

First edition of the Standard for Automatic Exchange of Financial Account Information in Tax Matters

The road continues

Global Financial Services Industry



OECD releases first edition of the Standard for Automatic Exchange of Financial Account Information in Tax Matters

On July 21, 2014, the Organization for Economic Co-operation and Development (“OECD”) released the first edition of the Standard for Automatic Exchange of Financial Account Information in Tax Matters. The document contains the Model Competent Authority Agreement (“Model CAA”), the Common Reporting Standard (“CRS”) and Commentaries interpreting each section of the Model CAA and the CRS. It also includes seven Annexes containing the Multilateral Model Competent Authority Agreement, the Nonreciprocal Model Competent Authority Agreement, the Common Reporting Standard User Guide, an Example Questionnaire to assess whether confidentiality and data safeguards requirements are met by a jurisdiction, the Wider Approach to the Common Reporting Standard, the Declaration on Automatic Exchange of Information in Tax Matters adopted on May 6, 2014 and the Recommendation of the Council on the Standard for Automatic Exchange of Financial Account Information in Tax Matters adopted on July 15, 2014.

By May 2014, over 60 jurisdictions committed to swiftly implement the CRS, including translating it into domestic law. Furthermore, 45 jurisdictions (known as “early adopters”) have agreed to a common timetable for the implementation of the Standard.

The CRS draws extensively on the U.S. FATCA Intergovernmental Agreements (“IGAs”), however the requirements established for the financial institutions located in the countries signing the Model CAA have been adjusted to take into consideration the multilateral nature of the CRS and the tax

residency concept. Therefore, these financial institutions will be required to modify their FATCA programs to assure the compliance with the CRS additional documentation, due diligence and reporting requirements.

Global model of automatic exchange of financial account information

The global model of automatic exchange of financial account information is based upon countries signing either a bilateral or a multilateral Model CAA. This provides the terms and conditions for the exchange of financial account information and the translation of the CRS into domestic law.

Model CAA

The Model CAA is the agreement that the countries adopting the CRS are required to sign. The Model CAA contains the type of information to be exchanged between the adopting countries, the time and manner of the exchange of the financial account information, the collaboration on compliance, the enforcement requirements as well as the confidentiality and safeguards that must be respected by the countries adopting the CRS.

In general terms, the countries signing the Model CAA are committed to exchange the information required to be reported under the reporting and due diligence rules of the CRS. This can be done on an annual basis, or more frequently, by using the information technology modalities described in the Commentaries to the Model CAA.

The Model CAA also establishes the safeguards applicable to ensure the confidentiality of the information received. This includes the legal framework required, practices and procedures for information security management (including background checks for employees, standards for access to premises and physical document storage, identification and authentication, etc.), as well as compliance and sanctions to address a breach of confidentiality which is described in detail in the Commentaries to the Model CAA.

As a mechanism to ensure the compliance by the countries signing the Model CAA, a Competent Authority is allowed to suspend the Agreement when there is a significant non-compliance by other Competent Authority. In this regard, significant non-compliance includes, but is not limited to:

- Non-compliance with the confidentiality or data safeguard provisions;
- The failure of a Competent Authority to provide timely or adequate information as required by the Competent Authority Agreement;
- Defining the status of Excluded Accounts or Non-reporting financial institutions in a manner that disturbs the purposes of the CRS; and
- Failure to have rules and administrative procedures in place to ensure the effective implementation of the reporting and due diligence procedures set forth in the CRS.

The Model CAA is drafted as a bilateral reciprocal agreement, however this first edition of the Standard for Automatic Exchange of Financial Account Information in Tax Matters also contains two additional documents:

- Multilateral version of the Model CAA (Annex 1) which was developed in order to reduce the costs associated with signing multiple Competent Authority Agreements; and
- Non-reciprocal bilateral agreement (Annex 2) which was developed for those jurisdictions that do not wish to enter into a reciprocal agreement.

CRS

The CRS contains the documentation, due diligence and reporting standards that the financial institutions located in adopting countries (“Reporting financial institutions”) will need to implement. The general requirements are based on the Annex I of the FATCA Model 1 IGA, however there are significant differences that will require reworking the FATCA programs. Some of these differences are as follows:

- General reporting requirements
 - Similar to the FATCA Model 1 IGA, financial institutions will be required to report information on “Reportable Accounts” (i.e. accounts held by individuals and entities considered “Reportable Persons” and “Passive Non Financial Entities” (“Passive NFEs”) with “Controlling Persons” that are considered “Reportable Persons”).
 - For CRS purposes, a “Reportable Person” is basically an individual or entity that is resident in a Reportable Jurisdiction under the tax laws of that jurisdiction.
 - Financial institutions will be required to report jurisdiction(s) of residence and place of birth for individual account holders in addition to the Tax Identification Numbers (“TIN(s)”) and date of birth which is currently required under FATCA.
 - For entities, it is required to report jurisdiction(s) of residence and TIN(s). For Passive NFEs, the jurisdiction(s) of residence, TIN(s) as well as the date and place of birth of the Controlling Persons considered Reportable Persons.
 - It is recognized that under certain circumstances one account could be reported to multiple jurisdictions.
 - With respect to the account balance or value (including cash value or surrender value in the case of certain insurance contracts), the CRS requires reporting the gross amount of interests paid or credited to depository and custodial accounts as well as the gross amounts of dividends, gross amounts of other income generated with respect to “Financial Assets” and gross proceeds to the account holders.

- General documentation and due diligence requirements

Similar to Annex 1 of the FATCA Model 1 IGA, CRS describes due diligence procedures for individuals and entities distinguished between “New Accounts” and “Preexisting Accounts”. However, there are significant modifications in the approach:

- Thresholds are not applicable for depository accounts of individuals. For preexisting entity accounts, the \$250,000 USD threshold would be applicable subject local approval. If applicable, preexisting entity accounts will be required to be reviewed when exceeding the \$250,000 USD threshold (instead of \$1,000,000 USD provided by Annex 1 of the FATCA Model 1 IGA).
- The system relies on the “self-certification”. Fields that should be included in the self-certification are specified in the Commentaries and adjusted for the CRS purposes.
- The “Documentary Evidence” definition is modified with respect to the FATCA Model 1 IGA and **Forms W-8 or W-9 would generally not be acceptable** for CRS purposes outside of the U.S.
- **Preexisting individual accounts** need to be reviewed by applying a “Residence address test” or an “Electronic record search” for low value accounts (those under \$1,000,000 USD).
 - “Residence address test” requires assuring that the residence address in the Reporting Financial Institution’s records is current. According to the Commentaries,

this would imply, for example, monitoring if the address has been used for mailing purposes and mail has been returned undeliverable-as-addressed.

- The Electronic record search consists of performing an indicia search. Indicia are similar to FATCA but eliminating references to U.S. citizenship. The CRS provides a "Curing procedure" based on a request for a self-certification to the extent indicia is identified within the account holder.
- **Preexisting high value individual accounts** are subject to paper record search if databases do not contain sufficient information in addition to relationship manager inquiries that will be subject to annual verification.
- **New individual accounts** requirements for validity of self-certifications are specified in the Commentaries which also describe the content of a valid self-certification. The financial institutions will be required to perform a "Reasonableness test" to confirm the consistency of the self-certification with the information obtained upon account opening.
- **Preexisting entity accounts** for financial institutions will be required to (i) determine if the entity is a Reportable Person by reviewing place of incorporation or organization as well as the address, and (ii) determine whether the entity is a Passive NFE with one or more Controlling Persons who are Reportable Persons. Similar to Annex 1 of the FATCA Model 1 IGA, the due diligence procedures are different depending on whether the account balance or value exceeds USD \$1,000,000. If the latter, it is required to obtain a self-certification.
- **New entity accounts** for financial institutions will be generally required to obtain a self-certification to determine the residence for tax purposes of the entity. However, financial institutions may rely on publicly available information in certain situations. If the financial institution relies upon publicly available information they are expected to retain a notation of the type of information reviewed and the date in which the review was performed.
- The content of the self-certification for entities is specified in the comments and in addition to the information of the entity, the self-certification includes information related to the "Controlling Persons" such as address, jurisdiction(s) of residence, TIN(s) and date of birth.
- Changes in circumstances that may affect self-certifications need to be monitored. Financial institutions will be expected to notify any person providing a self-certification the obligation to communicate any changes in circumstances to the financial institution.
- Standards of knowledge. Financial institutions may not rely on self-certifications or Documentary Evidence if they know or have reasons to know that they are unreliable or incorrect.
- **Effective implementation**
 - According to the CRS, jurisdictions are expected to include specific provisions in their domestic legislation imposing sanctions for signing false self-certification.
 - Jurisdictions are required to implement administrative procedures to (i) verify the compliance of the financial institutions with the reporting and due diligence procedures; (ii) follow up with a financial institution when undocumented accounts are reported (it is also expected that depending on whether the number of undocumented accounts in any one year is larger than average, a full audit of the financial institution takes place); and (iii) ensure that entities defined as "Non-Reporting Financial Institutions" and "Excluded Accounts" continue to have a low risk of being used to evade tax.

Wider approach

Wider Approach to the Common Reporting Standard is a document containing the due diligence procedures described for the CRS but amending such procedures to extend the due diligence requirements to cover all non-residents or residents of jurisdictions in which they have an exchange of information instrument in place. The purpose of this document is to allow Jurisdictions to implement a wider approach for the CRS in order to avoid performing additional due diligence each time a new jurisdiction joins.

Timetable

For those financial institutions located in the 45 jurisdictions that have agreed to a common timetable for the implementation of the Standard (known as “Early adopters”), according to the Joint Statement released in March 2014, the implementation dates for the CRS are summarized in the table below:

| | 2016 | 2017 |
|---|-------------------|-------------------|
| New accounts | January 1, 2016 | |
| Review high value preexisting individual accounts | December 31, 2016 | |
| First automatic exchange of information between jurisdictions | | September, 2017 |
| Review preexisting low value individual accounts | | December 31, 2017 |
| Review preexisting entity accounts | | December 31, 2017 |

Jurisdictions committed to implement the CRS

| | | |
|-----------------------------|--------------------|-----------------------------|
| Anguilla (EA) | France (EA) | Mexico (EA) |
| Argentina (EA) | Germany (EA) | Montserrat (EA) |
| Australia | Gibraltar (EA) | the Netherlands (EA) |
| Austria | Greece (EA) | New Zealand |
| Belgium (EA) | Guernsey (EA) | Norway (EA) |
| Bermuda (EA) | Hungary (EA) | Poland (EA) |
| Brazil | Iceland (EA) | Portugal (EA) |
| British Virgin Islands (EA) | India (EA) | Saudi Arabia |
| Bulgaria (EA) | Indonesia | Singapore |
| Canada | Ireland (EA) | Romania (EA) |
| Chile | Isle of Man (EA) | Slovakia (EA) |
| China | Israel | Slovenia (EA) |
| Cayman Islands (EA) | Italy (EA) | South Africa (EA) |
| Colombia (EA) | Japan | Spain (EA) |
| Costa Rica | Jersey (EA) | Sweden (EA) |
| Croatia (EA) | Korea | Switzerland |
| Cyprus (EA) | Latvia (EA) | Turkey |
| Czech Republic (EA) | Liechtenstein (EA) | Turks & Caicos Islands (EA) |
| Denmark (EA) | Lithuania (EA) | UK (EA) |
| Estonia (EA) | Luxembourg | U.S. |
| Faroe Islands (EA) | Malaysia | European Union |
| Finland (EA) | Malta (EA) | (EA: Early adopter) |

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