LAW NUMBER 9 OF 2017 AS AUTOMATIC FINANCIAL INFORMATION EXCHANGE AND COMPARISON WITH MALAYSIA

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Abstract
Taxpayer data and information from banking and finance institution could be guidance on any development. Therefore, it could be a corrective act to do the law enforcement on increasing Inland Revenue. Financial information exchange regarded to tax interests, besides by demanding way also could automatically way done (Automatic Exchange of Financial Account Information/AEol). Indonesia commitment was manifested by Multilateral Competent Authority Agreement signed after AEOI on 3rd June 2015. Indonesia agreed to start the financial information exchange automatically on September 2018. The followed-up Indonesia government commitment was on 8th May 2017. It had approved the financial information access no.1 2017 legislations as to tax interests. Then, one year later was set to be no.9 2017 legislations.

Keywords : Automatic, Exchange, Financial Account.

A. Introduction

In this modern era, financial transaction has been developing quickly based on the world trade. Financial transaction happens on any forms, whether cash or non-cash. Basically, non-cash transaction aims to minimalize the risk, ease the communication or prolong business relation between each other parties.

Non-cash financial transaction usually is done by financial institution. It easier the transaction, easier the re-traced transaction and decrease the real money. Besides has positive impact on economic sector, non-cash financial transaction by its institutions, are also useful to limit the abused real money on criminal act. Money laundering, corruption, drugs abused Terrorism fund and illegal business. Moreover, the financial transaction by its institutions is easier the government supervision on wealth personal taxpayer.

Particularly in tax sector, it is as the vital instrument to country's finance expenses revenue, whether routinely or national and economy development. However, the tax revenue is still having internal and external obstacles. Nowadays, government is undertaking the tax

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reformation on directorate general of transaction (DJP). The goal is to organization improvement, work process, data process, banking information and global trade. Also, there are still many taxpayers' avoiding tax to the abroad. Therefore, by the central tax protection existence from tax haven and there are no mechanism existence rules to obligate the exchange information between each other countries and judicially, it become more difficult to collect tax based on self-assessment[1] system in Indonesia.

Regards to best tax collection, the tax authority needs to be equipped with several abilities on data and information collection that relates to taxation. Hence, it is quick and effective enough to identify, analyze the risks based on taxpayer[2] disobeyed. Taxpayer data and information from banking sector through its institutions can be a guide on predicting any event or development, then can be correctively acted by taking the law enforcement.

Bank confidential is a basic need to each healthy banking system. Initially, this is obtained from the relation between each other banks and customers. Those banks are obligated to keep all customers confidential. Therefore, a customer will not entrust the fund or financial affairs on untrusted bank because, its finance institution cannot guarantee the customer data. However, this system plays a paramount importance role on protecting banking confidential. whether individual or particular entity.[3]

Even though there is a bank confidential towards government, includes tax authority, it will appeal the customers potential to hide their activity, illegally to avoid the tax obligation. Hence tax authority needs to have access on taxpayer financial transaction, to detect tax leak. It is also an effort to do the law enforcement.[4]

Regards to decrease the country's revenue deviation, President Instruction no.10 2016 about prevention act and corruption eradication had focused mainly on Automatic Exchange of Information [5] (shortly AEoI). It is as one of the strategic ways to repair the financial information processing system in Indonesia.

[1] The general explanation of legislations replacement no.1 2017 about financial information access to taxation importance.
[2] Jitt B.S. Gill, (2003), *The Nuts and Bolts of Revenue Administration Reform*, p. 16.
[3] OECD, (2000), *Improving Access to Bank Information for Tax Purposes,* OECD Publications Service: Paris, p.19.
[4] Darussalam, B. Bawono Kristiaji, and Deborah, "Banking Data Access to taxation goal: The balancing between taxpayer rights and tax potential search-comparation study", *Tax Law Design and Policy Series No 0514*, Februari 2014, p. 3.
[5] AEOI is the particular information as to taxpayer certain terms, periodically, systematic and continually from the country's producer or wealth saving to taxpayer country.

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AEoI discourse was an across countries initiative all over the world. Indonesia had committed to implement the AEoI based on Indonesia presidential commitment on Summit Conference (KTT) G20[6] in 2013, 2014, 2015 and 2016. Indonesia had also signed and ratified the convention about united administrative in Indonesia tax field. It was signed in 2015 as Multilateral Competent Authority Agreement[7] (shortly MCAA).

AEol implementation had still crashed by a few existed regulations. Such as, Legislations no.7 1992 *juncto* Legislations no.10 1998 about banking, Legislations no.21 2008 about sharia banking, Legislations no.8 1995 about stock trade, Legislations no.1 2013 about micro financial institution, and Legislations no.6 1983 juncto Legislations no.28 2007 juncto Legislations no.16 2009 as to public regulations and tax procedures.

There were important consequences, if this country does not fulfill the AEol commitment soon. Indonesia was threatened as failure categorized by AEol, until 30th June 2017, if there had been no any appliance on domestic law devices related AEol. Indonesia also could be included on non-cooperative jurisdiction category. Another, Indonesia was worn as particular defensive measures by G20, which was set on July 2017. This would be impacted on Indonesia's position and bargain power with other countries, mainly related on tax, investment, loan and ease business doing.

The prerequisites fulfillment as G20 countries, are by government legislations replacement rule no.1 2017 about financial information access to taxation importance. This draft must be finished soon, before June 2017, so that Indonesia is not failed to be AEol member.

Based on the explanation above, the patterns are as follows:

1. Were there any crashed on norms between the bank confidential principle, that ruled in no.7 1992 Legislations Juncto Legislations no.10 1998 about banking, with no,1 2017 Legislations government replacement about financial information access to taxation importance?
2. How were the confirmed urgency about legislations of law number 9 of 2017 as the country allowance increasing effort ?

[6] G-20 or 20 main economic group is the 19th big world's economy, added with European union.

[7] MCAA is a multirateral instrument to facilitate the AEOI implementation, using Common Reporting Standard baseed on Convention on Mutual Administrative Assistance in Tax Matters, that had signed by Indonesia on 3rd Nov 2011 in Cannes, France. It is also had validated by presidential issued no.159 2014.

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3. How were Malaysia's Commitment To Implement Automatically Exchange Information Relating To Financial Accounts (*AEOI*) ?

Research Method

This is juridish normatif research with *comparative approach*.

Discussion

1. Bank Confidential Principle Implementation after The Legislations Replacement Government Rule Appliance no.1 2017 about Financial Information Access to Taxation Importance.

After the Legislations no.1 2017 replacement government rule, about the taxation information openness, society would not be worried about bank confidential principle, which then was forced to be opened customers' confidential. The worried appealed because of the punishment threat, whether criminal or fee to the bank, which protected the customers' data.

Bank as a financial institution, has a funding activity whether financing or collecting and funding distribution. So, the bank as an intermediation institution is to be mediator between funding and funding need party. One factor to maintain and increase the society's reliability was to keep the bank confidential obligation.[8]

Based on Verse 1 no.28, Legislations no.10 1998 about the replacement Legislations no.7 1992 about banking, which literally was the bank confidential. It was anything that related to customers' information about saving and safekeeping. There was no meaning limitation to this.

Also, based on given definition on verse 1 no.28 Legislations no.10 1998, about the legislations replacement no.7 1992 about banking and other verses. It could be obtained as follows:

1. That bank confidential is related to information about saving and safekeeping customers'
2. That is the bank confidential obligation, except at exception category, based on procedure and applied legislations rule.
3. The prohibited bank confidential opened, is the bank itself or affiliated.[9]

The banking world development, had reached two theories about the confidential. Those were[10]

[8] Adrian Sutedi, (2010), Banking Law as a merger money laundering review, liquidity and bankruptcy, Jakarta: Sinar Grafika, p.1.

[9] Try Widiyono, (2006), Law aspect on banking product transaction operational law in Indonesia, Bogor : Ghalia Indonesia, p. 6.

[10] Kasmir, *Loc. Cit.*

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1. Bank confidential was an absolute characterized (absolute theory): That was the bank's obligation to save the customer's confidential to any customers' business circumstances.
2. The second theory was relative confidential bank. The bank was only allowed to open customers' confidential, if there were any urgent need, such as country's condition

Legislations no.10 1998 about Legislation replacement no.7 1992, regarded to banking. However, it was used bank confidential theory that relatively characterized and could be known on Clause 40 Verse (1). Also, it was also determined the customers' confidential as to saving and safekeeping, except as stated on Clause 41, 41a, 42, 43, 44 and 44 a. Then, those banks voluntarily keep the society's confidential.

Based on Clause 1, no. 1 Legislations no.10 1998 about the Legislation no.7 1992 terms of banking. Regarded to customers, it is a party to use banking service. Then, legislations no.10 1998 about the replacement after Legislations no.7 1992 as to banking. It difference the customers saving and customer debtor.

Based on Clause 1 no.17 Legislations no.10 1998, about the legislations replacement, after Legislations no.7 1992 about banking. Saving customer is themselves who placed the fund in a bank. It is on agreement saving based on the agreement between both. Debtor is a credit or fund facilitated based on Sharia principle. Based on the definition above, then bank customers data divided into two forms:

1. `Saving was trusted fund by society to the bank, based on fund saving agreement, whether on giro deposit, deposit certificate and saving or any similar forms.
2. Credit or fund facilitation based on Sharia principle or similar, based on bank agreement to related to customer.

Based on the bank customers confidential data definition, it was quite similar to financial statement as stated on Clause 2 verse (3), Legislations Replacement Government rule no.1 2017 about the financial information access to tax importance, that determined financial statement as stated on verse 2:

1. Financial account holder identity.
2. Financial account number
3. Financial service institution identity
4. Deposit or financial account amount

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5. Result that was related to financial account

Therefore, based on Clause 2 verse (3) Legislations Replacement Government Rule no.1 2017 about Legislations no.1 2017 as to financial information access to taxation importance. Basically, it could be similar to obligated customers data protected by bank. The absolute theory was not applied anymore.

The confidential theory is absolute characterized. Nowadays, it is not used anymore, because of abused act in taxation field. Almost all countries use bank confidential that relatively characterized. Because the country's importance, Indonesia has right to know the taxpayer financial statement. Hence, the government can prevent the criminal act on taxation. However, tax is a huge country's revenue.

Based on lause 40 verse (1) Legislations no.10 1998 about Legislations no.7 1992 replacement that ruled as to banking. It was ruled about bank confidential that as the same as Clause 35 no. (2), Legislations no.28 2007 about the third replacement after no.9 1983 about regular rule and procedure that stated:

1) If the taxation legislations implementation rule needed information or proof from the bank, public accountant, notary, tax consultant, administration office or other third parties, which has taxpayer relation in tax checking, tax billing or criminal act investigation in taxation field, based on written demand from Directorate General of Taxation.
2) Regarded to verse (1) that related to confidential obligation, to check the need, tax billing or criminal act investigation in taxation. The confidential obligation is eliminated, except to the bank, based on written demand Ministry of Finance.

So, the bank confidential unveiling could only be done to taxation importance, if the taxpayer related is undertaking criminal act on billing or investigation taxation. The confidential unveiling permit based on case per case, not as a whole.

Then, based on Clause 34 (1) Legislations no.28 2007 about the third replacement, after Legislations no.6 1983 about general regulation and taxation procedures, are as follow:

1) Each officers were prohibited to reveal other parties, about anything to the taxpayer, for the sake of their job or position, to run the taxation legislations rule
2) The prohibition as mentioned on verse (1), also applied on experts, which was showed by Directorate

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General of Tax. It was to assist the implementation taxation legislations.

Based on Clause 34 () and (2) Legislations no.28 2007, about the third replacement based on no.6 Legislations 1983, as to public regulation and taxation procedures. Therefore, each officer whether functional, structural and expertise, was prohibited to reveal, distribute or tell the financial information to unauthorized parties. If they did not obeyed the regulations above, based on Clause 41 (1) Legislations Indonesia Republic no.28, 2007 about the third replacement after Legislations no.6 1983 as to public regulation and taxation procedures, which was determined the ignorance officer as stated above, will be entangled by Clause 34, with at the very maximum 1 year jailed and fee at the very most 25 million rupiahs.

Yet, the replacement government rule no.1 2017 about financial information access to taxation importance, was not ruled as to the leaked financial information. Whereas, on the implementation rule, were: Ministry of Finance rule no. 70/PMK.03/2017 about technical functional regarded to financial information access for the sake of taxation importance. It is ruld on Clause 30:

1) Financial information above, as stated on Clause 7 and Clause 17 and information also evidence or information, as stated on Clause 15 and Clause 25, was used to Directorate General of Taxation basis data.
2) Every financial information and evidence as stated on verse (1) was a confidential guarded obligation. It was as on the legislations and international agreement.
3) Every officers, whether functional or structural in taxation field, and pointed expertise by directorate general of taxation, to help the taxation legislations rule implementation, was prohibited to reveal, distribute, or tell any information, evidence as mentioned on verse (1), to unauthorized parties, with legislations rule on taxation field.
4) Every officers, whether structural or functional in taxation field, and pointed expertise by directorate general of taxation to assist taxation legislations implementation, which was not fulfilled the confidential obligation as stated to verse (3) was convicted to Clause 41 Legislations no.6 1983 about the general regulations and taxation procedures, after a few times replacement with Legislations no.16 2009 about the

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replacement government rule determination Legislations no.5 2008 about the fourth replacement, based on no.6 1983 legislations as to general regulations and taxation procedures to be legislations.

3. Legislations of law number 9 of 2017 as the country's revenue increasing effort.

The national legislations rule is a legislation regulation that applies in a country, such as Indonesia. Therefore, the national legislations rule is a made rule by authorized country's institution to be obeyed by all citizens. Pointed legislations rule is aimed to rule the national life. Hence, all citizens to be obligated as legislations rule.

The society fulfillment need based on good legislations. Then, the rule is urgently needed as to the legislations form by certain and standard method. It related to all aspects, such as authorized institution to form legislations rules. Clause 22 A 1945 stated further regulations about legislation making procedure, that is ruled by legislations. Then, it describe on no12 Legislations 2011 about legislations rules form.

Clause 1 Legislations no.12 2011, about the legislations draft, explained by legislations rule form. Legislations rule form is legislation making that encircles planning, arrangement, review, validity or confirmation and invitation. This legislation rule is issued by authorized institution. Therefore, there is structural or procedural in a country. The lower rule legislative institution issued must be based on higher legislative issued institution. All rules have their own characteristics, as follow:

a. Legislation regulation based on written rule form.
b. Legislations regulation formed confirmed and issued by country's institution or authorized officers, whether national or regional.
c. Legislations regulation fulfilled by norms or attitude patterns rule.
d. Legislations regulation tied as a whole and public.

Based on Clause 7 verse (1) Legislations no.12 2011 about legislations rule making, confirmed the hierarchy and types of legislation regulations as below:

a. Indonesia legislations 1945
b. People's consultative assembly decree

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c. Legislations / Legislation government replacement regulation
d. Government regulation
e. President regulation
f. Province regulation
g. City / Town regulation.

Also, based on those regulations, the replacement regulation is similar with legislations. Yet, the legislative replacement government regulation making is different with legislations making. Legislation is House of Representatives regulation formed with presidential agreement altogether (legislative product). Whereas, the legislative replacement government regulation is decreed by president, regards to the urgent condition. Another, it is the government regulation appliance, that has limited terms because of the house of representative agreement, next year. If those regulations are agreed by house of representative, then it will be legislations. Otherwise, it those regulations are disagreed, then it will be revoked.

In regards to legislations replacement government regulation issued, on clause 22 verse (1) legislations 1945, it was confirmed the forced situation. President had right to confirm the regulations or rules, as to the legislations replacement. Jimly Asshididiqie stated:[11]

1. Those regulations are called government regulation as the replacement. It was meant by government regulation forms, as stated on Clause 5 verse (2) legislations 1945. Also, it was stated "president confirmed the government regulation to run as it ought to be." If it was usually confirmed government regulation, then the provisions could be inputted into legislations to replace previous legislations.
2. Principally, the government legislative replacement was not the official government named. It was called as perrpu or legislative replacement government regulation. Then, this named was very different from the constitution RIS 1949 and Legislations 1950 provisions. Both previous legislations are all the same as urgent legislative terms or as similar as perrpu meaning.
3. The government regulation as the legislative replacement, was only decreed by president, if fulfilled the prerequisites ("urgent or forced situation").

[11] Jimly Asshididiqie, (2006), state administration and democration pillars (a piece of law reasoning, Media and Human rights), Press Konstitusi, p. 32.

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Based on the constitutional court no 138/PUU-VII/2009, there were 3 prerequisites parameter of (urgent or forced situation) for president to confirmed the PERPU. Those were:

1. There were urgent condition to finish the law problem quickly, based on the legislations.
2. The needed legislations had been no occupation or exist but not sufficiently.
3. The law emptiness could be overcome by usual procedural legislative making. It was because taking too much time, whereas the urgent condition needed to be certainly finished

Then the arrangement process by legislative government replacement regulation in Clause 52, legislative no.12 2011 about the legislative regulation made. Those were :

1. The legislation government replacement regulation had to be proposed in House of Representative in the next court.
2. The legislation government replacement regulation proposal as stated on verse (1), by undertaken the legislative draft proposal about the confirmed regulation to be legislations.
3. House of Representative gave agreement or disagreement towards the legislative replacement government regulation.
4. Regarded to legislative replacement government rule by house of representative agreement in a plenary session. The legislative replacement government regulation was confirmed to be legislations.
5. Regarded to legislations replacement government regulation, that had not been agreed by house of representative in a plenary session, then that replacement legislations must be revoked and unapplied.
6. Regarded to legislations replacement government regulation must be revoked and unapplied stated as on verse (5), House of Representative must proposed the legislations draft as to legislative replacement government regulation revoked.
7. The legislations draft about replacement government regulation revoked, as stated on verse (6) that ruled all law causes, from that revoke.

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8. Legislations draft about the legislations replacement government regulation revoke, as stated on verse (7). It was confirmed to be legislations, about the revoke in the plenary session on verse (5).

Regarded to the fundamental issued, government legislative replacement regulation no.1 2017 about the financial information access to taxation importance, then those could be considered as follow:

a. The implementation national development of Indonesia, that had aim to prosper all citizens, needed funding from the country's revenue. It is mainly from taxation. Hence, regarded to fulfill the tax revenue, it needed to give wide access to tax authorities. So, they could get any financial information to taxation importance.

b. There were still many access limitations to tax authority, regarded to get any financial information. It was ruled in taxation, banking, sharia banking, stock trade field also other taxation authority. However, it could also cause obstacles to taxation authority in strengthened the taxation data, fulfill the tax revenue need and maintain the effectiveness of tax amnesty policies.

c. Indonesia had tied tightly on the international agreement in taxation field. Indonesia had obligation also to fulfill the engage commitment in implementing automatic financial information exchange (Automatic Exchange of Financial Account Information). Indonesia had also soon formed the legislative regulations as legislations about financial information access to taxation importance before 30th June 2017;

d. If Indonesia had not soon fulfill the obligation based on deadline, Indonesia would be considered as a failed country to fulfill the financial information exchange commitment automatically (fail to meet its commitment). Definitely, it would cause the significant lost to Indonesia. Such as, the decrease as G20 countries, the decrease of investor trust and national economic stability disturbance potential. Also, Indonesia could be the country's illegal fund destination.

e. Based on the consideration implied on point (a) until (d) and the urgent necessary to give wide access for tax authority to receive and to

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obtain financial information for taxation, so the government need to determine the substitute law about financial information access for taxation

Thus, the substitute law for Law No. 1/2017 is as explained in point (C) explaining about below points.

1. Reporting automatic finance information as implied in article (2) subsection (2) that point (a) is conducted for automatic information exchange between Indonesian Officers whose authorization is to give information exchange and Jurisdiction Officers whose duty is to report the information exchange
2. Giving information and proof based on the request implied in article (2) subsection (2) that point (b) is conducted to give information as the officers' request both Indonesian and Foreign Jurisdiction.

Additionally, other important thing of the substitute law is as mentioned in point A previously explained.

Leo Rinaldy stated that the Government Law No 1/2017 determination is actually government solution to implement tax reformation. It is needed because the level of Indonesia Tax discipline is still low. It was proven by only 11 million people from 18.2 million people submit their tax report documents last year. [12]

After the substitute law of No. 1/2017 was legalized, on 23 of August 2017, House of the People Representative (DPR) has legalized it as The Law No.9/2017 about the determination of government law No.1/2017 as The Law. In addition, the considerations about its determination are mentioned in below points, as followed:

1. The implementation of national development in Indonesia aims to create Indonesians' prosperity and welfare. Thus, there must be funding from the State to fulfill the aims. Therefore, wide authority access to get finance information is needed in that the funding may be taken from the tax
2. There are still limited access for Indonesia authority tax to receive and to get the information explained in the Law about taxation, banking, sharia banking, capital market and other Laws which may cause obstacles for tax authority in

[12] http://finansial.bisnis.com/read/20170517/90/654427/ [accessed on 30 of July 2018].

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strengthening basic data of taxation to fulfill the needs of tax and to keep it work effectively

3. Indonesia has agreed the international agreement about taxation and must obey the commitment in implementing Automatic Exchange of Financial Account Information. Thus, Indonesia must soon form the Law about financial information access before 30 of June 2017
4. President has determined the substitute law for government law No.1/2017 on 8th of May 2017
5. Based on point a, b, c and d, Indonesia need to form the substitute law for government law No.1/2017 as the Law

Financial information access in The Law No.9/2017 includes the access to receive and to get financial information to conduct the law of taxation and international agreement in taxation, banking, sharia banking, capital market and other Laws. This access is to support the taxation authority in strengthening basic data of taxation to fulfill the needs of tax and to keep it work effectively.

The realization of Law No.9/2017 was also to fill the commitment of Indonesia in implementing Automatic Exchange of Financial Account Information (AEoI) agreed in the international agreement. This is done to avoid the lowering of Indonesia credibility as G20 member and the trust of foreign investors and to keep Indonesia from illegal funding that disturb the stability of national economy. [13]

The Ministry of Finance, Sri Mulyani, stated that the access of financial data is considered as an optimism feeling to achieve the target of tax on 2018 which is about 1.609.4 trillion rupiah with tax assumption ration of 11.5% from the Domestic Bruto (the market value of all products produced by a country in certain period). Hence, the target increases up to 9.3% from the previous years. The legalization of the legislation as Law ensured the world that Indonesia has been ready to implement Automatic Exchange of Financial Account Information (AEOI) on September, 2018. Additionally, this act also deleted the hesitation of Indonesia commitment to improve the transpiration of financial sector. Besides that, the tax shifting out could be minimalized for taxpayers.

[13] https://www.gatra.com/ [accessed on 31 of August 2018].

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The implementation of the Law No.9/2017 will be effective if it is supported by the human resources in the general Directorate of Tax, especially in checking and collecting either qualitatively of quantitatively. This support will stimulate others so that the coordination of other parties, banking, is also fulfilled. The implementation of data exchange, based on article 35A about tax procedures, cannot work well because there was no written agreement specifically among institution and banking leaders.

Other supporting element is integration data on taxation system so that the officers may more focus on controlling the administration. The administration is still being the prominent duty as long as the State expects quantitative result.[14] Thus, through the determination of new Law No.9/2017, is expected that the Tax General Directorate has potency to increase the basic data of tax while doing the spreading system and information exchange.

4. Malaysia's Commitment To Implement Automatically Exchange Information Relating To Financial Accounts (*AEOI*).

In efforts towards global transparency, over 100 countries have agreed to automatically exchange information relating to financial accounts (*AEOI*) with each other under the Convention on Mutual Administrative Assistance in Tax Matters (*Convention*). The OECD had also developed the Common Reporting Standards (*CRS*) which set out the common information to be collected and reported by financial institutions of participating jurisdictions, for purposes of implementing AEOI locally.

As part of Malaysia's commitment to implement AEOI, Malaysia had:[15]

a) on 27 January 2016, signed the Multilateral Competent Authority Agreement which details the rules on exchange of information between participating jurisdictions; and

b) on 25 August 2016, signed the Convention in view of fostering all forms of administrative assistance in tax matters with the other signatories of the Convention.

On 23 December 2016, the following legislations were introduced in Malaysia:[16]

[14] IBID.
[15] https://www.bakermckenzie.com [accessed on 31 of August 2018].

[16] *IBID*.

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a) the Income Tax (Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information) Order 2016;

b) the Income Tax (Convention on Mutual Administrative Assistance in Tax Matters); and

c) Income Tax (Automatic Exchange of Financial Account Information) Rules 2016 (*AEOI Rules*).

Under the new legislations, Malaysia has committed to exchange information with respect to different types of accounts opened and maintained by the Malaysian financial institutions in accordance with the following timelines:[17]

Type of accounts		Intended date for the exchange of information
New account (generally refers to a financial account opened on or after 1 july 2017)		September 2018
Pre-existing account	Individual high-value account	September 2018
(Generally refers to a financial account opened as of 30 june 2017)	Individual low-value account	September 2018 or september 2019, depending on when the account is identified as reportable
	Entity account	September 2018 or september 2019, depending on when the account is identified as Reportable

The Inland Revenue Board of Malaysia (*IRB*) has announced that the first list of reportable jurisdictions will be published by 15 January 2018, and will be revised by 15 January of the following years.

The AEOI Rules, which came into effect on 1 January 2017, implements the CRS in Malaysia, with certain modifications. The AEOI Rules apply to every Reporting Financial Institution, which is defined as a Financial Institution that is resident in Malaysia (excluding any branch of that Financial Institution that is located outside of Malaysia) and any branch of a Financial Institution that is not resident in Malaysia if that branch is located in Malaysia. A Financial Institution is defined under Section VIII of the CRS.

[17] *IBID*.

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Under the AEOI Rules, every Reporting Financial Institution is required to comply with the following:[18]

1. Due Diligence Requirements

Each Reporting Financial Institution is required to identify the relevant reportable accounts maintained by the Reporting Financial Institution by applying the relevant due diligence procedures as prescribed under the CRS. There are different due diligence procedures depending on whether these are pre-existing accounts or new accounts, and whether such accounts are held by individuals or entities. The Reporting Financial Institutions are required to complete the due diligence review in respect of its account holders in accordance with the timeline below:

Type of accounts		Deadline For Completion Of Review
Pre-existing high value individual account		30 June 2018
Pre-existing low value individual account		30 June 2018
Pre-existing entity account	Agregate account balance or value that exceeds USD 250.000	30 June 2018

Type Of Accounts		Deadline For Completion Of Review
	As of 30 June 2017	
	Agregate account balance or value that does not exceed USD 250.000 as of 30 June 2017	Within the calendar year of the following year in which Agregate account balance or value exceed USD 250.000

2. Reporting Obligations

Every Reporting Financial Institution is required to furnish an information return to the Director General of Inland Revenue (**DGIR**) on or before 30 June of the year following the calendar year to which the return relates. As such, the first reporting in respect of the calendar year 2017 will be required to be made to the

[18] *IBID.*

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DGIR by 30 June 2018. The reporting would need to be made via the IT platform maintained by the IRB, the details of which are expected to be released later this year.

The information return will need to contain certain details relating to each reportable account, including the name, address, jurisdiction(s) of residence, tax identification number(s) of the account holders, and the account balance or value as of the end of the relevant calendar year (or, if the account was closed during such year, the closure of the account).

The Finance Act 2016, which was gazetted on 16 January 2017, introduces new penalty provisions to the Malaysian Income Tax Act (*MITA*). Under the proposed new Sections 113A and 119B of the MITA, it is an offence for any person to make an incorrect or false return, or fail to comply with any rules made to implement or facilitate any mutual administrative assistance arrangement (including the AEOI Rules).

Any person who is convicted for an offence under these new provisions will be liable to a fine of not less than RM 20,000 and not more than RM 100,000 and / or imprisonment for a term not exceeding six months.

Most of the players in the financial industry are Financial Institutions within the meaning of the CRS, including banks, insurance companies, brokers, investment funds and trust companies. However, the classification rules under the CRS and AEOI Rules are complex and it is important for the industry players to undertake a detailed assessment of their internal activities in determining how these rules apply to them.

With the introduction of the AEOI Rules, it is also timely for Malaysian financial institutions to review and refine the customer due diligence procedures and internal processes to ensure that reportable accounts are identified in accordance with the AEOI Rules. On-going monitoring for changes in circumstances is also crucial in ensuring that information relating to the account holder maintained by the financial institutions is accurate and up to date.

In light of the broad list of jurisdictions adopting and enforcing the AEOI, individual taxpayers should also be cognizant that the Malaysian government will receive financial information of Malaysian residents relating to bank accounts maintained outside of the country. For high-net-worth individuals in particular, AEOI and CRS would result in significantly increased transparency in

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relation to their financial assets and wealth management structures. In this regard, it would be prudent to undertake a review of the existing structures to consider if there are any historical non-compliance issues which need to be addressed via any applicable tax amnesty programmes or voluntary disclosure schemes. Tax and foreign exchange control rules will also need to be considered and assessed as the exchange of information will further bring in light any non-compliance in these areas.

Conclusion

Based on the explanation above, this study can be concluded as below points, are:

1. Almost all countries in the world use relative theory because the country has interest on the financial information of the tax. Thus, the government can prevent the taxation crime because, nowadays, tax is the funding resource of a country. It is in accordance with article 40, subsection (1) on the Law No.10/1998 about the alteration of Law No.7/1992 explaining about banking. In addition, it is also in line with article 35, subsection (2) of the Law No.28/2007 about the third change of Law No.6/1983 explaining about general determination and tax procedures. This Law rules the opening of bank secret for only taxation matters. The implementation of that Law is mentioned in article 41, subsection (1) of the Law No.28/2007 about the third change of Law No.6/1983 explaining the general procedures of tax, in which an officer who does not meet the requirements in article 34 will be arrested one year with 25 million rupiah as the fine. The rule of sanction is mentioned in article 30 of Ministry of Finance No.70/PMK.03/2017
2. The determination of substitute law No.1/2017, the Law No.9/2017, ensured the world that Indonesia ensured the world that Indonesia has been ready to implement Automatic Exchange of Financial Account Information (AEOI) on September, 2018. Additionally, this act also deleted the hesitation of Indonesia commitment to improve the transpiration of financial sector. Besides that, the tax shifting out could be minimalized for taxpayers.

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