AUTOMATIC EXCHANGE OF INFORMATION

As of 2014, the Organization for Economic Co-operation and Development (**OECD**) released a model Competent Authority Agreement (CAA) and Common Reporting Standard (**CRS**) designed to create a global standard for the automatic exchange of financial account information.

More than 100 jurisdictions (Full list under Annex I) have already committed to the swift implementation, including EU member states, five 'third' countries (Switzerland, Liechtenstein, Andorra, Monaco and San Marino) and certain dependent or associated territories ('extended territory').

WILL YOU COPE WHEN YOUR DATA HAS LEFT THE BUILDING OR THE COUNTRY?

The Panama Papers revelations as well as the 2014 LuxLeaks scandal exposed how individuals and corporations conceal their assets and hide their business dealings using offshore tax havens and shell companies. Governments see a big opportunity to boost revenues by collecting taxes relating to these assets – however this can be only achieved, if sufficient data can be obtained from financial institutions around the world and automatically exchanged with other nations. Only then the tax authorities would be able to verify whether the taxpayer has accurately reported his or her income.

To satisfy the Common Reporting Standard (CRS) for the automatic exchange of financial account information (AEoI) between tax authorities in different countries, countries, mostly through their tax authorities, must obtain information from their financial institutions and exchange that information automatically with tax authorities of partner countries on an annual basis – especially when the account is held not where the taxpayer is resident. The resident's tax authorities can then verify whether the taxpayer has accurately reported his or her income.

Financial institutions, including banks, custodians, brokers, certain collective investment vehicles, trusts and certain insurance companies, will have significant responsibilities for identification and reporting information on their account holders. Financial institutions will have to review their existing customer base as well as gather detailed data on new clients what may require implementation of new identification in order to be compliant with the CRS provisions.

Reportable accounts are financial accounts held, directly or indirectly, by tax residents in other CRS reportable countries. In gathering data, residency or tax residency within a particular country is the decisive factor – not citizenship. A person is considered to have a tax residence in a country if under the laws of that country this person is liable to pay taxes due to domicile, residence, place of management, or any other criteria. In the meantime, entities residing in the country of the reviewing financial institution will also be subject to special identification procedures: if such entity is considered as a "passive" entity the financial institution will request to provide information on the place of residency of its controlling persons during review or on-boarding procedures.

Reportable income includes account balance, income on financial assets, e.g. interest, dividends, income from certain insurance products, annuities and sales proceeds from financial assets and other income generated from assets held in the account or payments made with respect to the account.

The CRS envisages that identification procedures can be based on local anti-money laundering (AML) and Know Your Customer (KYC) requirements. However, in case these local requirements do not allow to gather information required under the CRS identification procedures should be properly modified. The CRS also envisages self-certification by account holders, however, further verification of the received information by financial institutions is still required. While the intention is to have a single global standard, requirements may vary across countries. Below is a more comprehensive insight into the reporting requirements and the respective timeframe.

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REPORTING IN DETAIL

Each reporting financial institution must report the following information to local tax authorities:

1. the name, address, country(s) of residence, tax identification number (TIN) of each reportable person that is an account holder as well as date and place of birth for each individual account holder. Where an entity is an account holder, and one or more of its controlling persons are reportable persons, the financial institution should also report the aforementioned information with respect to each controlling person. The identification and reporting procedures should be performed not only in the year of settlement but also in all subsequent years.

2. the account number such as IBAN or in a format set by the financial institution (or functional equivalent in the absence of an account number, e.g. contract or policy number) and identifying information of the reporting institution such as BIC, GIIN assigned under FATCA, etc.

3. the account balance or value (cash value or surrender value) at the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, at the date of closure of the account.

4. in the case of any custodial account:

   a. the total gross amounts of interest, dividends and other income generated by the assets held in the account, in each case paid or credited to the account during the calendar year or other appropriate reporting period;

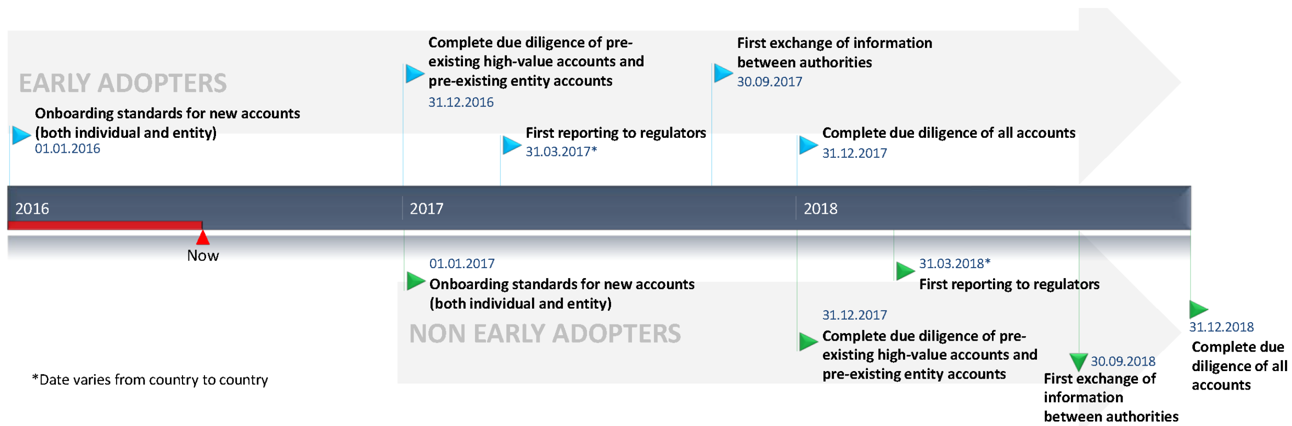
   b. the total gross proceeds from the sale or redemption of financial assets paid or credited to the account during the calendar year where the reporting financial institution acted as a custodian, broker, nominee, or agent for the account holder.

5. in the case of any depository account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period.

6. in the case of any account not described in subparagraph 4 or 5 above, the total gross amount paid or credited to the account holder with respect to the account, during the calendar year or other appropriate reporting period.

This information is send in a standardised matter (XML) to tax authorities, or other competent bodies according to the OECD Multilateral Competent Authority Agreement (MCAA). Resident's tax authorities can now verify whether the taxpayer has accurately reported its or his/ her income. Incorrect statements can have serious repercussions and penalties stated by the governments at local levels. Some governments impose grave sanctions and penalties on offenders, including fines and prison terms – see Annex II for selective examples.

IMPORTANT CRS KEY DATES



As such, the first reporting period for financial institutions in countries – early adopters is 2016, for financial institutions in countries – non early adopters – 2017.

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ANNEX I

The table below summarises the intended implementation timelines of the new standard.

EARLY ADOPTERS:
JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2017 (55)

Anguilla, Argentina, Barbados, Belgium, Bermuda, British Virgin Islands, Bulgaria, Cayman Islands, Colombia, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Dominica, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Greenland, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Montserrat, Netherlands, Niue, Norway, Poland, Portugal, Romania, San Marino, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Trinidad and Tobago, Turks and Caicos Islands, United Kingdom

NON-EARLY ADOPTERS:
JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2018 (46)

Albania, Andorra, Antigua and Barbuda, Aruba, Australia, Austria, The Bahamas, Bahrain, Belize, Brazil, Brunei Darussalam, Canada, Chile, China, Cook Islands, Costa Rica, Ghana, Grenada, Hong Kong (China), Indonesia, Israel, Japan, Kuwait, Lebanon, Marshall Islands, Macao (China), Malaysia, Mauritius, Monaco, Nauru, New Zealand, Panama, Qatar, Russia, Saint Kitts and Nevis, Samoa, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Sint Maarten, Switzerland, Turkey, United Arab Emirates, Uruguay, Vanuatu

ANNEX II

The sanctions provided for tax offences are generally prison sentences and criminal or administrative fines. For instance, the French General Tax Code provides (article 1741) that tax fraud is punished by a 37,500 Euro fine and of five years of imprisonment.

When fraud is facilitated by the use of false invoices, the French General Tax Code provides a 75,000 Euro fine and five years of imprisonment. The Italian legislative decree on tax offences of 24 September of 2015 provides a sentence from one year and a half to six years of imprisonment for committing a tax fraud using false documents for non-existent transactions.

In similar ways, the article 370 of the German Tax Code and the German Federal Court of law (Bundesgerichtshof) jurisprudence provide fines and imprisonment sentences that varies according to the amount of the fraud. For instance, under 50,000 Euros, the tax offender is only punished by a fine. Above 50,000 Euros, a fine and an imprisonment sentence, generally suspended, is provided except for massive tax fraud (above 1,000,000 Euros) for which imprisonment cannot be avoided.