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Tax Transparency – Global Information Reporting

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Global Information Reporting Update

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Common Reporting Standard

Bill in relation to the Common Reporting Standard passed on 29 February 2016

On 3 December 2015, the Tax Laws Amendment (Implementation of the Common Reporting Standard) Bill 2015, which proposes to implement the Organisation for Economic Co-operation and Development's (OECD) Common Reporting Standard (CRS), was introduced into the House of Representatives. The Bill, with a number of additional amendments made by the Senate, has now been passed by both Houses and awaits Royal Assent (Final Bill).

The CRS is intended to reduce international tax evasion and represents the next significant wave of compliance for taxpayers, both financial institutions and account-holders. Under the implementing legislation, Australian financial institutions will need to carry out due diligence procedures to identify the tax residence of account holders and report relevant data to the Australian Taxation Office (ATO). The Final Bill is generally consistent with the exposure draft legislation (please refer to our TaxTalk Alert on the exposure draft), however there were a number of key changes made as a result of consultation and during its Parliamentary process:

1. a change in the commencement date of the CRS for Australian financial institutions from 1 January 2017 to 1 July 2017;

2. the removal of the option to defer CRS due diligence and reporting obligations for twelve months;

3. the deadline for "pre-existing entity account" due diligence is brought forward by twelve months to 31 July 2018;

4. the reporting deadlines for pre-existing accounts are brought into line with the due diligence deadlines; and

5. the introduction of an obligation on the Commissioner of Taxation to provide the Minister with an annual report setting out the total number and value of the accounts in a particular CRS jurisdiction which will be tabled in Parliament.

The relevant deadlines for the CRS obligations under the Final Bill are as follows:

- Due diligence in respect of 'new accounts' (those accounts maintained on 30 June 2017) to commence on 1 July 2017.

- Due diligence in respect of 'preexisting entity accounts' (those accounts maintained on 30 June 2017) to be completed by 31 July 2018. These accounts are reportable by 31 July 2018.

- Due diligence in respect of 'preexisting individual accounts' (those accounts maintained on30 June 2017) to be completed by 31 July 2019 for 'lower value accounts' (accounts with an aggregate balance not exceeding USD 1M (with the option to treat in AUD) on 30 June 2017) and 31 July 2018 for 'high value accounts' (accounts with an aggregate balance exceeding USD 1M (with the option to treat in AUD) on 30 June 2017). Lower value accounts are reportable by 31 July 2019 and high-value accounts are reportable by 31 July 2018.

- Reporting obligations to commence on 31 July 2018 (in respect of the six month period from 1 July 2017 to 31 December 2017).

The revised deadlines gives financial institutions twelve months less time to conduct their pre-existing account due diligence than the equivalent provisions under the Foreign Account Tax Compliance Act (FATCA) regime. In addition, the due diligence deadlines have been brought into line with the reporting dates. Therefore, if due diligence is completed in respect of a pre-existing account just before the relevant deadline (e.g. 31 July 2018 for a pre-existing entity account) and the account is reportable, the financial institution will be required to include the account on its 31 July 2018 report.

The rationale behind the introduction of the obligation on the Commissioner to make public the value and number of accounts that a particular country's residents hold in Australia remain to be seen; however, once again the focus is on transparency.

Takeaway

Clients should consider whether they are subject to the CRS rules well in advance of the 1 July 2017 CRS commencement date, particularly with the tight timeframes in relation to pre-existing entity due diligence and reporting. In-scope clients should begin considering, in the context of the technical rules, how best to implement the CRS in their organisations from a data processing and systems perspective.

All other taxpayers should be aware that under the CRS the ATO will begin receiving information from overseas tax authorities in relation to any financial accounts they hold overseas. If you have failed to disclose income to the ATO in prior income years, you should consider making a voluntary disclosure to the ATO to correct your tax affairs which generally has the effect of reducing the administrative penalties and interest charges that would normally apply.

Foreign Account Tax Compliance Act (FATCA)

IRS updates website to allow sponsored entities to obtain a GIIN

Sponsored entities have been permitted to use the global intermediary identification number (GIIN) of their sponsoring entity on a temporary basis, with the United States Internal Revenue Service (IRS) prescribing a general requirement for sponsored entities to register with the IRS and obtain their own GIIN in advance of 31 December 2016. In order to enable sponsoring entities to obtain GIINs for the entities they sponsor before then, the IRS has launched a registration application as part of its FATCA Online Registration System.

Note that this general requirement does not apply to financial institutions which are resident in a Model 1 IGA jurisdiction (e.g. Australia). Therefore, Australian FIs are only required to register sponsored entities on or before the later of 31 December 2016 or the date that is 90 days after a US reportable account is first identified. However, the registration application will be relevant to Australian sponsored FIs with US Reportable Accounts.

Further insights from PwC may be found here.

Takeaway

Clients that own or manage sponsored financial institutions with US Reportable Accounts should take note of the manner in which to register their sponsored financial institutions.

Listed investment entities

The FATCA obligations of listed investment entities are still uncertain given the requirement that FATCA self-certifications be obtained prior to the opening of an account (per US IRS guidance). Currently there is ongoing consultation between Treasury and the industry regarding potential solutions.

Takeaway

Affected clients should continue to monitor developments in this area.

Third party reporting

Third Party Reporting Bill receives Royal Assent

The Tax and Superannuation Laws Amendment (2015 Measures No. 5) Bill 2015 received Royal Assent on 30 November 2015 becoming the Tax and Superannuation Laws Amendment (2015 Measures No. 5) Act 2015. The Act creates a new third party reporting regime which will require certain entities ("third

parties") to report information to the ATO on transactions that could reasonably be expected to have tax consequences for other entities.

Third party reporting obligations in relation to transfers of real property (reported by states and territories) and ASIC market integrity data (reported by ASIC) apply to transactions happening on or after 1 July 2016. All other third party reporting obligations apply to transactions happening on or after 1 July 2017.

An outline of the regime is included in the First Edition of our Global Information Reporting publication.

Takeaway

Clients should confirm whether they are subject to the Third Party Reporting rules and in-scope clients should start considering the extent to which other regulatory change projects (e.g. FATCA, CRS and/or anti-money laundering (AML)/know-your-customer (KYC)] could be leveraged to support implementation of this new information reporting regime.

For further PwC insights please refer to our TaxTalk Alert on the Bill.

Broader transparency measures

In December 2016 we saw the release of the first round of tax data reported by the Commissioner of Taxation for approximately 1500 of the largest public and foreign owned corporate groups operating in Australia. The data revealed that one-third of the companies included in the report did not pay tax in the 2014 tax year. The next round of data (for certain privately owned groups) is expected to be released in the second half of March 2016.

The Government has also announced that the Government and the ATO will consult with business on the relative costs and benefits of introducing a new tax reporting regime which would require taxpayers and tax advisers to report certain tax arrangements to the ATO. The regime would be shaped around the recommendations in the OECD's Base Erosion and Profit Shifting (BEPS) Action Paper Number 12 - Mandatory Disclosure Rules, which is aimed at the early reporting of information about tax arrangements and how they work.

PwC is involved in the consultation process that is due to commence soon.

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If you require further information, please contact your PwC representative, or alternatively the following:

Jeffrey May
Partner
+61 (3) 8603 0729
jeffrey.may@au.pwc.com

Daniel Lutz
Director
+61 (3) 8603 5479
daniel.lutz@au.pwc.com

Ken Woo
Partner
+61 (2) 8266 2948
ken.woo@au.pwc.com

Ciara Fagan
Manager
+61 (2) 8266 3609
ciara.fagan@au.pwc.com

Ashley King
Partner
+61 (3) 8603 1363
ashley.king@au.pwc.com

Gavin Marjoram
Partner
+61 (2) 8266 0576
gavin.marjoram@au.pwc.com

Darren Mack
Director
+61 (2) 8266 0993
darren.mack@au.pwc.com