

OECD publishes Common Reporting Standard

February 18, 2014

In brief

The Organisation of Economic Cooperation and Development (OECD) on February 13, 2014 released the Common Reporting Standard (CRS), which seeks to establish a new global standard for automatic exchange of financial account information between Governments.

As with the Foreign Account Tax Compliance Act (FATCA), the CRS model imposes obligations on financial institutions (FIs) to identify reportable accounts and obtain the accountholder identifying information that is required to be reported for such accounts with their local tax administration. It also provides the scope of the information to be collected and exchanged with the accountholder's residency country.

A total of 42 countries have already committed to adopting the CRS and the expectation is that at least some of these agreements will be entered into later this year. The documents released are:

1. an introduction and overview on automatic exchange of information
2. text of the model Competent Authority Agreement (CAA) and CRS due diligence processes.

While the documents released do not include any specific timelines, we understand that FIs in countries which adopt the standard will be required to undertake the necessary due diligence obligations in 2016 with reporting starting in 2017.

In detail

Model CAA

The CAA is arranged in 7 sections. Section 1 deals with definitions but is less comprehensive than Article 1 of the Model 1 intergovernmental agreement (IGA) under FATCA as some of the definitions have been moved to form part of the CRS Annex.

Section 2 covers the type of information to be exchanged and this follows the Model 1 IGA

with the addition that the tax residencies and not citizenship of the account holder are also required.

Section 3 deals with the time and manner of exchange of the information. Competent Authorities are required to exchange the information by September of the year following the year to which the information relates. This is the same as is required under the Model 1 IGA.

Section 4 requires the Competent Authorities to notify each other in the event of incorrect or incomplete reporting or non-compliance by an FI in their jurisdiction. Each Competent Authority is also responsible for addressing errors or non-compliance through its domestic laws.

Section 5 contains the confidentiality and data safeguards that need to be adhered to by the Competent

Authorities. As noted in the overview to the documents, a jurisdiction must have the legal framework and administrative capacity and processes to ensure confidentiality of data received before entering into an agreement. This may mean that certain jurisdictions will be unable to enter into a CRS agreement until they meet these requirements.

Sections 6 and 7 allow for consultations between the Competent Authorities, amendments to the agreement and the term of the agreement, including suspension in the event of significant non-compliance and termination of an agreement with 12 months' notice.

CRS due diligence processes

The CRS Annex deals with due diligence processes to be followed and is similar to Annex 1 of the Model 1 IGA. As with the Model 1 IGA, the CRS Annex sets out the due diligence processes for pre-existing and new individual and entity accounts. This section also provides various definitions that were not included within the CAA.

The following main points have been identified as areas of difference from the Model 1 IGA.

- The CRS expands the definition of passive nonfinancial entity (NFE) which will require the identification of the residency of controlling persons of investment entities that are not within a participating jurisdiction.

Observation: This represents a major change from FATCA and may create confusion as it appears to treat entities that are within the definition of an FI as passive NFEs. Guidance on how this is to be interpreted is required as soon as possible.

- Removal of the 'regularly traded on an established securities market' rule that exempted certain debt and equity interests of investment entities and other FIs from being treated as financial accounts.

Observation: This has the potential to have a large impact on investment entities, requiring many more entities to report information on their equity and debt interests holders than is currently required under FATCA.

- Cash value insurance contracts are contracts that have any cash value and unlike the Model 1 IGA are not limited to those with a cash value in excess of \$50,000.

Observation: Commentators had already noted the limited amount of contact FIs issuing these contracts have with their holders, the burden will only increase as many more accounts will now need to be reviewed and identified.

- Documentary evidence is defined as it is under the Model 1 IGA, but omits documents that are included in attachments to qualified intermediary agreements.

Observation: This omission should have a limited impact as most of the documents that are included in these attachments are permitted under the other categories of documents that are acceptable.

- The de minimis account balance or value thresholds for pre-existing individual accounts that applied under FATCA have also been removed. However, the threshold for when a pre-existing individual account is considered to be high value remains.

Observation: Organizations that have chosen to rely on such thresholds for any combined FATCA

and CRS due diligence review will now need to reassess that decision in the light of this development.

- Pre-existing lower value account due diligence includes the option of relying on a residence address based on documentary evidence to determine an account holder's status as an alternative to an electronic search for indicia.

Observation: The ability to use this option will depend on how the documentary evidence requirement can be applied in practice and may not be as useful as it first appears where the residence is not held in an electronically searchable form.

- The indicia have been modified to reflect the fact that the CRS will focus on the tax residency of an account holder, but bring in additional requirements in relation to accounts where there is a 'hold mail' instruction or 'in care of address' that is the sole address and no other indicia are associated with the account.

Observation: While the changes are understandable, the fact that they are different from FATCA presents implementation issues with respect to due diligence processes organizations have developed.

- Pre-existing entity account thresholds do not include the higher threshold of \$1 million and so the monitoring of account balances around \$250,000 becomes necessary if thresholds are applied.

Observation: As with FATCA, whether to apply the threshold or not is a decision that can be made in relation to all accounts or a clearly identifiable separate group.

- For accounts that have been closed there is no requirement to report the balance of such an account and only requires reporting of the fact that the account has been closed.

Observation: While a simplification from FATCA, it suggests organizations will need to implement two different processes to ensure they meet both the CRS and FATCA requirements. Both CRS and FATCA must be supported by local laws and regulations. This has the potential to introduce significant

variability in compliance requirements. FIs that must comply will need to consider the requirements for both CRS and FATCA by jurisdiction, and implement a program that is compliant across the various jurisdictions.

The takeaway

The details released on February 13 will at least allow firms to determine the scope of their obligations under the CRS but still leave many questions

to be answered. The OECD is currently developing commentary to accompany the CRS which is expected to be published in June. This will hopefully explain how the CRS is to be implemented and strike a balance between what's workable in practice and minimizing the costs of implementation.

A more detailed review of the changes and their impact for those currently implementing FATCA projects will follow.

Let's talk

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Click the link below to view PwC FATCA contacts in each country

<http://www.pwc.com/us/en/financial-services/fatca-contacts.jhtml>

For more information

- [OECD announcement](#) on the Common Reporting Standard
- The [Common Reporting Standard](#) as published
- See PwC's [prior coverage of the Common Reporting Standard](#).
- For thought leadership regarding FATCA guidance and implementation please see PwC's [FATCA Publications archive](#)