



Memorandum

To: SAVCA members

From: SAVCA Regulatory Sub-committee

Date: 9 May 2017

Re: Common Reporting Standards (CRS) reporting for partnerships

Introduction

This memo sets out the Southern African Venture Capital & Private Equity Association (SAVCA) position regarding CRS reporting for en commandite partnerships.

Overview

As set out in the OECD CRS legislation, a Reporting Financial Institution (RFI) is the private equity/venture capital fund itself rather than the fund manager or general partner. Most funds commonly employ an en commandite partnership as the fund vehicle, which has no legal personality of its own nor is it separately taxable and thus it is not registered for tax. At present, in order for a RFI to file a declaration of the foreign tax information (FTI) to SARS, it must first be enrolled and activated on the e-Filing third-party data platform. This platform only permits juristic persons in possession of a South African income tax number to be enrolled and activated (this functionality is not available to individual taxpayers). This means that the private equity fund cannot register itself in order to make the declaration despite having the legal obligation to do so.

This issue was resolved under the Foreign Account Tax Compliance Act (FATCA) as the legislation allowed the general partner of a partnership to act as a Sponsoring Entity and make the declaration on behalf of the RFI. The general partner is almost always constituted as a juristic person with its own tax identification number and thus able to register on the e-Filing data platform.

SAVCA met with SARS on 27 October 2016 to discuss this, and a number of other reporting issues, on behalf of its members. A follow up letter, confirming the discussions held and requesting formal feedback, was sent in January 2017. Separately, SARS arranged a series of workshops to explain CRS and FATCA reporting processes on the SARS third-party data platform. The workshop attended by various SAVCA members on 9 February was both informative and constructive. The en commandite partnership issue was raised with SARS again at this workshop. A practical solution (see details below) whereby the general partner is the submitting entity was suggested by SARS at this workshop.

For en commandite partnerships that are RFI's, the general partner (with its respective tax identification number) should be utilised as the submitting entity for CRS AEOI submissions. SAVCA contends that the general partner is an acceptable submitting entity for the following reasons:

- The general partner is legally the contracting entity on behalf of the Partnership.
- The general partner is almost always constituted as a juristic person with its own tax identification number and thus able to register on the e-Filing data platform.
- The general partner has access to records that would allow the entity to report accurate information on each account holder.
- Designating the general partner as submitting entity would reduce duplication in respect of information submitted for the same investor account holder under both FATCA and CRS.

With the deadline for the 2017 CRS submission approaching, without formal feedback from SARS, SAVCA sent a further follow up letter at the end of April 2017. In the latest follow up letter, SAVCA notified SARS that it would formally advise its members to follow the approach set out above at the regulatory workshop scheduled for 9 May 2017. If SAVCA's suggestion was not acceptable to SARS, they should respond to SAVCA by the 9 May in writing with a preferred alternative in terms of how Partnerships should report under CRS.

Conclusion

As SARS did not respond to SAVCA by 9 May 2017, SAVCA recommends that the general partner (with its relevant tax number) should be the submitting entity where the RFI is a South African en commandite partnership for the 2017 CRS filing season.