Executive summary

On 25 April 2016, the Cypriot Government enacted Law N.60(I)/2016 (the DAC2 Law). The DAC2 Law implements the European Union (EU) Directive 2014/107/EU of 9 December 2014, also known as the Directive on Administrative Cooperation in the field of Taxation (the EU DAC), regarding the mandatory automatic exchange of information in the field of taxation. The EU DAC has been amended to include the Organisation for Economic Co-operation and Development (OECD) Common Reporting Standard (CRS) provisions and, as an EU Directive, must be implemented by all EU member states through local legislation.

It should be noted that the provisions of the CRS have already entered into force as of 1 January 2016 on the basis of a Decree issued by the Cypriot Minister of Finance on 30 December 2015.

The DAC2 Law establishes the requirements under which Cypriot Financial Institutions (FIs) should collect and review information from their customers and/or investors, aiming to determine their country or country of tax residence and their relevant status.

The DAC2 Law also lays down the rules regarding client on-boarding, due diligence and reporting. It further includes a number of clarifications that relate to the entities and products falling within the scope of DAC2.
Furthermore, the DAC2 Law sets the applicable penalties relating to non-compliance.

The most important provisions of the DAC2 Law are described below.

Detailed discussion

Cypriot FIs

The Cypriot CRS Decree and the DAC2 Law both define FIs broadly, including depository institutions, custodial institutions, specified insurance companies and investment entities (a wider range of entities including but not limited to asset management entities and investment vehicles).

Cypriot Reporting FIs are required from 1 January 2016 onwards to:

- Apply prescribed due diligence procedures, in order to determine the country (or countries) of tax residence of each account holder and of persons who control passive non-financial entities (NFEs) that are account holders
- Report information on annual basis to the Cypriot Tax Department, with respect to individual account holders, individual controlling persons of passive NFEs or entities (other than FIs and a limited category of exceptions) that are tax residents in a reportable jurisdiction

A Cypriot Financial Institution is defined as any Financial Institution (FI) that is 1) resident in the Republic, except for branches of such FIs resident outside the Republic and 2) any branches in the Republic of FIs not resident in the Republic.

Due diligence procedures

For new accounts

For new accounts, Cypriot FIs must have the appropriate due diligence procedures in place by 1 January 2016 onwards to identify and classify their account holders of new accounts and controlling persons of passive NFEs that are holders of new accounts. It should be noted that the due diligence procedures do not provide thresholds below which the identification, review and (if applicable) reporting of account holders is required.

Wider approach

The DAC2 Law requires that the abovementioned due diligence procedures for new accounts be applied upon account opening and that FIs request the tax identification number (TIN) and date of birth, irrespective of whether the account is reportable or not.

This is in line with the election taken by Cyprus under the CRS Decree, whereby it adopted the so-called “wider approach,” with the aim of streamlining the due diligence procedure and by according such flexibility to FIs, as to reduce the costs of implementation.

For pre-existing accounts

Pre-existing individual accounts of a high value (i.e., aggregate value or balance of more than US$1 million) must be subject to enhanced review procedures, including an electronic search and generally a paper search for specific indicia of tax residence and an inquiry with relationship managers. If certain indicia are discovered, unless cured, the account holder must be treated as a tax resident of the country or countries to which the indicia associate the respective account holder.

With respect to lower value pre-existing individual accounts, unless the FI has in its records a residence address for the individual based on documentary evidence, the FI must perform an electronic search for indicia.

Pre-existing entity accounts with an aggregate value or balance that does not exceed the equivalent of US$250,000 as of 31 December 2015, are not required (unless the FI elects to do so) to be reviewed, identified or reported, until their aggregate value or balance does exceed such amount as of any year-end thereafter. The review of the pre-existing entity accounts may rely on information in the FI’s possession or publicly available information, except for determining the tax residence of controlling persons of account holders whose account has a balance or value of US$1 million or more, which requires self-certification.
Timing of due diligence
The review of pre-existing individual high-value accounts as of 31 December 2015 must be completed by 31 December 2016; the review of all other pre-existing accounts must be completed by 31 December 2017. FIs may, however, apply to pre-existing accounts the procedures required for new accounts and may apply to lower value accounts, the procedures required for high value accounts.

Reporting obligations
Reporting Cypriot FIs must report by 30 June of the following year (of the calendar year to which the information relates) to the Cyprus Tax Department, the following information with respect to each reportable account:

- The reportable person's name, address, country or countries of tax residence
- The reportable person's TINs and in the case of an individual, the person's date and place of birth (with certain exceptions)
- The same information as above with respect to each reportable controlling person of a passive NFE
- The account number or functional equivalent
- The account balance or value at the relevant year-end or upon account closure
- Other amounts paid during the year reported, depending on the type of account:
  - Total gross interest paid to the account, in the case of a depository account
  - Total gross amount of dividends, of interest, of other income and of gross proceeds from the sale or redemption of financial assets held in the account, in the case of a custodial account
  - Total gross amount paid to the account of which the reporting FI was the debtor or obligor, in case of all other accounts

The first reports are expected to be due by 30 June 2017 with respect to the 2016 calendar year.

Penalties
FIs, intermediaries or other persons circumventing any reporting or due diligence obligations will be subject to an administrative fine of up to €2,000. Additionally, FIs that fail to keep proper records of their due diligence process will be subject to an administrative fine of up to €1,500. Finally, any person who fails to provide access to records and information relating to this Law's provision to the tax authorities will be subject to an administrative fine of up to €500.

In the event that any imposed fine is not timely paid, the respective fine may be increased to an amount of €20,000.

Endnote
1. The DAC2 Law amends the Administrative Cooperation in the Field of Taxation Law of 2012.
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