fiduchi

Inspiring. Independent. Trusted.

Our ‘trusted’ approach means that we take care of the detail so that our clients can enjoy what matters to them.

FATCA/Common Reporting Standard (CRS)

Frequently asked questions

The continued drive for international tax transparency and increased cooperation between tax administrations has led to numerous ideas and initiatives over the last several years. One initiative that has finally got off the ground is the OECD’s “Standard for Automatic Exchange of Financial Account Information” - more commonly referred to as the “Common Reporting Standard”, or “CRS”.

It is clear that CRS is a game-changer in the fight against illegal tax evasion, but it is also clear that individuals that have set up well-planned and properly managed wealth preservation vehicles have nothing to fear.

To deal with some of the questions that our clients might have, Fiduchi has prepared this guide and FAQ summary. CRS is a complex matter and it has far-reaching implications. If you have any concerns or are unclear whether CRS affects you, then you should speak with a qualified tax advisor. Fiduchi can help with this, but this guide should be considered as an outline only - it does not represent tax or legal advice.

What is the Common Reporting Standard (“CRS”)?

CRS is a global standard for the automatic exchange of financial information between financial institutions and tax authorities.

CRS was developed by the Organisation for Economic Co-operation and Development (“OECD”) and provides an international legal framework for the prevention of illegal tax evasion. More information can be obtained from the OECD’s website www.oecd.org

What is the purpose of CRS?

The OECD developed CRS in response to calls from the G20 to create a global system allowing participating jurisdictions to obtain information from their financial institutions and automatically exchange that information with other participating jurisdictions on an annual basis.

The aim of CRS is to reduce the ability of taxpayers of one jurisdiction to conceal their assets and income in another jurisdiction. CRS should not unduly affect the management and effectiveness of properly advised structures.

Which jurisdictions have committed to CRS?

Over 90 jurisdictions have committed to CRS. A full list of participating jurisdictions can be found on the OECD website www.oecd.org Significant jurisdictions are the UK, all other EU states, China, India, Japan, Russia, Switzerland, Jersey and the other Crown Dependencies, Cayman and BVI.

The reality is that CRS will probably affect every jurisdiction in the World, although a notable exception to the list of signatories is the USA, which has decided that it can rely upon the existing framework created by FATCA.

Putting aside the difficulties caused by the USA’s non-commitment, it is likely that financial institutions in those jurisdictions that do not sign up to CRS will increasingly find themselves restricted in the transactions they can undertake. Withholding taxes have been mooted, but blacklists are more likely in the short term.

What’s the difference between CRS and FATCA?

FATCA is a framework developed by the USA (and then adopted by the UK) designed to combat tax evasion by US taxpayers by imposing reporting obligations in financial institutions together with withholding taxes for ‘non-compliance’. Over 100 jurisdictions have signed up to FATCA, but it is arguably of limited impact on non-US taxpayers.

CRS on the other hand is a global initiative designed to combat tax evasion by any tax payer of any of the jurisdictions that have signed up (over 90 and counting). The UK has dropped its version of FATCA in favour of signing up to CRS, but the USA has so far not joined CRS.

One notable difference between FATCA and CRS is that under FATCA there was a de minimus rule whereby accounts under $50,000 in value were not reportable; under CRS there is no de minimums exception.

When does CRS begin?

CRS has already begun! Full information can be found on the OCED's website www.oecd.org, but CRS is being brought into practice in three stages:

1. Stage 1 – 56 countries, the so-called 'Early Adopters', including Jersey and the EU, the UK and India began CRS on 1 January 2016, with the first reporting by May 2017.
2. Stage 2 – A further 40 countries, including China, Israel, Japan, Russia, Switzerland and Singapore began on 1 January 2017, with the first reporting by May 2018.
3. Stage 3 – Dates are still to be set.

What will financial institutions such as Fiduchi be reporting?

All institutions within CRS-participating jurisdictions must obtain and report the same information, including:

- name and residential address of Reportable Account holder;
- date of birth of Reportable Account holder;
- jurisdiction of tax residency of Reportable Account Holder together with relevant tax reference number;
- Reportable Account name and identifying number where applicable (i.e. in respect of a trust, the trust's name; in respect of a company, the company's name);
- Reportable Account balance at year end or closure;
- amount paid to Account Holder during the year.
- Where the Reportable Account is held by a Passive Non-Financial Entity, the Financial Institution will be required to provide certain information on 'Controlling Persons' of that Reportable Account.

Financial Institutions will report to the relevant authority in their own jurisdictions, who will in turn share that information with the authority of the taxpayer.

How are trust accounts affected by CRS?

Trusts are complex structures and, unfortunately, the wording of CRS is not helpful when considering how trusts should be treated within the framework. However, trusts are explicitly covered by the CRS rules and it is made clear that Reportable Accounts include accounts held by trusts and that Financial Institutions (which may include the trust itself) are required to look through passive entities to report on those natural individuals that ultimately control or benefit from trusts.

In most cases involving family or private wealth planning, a trust is likely to be classified under CRS as either a Reporting Financial Institution (FI) or a Passive Non-Financial Entity (Passive NFE).

Where a Jersey trust is an FI, the trust itself is obliged to report to the Jersey tax authority in respect of the trust's Reportable Accounts. In practice, this will mean disclosing details of the trust and, in respect of when these individuals reside in a participating jurisdiction: the settlor, the beneficiaries, the protector and any person with a loan account. However, it is worth noting that for discretionary beneficiaries there is no reporting obligation until that beneficiary has actually received a benefit.

Where the trust is a Passive NFE, the trustee may be required to disclose information on the same persons to any FI with which the trust deals (e.g. a bank or investment manager). This is in order that the FI can then file its own report.

What is a Reportable Account?

Financial institutions of participating jurisdictions have an obligation to review their Financial Accounts in order to identify Reportable Persons by applying due diligence rules. A Financial Account is a Reportable Account when it is held by a Reportable Person or by a passive NFE with one or more Controlling Persons that is a Reportable Person.

What is a Reportable Person?

Under CRS, this term essentially means an individual or entity or estate that is resident in a participating jurisdiction. For entities that do not have formal tax residency, residency is determined by the place of effective management and control.

What is a Financial Account?

A Financial Account is an account maintained by a Financial Institution. Relevant examples would be a bank account and equity interests in a trust, company or partnership.

What is a Financial Institution?

Under CRS, this term means a custodial or depository institution, a specified insurance company or an Investment Entity. Essentially, a Financial Institution is any Entity that 'holds, as a substantial portion of its business, Financial Assets for the account of others.'

What is an Investment Entity?

Under CRS, this term means:

1. any entity that primarily conducts as a business investing, administering, or managing Financial Assets or money on behalf of other persons;
2. any entity whose gross income is primarily attributable to investing, reinvesting or trading financial assets and the entity is itself managed by an FI.

What is a Controlling Person?

The natural persons holding control over an entity. In the case of a trust, the term means the settlor, the trustee, the protector and the beneficiaries, as well as any other person exercising ultimate effective control over the trust.

What are an NFE, a Passive NFE and an Active NFE?

An NFE is any entity that is not a Financial Institution. A Passive NFE is an NFE that is not 'Active', in general terms an Active NFE is an NFE that meets any of the following criteria:

- less than 50 per cent of gross income in the preceding calendar year or other appropriate reporting period is passive income and less than 50 per cent of the assets held by the NFE during the period are passive income-generating assets;
- publically traded;
- government entity, international organisation, central banks;
- holding NFEs whose subsidiaries are themselves NFEs (but not investment funds, private equity funds, venture capital funds or similar investment vehicles);
- the NFE is less than two years old, not yet operating a business but is investing capital into assets with the intent to operate a business other than that of an FI;
- NFEs in process of liquidation;
- Treasury centres for non-financial groups;
- Not for profits.

What are some useful links to assist with further understanding?

- The OECD's CRS page: https://www.oecd.org/tax/automatic-exchange/common-reporting-standard/
- The Jersey government's guidelines: http://www.gov.je/TaxesMoney/InternationalTaxAgreements/IGAs/Pages/CommonReportingStandard.aspx

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