Common Reporting Standards

Imminent implications for client tax reporting

Virtual Round Table Series
Tax Working Group 2018

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Imminent implications for client tax reporting

Common Reporting Standards (CRS) is an initiative that began in 2014 with the ambitious and high-minded goal of creating full transparency into the tax affairs of citizens in all Organisation for Economic Cooperation and Development (OECD) member countries.

On July 21, 2014, the OECD released the first version of the Standard for Automatic Exchange of Financial Account Information in Tax Matters, which would form the basis of the CRS framework to come.

By December 2015, over 95 jurisdictions had signed or were committed to sign the CRS. More than 50 jurisdictions were considered 'early adopters', meaning they started to automatically exchange information in 2017. The rest of the jurisdictions have committed to begin exchange in 2018.

CRS calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. Automatic Exchange of Information (AEOI) concerns any data or numbers in any format that can be used to clarify taxpayers' income or assets. The legislation details the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions.

The CRS legislation is modelled on the US's aggressive Foreign Account Tax Compliance Act (FATCA), which was designed to prevent US citizens from evading payment of tax to the US Internal Revenue Service (IRS). In many ways CRS is seen as the awkward stepchild of FATCA, since it has not been adopted by the US, but is very similar in structure with the same ultimate goals.

This Virtual Series provides an update on CRS implementation from a range of jurisdictions in which IR Global tax experts are currently operating. We have commentary from early adopters such as Spain and Luxembourg and insight on progress from later adopters such as Lebanon, a country which is well known for its banking secrecy.

The discussion touches on whether CRS has caused any conflict or tension during implementation, given issues such as the LuxLeaks Scandal and Lebanon's entrenched banking secrecy. We also ask whether CRS has affected advice on tax structuring and identify any loopholes that our experts have spotted in the developing legislation.

The View from IR

Tom Wheeler

MANAGING DIRECTOR

Our Virtual Series publications bring together a number of the network's members to discuss a different practice area-related topic. The participants share their expertise and offer a unique perspective from the jurisdiction they operate in.

This initiative highlights the emphasis we place on collaboration within the IR Global community and the need for effective knowledge sharing.

Each discussion features just one representative per jurisdiction, with the subject matter chosen by the steering committee of the relevant working group. The goal is to provide insight into challenges and opportunities identified by specialist practitioners.

We firmly believe the power of a global network comes from sharing ideas and expertise, enabling our members to better serve their clients' international needs.

SPAIN

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Jose Maria is specialised in the fields of Mergers & Acquisition, Restructuring, Corporate Governance, Dispute Resolutions, Acquiring companies and business units through the Bankruptcy Law, and Family Protocol. He is also a mediator in civil, commercial and insolvency areas and an arbitrator specialised in corporate conflicts.

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Hoogewerf & Cie has been established for almost 50 years, and was one of the first international firms in Luxembourg. Originally a tax adviser with offices in Geneva and Monaco, Hoogewerf & Cie now offers a complete range of fiduciary services to its wealthy clients, working in close harmony with lawyers, accountants and financial advisers around the world. The firm also provides project research and advisory services on both buy- and sell-side, assisting with implementation and business development. For the moment, the company focuses on the real estate and food and beverage sectors.

Hoogewerf & Cie will soon be launching an online platform for syndicated financing in the growth capital area (www.elistart.com). This initiative taps into a vast worldwide network of partners able to act as lead advisors or investors.

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Richard Ashby has more than 25 years' experience with New Zealand taxation matters, starting his career with the Internal Revenue Division before eventually becoming tax partner at Gilligan Sheppard.

He deals with clients of all types and sizes and provides tax opinions on the appropriate treatment of items of income and expenditure, assists clients with IRD risk reviews and audits and can assist clients who are having difficulties meeting their tax payment obligations to make suitable repayment arrangements with the IRD.

Richard strives to maintain a good work/life balance and outside of the office spends a large amount of time on his road bike, either training or competing in various events around the North Island.

LEBANON

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Wissam Abousleiman is a Lebanese certified public accountant (LACPA) and member of the IIA – Lebanon Chapter. Since 2009, he has been the Managing Director of Abousleiman & Co., a family professional services firm established in 1971 that practices audit, assurance, enterprise risk management and tax advisory services.

Over the course of his 18 year career, Wissam has gathered a wide range of experience in general, cost and financial accounting, financial management, internal and external audit, financial reporting and tax advisory services.

He has lectured at the CLET – Kafaat Institute University in Internal Controls and Auditing Practices, and has also given a wide range of workshops and seminars on International Financial Reporting Standards (IFRS), International Standards on Auditing (ISA), audit work papers, advanced accounting and financial reporting.

He is currently developing a number of far-reaching diploma programs based on good governance practices and responsible citizenry, including an eight course Tax Diploma Program for the American University of Beirut's Continuing Education Center covering international tax concepts and the Lebanese tax system.

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Suraj Nangia is a Partner of Nangia & Co LLP, one of the leading CA/CPA firms in India. He has expertise in international taxation, transfer pricing and entry strategy into India, advising several Fortune 500 companies with a presence in India.

Suraj is a qualified Chartered Accountant and a lawyer, certified by Mergers & Acquisitions Advisors (CM&AA) as an advanced professional. He has been instrumental in taking Nangia & Co LLP overseas, opening an office in Singapore and forming alliances in different parts of the world – USA, UK, South America, Germany, Netherlands, Austria.

Suraj is an Alumni of The Wharton School, UPENN, and a board member of Indo-Canadian Business chambers promoting business between India and Canada. He actively participates in charity events and has raised funds for ABETO and Childreach India with the help of his mountaineering skills. His contributions to society also include sponsoring and supporting underprivileged children and women.

QUESTION 1

Is there any conflict or tension in your jurisdiction between privacy laws and the new CRS regulations?

Luxembourg – Tudor Fedeles (TF) After the LuxLeaks issue, Luxembourg has been quite compliant with Common Reporting Standards (CRS) regulations. The jurisdiction completely adapted its legislation and now all financial institutions need to submit their first report to the authorities no later than the 13th June 2017, for the fiscal year of 2016. There is no way around this and they can't refuse to report the required information.

Lebanon – Wissam Abousleiman (WA) In Lebanon, we still have bank secrecy laws, yet the issue is that CRS undermines that secrecy. As a result, there was a lot of debate about the adoption of CRS, but it was eventually implemented, alongside several laws around access to public information. If we hadn't done this, the country would have been blacklisted back in September 2016. We don't start with CRS reporting until January 2018, with our first report due in September 2018.

The CRS process starts with a request for information coming into the tax authority that will be assessed to see if there is any requirement for banking information. If there is, it will be sent to the central bank. The central bank has a joint committee with the Ministry of Finance, which will look at the details and assess whether the request has anything to do with individual bank accounts. If so, they will notify the bank account holder that there has been a request and then assess the next steps.

This creates real conflict between Lebanese privacy laws and CRS.

New Zealand – Richard Ashby (RA) There have been no immediate concerns or conflicts in NZ between our existing privacy laws and CRS implementation, predominantly due to the collection mechanism for the data being via Inland Revenue. This body already has comprehensive secrecy provisions in place in respect of any information it obtains regarding taxpayers, sourced from third party providers.

New Zealand is already a party to FATCA, and its financial institutions have existing reporting obligations in that respect. CRS for most is just seen as being an extension of existing disclosure regimes, although with application to a wider group of reporting parties.

India – Suraj Nangia (SN) In India, the exchange of information doesn't lead to privacy concerns because the data collected remains with the tax authorities of the country of residence. Confidential data will be controlled by the lawmakers, so there are no concerns about reporting private data to tax regulators.

It is important to be compliant with CRS, because recent legislation passed, stipulates that all financial institutions have now to ask for self-certification from account holders on tax compliance. If you do not give the certification, your account will be blocked and transactions will be frozen.

Before the Foreign Account Tax Compliance Act (FATCA) or CRS, Indian banks were already required to give information to tax regulators and report information to other countries if stipulated in tax treaties. The flow of information was already very transparent, although CRS does add more regulations.

Spain – José Maria Dutilh (JMD) The strengthening of the automatic exchange of tax information at international level has been embodied in domestic legislation with the implementation of a series of regulations that consolidates this trend in our legal system.

This whole process of internal training to transfer the automatic exchange of tax information standard to our legal system has been carried out progressively and this has done so on the basis of two regulations that have been included in our domestic legal system: Directive 2014/107/EU of the Council , 9 December 2014, on the automatic exchange of information in the field of taxation, and the multilateral agreement of competent authorities on the automatic exchange of information regarding financial accounts.

This has prompted the introduction of a new additional twenty-second provision in the General Tax Law that governs with legal rank the obligations of due diligence and information relating to the financial accounts in the field of mutual assistance. The regulation also introduces two new types of infringement in relation to the breach of the obligation of identifying the residence of people who are the owners or control the financial accounts.

As can be seen from all of the above the Spanish legal system has been progressively incorporating all international regulations concerning mutual assistance in the exchange of tax information, which have been properly implemented by the various economic operators.

Wissam Abousleiman pictured at the 2017 IR Annual Conference in Berlin

QUESTION 2

Have you had any issues with the mechanics of CRS implementation in your jurisdiction, such as delays from governing bodies?

Luxembourg – TF In Luxembourg the authorities are quite keen to make all the old legislation CRS-compliant. Reporting has been in place since the beginning of 2007, with a penalty of 250,000 Euros for failure. As a result, there are no delays from governing bodies.

Lebanon – WA I was saying earlier that there was a huge long debate between the tax authorities and the Lebanese Central Bank about access to personal bank account information. Any request is processed by the Ministry of Finance before going to the central bank.

So far all the financial institutions have taken steps, starting with staff training on data collection on Ultimate Beneficial Owners (UBOs), sending out self-certification forms and completing due diligence to gather Proof of Evidence (PoE), but we have no information on how it will be approved by the Council of Ministers.

India – SN This is a Federal legislation, affecting financial institutions including banks, mutual funds and insurance companies across India. The implementation has been smooth so far, because they have followed an approach of taking suggestions from all parties affected.

The Indian Central bank has issued guidance and clarified that three times, to ensure financial institutions know how to apply CRS to all their clients. It's a sensitive thing, because they don't want to freeze the accounts of high net worth (HNW) clients just because of a small KYC requirement.

There were concerns around the governments revised guidelines, because clients need time to comply with self-certification, but finally a date in April 2017 was set for the first self-certification exercise, and it has gone fairly well in India.

Luxembourg – TF There have been no problems with overlying EU legislation in Luxembourg because the regulators are very keen on transposing all EU laws into their own. Luxembourg has set the gold standard because of the LuxLeaks scandal.

New Zealand – RA There have been no implementation delays in New Zealand. Our government is keen to be seen to be doing its bit to combat potential global tax avoidance, and has commented externally about the minimal legislative changes required to implement a number of the BEPS action plans, because avoidance provisions were already in place.

In terms of the CRS implementation timeline itself, legislation was introduced in August 2016, with the Bill being passed into law in February 2017. Since then, a list of reportable jurisdictions has been published, as well as details of excluded entities and excluded accounts.

From 3rd April 2018, reporting financial institutions can commence their registration and enrolment for CRS, and must provide the required CRS information for the period 1st July 2017 to 31st March 2018 no later than 30th June 2018. Inland Revenue will then provide the collected CRS information to the various reportable jurisdictions no later than 30th September 2018.

Spain – JMD Fifty-one countries, including Spain, signed a first agreement led by the OECD in October of 2014, which established the guidelines to be followed by foreign financial institutions for the exchange of tax information between member countries. There are currently more than 70 countries that have shown their commitment to the CRS system.

CRS regulations entered into force on 1 January 2016 in Spain, establishing 30 September 2017 as the first day for the first exchange of information between member countries.

The regulatory developments in Spain have been focused in two fundamental areas, namely successive amendments to the General Tax Law 58/2003, in which a new additional provision was included (the twenty-second) on the obligations of due diligence and information relating to financial accounts in the field of mutual assistance.

Financial institutions must also identify the residence of the people who hold the ownership or control of certain financial accounts and provide information regarding such accounts to the tax administration. In turn, the holders of these financial accounts are obliged to identify their fiscal residence to the financial institutions in which these accounts are open.

The Royal Decree 1021/2015 of 13 November, established the obligation to identify the fiscal residence of people who hold the ownership or control of certain financial accounts, and to inform about them in order to provide mutual assistance.

Initially, the speed of implementation in some cases has meant the blocking of accounts until their holders were able to provide the required documentation.

QUESTION 3

What are the practical implications of CRS on tax structuring advice. Has it affected the way in which you advise clients to structure their tax affairs?

Lebanon – WA When it comes to Lebanon, CRS and tax issues are a tricky subject. Many people have foreign passports and there is a huge diaspora going back and forth with interests in foreign countries. A lot of people don't realise the impact CRS will have and that is mostly due to lack of knowledge and tax structuring experience amongst tax advisors and professionals.

New Zealand – RA The introduction of CRS has not altered our tax structuring advice significantly, if at all, particularly with the BEPS project having been underway for some time now. There is simply more emphasis on ensuring clients are aware of the potential reporting obligations when doing business or undertaking transactions in New Zealand (if they are non-resident).

For New Zealand residents, it's essentially business as usual. CRS is just one more formality to tick off when undertaking various tasks, such as opening new bank accounts, although as mentioned previously, FATCA reporting disclosures have already exposed New Zealanders to cumbersome completion requirements.

India – SN We advise our clients that CRS is nothing more than a request for information. It is seeking transparency through exchange of information, because we are moving into a world where you can't hide anything. The Indian tax authorities are quite sharp in their work and can dig in whenever they see or smell anything strange. Our advice still remains the same, stay within the boundaries of law.

Our tax structuring advice has not really changed; we ask our clients to comply with reporting requirements because we want to prevent non-compliance with any laws.

CRS compliance hasn't become more difficult, it's just an additional requirement for extra information. Structuring advice is not primarily driven by tax, that's just one aspect.

Luxembourg – TF Here in Luxembourg, it's similar to India. The only thing that CRS does is create more bureaucracy and paperwork. Even before we stressed we were only accepting CRS-compliant clients, we didn't have any issues transmitting tax information. The one thing it might do is delay the process of transfer, because the authorities are requesting a lot more information. It doesn't affect the way in which we advise clients

India – SN I think it will take time for any affects from CRS to become apparent. It will not happen immediately, because the regulators need time to analyse and assess its effectiveness. There is likely to be much more information placed into the hands of the tax authorities. Hence CRS will not impact our tax structuring advice but may increase the scrutiny assessment.

Lebanon – WA Lebanon is unlike other jurisdictions such as Luxembourg which was more proactive in being CRS-compliant. There was no such requirement for tax compliance here pre-CRS, so the adoption of these regulations creates a lot of changes for HNW individuals and business.

Now that tax compliance is an issue, mentalities must change. People do not realise the necessity for revisiting their tax structures to ensure CRS compliance. For a long time, Lebanon was a banking haven, but clients must look at their business and their assets and what percentage of those are held inside and outside Lebanon in order to take necessary steps to ensure multi-jurisdictional compliance.

Spain – JMD We consider it essential to adjust tax planning strategies and tactics to the requirements and standards of the AEOI (automatic exchange of information) and the CRS. In general, this has not affected the tax planning offered from LeQuid as it has always been based on structures that serve the principle of tax avoidance and not of tax evasion, taking into account the prevalence of substance over form.

The four elements to be exchanged between the tax authorities are, the taxpayer's personal information, such as their name and address, the taxpayers' account numbers, the name of the financial institution and the balance of the taxpayers' account at the end of the fiscal year.

The confidentiality of the information between the customer and the bank must be kept; otherwise the financial institutions will begin to lose customers. However, privacy naturally becomes a problem with the annual exchange of data. There are data protection laws that tax authorities must comply with, but it is questionable up to which point they will be effective to protect the data exchanged.

Financial institutions are required to review their system to adopt the CRS standard, and this is not a simple task. It requires the training of employees and a substantial update of documentation and computer systems.

Tudor Fedeles pictured at the 2017 IR Annual Conference in Berlin

Suraj Nangia pictured at the 2017 IR DealMakers Conference in Barcelona

QUESTION 4

Any example cases which highlight the effect of CRS, following its recent adoption?

Luxembourg – TF We have noticed delays in transfers made by clients because of this regulation, despite the fact we have provided all the necessary information. This can create difficulties.

India – SN It's a condition that the banks, mutual fund houses and financial institutions ask account holders to submit their self-certification. If they don't comply, there is an account freeze. This is leading to some problems because KYC procedures can be at times onerous.

Spain – JMD We are not aware of any case that have been affected by this new CRS regulation.

The implementation of these regulations by countries with low taxation is increasing. Spain is often chosen as a place to establish holding companies or ETVE, (Holding Entities of Foreign Securities). This is a way of fiscally planning the groups operating in Europe and Latin America, and is done by registering the addresses of companies in jurisdictions, mainly in Madrid or the Canary Islands, which offer additional tax advantages.

Lebanon – WA We have no cases yet because Lebanon is yet to start with the CRS process, but CRS issues have been repeatedly brought up in client meetings with regard to how best to be compliant and deal with issues of anonymity.

When it comes to establishing companies, anonymity is something clients can't have any more in Lebanon. Needless to say, a lot of businesses in the Middle East are being established in the free zones of Dubai, where there is still some degree of leniency on CRS-compliance. It is just a two-hour flight from here to the free zones, where people know their information won't be shared. Of equal relevance is that the UAE also has more than 80 tax treaties with various jurisdictions.

We are contending with this problem, although Dubai had recently been blacklisted by the EU, so we don't know how that will unfold.

New Zealand – RA With registration and enrolment only commencing from 3rd April 2018, and the first round of CRS information to be provided by 30th June 2018, we have yet to experience any cases affected by CRS. The only example would be some confusion from clients who use family trusts as their investment vehicles, around whether the family trust potentially falls within the definition of a reporting New Zealand financial institution. In this respect however, the Inland Revenue has been quite pro-active in publishing guidelines in an attempt to ensure CRS reporting obligations are complied with where required.

QUESTION 5

Have you identified any specific loopholes in the CRS regulations that could be exploited by high net worth (HNW) individuals to hide assets?

India – SN I would not be able to name any loopholes in CRS, because it is just another requirement. The Indian tax authorities are famous for being interrogative, so there is nothing you can do around that. The rules are there and we have to abide by them.

Lebanon – WA To be practical about it, whenever there is a group of people who want to find a way to avoid something, they usually can get around it. People should comply, but many will still use contracts and assets to hide money. That is at their own risk, since they are responsible for not being compliant. Other loopholes include the reporting threshold, where evaders may divide their deposits into smaller separate deposits to avoid any legal consequences regarding their transactions; and and the use of commercial registries that lack in strength and transparency, rendering identifying the real UBO difficult.

Furthermore, it is hard to trace residency in all cases, taking into consideration that some jurisdictions are betting on defending their offshore finance industry by selling tax residency certificates which offer escape routes. Financial institutions often accept the passive residence certificate for CRS purposes despite it being not efficient in tracing residency status.

India – SN The OECD is working towards a better, transparent world. I tell my clients to concentrate on doing business and pay the right amount of tax. It is better to have peace of mind and do better work.

New Zealand – RA This is not an area we would wish to be seen to be involved in, particularly with the negative press NZ got with respect to our foreign trust regime post-Panama Papers. It's simply a fact of life that the world is becoming almost impossible to hide in, particularly with the BEPS agenda.

Spain – JMD If you open an offshore bank account in a banking institution that is in a non-AEOI jurisdiction, your data will not be shared.

Establishing an offshore company in a non-AEOI jurisdiction, or in a jurisdiction that provides certain exceptions, is also a way of limiting the reach of CRS. Otherwise, some structures, such as trusts or foundations, allow you to relinquish ownership of assets, but maintain certain control over them.

Luxembourg – TF There are some loopholes, but we are quite reluctant to advise our clients to use them, because tax legislation can be retrospective, and we don't want them to be liable in the future.

Passive non-financial entities are not bound to report via CRS, for example, although the people behind those institutions might have the obligation to do so, unless they are resident of a non-signatory country. A life insurance policy administered by a bank, is also deemed non-reportable if the beneficial owner is registered in a non-reporting country.

Despite this, I stress that this legislation is retrospective and all those loopholes could be closed in the near future. Many of our clients come with ideas, but we do our job and advise that is it usually not worth the risk. It is better that they focus on their business and do what they are good at.

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