Getting ready for the Common Reporting Standard

February 2017

In brief

Almost three years since the implementation of the Foreign Account Tax Compliance Act (FATCA) regime in Australia, "Financial Institutions" (FIs) must now be getting ready for the implementation of the Common Reporting Standard (CRS), with the first reporting period commencing on 1 July 2017.

In scope FIs will be subject to the CRS due diligence and reporting requirements. Although the in scope entities are broadly similar between FATCA and CRS, there are a number of differences which may mean entities that were not subject to FATCA are now in scope for the CRS regime. Due to the wider scope of the CRS, the wider approach adopted by Australia on Reportable Jurisdictions, and various differences in the due diligence and reporting requirements between FATCA and CRS, FIs will need to review their current policies and procedures to ensure compliance with the CRS. Failure to comply will result in penalties, include a new administrative penalty for failure to collect self-certification.

In detail

The Tax Laws Amendment (Implementation of the Common Reporting Standard) Act 2016 was enacted in March 2016 to implement in Australia the Organisation for Economic Co-operation and Development's (OECD) CRS for the automatic exchange of financial account information between the CRS signatory countries.

The CRS obligations commence in Australia from 1 July 2017, with the first reporting period commencing from 1 July 2017 to 31 December 2017. The first CRS statement will be due on 31 July 2018.

Key differences between CRS and FATCA

The overall provisions of the CRS are broadly similar to FATCA. However, there are a number of significant differences between the two regimes which will have an impact on the entities that are required to report, and the accounts and information to be reported.

In scope entities and registration requirements

The requirements under CRS are imposed on "Reporting Financial Institutions". The definition of an FI under CRS is broadly similar to that applicable under FATCA (including Custodial Institution, Depository Institution, Investment Entity and Specified Insurance Company), with some differences in the definition of an Investment Entity.

However, the key point to note is that an FI is not required to report if it meets the definition of Non-Reporting Financial Institution (NRFI), and there are significantly less categories of NRFI under CRS as compared to FATCA. For example, there are no specific exemptions for Investment Advisors and Investment Managers, Sponsored Entities or Local Banks. An FI that is a Non-Reporting Australian Financial Institution - either because it is an exempt beneficial owner or deemed compliant FI under FATCA - should review their CRS status to ensure compliance with the CRS.

There is no registration requirement under CRS.

Reportable accounts

For ease of administration, Australia has adopted the wider approach of including all countries, except for Australia, as Reportable Jurisdictions (under the OECD model convention, only CRS signatory countries are reportable).

Broadly speaking, any individual accounts held by non-Australian residents (for tax purposes), accounts held by entities incorporated or resident outside of Australia (subject to exemptions for certain listed companies and financial institutions) and certain Australian entities controlled by non-Australian residents will be reportable. It is expected that there will be significantly more reportable accounts under the CRS as compared to FATCA.

Due diligence

There are a number of differences in pre-existing and new account due diligence requirements under FATCA and CRS, including:

- i) a self-certification must be obtained for all new accounts;
- ii) there is no de minimis exemption for due diligence on individual accounts (including pre-existing and new accounts diligence); and
- iii) there is a more restricted threshold for due diligence on pre-existing entity accounts.

Generally, this means that certain pre-existing accounts, which may have been exempt from due diligence under FATCA, must be reviewed under CRS.

Reporting and withholding

The information required to be reported under CRS is broadly similar to FATCA, and must be filed under a specified schema. Australia has adopted the OECD developed CRS XML Schema v1.0. The schema and user guide are available through the OECD Automatic Exchange Portal.

There are no withholding requirements under CRS.

Fines and penalties

The CRS legislation also introduce a new penalty for the failure to collect self-certification. This penalty applies if self-certification is not collected by the time the CRS statement is due (31 July after the calendar year end). In addition to this new penalty, existing tax administrative penalties for failing to lodge documents on time, and making false or misleading statements about tax-related matters would also apply to CRS statements.

The takeaway

With the implementation of CRS commencing in less than six months, FIs will need to review their current policy and procedures on information reporting to ensure compliance with CRS. This will include confirming the entities that are in scope, reviewing existing customer due-diligence procedures and on-boarding process, modifying existing client on-boarding/self-certification forms, and reviewing system capability in relation to data collection and reporting.

Given the overlap of these obligations, it may also be timely to review other existing third party/investor reporting obligations, including FATCA, Annual Investment Income Report (AIIR), Quarterly Tax File Number reports, along with compliance with other customer on-boarding requirements such as Know Your Customer (KYC) and Anti-Money Laundering (AML).

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

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