

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

INTERNATIONAL COOPERATION (TAX INFORMATION EXCHANGE AGREEMENTS) AMENDMENT (NO 2) ACT 2017

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WHEREAS it is expedient to amend the International Cooperation (Tax Information Exchange Agreements) Act 2005;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the International Cooperation (Tax Information Exchange Agreements) Act 2005 (the "principal Act"), may be cited as the International Cooperation (Tax Information Exchange Agreements) Amendment (No 2) Act 2017.

Amends section 2

2 (1) Section 2 of the principal Act is amended—

(a) by inserting the following definitions in the appropriate alphabetical order—

“Common Reporting Standard” means the Common Reporting Standard developed by the Organisation for Economic Co-operation and Development for automatic exchange of financial account information and the commentary as amended from time to time;

“prescribed” means prescribed by regulations under section 12;

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“self-certification” means information, howsoever called, that performs or is intended to perform a purpose of a self-certification under the Common Reporting Standard.”.

(b) by inserting at the end of section 2 the following—

“(2) Expressions that are used in this Act and the regulations relating to the Common Reporting Standard have the same meanings as they have in the Common Reporting Standard, unless it is expressly otherwise provided in this Act or the regulations or the context otherwise provides.”.

Amends section 4A

3 Section 4A of the principal Act is amended by inserting after subsection (1) the following—

“(1A) For greater clarity with respect to, and for the purposes of, subsection (1), the Common Reporting Standard applies in relation to automatic exchange of financial account information.

(1B) Pursuant to this section, a Reporting Financial Institution or an entity referred to in the Common Reporting Standard shall collect and report to the Minister the information with respect to each Reportable Account of the Reporting Financial Institution or entity and take measures to ensure compliance with the Common Reporting Standard, including the following—

- (a) establish policies and maintain procedures designed to identify Reportable Accounts and such other information in relation to such accounts as may be prescribed;
- (b) collect, keep and maintain in Bermuda information and records relating to the steps undertaken and any evidence relied upon in the performance of any procedures set out in the Common Reporting Standard and such other records as may be prescribed;
- (c) keep the information and records referred to in paragraph (b) in such form as may be prescribed for five years from the end of the period within which Reportable Accounts and such other information and records in relation to such accounts are required to be reported pursuant to the Common Reporting Standard;
- (d) provide such reports relating to such information to the Minister as may be prescribed;
- (e) obtain self-certification in such manner and for such purposes as may be prescribed; and
- (f) give effect to such other obligations relating to the Common Reporting Standard as may be prescribed.

(1C) If a person enters into any arrangement for which the main purpose, or one of the main purposes, is to avoid any obligation under the Common

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Reporting Standard, this Act shall have effect as if such arrangement had not been entered into.”.

Amends section 9

4 Section 9 of the principal Act is amended by inserting after subsection (3) the following—

“(3A) If any person knowingly provides false self-certification, he is guilty of an offence. ”.

Amends section 12

5 (1) Section 12 of the principal Act is amended by inserting after subsection (1) the following—

“(1A) Without prejudice to the generality of subsection (1), the Minister shall make regulations for the purposes of the automatic exchange of information and such regulations may—

- (a) provide for the manner in which functions and obligations are to be carried out;
- (b) create offences and—
 - (i) prescribe penalties for such offences (including any defence, or if thought fit, imprisonment), but not exceeding the penalties fixed by section 9(4); or
 - (ii) prescribe civil penalties;
- (c) provide for objections and appeals; and
- (d) provide for savings and transitional matters.”.

Inserts section 13

6 The principal Act is amended by inserting after section 12 the following—

“Guidance

13 (1) The Minister may issue guidance for complying with the Common Reporting Standard, for using the electronic portal, or both.

(2) Any guidance issued under this section is not a statutory instrument and the Statutory Instruments Act 1977 shall not apply to it.”.

Commencement

7 This Act shall come into operation on such day as the Minister may by notice in the Gazette appoint.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the International Cooperation (Tax Information Exchange Agreements) Act 2005 (the “Act”) in order to confirm certain matters relating to Bermuda’s tax information exchange regime.

Clause 1 provides the short title for the Bill.

Clause 2 amends section 2 of the Act to provide additional definitions relating to the Common Reporting Standard developed by the OECD (“CRS”).

Clause 3 inserts new subsections in section 4A of the Act to provide greater clarity with respect to automatic exchange of information pursuant to any agreement. The new subsections relate to automatic exchange of information under the Common Reporting Standard. The new subsections are as follows:

- subsection (1A) confirms that the CRS applies with respect to automatic exchange of financial account information pursuant to the CRS;
- subsection (1B) deals with compliance with the CRS and specifies some of the principal requirements;
- subsection (1C) relates to anti-avoidance.

Clause 4 amends section 9 of the Act to provide an offence where persons provide false self-certification.

Clause 5 amends section 12 of the Act to highlight the regulations which the Minister shall make. This provision does not narrow the wide regulation-making power that is currently conferred on the Minister.

Clause 6 empowers the Minister to provide guidance for complying with the CRS.

Clause 7 provides for commencement.