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Connector briefing document

Common Reporting Standard for individuals

Introduction
The Organisation for Economic Co-operation and Development (OECD) has introduced the Common Reporting Standard (CRS), to crack down on tax evasion and to automatically exchange information between revenue authorities on a global scale. Individuals', companies' and trusts' data is exchanged between participating jurisdictions under the CRS.

Over 100 jurisdictions have committed to the CRS, with the majority – including the UK – receiving and exchanging information from September 2017 (in respect of the 2016 calendar year), and on an annual basis thereafter. In HMRC's recent 'No Safe Havens 2019' document, they commented that they received 5.67m pieces of data under the 2018 CRS exchange. Within the UK, HMRC has already increased their data analytics abilities to respond to the CRS and it is anticipated that they will move quickly to respond. As such, the CRS may impact on many taxpayers' relationships with HMRC, whether because new information reaches HMRC or previously reported data now appears in a different format, leading to misunderstandings with tax authorities.

Whilst this briefing note deals with the UK consequences of the CRS, individuals will need to consider their worldwide position, as tax authorities in other jurisdictions where individuals have connections may also receive information under the CRS.

Interaction with other reporting requirements & HMRC policy
CRS is one in a series of measures aimed at enhancing global transparency and tackling tax evasion.

US and UK Foreign Account Tax Compliance Act (FATCA)
US FATCA became law in the US in 2010 with the aim of targeting tax non-compliance by US taxpayers with foreign bank accounts. Over 100 countries, including the UK and Crown Dependencies, have signed agreements with the US to implement US FATCA on a domestic basis, enabling data on assets held by US persons outside the US to be passed to the US tax authorities annually.

The UK introduced its own version of FATCA ('UK FATCA') which applied to the period 1 July 2014 to 31 December 2015, before the CRS came into force. Information was exchanged between the UK and its Crown Dependencies (Isle of Man, Jersey and Guernsey) and the Overseas Territories (Anguilla, Bermuda, BVI, Cayman, Gibraltar, Montserrat and the Turks and Caicos Islands).

Whilst US and UK FATCA led to the introduction of CRS, definitions and reporting requirements can vary across the three regimes. For examples, charities were exempt from reporting under FATCA but will generally need to file reports for CRS.

Beneficial ownership registers
Under the 4th EU Money Laundering Directive, the UK and other countries committed to implementing registers of beneficial ownership for a wide range of UK legal entities and trusts.

In the UK, publicly-available corporate registers came into force from 30 June 2016. All UK Limited Liability Partnerships (LLPs), eligible Scottish partnerships and a broad range of UK corporates, including those with AIM listings, need to comply with the requirements to maintain an internal register and notify Companies House of relevant details. Companies with voting shares listed on a regulated market in the UK or EEA, or on specified markets in the USA, Switzerland, Japan or Israel do not need to maintain their own register.

Trust registration changes came into law in July 2017, but beneficial ownership details of trusts are only visible to HMRC and other tax authorities. All trusts with a UK tax consequence needed to register by 5 March 2018 at the latest.

At the end of 2016, 53 countries were reported to have committed to the systematic sharing of beneficial ownership information. Over 200 jurisdictions have now committed to adopting FATF recommendations.

It is expected that this data will also be analysed carefully by tax authorities. A separate briefing note is available on beneficial ownership registers.

HMRC responses

HMRC has already taken various steps to respond to the increased transparency of which CRS is part. This includes:

- Increasing HMRC's data analytics ability, including through the use of the 'Connect' database, which enables HMRC officers to link together data from multiple sources on individuals, properties, investments, businesses and other assets.
- The No Safe Havens 2019 document made reference to HMRC using the CRS data to identify common errors around offshore reporting with a view to helping taxpayers avoid those errors, for example through additional prompts on the online tax return. Another example would be the 'nudge letters' which HMRC have issued to a number of taxpayers suggesting they check whether their non-UK affairs are up to date for UK tax purposes. Taxpayers are often being asked to certify that they are fully up to date; making such a certification can have serious consequences if this is found to be incorrect in the future.
- Introducing the 'Worldwide Disclosure Facility' on 5 September 2016 for taxpayers who realise that their historic offshore affairs require bringing up to date. This is a voluntary disclosure facility that is open to individuals, trusts and companies and can cover innocent errors and situations where historic advice has been found to be no longer up to date.
- Introducing legislation for a statutory Requirement to Correct (RTC) UK tax errors arising from offshore income and assets. This applies to all UK and non-UK resident individuals, companies and trusts and covers income tax, capital gains tax and inheritance tax. The RTC window closed on 30 September 2018 and has been replaced by the Failure to Correct (FTC) regime which brings with it much harsher penalties. Under the FTC regime, taxpayers are subject to a standard penalty of 200% for failing to make a correction under the RTC legislation. In some circumstances, the penalty can be mitigated to a minimum of 100%.
- Increasing the penalties for non-compliance relating to offshore income and assets. This includes additional penalties where assets are moved to try and avoid the RTC, a strict liability criminal offence for any offshore tax evaders and tougher sanctions for those who enable offshore evasion, including moving assets to attempt to delay or avoid CRS reporting.

Who is affected?

Reporting Financial Institutions must identify and report on Reportable Accounts held by Reportable Persons. In addition, accounts held by a passive entity which is not a financial institution are also reportable where that entity has one or more controlling persons that are individual Reportable Persons.

The definitions are complex, but broadly an entity will be a Passive Non-Financial Entity ('passive NFE') if at least 50% of its income or assets held are passive. Property-holding companies are often examples of passive NFEs.

Similarly, controlling persons are usually individuals with a controlling ownership interest in a company, or who exercise ultimate effective control over a trust (e.g. a settlor, trustee, protector or beneficiary).

- **Reporting Financial Institutions:**
  - Banks
  - Trusts
  - Brokers
  - Certain insurance companies
  - Custodians
  - Certain collective investment vehicles
- **Reportable Persons (tax residents of a CRS jurisdiction)**
  - Individuals
  - Partnerships
  - Trusts
  - Certain non-regularly traded corporations
  - Foundations

Reportable Accounts include depository and custodial accounts maintained by financial institutions, as well as debt and equity interests in investment vehicles, where they are held by a Reportable Person.

Certain types of accounts are excluded, such as ISAs, Child Trust Funds, Premium Bonds, Fixed Interest Savings Certifications, Company Share Options Plans, Save As You Earn Share Option Schemes, Share Incentive Plans, Venture Capital Trusts, certain Retirement and Pension accounts.

Some accounts may need to be reported in more than one jurisdiction, and it is the responsibility of the Reportable Person to demonstrate to their financial institution where they are tax resident. Tax residency is determined at 31 December of each year.

What needs to be reported?
Once Reportable Persons and Accounts have been identified, the information below will be exchanged with partner jurisdictions:

- **Information on Reportable Persons**
    - Name
    - Address
    - Date and place of birth (for individuals)
    - Taxpayer Identification Number or similar
    - Tax residency/residencies
    - The account number, or a functional equivalent if this does not exist
    - The name and identifying number of the Reporting Financial Institution
    - The account balance or value as at the end of the relevant calendar year (or date of closure)
    - Details of the types of investment income received
    - Sales proceeds from property or financial assets
    - For trusts: the value of all trust property and the distributions made to settlors and the value of all trust property and distributions made to beneficiaries entitled to income, as well as certain interest free loans.

CRS reports will still be made for years in which an asset(s) has been sold, albeit with more limited financial details on the report.

Sanctions for non-compliance
Jurisdictions signed up to the CRS must introduce financial penalties under domestic law for the non-compliance of financial institutions.

How can you help your clients?
- It is important to check with clients that the data that is being exchanged on them by Financial Institutions is correct and up to date, particularly as Financial Institutions are not obliged to share the data with Reportable Persons before transferring it to the local tax authorities

- Check that clients' residency details are up to date and fully evidenced with their Financial Institutions. The obligation to demonstrate tax residency rests with the Reportable Person; if criteria indicate residency in multiple countries, Financial Institutions can share the data with several jurisdictions.

- A further step should be to check that legal and tax advice on international assets is up to date and accurate, that up to date valuations of the assets exist where appropriate, and there are no outstanding tax liabilities in relation to those assets.

- Finally, clients may wish to use the outcomes of this review process to consider rebalancing and reinvesting their financial and other asset portfolios. However, care should be taken that this does not trigger UK sanctions by being perceived as an attempt to delay or avoid CRS reporting.

How can we help?

- General advice on the CRS implementation: what needs to be exchanged, the timings of these exchanges and discussions around what your obligations are to both the tax authorities and your clients;
- Providing tax reviews to check that existing tax arrangements are still suitable and fully compliant;
- If necessary, assistance for specific clients with tax disclosures to HMRC under the various facilities available. This should ensure penalties are kept to a minimum and confidentiality is maintained;
- Advice regarding your current systems which will need to identify, collate and report information to HMRC for CRS.

Find out more…

The contents of this note are aimed at providing a brief overview of the issues which need to be considered under the various information exchange agreements. Please be aware that it does not cover all aspects of this subject, and a separate note is available on CRS for trusts. If you would like further information please contact your usual Deloitte advisor or one of the people listed below. This briefing note reflects our understanding of the law as at 11 September 2019.

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