

13 February 2025

APM Capital Limited
1009, 10th floor
Al Khatem Tower
Abu Dhabi Global Market Square
Al Maryah Island
Abu Dhabi
United Arab Emirates

Attention:



Sent by e-mail:



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 APM Capital Limited ("APM") pursuant to subsection 9(1) of the *Common Reporting Standard Regulations 2017* (the "CRS Regulations") and subsection 9(1) of the *Foreign Account Tax Compliance Regulations 2022* (the "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 ("FATCA Cabinet Resolution") which applies pursuant to the FATCA Regulations, following due consideration of an appeal submitted by APM on 25 November 2024 ("Appeal") in response to a notice from the FSRA dated 30 October 2024 ("October Notice").

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 APM:
 - a. having classified itself as a Reporting Financial Institution for the purposes of the CRS Regulations ("CRS RFI"), has:
 - i. opened accounts without collecting a valid self-certification form;
 - ii. failed to report information as required under the CRS Regulations in a complete and accurate manner;

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- iii. failed to apply due diligence procedures;
 - b. having classified itself as a Reporting UAE Financial Institution as defined in and for the purposes of the FATCA Regulations (“FATCA RFI”), has:
 - i. opened accounts without collecting a valid self-certification form; and
 - ii. failed to apply due diligence procedures.
4. Accordingly, the FSRA has decided to impose a total penalty of AED 104,000 on APM, pursuant to subsection 9(1) of the CRS Regulations and 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 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 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 24 May 2021, APM was registered as a Private Company Limited By Shares.

13. On 6 October 2021 APM submitted a self-certification form to the FSRA in which it self-classified as a CRS RFI and FATCA RFI.
14. 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 information returns for the purposes of CRS and FATCA (together “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.
15. On 25 May 2023, the FSRA published Notice No. 16 of 2023 in which it invited 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 that term is defined in CRS Cabinet Resolution) or Nil Report (as that term is defined in the FATCA Cabinet Resolution) as applicable.
16. 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.
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 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 starting from 10 July 2023 until 31 July 2023.
19. On 19 July 2023 and 20 July 2023, APM submitted a Nil Report for FATCA and an Annual Return for CRS respectively, via the AEOI portal.
20. On 17 August 2023, the FSRA sent an email to APM informing that APM has been selected for an audit review for compliance with the Regulations in respect of the 2022 calendar year (“Review”), and that the Review would be based on its Annual Returns submitted on the AEOI portal. The FSRA requested APM to complete the FATCA and CRS audit questionnaires (“Questionnaires”) by 20 September 2023, and to acknowledge the FSRA’s email by 22 August 2023.
21. On 18 September 2023, APM sent an email to the FSRA attaching the completed Questionnaires.
22. On 21 September 2023, the FSRA sent a letter to APM informing APM that the Review would be conducted on 13 November 2023 and requesting APM to submit documents requested by the FSRA by 29 September 2023.
23. On 9 November 2023, the FSRA sent an email to APM requesting information and documents by the same day, and APM responded on the same day.
24. On 13 November 2023, the FSRA conducted the Review.

FAILURE TO COLLECT VALID SELF-CERTIFICATION FOR CRS

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

26. Section IV subparagraph A of the CRS (New Individual Accounts as defined in the CRS) requires a CRS RFI to obtain a self-certification from an Account Holder at account opening.
27. Subsection 3(1) of the CRS Regulations applies any commentary published by the OECD for the purposes of assisting with the interpretation of the CRS as part of the CRS. Paragraph 7 of Section IV of the OECD's *Commentaries on the Common Reporting Standard*¹ concerning due diligence of New Individual Accounts provides that self-certifications are only valid if signed (or otherwise positively affirmed) by the person with authority to sign for the Account Holder and dated, and contains among other things, the Account Holder's TIN with respect to each Reportable Jurisdiction.
28. "Reportable Jurisdiction" is defined in the CRS as implemented in the UAE as meaning a jurisdiction other than the United States of America means for the purposes of applying the due diligence procedures described in Sections II to VII of the CRS.

Clients 1 to 10

29. The Review found that APM had opened accounts for each of the following individuals on the following dates:

| Client (as identified in Annexure A of the October Notice) | Date account opened |
|--|---------------------|
| 1 | 21 October 2021 |
| 2 | 20 May 2022 |
| 3 | 1 July 2022 |
| 4 | 14 July 2022 |
| 5 | 17 August 2022 |
| 6 | 22 September 2022 |
| 7 | 23 September 2022 |
| 8 | 9 November 2022 |
| 9 | 11 November 2022 |
| 10 | 1 June 2022 |

30. The Review found that APM had opened Accounts for Clients 1 to 10 on the dates mentioned above, and had not collected a self-certification form that contained the TIN of each Account Holder, apart from Client 8.
31. Accordingly, the FSRA considers that APM has contravened subsection 6(1) of the CRS Regulations.

FAILURE TO COLLECT VALID SELF-CERTIFICATION FOR FATCA

32. Subsection 6(1) of the FATCA Regulations requires FATCA RFIs to collect and report all information in accordance with the FATCA Regulations and the FATCA Cabinet Resolution. The FATCA Cabinet Resolution defines a Self-Certification Form as "...the form required to be collected and validated... establishing where an Account Holder or Controlling Person is resident for tax purposes." Article 5 of the FATCA Cabinet Resolution requires each FATCA RFI to collect and validate a Self-Certification Form for each New Individual Account (as defined in the FATCA Cabinet Resolution).

¹ OECD (2017), *Standard for Automatic Exchange of Financial Account Information in Tax Matters, Second Edition*, OECD Publishing, Paris

Clients 1 to 10

33. The Review found that APM had opened New Individual Accounts for each of Clients 1 to 10 on the dates set out in paragraph 29 above without collecting a valid Self-Certification Form that contained information establishing whether the Account Holder is resident in the United States for tax purposes for each of these Clients. In addition, none of the Self-Certification Forms for Clients 1 to 10 included a US Person declaration section to enable them to do so.
34. Accordingly, the FSRA considers that APM has contravened subsection 6(1) of the FATCA Regulations.

FAILURE TO REPORT IN A COMPLETE AND ACCURATE MANNER - CRS

35. Section I subparagraph A(1) of the CRS requires each CRS RFI to report for each Reportable Account the name, address, jurisdiction(s) or residence, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder.
36. Section VIII, subparagraph D(1) of the CRS defines a "Reportable Account" as "*an account held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Reportable Person...*"
37. Section VIII, subparagraph D(2) of the CRS defines a "Reportable Person" as a "*Reportable Jurisdiction Person other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a Related Entity of a corporation described in clause (i); (iii) a Governmental Entity; (iv) an International Organisation; (v) a Central Bank; or (vi) a Financial Institution.*"
38. A "Reportable Jurisdiction Person" is defined in Section VIII, subparagraph D(3) of the CRS to mean an individual or Entity that is resident in a Reportable Jurisdiction, which in turn is defined in subparagraph D(4) to mean a jurisdiction other than the US or the UAE.
39. In its Self-Certification Form, Client 7 had self-classified its jurisdiction of tax residence as Portugal, which is a Reportable Jurisdiction and accordingly, Client 7 is a Reportable Jurisdiction Person. However, the Review found that APM did not collect the TIN for Client 7 or report the TIN in its CRS Annual Return.
40. Accordingly, the FSRA considers that APM has contravened subsection 6(1) of the CRS Regulations.

FAILURE TO CONDUCT DUE DILIGENCE PROCEDURES FOR CRS AND FATCA

41. Subsection 6(2) of the CRS Regulations requires every CRS RFI to establish and implement appropriate systems and internal procedures to enable its compliance with the CRS, the CRS Cabinet Resolution and the CRS Regulations. Subsection 7(1) of the CRS Regulations requires every CRS RFI to keep records of the steps undertaken and any evidence relied upon for the performance of the due diligence procedures and the measures to obtain those records that the CRS RFI obtains or creates for the purposes of complying with the CRS Cabinet Resolution and CRS Regulation.
42. Subsection 6(2) of the FATCA Regulations requires every FATCA RFI to establish and implement appropriate systems and internal procedures to enable its compliance with the FATCA Cabinet Resolution and the FATCA Regulations. Subsection 7(1) of the FATCA Regulations requires FATCA RFIs to keep records of steps undertaken and any evidence relied upon for the performance of the due diligence procedures and the measures to obtain those records that the

FATCA RFI obtains or creates for the purpose of complying with the FATCA Cabinet Resolution and the FATCA Regulations.

43. As mentioned in paragraphs 25 to 34 above, APM failed to collect valid self-certifications for Clients 1 to 10 for the purposes of CRS (apart from Client 8) and FATCA. As APM failed to collect valid self-certification forms with all required information, APM failed to conduct the required due diligence to ensure that these forms contained the required information on TINs, and/or that questions in relation to TINs were answered where appropriate as required by the CRS, and that the self-certification forms contained the required information on US Persons for the purposes of FATCA.
44. Accordingly, the FSRA considers that APM has contravened subsection 6(2) and 7(1) of the CRS Regulations and subsection 6(2) and 7(1) of the FATCA Regulations.

PENALTY

45. The FSRA considers that APM contravened:
- a. subsection 6(1), 6(2) and 7(1) of the CRS Regulations and accordingly subsection 9(1)(b) of the CRS Regulations applies; and
 - b. subsection 6(1), 6(2) and 7(1) of the FATCA Regulations, and accordingly subsection 9(1)(b) of the FATCA Regulations applies.
46. The penalties for the contraventions are set out in Articles 5(2), 5(4)(a) and 5(5) of the CRS Cabinet Resolution and Articles 7(1) and 7(2) of the FATCA Cabinet Resolution.
47. The total penalty imposed by the FSRA on APM is AED 104,000.
48. The breakdown of the penalty imposed by the FSRA on APM pursuant to the CRS Cabinet Resolution and FATCA Cabinet Resolution is as follows:

| Reference | Contravention | Penalty (AED) |
|---|---|---------------------------------|
| Article 5(2) of the CRS Cabinet Resolution | A CRS RFI that opens an Account to an Account Holder or Controlling Person (as applicable) without obtaining a valid self-certification and/or failing to validate such self-certification. | 1,000 per contravention x 9 |
| Article 5(4)(a) of the CRS Cabinet Resolution | A CRS RFI that fails to report any information that is required to be reported in a complete and accurate manner | 5,000 |
| Article 5(5) of the CRS Cabinet Resolution | A CRS RFI that fails to apply the due diligence as described in the CRS and the regulations issued by its respective Regulatory Authority | 40,000 |
| Article 7(1) of the FATCA Cabinet Resolution | A FATCA RFI that fails to apply due diligence procedures as set out in Article 5(1) of the FATCA Cabinet Resolution | 40,000 |
| Article 7(2) of the FATCA Cabinet Resolution | A FATCA RFI that opens a New Individual Account or New Entity Account without collecting a valid Self-Certification Form or without validating such Self-Certification Form | 1,000 per contravention x 10 |

CONSIDERATION OF APPEAL

49. In the October Notice, the FSRA imposed a penalty of AED 104,000 on APM.
50. 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, APM had the opportunity to appeal against the FSRA's decision set out in the October Notice.
51. On 25 November 2024 APM submitted its Appeal.
52. In its Appeal, APM asked the FSRA to take certain matters into consideration, as follows:
 - a. APM was founded in May 2021 and was in its nascent stages of development in the review year 2022 and had not yet benefitted from the comprehensive training and guidance from the FSRA in relation to CRS and FATCA compliance requirements. The non-conformity was largely attributed to the IT systems used by APM which lacked the sophistication to demonstrate the recordings of the requirements, which could be used as supporting evidence of compliance with the regulations. Only 1 in 10 accounts reviewed during the Review were active, while all others were dormant accounts, reducing the extent of the potential damage.
 - b. APM has taken corrective action. It has replaced its IT systems to ensure that APM has adequate systems and controls in place. The outcome of the system will be further verified and validated by a third-party service provider to ensure that all information is captured correctly and timely reporting of CRS/FATCA filings. It has issued directives to all clients to provide APM with valid self-certification forms within a specific deadline. Its Compliance Officer and MLRO has experience in compliance with the Regulations, Finally, all dormant and inactive accounts have been closed with immediate effect.
53. The FSRA has considered each of the representations made in support of the Appeal and summarises its decision in relation to the Appeal as follows:
 - a. The FSRA also notes that APM accepts the contraventions set out in the October Notice.
 - b. The limited grounds for appeal against penalties applied for contravention of the Regulations are set out in Article 7(2) of the CRS Cabinet Resolution and Article 9(2) of the FATCA Cabinet Resolution.
 - c. In response to APM's representations in paragraph 52(a) above, the FSRA expects all RFI's to comply with the Regulations. The FSRA notes that APM had slightly over a year from the date of its incorporation to the deadline for submission of the 2022 Annual Returns to familiarise itself with the requirements of the Regulations.
 - d. In response to APM's representations in paragraph 52(b) above, the FSRA notes that APM has taken corrective action with a view to ensuring future compliance with the Regulations since having been made aware of the contraventions.
54. Given the facts and matters set out above, and having given due consideration to the Appeal, the FSRA has decided to confirm its decision in this matter to impose a penalty of AED 104,000 on APM.

Manner and time for payment of penalty

55. 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 APM within fifteen (15) business days from the date of this notice, i.e. on or before **6 March 2025**.
56. 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] |

57. 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

58. 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,



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