

OECD Releases Global Standard for Automatic Exchange of FATCA-Type Information

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As part of a push for greater transparency, the Organization for Economic Cooperation and Development (OECD) released on February 13, 2014, a Common Reporting Standard (CRS) for Automatic Exchange of Financial Account Information, as well as a model Competent Authority Agreement (CAA).¹

Under the CRS, countries will annually obtain financial information from domestic financial institutions. Under the CAA, countries will then automatically exchange that information with their exchange partner countries.

The CRS is widely cast and requires:

- financial institutions, such as banks, custodians, brokers, certain collective investment vehicles and certain insurance companies, to report
- financial information, such as interest, dividends, income from certain insurance contracts, other investment income, account balances and sales proceeds from financial assets, in relation to
- reportable accounts held by individuals and entities, including foundations and trusts (passive entities typically will be looked through and the ultimate controllers will be reported on).

The CRS also contains detailed due diligence procedures for financial institutions to identify reportable accounts.

The CRS and CAA are not law — implementing the CRS and CAA is voluntary, and countries wishing to participate will need to translate the CRS into domestic law and enter into the CAA with each exchange partner country. The CAA can be executed within existing legal frameworks, such as any existing double tax treaty (DTT) in place between the relevant countries, or under the OECD Multilateral Convention on Mutual Assistance in Tax Matters (OECD Treaty), which allows for signatory countries to agree on automatic exchange of information.

Comment

Many countries, both OECD and non-OECD, already exchange taxpayer information automatically, using either an applicable DTT, or the exchange of information provisions in the OECD Treaty.

However, FATCA² has been the catalyst for an increasing level of cooperation and exchange between countries, with an increasing number of jurisdictions entering into intergovernmental agreements (IGAs) with the U.S. in relation to FATCA. In addition,

¹ See <http://www.oecd.org/ctp/exchange-of-tax-information/Automatic-Exchange-Financial-Account-Information-Common-Reporting-Standard.pdf>.

² See “Financial Institutions Wrestle With FATCA Implementation” at <http://www.skadden.com/insights/financial-institutions-wrestle-fatca-implementation>; “Treasury and IRS Move to Implement FATCA as 2014 Start Date Approaches” at <http://www.skadden.com/insights/treasury-and-irs-move-implement-fatca-2014-start-date-approaches>; and “Treasury and IRS Finalize Highly Anticipated FATCA Regulations” at <http://www.skadden.com/insights/treasury-and-irs-finalize-highly-anticipated-fatca-regulations>.

the U.K. has entered into agreements with its Crown Dependencies and Overseas Territories for the provision of FATCA-type information, and a small group of countries (including the U.K., Germany and France) have agreed to exchange FATCA-type information with each other.

The CRS is intended to supplement and expand existing exchange of information arrangements, such as those in place under DTTs and the OECD Treaty. Through standardization, the CRS is meant to provide greater efficiency in reporting, and thus reduce reporting costs for financial institutions. In that regard, the CRS draws extensively from FATCA IGAs, such that similar financial institutions as are covered by FATCA reporting will have to report similar financial information as is required by FATCA reporting, this time in relation to taxpayers resident or located in the exchange partner country.

It is likely that a number of countries, particularly OECD members, will adopt the CRS and CAA, so that financial institutions located in those countries will have to modify the systems that they have in place for FATCA reporting, so that exchange partner country taxpayers are also included.

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