

17 December 2024

AC Limited
Unit 13, 7th floor
Al Sarab Tower
Abu Dhabi Global Market Square
Al Maryah Island
Abu Dhabi
United Arab Emirates

Attention:

[REDACTED]

[REDACTED]

Sent by e-mail:

[REDACTED]

Dear Sirs

CONFIRMATION OF DECISION IN RELATION TO PENALTY IMPOSED FOR CONTRAVENTIONS OF THE COMMON REPORTING STANDARD REGULATIONS 2017 AND THE FOREIGN ACCOUNT TAX COMPLIANCE REGULATIONS 2022

1. The Financial Services Regulatory Authority (“FSRA”) of the Abu Dhabi Global Market (“ADGM”) hereby confirms its decision to impose a penalty on AC Limited (“AC”) pursuant to subsection 9(1) of the *Common Reporting Standard Regulations 2017* (“CRS Regulations”) and subsection 9(1) of the *Foreign Account Tax Compliance Regulations 2022* (“FATCA Regulations”), together the “Regulations”. This notice is issued pursuant to Article 7(5) of Cabinet Resolution No. 93 of 2021 (“CRS Cabinet Resolution”) which applies pursuant to the CRS Regulations and Article 9(5) of Cabinet Resolution No. 63 of 2022 (the “FATCA Cabinet Resolution”) which applies pursuant to the FATCA Regulations, following due consideration of an appeal submitted by AC Limited on 1 October 2024 in response to a notice from the FSRA dated 20 September 2024.

Defined Terms

2. Terms defined in the notice are defined at the first instance the term is used in parentheses. Other capitalised terms are defined in the Regulations and shall bear the same meaning in this notice, unless the context otherwise requires.

SUMMARY

3. The FSRA considers that AC has:
 - a. failed to submit its risk assessment as requested by the FSRA in connection with its administration of the CRS Regulations (“CRS Risk Assessment”) by the due date of 31 July 2023, in contravention of subsection 6(1) of the CRS Regulations;

- b. failed to submit its risk assessment as requested by the FSRA in connection with its administration of the FATCA Regulations (“FATCA Risk Assessment”) by the due date of 31 July 2023, in contravention of subsection 6(1) of the FATCA Regulations,

and accordingly, subsection 9(1)(b) of the CRS Regulations and subsection 9(1)(b) of the FATCA Regulations respectively apply.

4. The FSRA has decided to impose a penalty of AED 10,000 on AC pursuant to subsection 9(1) of the CRS Regulations and a penalty of AED 10,000 on AC pursuant to subsection 9(1) of the FATCA Regulations.

BACKGROUND

CRS Regulations

5. The Organisation for Economic Co-operation and Development (“OECD”) developed the Common Reporting Standard (“CRS”), which came into force in October 2014. The CRS was established in the United Arab Emirates (“UAE”) with effect from 1 January 2017 pursuant to the ratification of various conventions and declarations by the UAE, and publication of Federal Law No. 54 of 2018.
6. The CRS sets out the required information to be exchanged, the types of entities required to report, the different types of financial accounts and account holders in scope and the common due diligence procedures to be followed by Reporting Financial Institutions, as defined in the CRS (“CRS RFIs”).
7. Appropriate legislation to support the implementation of the CRS in the UAE has been issued at both a federal level in the UAE and in the ADGM. This includes the enactment of the CRS Regulations by the Board of Directors of ADGM in 2017. The CRS Regulations apply the CRS Cabinet Resolution in the ADGM pursuant to subsection 2(1) of the CRS Regulations, and the CRS and any explanatory material and commentary published by the OECD in relation to the CRS pursuant to subsection 3(1) of the CRS Regulations.
8. On 27 January 2017, the ADGM published the ‘*Notification of collection of information under the Common Reporting Standards*’ prepared by the UAE’s Ministry of Finance (“MOF”), setting out the requirements for implementation of the CRS across all jurisdictions within the UAE.

FATCA Regulations

9. The Foreign Account Tax Compliance Act (“FATCA”) was introduced by the United States of America (“US”) in 2010 to target non-compliance by US taxpayers using foreign accounts. FATCA requires financial institutions outside the US to report information on financial accounts held by their US customers to the Internal Revenue Service.
10. On 17 June 2015, the UAE signed a Model 1B Intergovernmental Agreement (“IGA”) with the US to improve international tax compliance and to implement FATCA reporting by Reporting UAE Financial Institutions, as defined in the IGA (“FATCA RFI’s”). The IGA was ratified by Federal Decree 9 of 2016.
11. Appropriate legislation to support the implementation of FATCA in the UAE has been issued at both a federal level in the UAE and in the ADGM. This includes the enactment of the FATCA Regulations by the Board of Directors of ADGM in 2022. The FATCA Regulations apply the FATCA Cabinet Resolution in the ADGM pursuant to subsection 2(1) of the FATCA Regulations.

RELEVANT FACTS

12. On 8 December 2021 AC was registered as a private company limited by shares.
13. On 24 April 2023, the FSRA published Notice No. 10 of 2023 informing Senior Executive Officers (“SEOs”), Money Laundering Reporting Officers (“MLROs”) and ADGM Licensed Persons (“LPs”) of the MOF’s new Automatic Exchange of Information (“AEOI”) portal for submission of annual returns for the purposes of CRS and FATCA (“Annual Returns”) by CRS RFIs and FATCA RFIs (together “RFIs”) for the 2022 calendar year, with training scheduled on 28 April 2023 and 4 May 2023.
14. On 25 May 2023, the FSRA published Notice No. 16 of 2023, inviting all RFIs to attend a mandatory training session on the AEOI portal. The training was to provide a comprehensive review of the new portal and guide RFIs on completing and submitting Annual Returns, including a Nil Return (as defined in the CRS Cabinet Resolution) or a Nil Report (as defined in the FATCA Cabinet Resolution).
15. On 8 June 2023, the FSRA published Notice No. 18 of 2023 addressed to SEOs, MLROs and LPs to notify them that the new AEOI portal was operational and open for registration in advance of submission of Annual Returns in respect of the 2022 calendar year, with instructions on how to do so.
16. On 25 June 2023, MOF published on its website a ‘FATCA/CRS Risk Assessment Questionnaire – User Guide’ specifying that RFIs are required to complete a CRS Risk Assessment and/or a FATCA Risk Assessment (as applicable) by the stipulated deadline, with instructions on how to do so.
17. On 26 June 2023, the FSRA published and sent by email ‘FCCP FSRA Notice No. 21 of 2023 – FATCA and CRS System Live’ informing SEOs, MLROs and LPs that the functionality for submission of Annual Returns and Risk Assessments was enabled on the AEOI portal, and that all RFIs were required to fulfil their obligations for the 2022 calendar year by the deadline of 31 July 2023.
18. On 5 July 2023, the FSRA published Notice No. 22 of 2023 informing RFIs that the MOF would be conducting training and web-based sessions from 10 July 2023 until 31 July 2023 with respect to the submission of Annual Returns and Risk Assessments.
19. On 13 July 2023 AC registered as a CRS RFI and a FATCA RFI on the AEOI portal.
20. On 20 July 2023, AC submitted a Nil Return for CRS and a Nil Report for FATCA through the AEOI portal.
21. On 28 July 2023, the MOF extended the deadline for submission of Annual Returns for the 2022 calendar year, to 15 August 2023. On the same day, the FSRA sent an email to AC informing it of the extended deadline for submission of Annual Returns and also noting that the deadline for submission of the Risk Assessment(s) remained 31 July 2023 and that the system would not accept late submissions.

FAILURE TO SUBMIT RISK ASSESSMENT FOR CRS BY THE DUE DATE

22. Subsection 6(1) of the CRS Regulations requires RFIs to collect and report all information in accordance with the CRS Regulations and the CRS Cabinet Resolution.

23. Article 4(7) of the CRS Cabinet Resolution requires CRS RFIs to provide any other information, documentation and records as may be reasonably requested by the FSRA and MOF within the time prescribed by them.
24. As mentioned in paragraphs 17 and 21 above, the FSRA sent reminders to AC that the submission of the CRS Risk Assessment was due by 31 July 2023.
25. AC failed to submit the CRS Risk Assessment by the deadline stipulated. Accordingly, AC has contravened subsection 6(1) of the CRS Regulations and Article 4(7) of the CRS Cabinet Resolution.

FAILURE TO SUBMIT RISK ASSESSMENT FOR FATCA BY THE DUE DATE

26. Subsection 6(1) of the FATCA Regulations requires RFIs to collect and report all information in accordance with the FATCA Regulations and the FATCA Cabinet Resolution.
27. Article 5(3)(e) of the FATCA Cabinet Resolution requires FATCA RFIs to provide to the FSRA or MOF any information, records or documents required to be submitted in a complete and accurate manner.
28. As mentioned in paragraphs 17 and 21 above, the FSRA sent reminders to AC that the submission of the FATCA Risk Assessment was due by 31 July 2023.
29. AC had failed to submit the FATCA Risk Assessment by the deadline stipulated. Accordingly, AC has contravened subsection 6(1) of the FATCA Regulations and Article 5(3)(e) of the FATCA Cabinet Resolution.

PENALTY

30. The FSRA considers that AC contravened subsections 6(1) of the CRS Regulations, and 4(7) of the CRS Cabinet Resolution, and accordingly subsection 9(1)(b) of the CRS Regulations applies. The FSRA also considers that AC contravened subsection 6(1) of the FATCA Regulations and Article 5(3)(e) of the FATCA Cabinet Resolution and accordingly subsection 9(1)(b) of the FATCA Regulations applies.
31. The penalties for the contraventions are set out in Article 5(6)(a) of the CRS Cabinet Resolution, and Article 7(6) of the FATCA Cabinet Resolution.
32. The total penalty imposed by the FSRA on AC is AED 20,000.
33. The breakdown of the penalty imposed by the FSRA on AC pursuant to the Regulations are as follows:

Reference	Contravention	Penalty (AED)
Article 5(6)(a) of the CRS Cabinet Resolution	An RFI that fails to comply with any other provision(s) of the CRS Cabinet Resolution	10,000

Article 7(6) of the FATCA Cabinet Resolution	A Financial Institution that fails to comply with any other provision(s) of the FATCA Cabinet Resolution	10,000
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CONSIDERATION OF APPEAL

34. On 20 September 2024, the FSRA issued AC with a notice in which it imposed on AC a penalty of AED 20,000.
35. Under subsection 9(2) of the CRS Regulations and Article 7(1) of the CRS Cabinet Resolution, and subsection 9(2) of the FATCA Regulations and Article 9(1) of the FATCA Cabinet Resolution, AC had the opportunity to appeal against the FSRA's decision set out in the notice dated 20 September 2024.
36. On 1 October 2024 AC submitted its appeal to the FSRA, which was acknowledged by the FSRA on 7 October 2024.
37. In its appeal, AC asked the FSRA to take certain matters into consideration, as follows:
- That the MOF extended the deadline for submission of Annual Returns to 15 August 2023, and AC had attempted to submit the Risk Assessment on 10 August 2024.
 - That the FSRA had acknowledged on 10 August 2023 that AC had submitted its CRS and FATCA Annual Returns (a Nil Return and a Nil Report respectively) and advised AC that the AEOI portal would no longer allow AC to submit its Risk Assessments.
 - Further, that the FSRA advised AC that if the FSRA or the MOF had any concerns about the Nil Return filed, the FSRA would contact AC for further clarification.
38. The FSRA has considered the grounds and documents in support of AC's appeal.
39. In relation to AC's representations in paragraph 37 above, the FSRA notes that:
- Whilst an extension of time was provided by the MOF, this extension was only in relation to the submission of Annual Returns (including Nil Returns and Nil Reports) and did not apply to the filing of Risk Assessments. As mentioned in paragraph 21 above, and in the notice dated 20 September 2024, the FSRA sent an email to AC on 28 July 2023 informing AC that the deadline for the submission of Risk Assessments remained 31 July 2023, and that the AEOI portal would not accept late submissions. AC attempted to submit the Risk Assessments after the deadline for submission of 31 July 2023.
 - The AEOI portal was closed after 31 July 2023 for the submission of Risk Assessments, therefore AC was not able to submit the Risk Assessments after that date, as notified by the FSRA to AC on 28 July 2023.
 - The email advising that the FSRA or the MOF would contact AC if there were any concerns specified that such contact was in relation to concerns with AC's Nil Return and not its unsubmitted Risk Assessments.
40. Given the facts and matters set out above, and having given due consideration to AC's appeal, the FSRA has decided to confirm its decision in this matter to impose a penalty of AED 20,000 on AC.

PROCEDURAL MATTERS

Manner and time for payment of penalty

41. Pursuant to Article 6(4) of the CRS Cabinet Resolution and Article 10(2) of the FATCA Cabinet Resolution, the penalty imposed pursuant to this notice is to be paid by AC within fifteen (15) business days from the date of this notice, i.e. on or before **2 January 2025**.
42. Payment of the penalty can be made by electronic funds transfer into the following account:

Account Name	[REDACTED]
Account Number	[REDACTED]
IBAN Number	[REDACTED]
Account Type	[REDACTED]
Bank Name	[REDACTED]
Swift Code	[REDACTED]
Reference	[REDACTED]

43. If the penalty or any part of it remains outstanding on the date by which it must be paid, the obligation to make the payment is enforceable as a debt by the FSRA.

Publicity

44. The FSRA will generally publish, in a manner we consider appropriate and proportionate, information and statements relating to enforcement action. Accordingly, the FSRA will publish relevant information about the decision in this notice, including the notice itself, as the FSRA considers appropriate. The publication of enforcement outcomes is consistent with the FSRA's commitment to open and transparent processes and our objectives.

Yours sincerely,

[REDACTED]
Mr. Adrian Bock
Executive Director – Enforcement
Abu Dhabi Global Market Financial Services Regulatory Authority