

- Failure to comply with duty or obligation imposed under the Regulations attracts a penalty of ₦10 million, and ₦1 million for every month in which the failure continues.
- Failure to file information returns, as and when due, attracts a penalty of ₦10 million in the first month in which the failure occurs, and ₦1 million for every month in which the failure continues.
- Falsification/omission of required information attracts a penalty of ₦5 million, and offenders may also be liable to penalties prescribed in the Companies Income Tax Act.
- Failure to comply with the requirements of the FIRS in exercise of its powers or duties under the Regulations attracts a penalty of ₦1 million, in the first instance, and ₦100,000 for every day in which the failure continues.
- Failure to keep records in accordance with the Regulations attracts a penalty of ₦10 million in the first month, and ₦1 million for every month in which the failure continues.

Matters arising

1. The CRS Regulations represents Nigeria's action to domesticate the OECD's Common Reporting Standard. The AEOI/CRS is aimed at ensuring the automatic exchange of information relating to assets and income of citizens, by tax authorities of jurisdictions that have signed up to the MCAA on AEOI. As a result, Nigeria Financial Institutions would be required to submit to the FIRS in specific formats, reports on the financial information of affected citizens/residents of over 100 countries that have signed up to the MCAA on AEOI. The FIRS would, in turn, be required to exchange information obtained with relevant counter-party jurisdictions.

2. The NFIs would be required to review existing customer accounts, which can be a herculean task, to determine Reportable Accounts and update customer onboarding procedures to ensure accurate information is captured for CRS reporting. Due to the wide scope of AEOI/CRS reporting, NFIs may need to conduct due diligence procedures on existing customer accounts to identify reportable persons and verify reportable information accordingly. They may also need to acquire the right technology for capturing and reporting information for CRS submissions and train their personnel on AEOI/CRS requirements.

3. The adoption of AEOI/CRS in Nigeria will improve tax transparency and prevent cross-border tax evasion through the automatic exchange of information between the FIRS and tax authorities in various jurisdictions. Therefore, affected individuals must ensure accurate reporting of assets and income in their tax returns to the tax authority in the relevant jurisdiction. They also need to accurately provide information on their residence status to the NFIs, as the provision of false records may lead to penalties in the relevant jurisdiction where the irregularity is discovered.

4. Further, taxpayers who participated in the recently concluded Voluntary Assets and Income Declaration Scheme (VAIDS) may expect relevant tax authorities to engage them where there are inconsistencies between their declarations and information received from participating jurisdictions.

Conclusion

The prompt issuance of the CRS implementation and compliance Guidelines by the FIRS, is a step in the right direction as it provides detailed guidance on AEOI due diligence and reporting requirements. Given the short timeline to the first CRS reporting date, the expectation is that the FIRS have machinery in place to effectively deploy the required administrative capacity and technology to collect, exchange and manage relevant information. The FIRS must also establish defined processes to prevent any breach of data privacy.

For further enquiries on the above, please contact:
Wole Obayomi
NG-FMTAXEnquiries@ng.kpmg.com

home.kpmg/ng
home.kpmg/socialmedia