



## **FStaxworld**

### Your November snapshot

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**In this month's FStaxworld, we review the consequences of the recently-released OECD CRS reporting relationships**

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#### **The View from Deloitte**

Dear Reader,

Since 2014, more than 100 jurisdictions have committed to implement the Common Reporting Standard (CRS). The OECD regularly publishes lists of these jurisdictions with the last update published on 26 June 2016 (available [here](#)). The OECD also publishes a list of signatories of the Multilateral Competent Authority Agreement (MCAA), which is a framework to which jurisdictions sign up and commit to a date. So far, 87 jurisdictions have signed the MCAA (available [here](#)), which does not lead to an automatic exchange of information until the jurisdictions bilaterally it. Recently, several agreements to exchange information were activated or signed, prompting due diligence and reporting responsibilities for RFIs. CRS in Switzerland enters into force as of 1 January 2017. However, in other jurisdictions, the so-called early adopter jurisdictions, CRS has been effective since 1 January 2016.

To comply with the CRS due diligence and reporting obligations, it is essential that an RFI actively monitors the evolving framework of agreements. The expectation is that the framework grows over time when committed jurisdictions enter into exchange agreements with one another. To temporarily facilitate this transition period, the concept of so-called white lists was established. For a certain amount of time, a white list allows a jurisdiction to treat another jurisdiction as if it had an agreement in place without requiring an actual exchange of information. As white lists are planned to be valid only for a limited time, RFIs must also cope with the additional burden to monitor them.

Until recently, RFIs manually monitored whether agreements were activated or signed and whether local white lists existed. For smaller RFIs, such monitoring is cumbersome even if it concerns only one jurisdiction. For larger RFIs with a global footprint, monitoring the relevant developments is even more onerous as each jurisdiction publishes the relevant information locally, requiring manual searching effort.

It was obvious from the beginning that the monitoring of these global relations would be extremely difficult as the information is unstructured and scattered across local platforms and, in addition, subject to certain language barriers.

The OECD acted on the requests of global FIs to publish the relevant information on its central portal (available [here](#)). On 20 October 2016, the OECD published the list of automatic exchange relationships on its webpage to enable global FIs to easily access the relevant information. However, the current list seems incomplete, leaves several questions unanswered and does not provide crucial information required to enable global RFIs to fully comply with CRS. The following evaluation provides an overview of the most relevant shortcomings of the OECD list.

## **Shortcomings of the OECD list**

### Agreements

The list published by the OECD currently shows 1,955 relationships. A reciprocal agreement is represented by two relationships, while a non-reciprocal agreement counts as one relationship. However, the list fails to name several agreements that were communicated prior to its publication (e.g. the agreement between the British Virgin Islands and Guernsey which is effective as of 1 January 2016). On the other hand, over 800 of these relationships seem to be new, i.e. no public statements are accessible to substantiate the existence of an exchange relationship. The OECD announced that it will update the list in December 2016 and spring 2017. It remains to be seen whether the blind spots with regard to previously announced agreements will remain.

### Effective dates

The release of the OECD list surprised the industry by introducing unexpected effective dates. For the newly activated agreements, the list contains three variations on effective dates. More than 100 relationships were published with a specified effective date of 1 January 2016. This might imply retroactive due diligence obligations in certain circumstances and potentially severely shortened deadlines in relation to pre-existing accounts. Over 600 relationships were published with an activation date of 20 October 2016, but without a specified effective date, leaving RFIs with many questions on the operational implications in relation to the definition of new vs. pre-existing accounts, the resulting deadlines to complete the due diligence for pre-existing accounts and the first relevant reporting period. The remaining newly published relationships have a specified effective date of 1 January 2017. Even where the OECD list contains the applicable effective dates of a relation, it does not allow the user to sort, filter, export or otherwise prioritize by these dates as is needed for operational processes.

### Territories

Many RFIs will identify client's tax residencies based on the data in their systems. More jurisdictions might be found by RFIs than are available on the OECD list because certain territories have their own ISO code but are nevertheless following their "main countries" CRS implementation. Other territories and dependencies, like many of the UK overseas territories, published their own CRS implementation laws and will sign separate CRS agreements. A complete list should therefore also take into account such territories and dependencies.

### Limited use for RFIs

The OECD list only contains information about whether a jurisdiction has entered into an agreement with another jurisdiction and the corresponding effective date. However, an RFI would need to break down the OECD list to determine the operational consequences and instruct its personnel appropriately. For example, an RFI must determine whether a Tax Identification Number (TIN) must be collected with regard to a specific Reportable Person or whether indicia for a specific jurisdiction must be considered for purposes of the change in circumstances (CiC monitoring). It must also know which accounts must be reported to the local

authority and also which data will be exchanged with foreign authorities. Furthermore, an RFI must determine accounts for which the Controlling Persons of a Professionally Managed Investment Entity (PMIE) must be identified. However, even if analyzed carefully, the OECD list is not able to answer all these operational questions for RFIs as they are not solely dependent on the activated agreements, but also on local regulations and locally published lists. In addition, the usability of the OECD list is limited with results being displayed in groups of 10 entries per page, which seems to be designed for the look up of a specific relationship rather than a broad usage.

## **Additional information required by RFIs**

### PMIE look-through

Depending on whether a jurisdiction is considered a Participating Jurisdiction from another jurisdiction's perspective, it might be necessary to look-through PMIE Account Holders (i.e. identify the Controlling Persons of the PMIE). Whether a jurisdiction is considered a Participating Jurisdiction from another jurisdiction's perspective depends not only on the signed or activated agreements but, if available, also on a jurisdiction's locally published white list. As mentioned above, if a jurisdiction is listed on a white list, it will be considered a Participating Jurisdiction for a limited time. It is currently planned to limit the validity of a whitelist, although the 1 July 2017 timeline for review and re-assessment as stipulated in the OECD CRS implementation handbook seems rather short.

### Reportable Jurisdictions

Jurisdictions may publish local lists of Reportable Jurisdictions, which may or may not be consistent with the OECD list (e.g. the UK HMRC published list includes Barbados, Colombia, Curacao, Greenland, Montserrat, Niue, and Trinidad and Tobago). Such lists may take precedence over the OECD list.

### TIN collection

Knowing if there is an agreement in force between two jurisdictions is not sufficient to know whether a TIN must be collected. Some jurisdictions do not issue TINs in general or only in limited cases. Although the OECD provides a source to such information, this source is not integrated into the OECD list and therefore more cumbersome to access, monitor and use.

### Indicia search & CiC monitoring

The OECD list does not address whether an RFI must consider information pointing to a specific jurisdiction for purposes of identifying Reportable Persons during the indicia search or the CiC monitoring. To define this, local legislation and strategic decisions of the RFI in relation to the application of the so-called wider approach must be considered in addition to the identification of Reportable Jurisdictions.

### Reporting to domestic authorities and actual exchange of information

In some jurisdictions, RFIs need to not only report Reportable Persons, but rather the complete population of non-local Account Holders and Controlling Persons. Even if not explicitly required, clients of RFIs tend to be very interested in understanding where their data is being reported. In fact, potentially more accounts will be reported to the local authorities than will be exchanged with foreign authorities. Maintaining an overview of these information flows is critical for RFIs to enable them to perform correct reporting and to inform their clients appropriately.

## How to overcome the shortcomings and obtain the missing information

We at Deloitte are convinced that the publication of the OECD list is a step in the right direction. However, it does not cover crucial information for RFIs to manage operational challenges and ensure compliance with the complex and globally differing regulations. RFIs will need a solution that addresses all the above-mentioned shortcomings and missing information. Moreover, the answers to these questions are dynamic as the relationships may evolve over time. In order to avoid any deficiencies in their CRS compliance, RFIs must closely monitor CRS agreements and relevant lists published by local authorities. To mitigate the risk of missing information and to alleviate these burdensome monitoring efforts, Deloitte developed a web-based solution, which tracks relevant information and provides RFIs access to the answers to the relevant questions on a regularly updated basis.

Regards,

**Brandi Caruso**  
**Michael Grebe**  
**Karim Schubiger**

Reporting Jurisdiction	Counterparty Jurisdiction	CRS agreement status	CRS agreement effective date	Participating jurisdiction	Reportable jurisdiction	FATF link-through	TIN collection	Index search and change in circumstances monitoring	Reporting to domestic tax authorities	Exchange of information with foreign tax authorities
Austria	Ay/Uruguay	No	n/a	No	No	Yes	No	No	No	No
Austria	Fiji	No	n/a	No	No	Yes	No	No	No	No
Austria	Poland	Yes	01/10/2016	Yes	Yes	No	Yes	Yes	Yes	Yes
Austria	Syria	No	n/a	No	No	Yes	No	No	No	No
Austria	Comoros	No	n/a	No	No	Yes	No	No	No	No
Austria	Monaco	Yes	01/01/2017	Yes	No	No	No	No	No	No
Austria	Tuvalu	No	n/a	No	No	Yes	No	No	No	No
Austria	Namibia	No	n/a	No	No	Yes	No	No	No	No
Austria	Portugal	Yes	01/10/2016	Yes	Yes	No	Yes	Yes	Yes	Yes
Austria	Luxs	No	n/a	No	No	Yes	No	No	No	No
Austria	Switzerland	Yes	01/01/2017	Yes	No	No	No	No	No	No
Austria	Belarus	No	n/a	No	No	Yes	No	No	No	No
Austria	Sweden	Yes	01/10/2016	Yes	Yes	No	Yes	Yes	Yes	Yes
Austria	Gummeiy	No	n/a	No	No	Yes	No	No	No	No
Austria	Czech Republic	Yes	01/10/2016	Yes	Yes	No	Yes	Yes	Yes	Yes
Austria	Moldova	No	n/a	No	No	Yes	No	No	No	No
Austria	Jamaica	No	n/a	No	No	Yes	No	No	No	No

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# Partial Deferral to Section 871(m) Regulations Announced

During a panel at the SIFMA Conference in New York on 21 October, the IRS announced a partial deferral to the implementation of the 871(m) Regulations.

Details and written confirmation are not yet available. Generally, however, the deferral seems to cover the following points:

- Only Delta 1 contracts should be in-scope as of 1 January 2017;
  - All other potentially in-scope products should be deferred until 1 January 2018;
- and
- The IRS will apply unspecified “relaxations” to the implementation of the so-called combination transaction rule for 2017.

Currently, two interpretations for the meaning of “Delta 1” for purposes of the announced deferral are being debated:

- The mathematical method, whereby only products with a delta of one or above at issuance would be in-scope as per the formulae set forth in the Regulations; or
- The conceptual method, whereby products with no optionality and a delta very close to one would be in-scope, e.g. futures, forwards, trackers, which seems to synchronize with the presumed intent of the deferral (i.e. to provide relief while capturing the products that most closely replicate the economic performance of the underlying equity).

The IRS promised written guidance, confirming and detailing the scope of the deferral, but would not commit to release prior to the middle of this month at the earliest, which may result in a materially later publication date despite the pending onset of the new rules.

For more information, please contact [Paul Millen](#).

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## New Form W-8IMY Released

On 27 September 2016, the IRS released the final 2016 versions of the Form W-8IMY and the accompanying instructions. Most of the revisions to the 2014 versions mirror the amendments to the Form W-8BEN-E and accompanying instructions (e.g. the clarification regarding the Nonreporting IGA FFI certification or the sponsoring entity GIIN requirements) and were already previewed in the draft Form W-8IMY from July this year. Qualified Intermediaries (“QIs”) ought to carefully look at Part III of the Form W-8IMY, which includes the Chapter 3 Status certifications for QIs and underwent a number of changes related to the release of the proposed revised

QI Agreement. In particular, new check boxes were added for QIs acting as Qualified Derivatives Dealers (“QDDs”, line 14g) and for QIs assuming primary withholding and reporting responsibilities for substitute interest payments (line 14h). Further, the certification required from many QIs has been slightly revised (line 14e).

A QI that is not assuming primary 1099 reporting and backup withholding responsibilities can now use separate check boxes to certify that it either forwards Forms W-9 to upstream withholding agents or that it has included the relevant account holders in its Chapter 4 withholding rate pool of U.S. payees.

Finally, even though a QI is not obliged to use the updated Form W-8IMY until six months after the revision date, QIs may prefer to start using the new form as of 1 January 2017 because the 2014 version will not be able to cope with recent developments (e.g. expiration of the limited FFI status or the sponsoring entity GIIN requirement).

For more information, please contact [Robin King](#).

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## **CRS Online Course**

Following the successful launch of our FATCA online course and market demand, we have developed together with VisionCompliance an online course for OECD CRS. This training is focused on the Relationship Manager and the role he or she plays in the context of CRS and is aimed at equipping the Relationship Manager with the necessary knowledge to understand the key concepts of CRS and how these topics are relevant to him or her in daily activities. The training is divided into two modules. This first module provides background and key definitions for CRS as well as the due diligence procedures relevant to individual Account Holders.

The second module covers entity classification, the due diligence procedures relevant to entity Account Holders, documentation requirements, reporting and general compliance obligations.

After taking the course, you will be able to answer the following questions: What is the purpose of CRS? Which accounts are Reportable Accounts? How to cure indicia? And, how to validate the self-certification provided by your client?

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