

## **Frequently Asked Questions on Fulfillment of Due Diligence and Reporting Obligations of Trusts (Published in August 2023)**

### **1. How do Trusts fulfill the due diligence and reporting obligations?**

To facilitate the Automatic Exchange of Financial Account Information, pursuant to Law no.5/2017 ["Legal Regime for the Exchange of Tax Information"](#) and ["The Common Reporting Standard and the Due Diligence Procedures for Financial Account Information"](#) (hereinafter referred to as "Instructions" ) approved by the Chief Executive Resolution No. 211/2017 stipulates that, Trusts as defined as "Financial Institutions" in the "Instructions" are Reporting Financial Institutions (hereinafter referred to as RFIs) and must fulfill the due diligence and reporting obligations.

The aforementioned obligations of a Trust will be fulfilled by its trustee, with the responsibility being transferred from the Trust to the trustee. This, however, does not modify the time and manner of the reporting and due diligence obligations which remain the same as if they still were the responsibility of the Trust, i.e. the trustee must not report the information with respect to a Reportable Account of the Trust as if it were a Reportable Account of the trustee. The trustee must report such information as the Trust would have reported.

### **2. How to determine that the Trust is a Reporting Financial Institution as described in the "Instructions"?**

A Trust, which established in accordance with Law no. 15/2022 ["Trust Law"](#) and the institution of its effective management (i.e. the trustee as specified in Article 16 of the aforementioned law) is resident in the Macao SAR, is considered as a Financial Institution in Macao SAR and an RFI.

### **3. When the trustee performs the due diligence and reporting obligations, how to identify a Trust's Financial Accounts and its Account Holders?**

The Financial Accounts of a Trust are generally the equity and debt interests, and the equity interests are held by any person treated as a settlor or beneficiary of all or a portion of the Trust, or any other natural person exercising ultimate effective control over the Trust, including the trustee and protector (if any). Where an equity interest is held by an Entity, the equity interest holder will instead be the Controlling Persons of that Entity.

For beneficiaries that are designated by characteristics or by class, the trustee should obtain sufficient information concerning the beneficiaries that it will be able to establish the identity of the beneficiaries at the time of the pay-out or when the beneficiaries intend to exercise vested rights.

**4. When the trustee applies the due diligence procedures, from which customers will self-certifications be obtained?**

The trustee should collect self-certifications and relevant documents from each Account Holder of the Trust and/or its Controlling Person if any, in order to fulfill its due diligence obligations.

**5. How should the reportable account balance or value of Trusts be calculated?**

In respect of the reportable account balance or value of the Trusts, depending on whether or not it is calculated, the ordering rules are as follows:

a) The account balance or value is calculated

Generally, the account balance or value is the value calculated by the Financial Institutions that is used for reporting to the Account Holder. If the Trusts calculate the account value of each Account Holder for other reasons (e.g. the investment results reported periodically by trustee to the Account Holder), such account value is applicable for the automatic exchange of information purpose, i.e. the account value should be the calculated value on the aforementioned report.

b) The account balance or value is not calculated

If the Trusts do not otherwise calculate the account balance or value for other reasons, the account balance for the settlors and beneficiaries will be the value of the interest upon acquisition. Where the abovementioned value is unavailable, the account balance will be the total value of all trust property.

Ordering rules:

	<b>Calculation Status of Account Balance or Value</b>	<b>Account Balance or Value</b>
1.	With calculation	The balance or value indicated in the report
2.	Without calculation	2.1 Value of the interest upon acquisition
		2.2 The total value of all trust property

Note: For details on the above ordering rules, please refer to page 110 and 111 (paragraphs 257

through 261, including Table 7) of [AEOI Implementation Handbook \(Second edition\)](#).

**6. In the event of the death of an Account Holder, how should the information of such Account Holder be reported? In addition, where there is a designated beneficiary, is it required to conduct due diligence procedures in respect to such beneficiary?**

The account can be an Excluded Account if the account is held solely by an estate and the documentation for such account includes a copy of the deceased's will or death certificate. In other words, the account pertaining to the deceased person (Account Holder) is not required to be reported if relevant documentation is obtained. Besides, the Financial Institution must treat the account as having the same status that it had prior to the death of the Account Holder, and the Financial Institution is required to perform ongoing review and reporting in respect to the account (if applicable) until the date it obtains a copy of such documentation.

In addition, where a beneficiary upon death has been designated by an Account Holder, such beneficiary is neither subject to the due diligence procedures nor the provision of self-certification.

**7. When is the review and first reporting year with respect to the Trusts by the RFIs?**

RFIs should review upon the account opening of the Trusts by the settlor and report the information in the calendar year following the year in which the accounts became Reportable Accounts.

In respect to the discretionary distribution, the RFIs would only need to report discretionary beneficiaries in the calendar year following the year they receive distributions from the Trust. Such account still has to be reported as closed account in the calendar year following the year in which the beneficiary is permanently excluded from receiving future distributions, and the reporting will then not be required in the subsequent years.

## Annex

### Financial activities to be reported by the Financial Institutions (applicable to Trusts without calculation)

Account Holder	Account Balance or Value	Gross payments
Settlor	Total value of all trust property	The total gross amount paid or credited to the settlor in reporting period (if any)
Beneficiary: mandatory	Total value of all trust property	The total gross amount paid or credited to the beneficiary in reporting period
Beneficiary: discretionary (in a year in which a distribution is received)	Nil	The total gross amount paid or credited to the beneficiary in reporting period
Any other person exercising ultimate effective control (including trustee and protector)	Total value of all trust property	The total gross amount paid or credited to the person in reporting period (if any)
Debt interest holder	Principal amount of the debt	The total gross amount paid or credited in reporting period (if any)
Any of the above, if account was closed	The fact of closure	The total gross amount paid or credited until the date of account closure to any of the abovementioned Account Holder(s)