



Tax Alert

New Financial reporting requirement to facilitate Automatic Exchange of Information between tax authorities

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Background

Automatic Exchange of Information (AEOI) is provided for by the Convention on Mutual Administrative Assistance in Tax Matters (Implementation) Act, Cap. 335 ("the CMAA Act or the law") which came into force in Uganda on 1 July 2023. AEOI is a process that involves the transmission of a non-resident's financial information from one country to their respective country of residence.

The Act operationalises two treaties to which Uganda is a signatory, the Convention on Mutual Administrative Assistance on Tax Matters ("CMAA" or the "Convention") and the Multilateral Competent Authority Agreement on Automatic Exchange of Information (MCAA). The Cabinet of Uganda ratified the CMAA on 6 May 2016 and the MCAA on 18 November 2021 in accordance with the Ratification of Treaties Act, Cap. 190.

The CMAA is an international treaty aimed at promoting cooperation among countries in the fight against tax evasion and avoidance. It provides for exchange of information and assistance in tax collection between countries that are party to the convention.

On the other hand, the MCAA was developed by the Organisation for Economic Cooperation and Development (OECD) to facilitate the automatic exchange of financial information among countries to promote tax transparency and reduce tax evasion.

The Common Reporting Standard (CRS) was developed by the OECD in collaboration with G20 countries to promote global tax transparency and reduce cross-border tax evasion.



Purpose of the CMAA Act

The CMAA Act expounds on the provisions under Section 88(5) of the Income Tax Act, Cap. 338 which provides that the Minister of Finance may make regulations to provide for the automatic exchange of information for tax purposes. The law also provides for the CMAA under Schedule 2, the MCAA under Schedule 3 and the CRS under Schedule 4 as the standards for the automatic exchange of financial account information.

Key definitions in the CMAA Act

- A Reporting Financial Institution includes a custodial institution, depository institution, investment entity or specified insurance company.
- A Reportable Person refers to any individual or entity who is not a tax resident of Uganda. Entities which have no tax residence are taken to have residence in countries in which their effective management is situated. The definition of Reportable person excludes companies listed on the stock exchange, governments, central banks, world bank, some international organisations and financial institutions.
- A reportable account means an account held by one or more non-residents, or a passive non-financial entity with one or more controlling persons, who is a reportable person.
- Reportable jurisdiction is a country which is a signatory to the MCAA.
- Non-resident is defined as any entity or an individual who is not a resident person for the year of income (as defined in the Income Tax Act).
- A controlling person means a natural person or a beneficial owner who exercises control over an entity e.g. has voting rights, rights to appoint directors, among others.



What does the CMAA provide for?

Schedule 2 to the law provides for the exchange of information among tax authorities as per the CMAA. The CMAA sets out clear guidelines and procedures for cooperation between tax authorities which enables countries to work together to ensure that they have the information and the tools that they need to enforce their tax laws.

Below, we note some of the crucial provisions of the CMAA;

- Relevant information may be exchanged between tax authorities that are party to the Convention upon request. This includes information about bank accounts, investments, and other financial data (Article 5 and 6).
- Countries may exchange information spontaneously if one country believes that the information may be useful to another country in administering its tax laws. Information could relate to suspected loss of tax, tax exemptions obtained in one

country that would result in increased taxes in another country, business dealings liable to tax, tax savings arising from artificial transfers of profits among group entities (Article 7).

- Two tax authorities may simultaneously examine the tax affairs of a person or persons in which the authorities have a common interest with the view of exchanging relevant information (Article 8 and 9).
- Tax authorities can assist with recovery of tax claims of member states (Article 11).

Accordingly, where an individual or business has financial interests in multiple countries, the tax authorities in one country can access information about those interests held by the tax authorities in other countries. This information includes bank accounts held, bank balances, tax identification numbers, jurisdiction of residence, income earned such as dividends, interest, royalties, salaries and pensions.



Tax authorities will be in position to identify instances where taxpayers are under-reporting income or hiding assets and to collect taxes owed by individuals or businesses in a fair, effective, and efficient manner.

What does the MCAA provide for?

The MCAA as provided for under Schedule 3 to the law, requires all reporting financial institutions (RFIs) to collect and report financial account information of foreign tax residents (reportable persons) to the Commissioner General of URA.

The URA will then share this information with signing countries to assist their tax administration by identifying potentially non-compliant taxpayers and taking appropriate measures.

Therefore, an RFI will be required to continuously update its customers' information and ensure that accurate information is obtained for existing and new clients through the required KYC procedures and continuously track transactions across reportable accounts.

Key compliance obligations for RFIs under the CRS

Like the MCAA, the CRS as provided for under Schedule 4 to the law requires an RFI to collect financial account information on non-resident customers and report this information to the URA.

The general reporting requirements under the CRS provide that:

- The RFI must report the following information with respect to each reportable account:
 - a. the name, address, TIN(s) for reportable persons and date and place of birth for individuals,
 - b. the account number;
 - c. the name and identification number of the reporting financial institution;
 - d. Account balance or value as at the end of the relevant reporting period;
 - e. In case of a custodial account, the gross interest, dividends or other income generated with respect to the assets held in the account or proceeds from sales or redemption of financial assets paid or credited to the account during the reporting period;
 - f. In the case of a depository account, the total gross amount of interest paid or credited to the account during the calendar year.

Other financial accounts covered under the CRS for which AEOI is required include equity or debt interests in investment entities and cash value insurance contracts and annuity contracts.

- Due diligence of account holders

All RFIs are required to apply due diligence processes to account holders with effect from 1 January 2024

and report annually on information regarding the reportable accounts including the balance or value of the account on the last day of the reporting period. The thresholds for purposes of reporting are set out in the Act.

- RFIs should require account holders or controlling persons to notify them within 30 days from the date of change in case of a change of residence for tax purposes.
- RFIs are required to maintain the information obtained in the process of conducting due diligence for the duration the account is active and at least five years after the account is closed. This places an obligation on RFIs to ensure proper record keeping of such information and to update customer KYC information periodically to comply with the law. RFIs may be allowed to use service providers to fulfil the reporting and due diligence obligations imposed under the law.
- Following the due diligence process, RFIs must submit a return to the URA providing information on the accounts held by non-resident persons or on reportable accounts held by 31 May of every year. The first returns will be due on 31 May 2025 and will include information relating to reportable accounts held by the RFI between 1 January 2024 to 31 December 2024. Where no reportable accounts are held by the RFI, then a NIL return should be filed.

- It is important to note that any information exchanged between tax authorities must be done under strict confidentiality agreements and in accordance with applicable laws and regulations. The information collected is solely for the purpose of tax compliance and must not be shared for any other reason. All information collected and reported should be stored in a secure and confidential manner to comply with other applicable laws and regulations.

Format of the Report/Return

The Commissioner General, URA will prescribe the format of the return by notice in the Gazette and in a newspaper of wide circulation. The annual return template is expected to be issued by URA by the end of March 2025 following which notice will be given to the public to comply with the law ahead of the reporting deadline.

Consequences of non-compliance

The Act spells out offences and penalties relating to automatic exchange of information which include; failure to file an information return, failure to maintain information obtained in the process of conducting due diligence processes, making false or misleading statements in a return,

submitting a false or misleading self-certification to the RFI and omission from a statement made in a return for purposes of the automatic exchange of information.

These offences attract a penalty of fines ranging from UGX 5 million to UGX 50 million and/ or imprisonment for a term not exceeding 10 years.

Anti-avoidance provision

The Act empowers the Commissioner General to recharacterise any arrangement or engagement for purposes of avoiding an obligation under the proposed law as part of the anti-avoidance scheme and to require the person to comply with the obligations under the law.

How should Financial Institutions start complying:

- Establish and maintain document processes to identify reportable persons (due diligence processes)
- Identify reportable persons (new and existing) through carrying out a review of new and existing customer accounts to ensure compliance with the Act.
- Establish and maintain up to date customer information on

non-residents' accounts. This includes monitoring these accounts in addition to reviewing KYC documentation that includes this information relating to the due diligence requirements on systems and manual documents.

- Monitor reporting dates and to file returns with the URA, including NIL returns, where applicable.
- Create awareness among the management team, the Board and affected customers.

For the taxpayer that conducts business or performs employment services abroad, it is important to be aware of the provisions of the CMAA and to understand the interaction between the tax laws of Uganda and the different countries in which one works. This is because tax authorities around the world are now cooperating to ensure that individuals do not avoid their tax obligations.

Therefore, by staying informed and ensuring compliance with tax laws, you can mitigate the risks associated with international tax issues.

Get in Touch

Our contacts listed above are available for a detailed discussion with you.