GOVERNMENT OF ANTIGUA AND BARBUDA

Ministry of Finance

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INLAND REVENUE DEPARTMENT

COMPETENT AUTHORITY FOR TAX TRANSPARENCY

GUIDANCE NOTES: LEGISLATIVE UPDATES UNDER THE AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION (AMENDMENT) ACT, 2025 (NO. 5 OF 2025)

ISSUED BY THE COMPETENT AUTHORITY

DATE: 5TH MARCH 2025

Advisory to Reporting Financial Institutions - Purpose of the Advisory

This advisory serves to inform all Reporting Financial Institutions (RFIs) of the legislative amendments made to the Automatic Exchange of Financial Account Information Act, 2016, through the 2025 Amendment Act (No. 5 of 2025) as enacted 5th March 2025. These changes are part of Antigua and Barbuda's continuing efforts to meet the evolving OECD Common Reporting Standard (CRS) obligations and to improve enforcement, compliance, and clarity in the implementation of automatic exchange of information (AEOI).

1. Updated Definitions (Section 2 of the Principal Act)

a. Financial Account (Revised Definition)

- The scope of what constitutes a "financial account" has been significantly expanded.
- Now includes:
  - Depository accounts (e.g., savings, checking, GICs).
  - Custodial accounts (holding financial assets on behalf of another).
  - Equity or debt interests in certain investment entities.

- Cash value insurance contracts and annuity contracts, with clear exclusions.

Implication:
RFIs must review all account types they offer to ensure correct classification under the new, broader definition. Misclassification may result in non-reporting and penalties.

b. Reportable Person (Replaced)

- Now strictly defined according to the CRS.

Implication:
No national interpretation. RFIs must rely on the CRS guidance to determine which account holders are "reportable persons."

c. Reportable Account (Replaced)

- Defined as any account:
  - Held by a Reportable Person, or
  - Held by a Passive NFE with Controlling Persons who are Reportable Persons, as identified through CRS due diligence.

Implication:
RFIs must apply full CRS due diligence procedures. Passive NFEs and their Controlling Persons require special attention.

d. New Definitions Introduced

Key new terms added to the law for clarity and international alignment:

Term	Explanation
Depository Account	Any typical banking or savings product, including insurance-held guaranteed contracts.
Custodial Account	An account holding financial assets for a client, excluding insurance/annuity contracts.
Equity Interest	For partnerships: capital or profit stake. For trusts: settlors, beneficiaries, or persons with control.
Insurance Contract	Contract paying upon risk events like death, injury, liability, etc.
Annuity Contract	Contract paying over time, based on life expectancy or fixed term.

Term	Explanation
Cash Value Insurance Contract	An insurance contract with a surrender/cash value.
Cash Value	Value received upon termination or borrowable amount from an insurance contract.
Controlling Person / Self-Certification	Adopted from CRS and essential for NFE due diligence and onboarding.

Implication:
These terms affect account classification, onboarding, self-certifications, and reporting requirements. Internal policies and staff training must reflect these changes.

2. Expanded Regulatory Powers (Amendment to Section 7)

- The Commissioner (IRD) or designated officer may now:
  - Enter the premises of any RFI without suspicion of non-compliance.
  - Examine procedures, validate completeness of reports, and access records.

Implication:
RFIs must maintain organized, current, and accessible records. A strong internal compliance framework is critical, even absent a formal audit notification.

3. Increased Penalties for Non-Compliance (Amendment to Section 10)

Offence	New Penalty
General failure to comply	USD $10,000 per failure + USD $5,000 per day of continuation
False statement/omission	USD $10,000 unless reasonable effort is proven
Obstruction of Commissioner's directions	USD $10,000 per instance

Implication:
The cost of non-compliance is now substantial. RFIs must:

- Conduct rigorous self-certification collection and validation.
- Submit timely and complete returns.
- Cooperate with the IRD in good faith.

4. Personal Liability for Responsible Individuals (Amendment to Section 11)

- Penalties may now apply directly to persons managing local branches, including:
    - Trustees (for trusts),
    - Partners (for partnerships),
    - Local managers of foreign institutions.

Implication:
Management and board members must understand their personal responsibilities. Delegating compliance is not sufficient to escape liability.

<u>What Should RFIs Do Now?</u>

1. **Review and update** internal policies, client onboarding, due diligence, and classification procedures.
2. **Train compliance and onboarding staff** on new definitions and obligations.
3. **Re-assess self-certification forms** and ensure ongoing monitoring of changes in account holder circumstances.
4. **Conduct internal audits** to ensure all reportable accounts are correctly identified and included.
5. **Engage with the IRD** if there are questions or ambiguities regarding implementation.

<u>Summary Guide: Key Changes in the Amendment Act, 2025</u>

Area	**Summary of Changes**
Definitions Updated	New definitions for *Financial Account*, *Depository Account*, *Custodial Account*, *Equity Interest*, *Insurance Contract*, and others consistent with the CRS.
Reportable Person/Account	Aligned definitions with CRS; includes Passive NFEs with reportable Controlling Persons.
Access Powers	The Competent Authority can now enter premises and request records *without prior suspicion* to verify compliance.
Penalties	Increased to USD 10,000 per violation and USD 5,000 per day for ongoing non-compliance. False reporting also penalized.

Area	Summary of Changes
Liability	Extends to individuals managing affairs of legal arrangements and domestic branches, including trustees and partners.

Frequently Asked Questions (FAQs)

Q1: Does the new Act apply to all existing Reporting Financial Institutions?
Yes. All institutions previously classified as Reporting Financial Institutions under the 2016 Act remain within scope.

Q2: What is a 'Financial Account' under the new definition?
It includes Depository Accounts, Custodial Accounts, Insurance Contracts, Annuity Contracts, and certain equity or debt interests, with detailed exclusions outlined in the Act.

Q3: What should we do to comply wit the revised law?
You should:

- Update internal compliance frameworks;
- Review and adjust onboarding/self-certification processes;
- Ensure staff are trained;
- Respond promptly to any inquiry or inspection by the Competent Authority.

Q4: Are penalties automatically imposed?
No. Penalties are assessed based on findings of non-compliance. However, strict liability applies in many cases, especially where false information is provided or required due diligence is not undertaken.

Q5: Who is liable for branches and trusts?
The branch manager, trustee, or partner(s) are considered responsible and may be penalized if the Reporting Financial Institution fails to comply.

END.