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The road to FATCA continues

Global Financial Services Industry

OECD releases first edition of the Standard for automatic exchange of financial account information on tax matters[1]

The standard is based on the principles of automatic international exchange of information on taxpayers between financial institutions and tax authorities, established by FATCA. If all goes to plan, the standard will be fully implemented in over 60 jurisdictions within two years. During this time, Russian financial institutions need to finalise the methodology and procedures and optimise the current systems for FATCA purposes.

On 13 February 2014, the Organisation for Economic Cooperation and Development (OECD) released the text of the "Model Competent Authority Agreement (CAA) and Common Reporting Standard and Due diligence for Financial Account Information (CRS)". According to the overview provided in the document released by the OECD, the CRS draws extensively on the intergovernmental approach to implementing FATCA, with a view to maximising efficiency and reducing costs for financial institutions. However, there are several differences with the FATCA approach, as the CRS is multilateral in nature and does not contemplate U.S.-specific aspects, such as taxation based on citizenship instead of tax residency.

By May 2014, over 60 jurisdictions, including Russia[2], had committed to implementing the CRS and translating it into domestic law as quickly as possible. Furthermore, 45 jurisdictions (known as "early adopters") have agreed to a unified timetable to implement the standard. If all goes to plan, the standard will take effect within 2-3 years.

On 21 July 2014, the OECD released the first edition of the Standard for automatic exchange of financial account information on tax matters. [3] The document contains the Model CAA, the CRS[4] and an interpretation of each section. It also includes seven appendices 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 a jurisdiction meets confidentiality and data protection requirements, the wider approach to the CRS, the Declaration on automatic exchange of information on tax matters[5] adopted on 6 May 2014, and the Recommendations of the Council on the Standard for automatic exchange of financial account information on tax matters adopted on 15 July 2014.

The CRS draws extensively on the U.S. FATCA Intergovernmental Agreements ("IGAs"); however, the requirements established for 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 concept of tax residency. Therefore, these financial institutions will be required to modify their FATCA programmes to comply with the additional documentation, due diligence and reporting requirements set forth by the CRS.

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[1] http://www.oecd.org/ctp/exchange-of-tax-information/automatic-exchange-of-financial-account-information.htm

[2] http://www.oecd.org/tax/exchange-of-tax-information/automaticexchange.htm

[3] http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/standard-for-automatic-exchange-of-financial-account-information-for-tax-matters_9789264216525-en#page304

[4] http://www.oecd.org/ctp/exchange-of-tax-information/automatic-exchange-financial-account-information-common-reporting-standard.pdf

[5] http://www.oecd.org/mcm/MCM-2014-Declaration-Tax.pdf

In Russia, the general approach to identifying clients as foreign taxpayers and the manner of exchanging financial account information with regard to those clients is provided for by Federal Law No. 173 “On the specifics of conducting transactions with foreign nationals and legal entities, the introduction of amendments to the RF Code of Administrative Offences, and the recognition of certain legislative acts of the Russian Federation as void” (“the Federal Law”), which came into effect on 30 June 2014. The Federal Law targets a broad category of foreign taxpayers and allows financial institutions to submit information on foreign taxpayers to foreign tax authorities, after receiving their clients’ consent to do so. It also obliges foreign financial institutions located outside the Russian Federation to provide Russian tax authorities with information on the accounts of Russian citizens and their legal entities.

Global model of automatic exchange of financial account information

The global model of automatic exchange of financial account information is implemented based on bilateral and multilateral Model CAAs signed by countries. These agreements provide 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 information, collaboration on compliance, requirements for enforcement, and confidentiality and data protection requirements that the adopting countries are obliged to respect.

In general, countries signing Model CAAs commit to exchanging all information that must be reported in accordance with the reporting and due diligence rules of the CRS. They can do so annually or more frequently, applying the IT methods described in the comments provided with the Model CAA.

The Model CAA also establishes the safeguards that must be applied to ensure the confidentiality of the information received. This includes the necessary legal framework, 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 breaches of confidentiality, described in detail in the comments provided with the Model CAA.

To ensure compliance by the countries signing the Model CAA, a competent authority may suspend the agreement in the event of significant non-compliance on the part of another competent authority. In this regard, the phrase “significant non-compliance” includes (but is not limited to):

- Failure to comply with the confidentiality or data protection requirements
- Failure to provide timely or adequate information as required by the CAA
- Definition of the status of excluded accounts or non-reporting financial institutions in a manner that hinders the implementation of the CRS
- Failure to introduce rules and administrative procedures 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, the first edition of the Standard for automatic exchange of financial account information on tax matters also contains two additional documents:

- A multilateral version of the Model CAA (Appendix No. 1), which was developed in order to reduce the costs associated with signing multiple CAAs

- A non-reciprocal bilateral agreement (Appendix No. 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 financial institutions located in the adopting countries ("reporting financial institutions") will be required to implement. The general requirements are based on Appendix No. 1 to the FATCA Model 1 IGA; however, there are significant differences that will require FATCA programmes to be reworked. Some of these differences are as follows:

- General reporting requirements
  - As with 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 parties" and "passive non-financial entities" – "passive NFEs" – with "controlling parties" that are considered "reportable persons").
  - For CRS purposes, a "reportable party" is defined as an individual or legal entity that is resident in a reportable jurisdiction in accordance with the tax laws of that jurisdiction.
  - Financial institutions will be required to report on the jurisdiction(s) of residency and birth of individual account holders in addition to their taxpayer identification numbers ("TIN(s)") and date of birth, as currently required under FATCA.
  - With regard to legal entities, it is obligatory to report on their jurisdiction(s) of residency and TIN(s). For passive NFEs, in addition to their jurisdiction(s) of residence and TIN(s), information must be provided on the date and place of birth of the controlling parties considered to be reportable parties.
  - It is recognised that, under certain circumstances, a single account may be reportable to multiple jurisdictions.
  - With respect to the account balance or value (including cash value or redemption value for certain insurance contracts), the CRS requires information on the gross amount of interest paid or credited to depository and custodial accounts to be reported, as well as the gross amounts of dividends and other income generated with respect to "financial assets" and gross proceeds to the account holders.
- General documentation and due diligence requirements
  Similar to Appendix No. 1 to the FATCA Model 1 IGA, the CRS describes due diligence procedures for individuals and legal entities, distinguishing between "new accounts" and "preexisting accounts". However, there are significant differences in the approach:
  - Thresholds do not apply to depository accounts held by individuals. For preexisting accounts held by legal entities, the USD 250,000 threshold would apply, subject to local approval. If applicable, preexisting accounts held by legal entities will need to be reviewed upon exceeding the USD 250,000 threshold (rather than USD 1,000,000, as provided by Appendix No. 1 to the FATCA Model 1 IGA).
  - The system relies on "self-certification". Fields that are mandatory for inclusion in self-certification are specified in the comments and adjusted for CRS purposes.
  - The definition of "documentary evidence" has been modified with respect to the FATCA Model 1 IGA, meaning that **Forms W-8 or W-9 would generally not be acceptable** for CRS purposes outside the U.S.
  - **Preexisting accounts held by individuals** need to be reviewed by applying a "residence address test" or an "electronic record search" for low-value accounts (i.e. those under USD 1,000,000).

    - The "residence address test" ensures that the residence address reflected in the reporting financial institution's records is up to date. According to the comments, the test may include monitoring the usage of the address for mail, and the return of mail deemed undeliverable to the address.
    - The electronic record search involves performing an analysis of certain indicia. The indicia are similar to those provided by FATCA, except that references to U.S. citizenship have been eliminated. The CRS provides a "Curing procedure" based on a request for self-certification to the extent that indicia are identified within the account holder.
  - **Preexisting high-value accounts held by individuals** are subject to paper record search if databases do not contain sufficient information, in addition to relationship manager inquiries subject to annual verification.
  - **New accounts held by individuals** must meet the self-certification validity requirements specified in the comments, which also describe the content of a valid self-certification. Financial institutions will be required to perform a "reasonableness test" to confirm the consistency of the self-certification with the information obtained at the time the account was opened.
  - **Preexisting accounts held by legal entities** will require financial institutions to (i) determine whether the entity is a reportable party by reviewing its place of incorporation or organisation and its address, and (ii) determine whether the entity is a passive NFE with one or more controlling parties considered reportable parties. As in to Appendix No. 1 to the FATCA Model 1 IGA, the due diligence procedures vary depending on whether the account balance or value exceeds USD 1,000,000. If it is the value, it is necessary to obtain self-certification.
  - **New accounts held by legal entities** will generally require financial institutions to obtain self-certification in order to determine the legal entity's jurisdiction of residency for tax purposes. However, financial institutions may rely on publicly-available information in certain situations. If a financial institution relies upon publicly-available information, it must keep note of the type of information reviewed and the date on which the review was performed.
  - The content of the self-certification for legal entities is specified in the comments, and in addition to information on the legal entity, it must include information related to the "controlling parties", e.g. registered address, jurisdiction(s) of residency, TIN(s) and date of birth.
  - Changes to circumstances that may affect self-certification need to be monitored. Financial institutions will be expected to notify any party that provides self-certification that it is obligated to notify the financial institution of any changes to these circumstances.
  - Standards of knowledge apply, i.e. financial institutions may not rely on self-certification or documentary evidence if they know or have reason to suspect that they are unreliable or incorrect.
- Effective implementation
  - According to the CRS, jurisdictions must include specific provisions in their domestic legislation imposing sanctions for signing falsified self-certification.
  - Jurisdictions must implement administrative procedures to (i) verify the compliance of financial institutions with the reporting and due diligence procedures, (ii) follow up with financial institutions that report on undocumented accounts (in addition, depending on whether the number of undocumented accounts reported in any given year is above average, a full audit of the financial institution may take place), and (iii) ensure that the risk of "non-reporting financial institutions" and "excluded accounts" being used to evade tax remains low.

Wider approach

The wider approach to the CRS is a document containing the due diligence procedures described for the CRS, amended to extend the due diligence requirements to cover all non-residents or residents of

jurisdictions in which an exchange of information instrument is in place. The purpose of this document is to allow jurisdictions to implement a wider approach to 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 unified timetable for the implementation of the CRS (i.e. “early adopters”), according to the Joint Statement released in March 2014, the implementation dates for the CRS are summarised 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 implementing the CRS

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

EA: Early adopter

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