**Automatic Information Exchange in Tax Matters**

Next stop – The Common Reporting Standard (“CRS”)

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**What is CRS?**

The Common Reporting Standard (CRS), formally referred to as the Standard for Automatic Exchange of Financial Account Information, is an information exchange standard developed by the Organisation for Economic Co-operation and Development (OECD).

In recent years, developments in the field of automatic information exchange in tax matters have increased considerably. The driving force behind CRS arises from the success of another automatic exchange of information regime in tax matters, that is, the Foreign Account Tax Compliance Act (“FATCA”) implemented by the USA.


The EU’s Council Directive 2014/107/EU implements CRS. This means that Maltese “financial institutions”, are required to implement CRS procedures as from January 2016.

In principle, CRS is based on similar concepts to FATCA and expands on what is already being automatically exchanged under the EU Savings Directive.

There are some specific differences between CRS & FATCA, one of which is that while FATCA aims at identifying and reporting US citizens and residents, CRS focuses on residents of all jurisdictions participating in CRS – and consequently has a wider purport.

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**Who will be affected by CRS?**

CRS impacts financial institutions (“FIs”) as defined in the OECD Standard and the EU Directive. Furthermore, the term is explained in the OECD Commentaries to CRS.

A FI, for CRS purposes, includes any entity that:

(i) accepts deposits in the ordinary course of a
banking or similar business;

(ii) holds, as a substantial portion of its business, financial assets for the account of others;

(iii) is engaged (or holds itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, notional principal contracts, insurance or annuity contracts or any interest (including a futures or forward contract or option) in such securities, partnership interest, commodity, notional principal contract, insurance contract or annuity contract;

(iv) is an insurance company (or the holding company of an insurance company) that issues or is obligated to make certain payments with respect to a financial account.

Although the above definition is far reaching, there are various exceptions and certain FIs may fall outside the scope of CRS and be classified as Non Reporting Financial Institutions.

From 2016, under the current requirements, Maltese FIs will be at least required to comply with CRS as adopted by the EU Directive. In practice, this means that the relevant accounts to be reported upon yearly to the Maltese tax authorities by each FI will relate to residents of EU jurisdictions. This requirement will need to be monitored and updated if the EU / Malta sign CRS agreements with non-EU jurisdictions.

The EU Directive refers to the OECD Commentaries to CRS that assist in interpreting the various definitions contained in CRS. Furthermore, the local tax authorities are expected to issue additional Regulations and Guidelines in order to assist Maltese FIs to comply with CRS.

Unlike FATCA, CRS does not impose a punitive withholding on a non-compliant FI. However, domestic penalties are expected to be imposed in this respect.

What is the next step?

CRS compliance presents substantial business and operational challenges, ranging from the identification and documentation of customers to the FIs on-boarding and I.T. systems. This may affect multiple functions (tax, legal, back-office administration, operations, IT, etc.) and may consequently require time and resources to address.

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