

Common Reporting Standard and FATCA

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2016 Compliance Update

For the past few years, FATCA has dominated the international tax compliance landscape. As that regime continues to be phased-in, a new regime – the Common Reporting Standard (“CRS”) – will begin to be implemented around the world. CRS, sometimes referred to as “Global FATCA,” will expand the due diligence and reporting obligations of many non-U.S. investment entities, including those in the Cayman Islands and the British Virgin Islands.

CRS will begin to go into effect on January 1, 2016, and investment entities that are subject to CRS may have compliance obligations that will go into effect on that date (see below).

CRS: Due Diligence

For investment managers already dealing with U.S. and U.K. FATCA compliance, CRS will be familiar. Under CRS, reporting financial institutions (including investment entities) will be required to conduct due diligence with respect to all of their investors to determine whether any investor is a tax resident in a CRS jurisdiction. Conceptually, this will not expand the due diligence requirement for investment entities that already undertake FATCA due diligence with respect to their investors. From a practical standpoint, however, investment managers will need to re-focus their due diligence to ensure that they have collected (or will collect) sufficient information from all of their investors to be able to comply with the reporting requirements under CRS.

For this purpose, CRS jurisdictions (including the Cayman Islands and the British Virgin Islands) have developed self-certification forms that are loosely based on IRS Forms W-8 and W-9, but also gather information that is specific to CRS. The Cayman forms (Entities/Individuals) were published last week. The BVI forms (Entities/Individuals) have not been updated for CRS, but can be used for CRS due diligence.

Investment entities subject to CRS should solicit these self-certification forms, in addition to IRS Forms W-8 and W-9, from all of their investors according to the following timetable:

- “New” Investors (first admitted on/after January 1, 2016):
 - ▶ At on-boarding (or within 90 days of admission) – **This goes into effect on January 1, 2016.**

- “Pre-Existing” Investors (first admitted before January 1, 2016):
 - ▶ **December 31, 2016:** Individual investors whose investment value was > US \$1 million on 12/31/15.
 - ▶ **December 31, 2017:** Individual investors whose investment value was ≤ US \$1 million on 12/31/15 and entity investors whose investment value was > US \$250,000 on 12/31/15 or 12/31/16.
 - ▶ **December 31, 20xx:** Entity investors whose investment value was ≤ US \$250,000 on 12/31/15 and 12/31/16, but exceeded US \$250,000 on a subsequent 12/31 (in which case, CRS due diligence must be completed by the following 12/31).

CRS: Reporting

CRS reporting (which will be done through the same portal, and according to the same timeline, as FATCA reporting) will begin in May 2017 (with respect to 2016).

FATCA

From a FATCA perspective, non-U.S. reporting financial institutions will be required to submit their 2015 FATCA reports by May 31, 2016; U.S. withholding agents will be required to submit their 2015 information returns by March 2016.

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