



FStaxworld Your May snapshot

In this month's FStaxworld, we analyze the highlights of the newly-released Swiss CRS Ordinance, further illustrating the rules for CRS compliance in Switzerland.

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The View from Deloitte

Dear Reader,

On 18 May 2016, the Swiss Federal Council initiated the consultation on the CRS Ordinance, which will last until 9 September 2016. The Ordinance supplements the CRS Act (our detailed analysis of the CRS Act available [here](#)) by providing two key elements for the implementation of CRS in Switzerland:



- Additional clarification where the CRS Act delegated certain decisions to the Federal Council; and
- Supplemental provisions further specifying the implementation of CRS in Switzerland.

Aiming to ensure that Swiss Financial Institutions (FIs) do not suffer disadvantages compared to competitors in other financial centers, many provisions are based on (or at least inspired by) the implementing legislation of other jurisdictions.

Below please find an overview of the key provisions set forth in the draft Swiss CRS Ordinance:

Section 1 – The Swiss “white list” (Art. 1)

- The draft CRS Ordinance specifies that all jurisdictions committed to implement CRS plus the U.S. will be treated as Participating Jurisdictions and, thus, no look-through is required for Professionally Managed Investment Entities type FI Account Holders resident in such jurisdictions. While several “white lists” include all committed jurisdictions (e.g. the ones from the UK and certain UK territories), the Swiss inclusion of the U.S. stands apart. Presently, only Luxembourg joins Switzerland in treating the U.S. as a Participating Jurisdiction.
- Please note that the Explanatory Notes indicate that the Swiss “white list” will be temporary. However, no expiration date is set. Rather, the Federal Council will likely amend the CRS Ordinance once the “white list” expires, rather than eliminate it entirely.

Section 2 – Additional Non-Reporting FI types (Art. 2 to 5)

In addition to the Non-Reporting FI types mentioned in CRS or the Swiss CRS Act, the following categories of FIs are considered to be Non-Reporting FIs per the draft CRS Ordinance:

- Certain Swiss collective investment vehicles structured as FCPs, SICAVs, LPs or SICAFs as well as publicly traded investment companies;
- Certain Swiss co-ownerships;
- Swiss investment advisors and investment managers that only provide investment advisory and investment management services with respect to assets held with a Swiss or non-Swiss FI based on a Power of Attorney or as a director; and
- Central securities depositories.

Section 3 – Additional Excluded Account types (Art. 6 to 11)

As with Non-Reporting FIs, the draft CRS ordinance specifies additional Excluded Account types, i.e. accounts excluded from any CRS documentation, review and reporting obligations, such as:

- Certain accounts held by notaries and lawyers (so-called “Form R Accounts”)

where the new rule, agreed with the U.S. for FATCA purposes, will also be applicable under CRS;

- Accounts for capital deposits;
- Dormant accounts with an account balance that does not exceed CHF 1'000;
- Accounts that are Excluded Accounts under local law in the client's jurisdiction ("home country rule");
- Accounts of Swiss Associations ("Vereine") that have no commercial purpose; and
- Estate Accounts irrespective of the applicable inheritance/estate law (excepted status ensues from the receipt of a death certificate or similar document and applies until the dissolution of the estate or its transformation into another legal arrangement).

Section 4 – Residence of FIs in Switzerland (Art. 12 to 14)

- The draft CRS Ordinance provides additional clarification regarding the alignment of the tax residence definition under CRS and under Swiss income tax rules. It also specifies that Swiss tax-exempt FIs, like certain Swiss Cantonal banks, are treated as resident in Switzerland for CRS purposes.
- Further, collective investment trusts (e.g. investment or unit trusts), if subject to foreign regulatory supervision, are not considered to be Swiss FIs, irrespective of the Trustee's residence.

Section 5 – Alternative provisions from the OECD Commentary (Art. 15 and Annex)

- Unless otherwise stipulated in an applicable agreement, the draft CRS Ordinance allows Swiss FIs to rely on the alternative provisions from the OECD Commentary regarding Group Cash Value Insurance Contracts, Pre-existing Accounts and Related Entities.

Section 6 – Details on general reporting obligations (Art. 16 to 20)

- The draft CRS Ordinance provides some high-level information regarding the characterization of certain payments. However, it is expected that more detailed information will be included in the Swiss CRS Guidance Notes.
- In addition, certain technical details relating to insurance policies have been clarified.
- Of great interest, the draft CRS Ordinance allows Swiss FIs not only to report the account balance and relevant payments in the currency of the account, or in U.S. Dollars or Swiss Francs, but also in the reference currency chosen for a specific client relationship.

Section 7 – Details on due diligence obligations (Art. 21 to 24)

- While the Swiss CRS Act requires a Swiss FI to block an account if not all CRS relevant information is obtained within 90 days after the account opening, the draft CRS Ordinance provides for a welcome relief in this respect. If only the TIN cannot be obtained within 90 days after the account opening (for whatever reasons), the account blocking requirements are not applicable. Instead, Swiss FIs must use reasonable efforts to collect the TIN until the end of the second full calendar year following the account opening. Please note that CRS reporting (if any) is not delayed in such cases but the accounts will be reported without the TIN.
- The Swiss CRS Act provides additional clarification regarding the treatment of accounts that were closed prior to the completion of all required CRS due diligence

steps (e.g. during remediation, upon account opening or following a change in circumstances):

- o Reporting Swiss FIs do not need to treat a Pre-existing Account as a Reportable Account if it is closed during the remediation period and the due diligence has not been completed (even if there are uncured indicia).
- o Further, Reporting Swiss FIs do not need to treat a New Account as a Reportable Account if it is closed prior to the Reporting Swiss FI determining the relevant tax residences as part of the account opening.
- o With regard to changes in circumstances, Reporting Swiss FIs do not need to consider changes in circumstances as relevant, if the account is closed during the curing period following the change in circumstances and the curing is not yet complete at the time of account closure.
- Regarding insurance contracts, the draft CRS Ordinance clarifies that if a beneficiary, who had not been entitled to receive distributions in the past, receives a distribution and, thus, becomes an Account Holder for CRS purposes, such beneficiary must be documented according to the New Account procedures.

Section 8 – Registration of Reporting Swiss FIs (Art. 25)

- Reporting Swiss FIs must register with the Swiss Federal Tax Administration (SFTA) via its online portal by the end of the year in which it becomes a Reporting FI, i.e. for most Reporting Swiss FIs by 31 December 2017.

Section 9 – Information obtained from foreign jurisdictions (Art. 26)

- Due to the reciprocal nature of the CRS agreements, the SFTA will receive information about Swiss taxpayers from foreign tax authorities. The draft CRS Ordinance clarifies how such information will be disseminated to the Cantons that are responsible for the collection of taxes and enforcement of tax laws.

Section 10 – Information system (Art. 27 to 29)

- The Swiss CRS Ordinance further sets out the details on the organization and maintenance of the IT platform of the SFTA. These provisions mainly relate to the editing and deletion of information.

Section 11 – Effective date (Art. 30)

- The CRS Ordinance formally enters into force on 1 January 2017.

The draft Ordinance provides welcome direction on key parts of the implementation of CRS in Switzerland and, in conjunction with the anticipated Guidance Notes, will ensure that Swiss FIs will not suffer from the same lack of guidance that currently afflicts FIs in many jurisdictions where CRS is already underway.

Regards,

Markus Weber **Paul Millen** **Robin King**

IRS Issues New Final Form W-8BEN-E and Instructions

Last month, the IRS released an updated final version of the Form W-8BEN-E and accompanying instructions (available [here](#) and [here](#)). Generally, the final version closely resembles the draft versions released on 15 January 2016 (our detailed analysis of the draft materials available [here](#)). In response to comments submitted by stakeholders, the IRS cleaned up a few oversights, but did not make material modifications to the final version of the Form.

As a reminder, the more significant changes to the prior version of the Form W-8BEN-E and accompanying instructions include the following key points:

- In Part III (Treaty benefits claims), a taxpayer is required to check the relevant box associated with the limitation on benefits (LOB) test it meets with respect to the treaty benefits claimed on the Form, or to check a box that it has obtained a favorable discretionary determination from the U.S. competent authority that it qualifies for the treaty benefits claimed on the Form. The additional requirement to designate an LOB status provides the most challenging new aspect introduced by the Form revisions. QI banks likely need to validate such statuses for plausibility based on information collected on the client for AML/KYC and other regulatory purposes.
- In Part IV (Sponsored FFI status certification), sponsored entities with their own GIINs must provide both their own GIIN and their sponsor's GIIN (also applies to Sponsored Direct Reporting NFFEs). Although a sponsored FFI is not required to obtain its own GIIN before 1 January 2017, a sponsored entity that has obtained a GIIN must provide it on line 9a and the sponsor's GIIN of the sponsoring entity on line 16. There is a presumptive need to verify both GIINs on the IRS GIIN List and to record both for potential reporting obligations.
- According to the instructions, actionable changes in circumstances include when the jurisdiction where the FI is organized or resident was included on the list of jurisdictions treated as having an intergovernmental agreement (IGA) in effect and is removed from that list or when the FATCA status of the jurisdiction changes (e.g., from Model 2 to Model 1). When a Model 2 jurisdiction moves to a Model 1 IGA, forms documenting Reporting FIs as Reporting Model 2 FIs will be subject to a change in circumstance treatment and the account holder will need to be re-documented. Were such a requirement intact when Switzerland converts to a Model 1 IGA, likely in 2018 or 2019, the operational consequences would be extremely burdensome. Therefore, it is hoped that the U.S. relents on this provision and permits FIs to alter the status of relevant Reporting FI account holders by means of an internal adjustment.

For more information, please contact [Brandi Caruso](#) or [Paul Millen](#)

IRS Release Proposed Section 305(c) Regulations

On 12 April 2016, the IRS released proposed section 305(c) regulations, reaffirming the IRS view that any adjustments to the conversion ratios in U.S. convertible debt and similar instruments constitute deemed distributions potentially subject to withholding and reporting under the QI and FATCA regimes. Further, the new rules provide sharper clarity on the expected methodology for determining the amount of such deemed payments so that withholding may be applied correctly. QI banks will need to adjust their withholding and reporting mechanisms to capture these new income payments, even where, due to timing rules in the new regulations, no actual payment is made and thus withholding must be applied on phantom income. Following the onset of FATCA in 2014 and the introduction of the section 871(m) in winter last year, the IRS continues to build out the original QI regime, imposing an ever increasing burden on the withholding agents intermediating the payment flows of the financial system.

For more information, please contact [Markus Weber](#) or [Paul Millen](#)

FATCA Online Course Co-Developed by Deloitte Tax – Coming Soon!

Deloitte Switzerland and VisionCompliance are partnering to provide a state of the art FATCA Online Course with a particular focus on relationship managers. This unique cooperation brings together the technology and training know-how of VisionCompliance with our professionals' tax technical expertise to help banks and other FIs assess and address implications related to compliance with the FATCA regime.

Specializing in educational programs in banking and financial compliance, VisionCompliance is a leading Swiss company offering online training courses and currently partnering with over 60 banks in Switzerland.

The purpose of our new training is to offer front office personnel a broad understanding of FATCA, so that such personnel has sufficient understanding of the FATCA regime in order to effectively and efficiently fulfill its role as the front line in the client on-boarding process.

The FATCA Online Course is more than a comprehensive training for client facing staff, it has been designed to serve as a valuable tool to create a coherent understanding of FATCA compliance within Financial Institutions as a whole, and is thus of added-value for support functions as well.

The FATCA Online Course consists of three modules:

- **Module 1**

- Part I: From double tax treaties to FATCA
- Part II: The FATCA regime

- **Module 2**

- Individual accounts under the FATCA regime

- **Module 3**

- Part I: Entity accounts under the QI Regime (overview)
- Part II: Classification of entities under the FATCA regime

VisionCompliance is a leading Swiss company, specialized in educational programs related to banking and financial compliance. Its offering includes e-learning, online and in-class training courses and is servicing over 60 banks in Switzerland.

For more information, please contact [Brandi Caruso](#) or [Karim Schubiger](#).

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