

Legal Research on Customer Identification of Financial Institutions in My Country in the Era of Information Transparency

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Abstract

In September 2020, FATF issued a China report on anti-money laundering to China. In December of the same year, the OECD released a peer review report on CRS. The two reports proposed changes to the "substantial compliance" of customer identification work. High demands. In the field of budget information exchange and anti-money laundering, a large number of tickets have been generated due to customer identification problems, the identification of customer information still has a single collection channel, the absence of authoritative technical support, the weak legal awareness and procedural concepts of front-line staff, and the information of voluntary agencies Recognize real problems such as formality. Based on this, the practice of automatic information exchange combined with the target and the status quo of anti-money laundering propose constructive countermeasures to improve the identification mechanism of customer identification information of internal financial institutions.

Keywords

Anti-money laundering; Customer identification; Automatic exchange of tax information.

1. Origin and Value of Customer Identification System in Financial Institutions

1.1. The Origin of Customer Identification System of Financial Institutions

The financial action task forces on money laundering (hereinafter referred to as FATF), established in 1989, set off a wave of international anti money laundering movement. In 1990, the organization formulated the "40 condition proposal" reflecting the basic framework of anti—money laundering, laying a foundation for the development of International Anti Money Laundering Cooperation and the proposal of customer identification system. In 2014, the organization for economic cooperation and development (hereinafter referred to as OECD) and the group of G20 jointly issued the standard for automatic exchange of financial information in tax matters (hereinafter referred to as "AEOI standard"), It puts forward the idea of exchanging tax related information in batch form in order to crack down on the international use of cross-border organizations or financial institutions to evade tax. In the context of combating the crime of money laundering and international tax evasion, customer identification has become the core topic.

1.2. The Value of Customer Identification System in Financial Institutions

The customer identification system of financial institutions originated from the wave of international anti money laundering and the automatic exchange of international tax information. Customer identification is a key measure to carry out anti money laundering. It is an important pre task to stabilize the national financial system and avoid the bank trust crisis and payment crisis caused by the proliferation of money laundering. On the eve of the automatic

exchange of tax information, multinational corporations took advantage of the differences and mismatches in the tax systems of different countries to evade tax collection and payment, resulting in serious tax base erosion and profit transfer in various countries and regions [1]. In this regard, OECD and G20 jointly launched the cooperation action on the automatic exchange of international tax information. All countries shall carry out customer identification in accordance with specified procedures and exchange information with members after information integration. In order to promote members to effectively carry out customer identification and more effectively crack down on harmful international tax practices, OECD puts forward requirements for strengthening tax transparency [2].

2. Current Situation and Deficiency of Customer Identification System in Financial Institutions

2.1. Current Situation of Customer Identification System of Financial Institutions

In October 2020, G20 finance ministers and central bank governors expressed support for FATF's efforts and achievements in preventing the absorption of key financial assistance for the epidemic from anti money laundering elements during covid-19 [3], as one of the initiators of the automatic exchange of international tax information, Both countries have made efforts for identification and information collection from different aspects of anti-money laundering and international tax information exchange cooperation.

In April 2019, China passed the fourth round of FATF evaluation procedure. In the mutual evaluation report issued by FATF, it affirmed China's efforts in Anti Money Laundering Cooperation, and also pointed out that China did not meet the standard requirements in customer identification and record preservation [4]. In order to meet the fifth round of FATF assessment, China has also carried out corresponding system improvement and legal renewal, For example, China has put forward the whole process risk identification requirements of "customer identification" in the measures for the administration of customer due diligence and the preservation of customer identity data and transaction records of financial institutions (Revised Draft for comments), and stipulated the crime of "self-money laundering" in the latest amendment Xi to the criminal law of the people's Republic of China. In December 2020, OECD issued a peer review report, which affirmed China's compliance with core requirement 1 (domestic legal framework) and core requirement 2 (international legal framework). However, the overall evaluation of the implementation of China's international tax information automatic exchange standard is only "generally compliant" [5], which reflects that there may be non-compliance problems in China's customer identification, customer information collection and tax transparency of beneficial owners under the automatic exchange of tax information.

2.2. Deficiencies of Customer Identification System of Financial Institutions in China

(1) The implementation of voluntary agency identification remains at the formal level

There are some specific problems in the implementation of identification work, such as asymmetric mechanism and non-standard operation, which makes the identification work not implemented, only "formal compliance" rather than "substantive compliance" [6]. Based on the background that China was pointed out in the new round of information exchange mutual evaluation that the transparency of beneficial owners did not meet the standard, the state began to vigorously rectify the phenomenon of non-standard identification of customer identity information. In passive acceptance, compulsory institutions faced mandatory information exchange identification and compliance requirements, but the original information

identification mechanism still remained at the level of "formal compliance", The principle of "know your customer" is not really fulfilled [7]. According to the current requirements of China's corresponding laws and regulations, customer identification roughly includes the collection and archiving of customer identity information; Verification and verification of customer identity information; Assess the risk level by level and determine the object of due diligence in the later stage; Take continuous identification measures for customer identity in the change of customer identity information. In the face of complex compliance requirements, the phenomenon of repeated "punishment" will be more serious if the compulsory institutions do not actively forge ahead, break the inherent concept, strengthen the procedural concept and update the information identification mechanism.

(2) The information of beneficial owners lacks accuracy, systematicness and authority

Facing the complex ownership structure, the obligatory institution has the obligation to penetrate and identify the actual controller behind the company to determine the information of the beneficial owner of the company. Therefore, the acquisition of authoritative, accurate and systematic information has become the key to the performance of information identification. For example, in the ownership structure of company a, which has completed the listing of s shares, the shareholding ratios of company a, company B, natural person C, company D and company E as shareholders are 28%, 9%, 26%, 26% and 11%, respectively. Among them, company e owns 100% of the controlling equity of company a and company B. in the penetration identification, natural person C holds more than 25% of the equity and should be recognized as the beneficial owner, Company e directly or indirectly owns 48% of the equity of company A. at this time, it is necessary to refer to the collected information to identify the beneficial owner behind company E. if 85% of the equity of company E is held by company X and company X is controlled by natural person Z in real time, but they are respectively held by natural persons g, P, h, I and O whose equity is less than 25%, The per capita shareholder of X has the right to make decisions on behalf of the company, and the actual shareholder of X has signed an agreement with the company. In short, the information collection channel of the subject of identity recognition obligation is single, and there is a lack of information certification authority and authoritative and safe information collection system, resulting in the lack of authenticity, authority and systematicness of the collected information itself.

(3) The low tax transparency of beneficial owners hinders the promotion of identification work

In the international tax cooperation to combat international tax evasion and improve tax transparency, countries all over the world have reached a consensus and gradually formed two tax transparency standards - the tax information exchange standard upon request (EOIR) and the automatic information exchange standard (AEOI) [8], in which EOIR refers to the tax authorities of one country according to the request of another tax authority, Provide tax related information related to the competent tax authority. AEOI standard is the behavior standard agreed between countries or regions to automatically share tax information about taxpayers in batch form. Its internal structure is composed of the agreement between multilateral competent authorities for the automatic exchange of tax related information in financial accounts (MCAA) which stipulates the implementation procedures and legal framework, and the common reporting agreement (CRS) which stipulates the procedures for identifying, collecting and submitting tax related information among financial institutions. From 2020, The automatic information exchange peer review group (APRG) under the global forum has been committed to promoting the parallel mechanism of EOIR and AEOI, and carried out online remote conference in March 2020 to further promote the AEOI peer review mechanism. The peer review report in December 2020 revealed that there are problems in the transparency of beneficial owners in China, which refers to that China's submission content is not comprehensive and accurate, and some institutions only pay attention to the surface form and

element compliance of basic customer information, When it is necessary to penetrate and identify the actual controller, it is not accurately identified for various reasons, resulting in insufficient transparency of the exchange object.

(4) The concept of information confidentiality makes the information identification mechanism stagnant

The contradiction between the confidentiality concept of financial institutions and the acquisition of customer information for tax purposes has been widely discussed and studied. In order to combat the crime of international tax evasion and money laundering, obtaining bank information for tax purposes, as an exception to the bank confidentiality system, compromises the debate and conflict between the confidentiality tradition of financial institutions and the acquisition of customer information, However, this compromise has not really solved the crisis of information disclosure. In the evolution of international tax information transparency, the issue of information confidentiality has always been the most important and sensitive topic in the automatic exchange of international tax information, The penalty case of information disclosure of China CITIC Bank at the end of March 2021 also reflects that there are still imperfections in China's customer information confidentiality mechanism and customer information collection and management, and the news of selling users' personal data letters is also occasionally heard. On the one hand, we should constantly consolidate the customer information protection mechanism. On the other hand, we should establish an information identification and collection system to fulfill the obligation of information identification. The system authority between technicians and supervisors extinguishes the possibility of realizing information transparency in technology and information confidentiality in practice. The system authority mechanism is one of the important mechanisms for protecting information. Within each subject, Principals at different levels have different access to information, and individuals in charge of data development at the front line also carry out program development and maintenance based on the requirements within the scope of the task. However, how to achieve the win-win of information confidentiality and the evolution of information recognition mechanism has become the core of this problem.

3. Suggestions on the Improvement of Customer Identification System In China

3.1. Give Full Play to the Risk Prevention and Control Role of the Legal Adviser of the Institution, and Improve the Legal Awareness of Employees In Identification Work

At present, with the collection of customer information in China, the relevant legal norms of identity recognition are becoming more and more perfect, and financial institutions have also established a more comprehensive customer identity recognition mechanism, but the staff of financial institutions still have poor awareness of identity recognition procedures and cannot understand the position of legal documents, so the legal adviser system should be effectively used, Give full play to the role of the legal counsel team of the institution, from the publicity and training of legal documents to the participation and guidance of legal counsel, improve the legal awareness of staff in customer identification, and effectively solve the problem of non-compliance in identification. According to the data of Tong percent ticket, the reasons for fines for failing to fulfill the customer identification obligations are among the best, which reflects that to solve the vicious circle of fines, we should not only optimize the system level and follow up the legal level, but also improve the procedural awareness and legal concept of operators. In 2020, Harvest Fund Management Co., Ltd. issued an announcement to remind investors to continuously improve customer identity information, put forward requirements for individual

investors and non-natural person investors to improve personal information, and prompt relevant legal issues and legal risks from the initiative level. This is a manifestation of legal awareness in the identification work carried out by the company itself.

3.2. Introduce Block Chain Technology, Establish A Unified Information Sharing Mechanism, and Complete the Diversified Integration of Information Acquisition Channels

Limited by the constraints of technology and confidentiality awareness, financial institutions have not fully realized the interconnection and sharing of financial institution information and other business system information. Based on this, a unified information sharing mechanism is established to realize the identification obligations of banks, insurance securities and other information subjects with industrial and commercial administrative departments, tax departments, public security departments. The information interconnection of information authoritative channels such as courts is imperative, and some scholars have put forward suggestions on establishing an information sharing mechanism, but they only stay at the level of scholars' suggestions and do not put forward practical technical solutions, which only scratch the surface of the real problem. However, with the development and application of block chain technology, the information interconnection mechanism has taken a turn for the better. Block chain technology refers to the technical method of using technical conduit to establish a system platform with the characteristics of "tamper proof", "operation trace", "group maintenance", "traceability", "data transparency" and "high credibility". Based on the consistency between block chain technology and the concept of information identification and sharing mechanism in terms of operation mode, data security and information diversity, it is proposed to enter block chain technology to establish a unified information sharing mechanism and complete the diversified integration scheme of information acquisition channels. The practical experience of Shenzhen's Roma integration platform, Guizhou block chain targeted poverty alleviation system and urban cross regional and cross departmental data sharing system provides a model for the application of block chain technology to the information exchange and interconnection of government departments. The security and transparency of platform data conforms to the inherent confidentiality concept and tradition of obligatory subjects, and objectively contributes to the realization of data security.

3.3. Diversified Linkage of Emerging Technologies to Improve the Accuracy of Customer Identification

The subject of identity recognition obligation should strengthen the application of emerging technologies. The promotion and application of biometric verification systems such as fingerprint recognition technology, 3D face recognition technology and voice recognition technology will maximize the accuracy of customer identity recognition and solve the problem that the traditional password account model cannot penetrate the real users of the confirmed account, Realize the transformation from mechanized password account verification mechanism to intelligent identification mechanism.

In March 2021, Beijing bank, China's largest city commercial bank, signed a cooperation agreement with the national Internet plus trusted identity authentication platform (CTID platform), which further strengthened the authority, accuracy and unity of identity information. CTID platform is a project of "Internet plus" major project jointly launched by the Central Committee of the CPC Central Committee on network security and information technology, the national development and Reform Commission, the Ministry of science and technology and the Ministry of public security. Therefore, the CTID identity authentication platform is introduced to build and improve an authoritative and efficient automatic identity verification system. Mobile phone banks are the main platform for the construction of the platform. Online banking

and offline counter business are identified and managed through the authentication system. This has improved the transparency of identification to a certain extent, effectively implemented the identification work, and greatly improved the effectiveness of anti money laundering supervision.

3.4. Learn From International Experience, Revise High-level Legal Documents and Improve the Legal Norms of Information Identification

The OECD Model and BEPS action plan constantly put forward requirements for the information transparency of beneficial owners. In the face of increasing international requirements, China has adopted the mode of issuing departmental regulations to deal with the renewal of rules [8]. This mode is selected because the relevant mechanisms and norms in China are not perfect and cannot be regulated in the form of law. However, with the development of the information identification mechanism and norms of beneficial owners in China, the establishment of a systematic identification standard system has become increasingly mature. In practice, the actual controller often evades the information identification behavior of obligatory institutions by signing the holding agreement and establishing a complex ownership structure, which makes the customer identification face challenges. According to the provisions on the effectiveness of contracts in China's civil code and the minutes of the Ninth People's Congress, the agency agreement for avoiding information identification is still a valid contract and is protected by the civil code, which hinders the acceptance of information to a certain extent.

4. Conclusion

Combined with the practice of automatic exchange of tax information and the current situation of anti-money laundering in China, this paper puts forward constructive countermeasures to improve the customer identification information identification mechanism of financial institutions in China.

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