Planning for the Common Reporting Standard
Planning for the Common Reporting Standard

In the wake of the 2008 credit crisis, the global legislative agenda for financial markets shifted its focus from harmonising markets and streamlining activities to one that emphasises systemic risk mitigation. The regulatory landscape has been evolving ever since.

New guidelines and requirements generated by the G-20 and others have ranged from looking at how to make better use of financial market infrastructures to handle volume, to putting greater responsibility on banks and depositories. There has also been a particular focus on tax collection and financial crime compliance priorities, which ultimately led to the Foreign Account Tax Compliance Act (FATCA) and the 4th Anti-Money Laundering Directive. In addition to these, the Organisation for Economic Cooperation and Development (OECD) has created a single global automatic exchange of information model to further help governments effectively combat tax evasion. The result of this model is the Common Reporting Standard (CRS), a set of global tax reporting and due diligence guidelines for Financial Institutions (FIs).

CRS and FATCA: a comparison

CRS has sometimes been referred to as a global FATCA, but there are some key differences.

Scope

While FATCA and CRS are both Automatic Exchange of Financial Information (AEOI) regimes with FIs taking on the responsibility, FATCA focuses on US account holders specifically. CRS, on the other hand, is a global tax reporting regime that may impact account holders with tax residency in the 90+ jurisdictions that have already committed to it.

Compliance

Both schemes also focus on account holder due diligence and reporting. This includes putting guidelines in place for FIs to gain an understanding of who investors are and where their tax residency is, and then how to report on the financial information related to those investors’ accounts or funds. The distinction between the two comes in as it relates to pre-registration. Under FATCA, most non-US FIs are required to have obtained a Global Intermediary Identification Number (GIIN) from the US Internal Revenue Service (IRS). With CRS, pre-registration is not required and there is also no Responsible Officer concept as there may be with FATCA. Another key differential is the fact that FATCA drives compliance through creating the potential of withholding on non-compliant FIs and account holders, while CRS levies domestic or local penalties for non-compliance – some of which may potentially be material and significant.

Definitions

The break out of financial accounts between individual and entities as well as new and pre-existing account holders is consistent for CRS and FATCA. However, some definitions related to what is considered an FI, what a reportable account is and what exemptions may differ.

CRS levies domestic or local penalties for non-compliance – some of which may potentially be material and significant

With these effective dates it is expected that the UK Crown Dependencies and Overseas Territories (CDOT) reporting regimes will transform into CRS. In addition, there will also likely be a technical and practical phase out of the EU Saving Directive. CRS also features a potential future benefit for funds and fund investors as the EU Commission is considering plans to ease tax reclaim and withholding processes by using CRS data.

Considerations for implementation

The primary area of focus for FIs in terms of implementation of CRS is on updating documentation. For FIs that are funds, subscription documents may need updating to request missing mandatory information or self-certification to ensure tax residency can be identified and reporting elements are taken in from individual investors. (CRS self-certifications are being combined with FATCA self-certifications, and are becoming one document as CRS moves into the marketplace.)

Fund managers and asset managers may need to consider updating to their prospectuses to cover current and potential future Automatic Exchange of Information (AEOI) regimes. While many may have already done this with FATCA, it’s advisable to be certain that account holders and investors are properly notified that financial information may be requested and stored as well as shared and reported.

Beyond this, FIs will need to plan out exactly how they are going to establish the necessary compliance elements – specifically identifying who is responsible for what. As with FATCA, CRS cannot be 100% outsourced. As a result, it is necessary to clearly map out what processes must be performed by the FI and which can be performed by the service provider. For instance, while service providers can support elements of due diligence and reporting, FIs may need to be involved in part of the due diligence process. This is particularly true as it relates to the to the role of those that manage relationships for the FI, who may have, who may have key knowledge with respect to reportable accounts, change of circumstances and high value individual accounts that need to be passed along to the service provider to ensure proper reporting.

Another critical consideration for FIs is working with different counterparties, including distributors. Many beneficial owners of funds will be held by nominees/distributors. Distributors are generally FIs as well, and will have their own set of requirements with which they must comply. It’s important, from a reputational standpoint, for asset managers to choose to work with distributors who are committed to the process.

As there were many lessons learned and processes that can be leveraged from FATCA, CRS does create its own challenges for FIs. FIs will be best served to work with experienced partners to assist with their compliance of this to take on the monumental compliance task of CRS.

For further information, please visit www.gbm.hsbc.com/securities-services or contact your relationship manager.

Timeframe for roll out

CRS has been committed to by over 90 jurisdictions, which will roll out in two waves.

<table>
<thead>
<tr>
<th>Wave 1</th>
<th>Wave 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Many key fund domiciles and most of the EU – ranging from the Cayman Islands and Bermuda, to Ireland, Luxembourg and the UK, to Korea and India</td>
<td>Includes China, Singapore, Hong Kong and Mauritius</td>
</tr>
<tr>
<td>Due diligence on new accounts came into effect 1 January 2016</td>
<td>Due diligence on new accounts will commence 1 January 2017</td>
</tr>
</tbody>
</table>

Due diligence on new accounts

Due diligence on new accounts coming into effect 1 January 2016

Reporting to begin in the first half of 2017 based on 2016 information

Reporting to begin in the first half of 2018 based on 2017 information