United States

U.S. Financial Institutions Working to Meet CRS Challenges

U.S. financial institutions with operations in early-adopter common reporting standard (CRS) jurisdictions will begin reporting this spring. Practitioners told Tax Analysts that implementing the standard has presented challenges for all the institutions, but that larger organizations appear to have moved further toward compliance than smaller entities.

The CRS is the OECD's framework for the automatic exchange of financial account information that provides the basis for exchanges of data between participating jurisdictions. It is based on the U.S. Foreign Account Tax Compliance Act, and there are currently more than 100 participating jurisdictions. Early adopters began applying CRS onboarding standards to new accounts in January 2016 and require reporting to begin in early 2017. All committed jurisdictions are to apply the CRS's onboarding standards in 2017 and begin reporting in 2018.

Denise Hintzke, managing director and global FATCA/CRS tax leader at Deloitte Tax LLP, told Tax Analysts she doesn't believe any U.S. financial institution with branches or subsidiaries in CRS jurisdictions could be described as fully ready to file reports, but she said larger institutions have been working to institute programs that will allow them to comply with the filing requirements.

''Where I see some of the bigger gaps are in some of the smaller entities that fall into the definition of 'financial institutions' under [CRS] rules and maybe haven't been focused on it,'' Hintzke said. ''So there are certain investment funds, or institutions in the trust industry, where they probably have not been as focused on what they need to do. It was the same way they were not focused when FATCA came out. It kind of caught them by surprise.''

Michael Plowgian, a principal in the international tax group of the Washington National Tax practice of KPMG LLP, agreed that large global financial institutions are generally the closest to being prepared for CRS reporting, but he noted that they have the most accounts to report. ''They've got the largest volume of accounts and the most to do to remediate and change their systems,'' he said. ''They have done a lot of work, and they are at a point where they will do the reporting on time, but in many cases, they are still in a situation where the solutions are relatively manual, so it still takes a lot of human time to put a submission together and get it filed.''

Eventually, those institutions want the process to be automated, Plowgian said. However, given the filing timelines and the resource constraints they face, most have not yet reached that point, he said.

Plowgian's view that asset managers have generally been slower in their preparations for CRS aligns with Hintzke's view. ''There are a fair number of asset managers, especially some of the smaller U.S. asset managers that have funds offshore in CRS jurisdictions, who might not be as focused on CRS as they need to be right now,'' he said. Asset managers may be able to overcome their slower start on the CRS compliance efforts if they have fewer accounts to report, Plowgian said. He added that the manual collection of information for filing will not be as much of an issue for some asset managers because of the smaller number of accounts.

Most Orgs Making Best Effort

Hintzke said most of her clients are trying to comply with their CRS reporting obligations. ''I have met with companies that have said, 'There's no way we'll be able to do this on time. We realize that we are making our best effort right now, and we have full intentions of complying by the deadline,' but I have not heard of anybody who is ignoring [their filing obligations],'' she said. ''I think most organizations have the best intentions of trying to do what they can by the deadline.''

Some banks have opted to let their local entities operating in CRS jurisdictions determine what they need to do to comply rather than centrally track their CRS obligations, Hintzke said. ''Organizations that have done that have found that they have some big holes because they will have teams in some jurisdictions which may be more knowledgeable and on top of this stuff than others,'' she said. ''[What] you really need, if you're going to do it right, is to have some type of centralized compliance framework in place that is checking and ensuring that each jurisdiction is meeting the requirements that they need to.''

There is no withholding tax associated with the CRS, as there is with FATCA, but Hintzke said organizations appear to be a little more nervous about complying with the CRS than they were with FATCA. That is because the CRS will be enforced through local audits and penalties and some jurisdictions are discussing possible criminal penalties for noncompliance, she said. Hintzke noted, however, that she is seeing some jurisdictions demonstrate flexibility when it comes to CRS. For example, the Cayman Islands has announced that it will not impose penalties for institutions that file up to 60 days after its reporting deadline, she said, adding that other countries have also discussed the possibility of ''soft landings.''

''So this first year there will probably be a lot more leeway and understanding for an institution that does not meet the deadline, so long as they can show that they are trying,'' Hintzke said. ''That will probably not be the case as time goes on, which is what we saw with FATCA.''

Differing Standards Add Complexity

The requirements under the CRS are minimum standards, so each of the 101 participating countries has leeway to impose additional requirements, Hintzke said. Countries are also presented with different options within those minimum standards, she explained. For example, she said, countries may decide whether they are going to require financial institutions within their jurisdiction to document all of their account holders, or only those in reportable jurisdictions.

Because of the complicated nature of CRS reporting, any organization with an obligation to file will be under at least a little stress when it comes to filing this year, said Candace Ewell, a tax principal with PwC. She said that the first year institutions were required to file under FATCA was stressful for them and that those organizations will be under similar stress when they file their initial CRS reports.

''I like to tell people that the CRS is almost FATCA on steroids because you can have some wide variations between the different countries,'' Hintzke said. ''So if you are a large financial institution and you are doing business in 50 different countries, you cannot come up with a consistent standard that you are going to apply everywhere. You need to really look at what the requirements are in each of those countries.''

Plowgian said that there is still quite a bit of angst over the CRS and that most financial institutions still have a lot of work to do. He added that mistakes are likely because for many financial institutions, onboarding, validation, and reporting remain manual processes. ''There is a risk of reports being done incorrectly because people make mistakes,'' he said, emphasizing the need for governments to provide a soft landing in the early years.

Hintzke said many of the financial institutions best equipped to handle CRS reporting are those that saw FATCA as ushering in a new era of reporting requirements and built processes into their systems and made technology updates that are making it easier to adapt to CRS filing requirements. ''There are quite a few financial institutions, however, that did not necessarily take that broader view, and so they've had to go back and actually make changes to systems,'' she said. ''Also, from what we have seen, in some organizations, their FATCA project management groups are just trying to retool and focus on CRS as the next stop. And in others, there has actually been a split, so within the organization they will have had the team that worked on FATCA and now there will be a separate team focused on CRS, and there is not necessarily a lot of synergy between those teams.''

There has also been some fatigue when it comes to addressing the CRS and finding the money to do so because putting the FATCA compliance framework in place was such a sizable undertaking for large financial organizations, Hintzke said. ''I think that with CRS the people in some organizations are trying to do what they need to, but they probably do not have as much manpower behind it or as much budget behind it as they did when FATCA was being rolled out,'' she said.

Tracking Filing and Compliance Dates

Traditionally, a U.S. organization's tax officer only had to worry about preparing Forms 1099 and Forms 1042-S during a single quarter (January for Forms 1099 and March/April for Forms 1042-S) because they were all due at the same time, said Cyrus Daftary, co-head of operational risk and regulatory compliance at IHS Markit. However, the countries implementing FATCA and the CRS have spread their intergovernmental agreement and automatic exchange of information reporting filings across the calendar, making it essential that firms track their compliance for each jurisdiction and effectively have teams managing reporting throughout the year, he said.

''People are really struggling because they are trying to figure out how to bring some structure to the chaos, particularly when they've got different reporting deadlines and different portals/registration/submission requirements,'' Daftary said. ''It's kind of like the Wild West at this point. There isn't a uniform deadline as there is with forms 1099 and 1042-S.''

In addition to tracking the filing dates, organizations need to keep track of all of the guidance issued in each CRS jurisdiction, Daftary said. ''When the guidance is published, a lot of times it's published in the local language,'' he explained. ''So then you have to have it translated, and you are hoping nothing is lost in translation. These things just add further wrinkles to an already complicated process.''

Daftary noted that with CRS there is no equivalent to FATCA'S International Data Exchange Service reporting portal, so practitioners are still awaiting guidance on where and how they should be filing in some jurisdictions. ''While there is an OECD schema, that schema is not law, and it's really more of a recommendation and we know countries are free to tailor it as they want,'' he said.

As a result of these challenges, Daftary said he expects to see firms initially struggle with the reporting as they try to get the data right and get a handle on the filing requirements for various jurisdictions. ''Realistically, for some countries the first filing may encompass multiple years, as the requirements have yet to be published,'' he said. ''There is still the dependency on each jurisdiction to publish the CRS guidance and make sure the jurisdiction has outlined the parameters by which they expect to receive the data, where one files, and in what format.''

Lack of Preparation

Although the CRS is usually viewed as stemming from FATCA, Ewell said the fact that FATCA reporting is already taking place hasn't necessarily made it easier for financial institutions to comply with the

CRS. She noted that some types of financial institutions were exempt from FATCA filing requirements, but those exemptions did not carry through to the CRS. ''As an example, under FATCA, organizations like foreign credit unions or foreign local banks which only had local customers would be largely excluded from the filing requirements,'' she said. ''If those foreign financial institutions are in a common reporting standard jurisdiction, I would imagine they are scrambling, or have a lot to do, because they would not have needed to comply with FATCA.''

Ewell said that financial institutions that had minimal filing obligations under FATCA may not have sought assistance with the CRS. ''What I would expect, though, is that they would struggle to the extent that they do not have the kind of account opening documentation that the common reporting standard requires,'' she said.

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