Increasing Regulation – FATCA, CRS & AML

George Hodgson
Automatic Exchange of Information

AEOI – Automatic Exchange of (Tax) Information.


IGA – Inter Governmental Agreement.
  ▪ Treaties that implements FATCA into domestic law.

CDOT – Crown Dependencies (and) Overseas Territories.
  ▪ FATCA style IGAs between UK & CDs and OTs.

CRS – Common Reporting Standard.
  ▪ New global standard for AEOI.
Common Reporting Standard

- CRS new global standard.
- 91 countries now committed to exchange by end of 2018.
- All EU Member States signed up.
- Switzerland, CDs, OTS signed up.
- Brazil, Russia, India & China signed up.
- US sticking with FATCA.
- No clear commitment from Panama, Cook Islands, Nauru, Vanuatu & Bahrain.
The Road to Automatic Exchange

- **1980’s** – Multilateral Convention on Mutual Administrative Assistance on Tax matters.


- **2010’s** – FATCA, UK CD/OT IGAs, US/Swiss amnesty, Swiss sign Multilateral Convention, **CRS launched as new global standard.**
The Growth of Offshore – The Tax Challenge

- **Mid-1950s** – Growth of euro markets.

- **1970’s** – $ breaks gold link, fixed exchange rates begin to disappear.

- **1979** – UK abolishes Exchange Controls.

- **1980’s** – Exchange Controls disappear through most of developed world.
Global Cross Border Flows, % of GDP
## CRS vs FATCA

<table>
<thead>
<tr>
<th></th>
<th>FATCA</th>
<th>CRS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registrations</td>
<td>✔</td>
<td>✗</td>
</tr>
<tr>
<td>Scan for Citizenship</td>
<td>✔</td>
<td>✗</td>
</tr>
<tr>
<td>Scan for Tax Residence</td>
<td>✗</td>
<td>✔</td>
</tr>
<tr>
<td>Owner documented status</td>
<td>✔</td>
<td>✗</td>
</tr>
</tbody>
</table>
## AEOI - Key Dates

<table>
<thead>
<tr>
<th></th>
<th>FATCA</th>
<th>CRS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registrations</td>
<td>01/01/2015</td>
<td>n/a</td>
</tr>
<tr>
<td>1\textsuperscript{st} Reporting period ends</td>
<td>31/12/2014</td>
<td>31/12/2016</td>
</tr>
<tr>
<td>Typical reporting to local tax authority</td>
<td>31/05/2015</td>
<td>31/05/2017</td>
</tr>
<tr>
<td>Information exchanged</td>
<td>30/09/2015</td>
<td>30/09/2017</td>
</tr>
</tbody>
</table>
The following are the same for all types of AEOI:

- All trusts are deemed to be entities.

- Trusts are either Investment Entities - a type of Financial Institution (FI) - or Non Financial Entities (NFE).

- What sort of entity a trust is depends on what assets are in the trust and who ‘manages’ the trust.
The Basics:

- Under FATCA trusts that are FIs should have registered with the IRS - for CRS there is no equivalent need to register.

- Under both FATCA and CRS FIs must either report or make arrangements for someone else to report for them.

- Trusts that are NFEs don’t need to register or report, they will be reported on by any FIs they use.
If the trust gets most of its income from financial assets, it will be a Financial Institution where:

- The trustee is a FI.
- The trustee engages FI to manage the trust.
- The trustee engages FI to manage the financial assets of the trust.
Excluded accounts

Under both FATCA & CRS the following are excluded and are not reportable:

- Most retirement & pension accounts.
- Most tax favoured products.
- Estate accounts (where institution has death certificate).
- ‘Escrow accounts’ - i.e. accounts created as a result of court order.
Who gets reported?

The term “Controlling Persons” means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust… The term “Controlling Persons” must be interpreted in a manner consistent with the Financial Action Task Force Recommendations.

N.B. To identify the Controlling Persons of an entity FIs may generally rely on information collected and maintained pursuant to AML/KYC procedures.
Who gets reported?

- In the case of a trust that is a FI, an “Equity Interest” is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust.

- A Reportable Person will be treated as being a beneficiary if they have the right to receive, directly or indirectly, a mandatory distribution or may receive a discretionary distribution from the trust.

- For these purposes, a beneficiary who may receive a discretionary distribution from the trust will only be treated as a beneficiary if they receive a distribution in the appropriate reporting period (i.e. either the distribution has been paid or made payable).
# AEOI – Key Reporting Dates

<table>
<thead>
<tr>
<th>Information for preceding year to 31 December</th>
<th>FATCA</th>
<th>CRS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Client identification + account balance</td>
<td>31/5/2015</td>
<td>31/5/2017</td>
</tr>
<tr>
<td>Client identification + account balance + payments</td>
<td>31/5/2016</td>
<td>31/5/2018</td>
</tr>
</tbody>
</table>
What gets reported?

FATCA
Reporting year 31/12/2014
“Each Specified US Person”

To be Reported:
- Name
- Address
- TIN
- DOB
- Account number
- GIIN of reporting FI
- Account balance or value
- Jurisdiction of residence
- Place of birth (new accounts)

CRS
Reporting year 31/12/2016
“Each Reportable Person”
What gets reported?

Account balance or value:

- General principle is that value to be reported is the value the FI calculates for reporting to the account holder.

- For an equity interest in an investment entity (i.e. a trust which is an FI) the amount to be reported is the value calculated by the FI for the purpose that requires most frequent valuation.

- Standard accounting principles should apply - no need to do special valuations of real property for AEOI.

- Where there is more than one controlling person, report total value of trust for all controlling persons, same as for joint accounts.
What gets reported?

Reportable Payments:

Total gross amounts paid or credited to any Beneficial Owner and beneficiaries who receive mandatory or discretionary distributions during the calendar year or appropriate reporting period, including aggregate payments in redemption (in whole or in part) of the account.

Applies from:
- Reporting year to 31/12/2015 for FATCA
- Reporting year to 31/12/2017 for CRS
## Due Diligence – Account thresholds

<table>
<thead>
<tr>
<th></th>
<th>Individual Accounts</th>
<th></th>
<th>Entity Accounts</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Pre-Existing</td>
<td>New</td>
<td>Pre-Existing</td>
<td>New</td>
</tr>
<tr>
<td></td>
<td>High Value Threshold</td>
<td>High Value Threshold</td>
<td>High Value</td>
<td>Threshold</td>
</tr>
<tr>
<td>FATCA</td>
<td>US $1mn</td>
<td>US $50,000</td>
<td>US $1mn</td>
<td>US $250,000</td>
</tr>
<tr>
<td>CRS</td>
<td>US $1mn</td>
<td>✗</td>
<td>US $1mn</td>
<td>US $250,000</td>
</tr>
</tbody>
</table>

- Account aggregation rules apply.
- Application of thresholds are generally optional.
- High value limit for pre-existing entities under FACTA is level that triggers reporting for trusts that start off below $250,000.
AEOI – the dangers

<table>
<thead>
<tr>
<th>Governance National Rankings - World Bank</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Top 10 vs Bottom 10</strong></td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>98.3%</td>
</tr>
<tr>
<td>New Zealand</td>
<td>98.0%</td>
</tr>
<tr>
<td>Norway</td>
<td>97.6%</td>
</tr>
<tr>
<td>Sweden</td>
<td>97.6%</td>
</tr>
<tr>
<td>Switzerland</td>
<td>97.0%</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>96.0%</td>
</tr>
<tr>
<td>Denmark</td>
<td>95.4%</td>
</tr>
<tr>
<td>Netherlands</td>
<td>95.4%</td>
</tr>
<tr>
<td>Liechtenstein</td>
<td>94.7%</td>
</tr>
<tr>
<td>Austria</td>
<td>94.1%</td>
</tr>
</tbody>
</table>
AEOI – the dangers

Quartile ranking, National Governance vs CRS Adoption

- 1st Quartile: 77%
- 2nd Quartile: 52%
- 3rd Quartile: 17%
- 4th Quartile: 2%

Countries mentioned: Albania, Argentina, China, Colombia, India, Indonesia, Mexico, Saudi, Russia
“Thanks to the EU's new rules, European law enforcers should soon find it easier to track the money flows of organised crime, bribe-takers and the like. That will help to push up detection rates for illicit funds, which are estimated to be as low as 1% worldwide, with a seizure rate of just 0.2%, according to the United Nations Office on Drugs and Crime.”

The Economist 21/1/2015
Illicit flows from developing countries, $ mn

![Bar chart showing illicit flows from developing countries from 2003 to 2012. The values increase over time, starting from $200,000 in 2003 and reaching $1,200,000 in 2012.](chart.png)
Recommendation 24 - Legal persons (corporates & foundations)
- Identify beneficial owners.
- Ensure timely access.
- Need not be a register or publicly available.

Recommendation 25 – legal relationship (trusts)
- Identify beneficial owners.
- Ensure timely access.
- Need not be a register or publicly available.
UK Response to FATF Recommendations

Corporates
- Register of ‘persons with significant control’ (PSC).
- Public access to register.
- Trusts that hold companies - trustee is PSC, beneficiaries are generally not? Settlor?
- ‘Request’ to CDs and OTs to follow suit.

Trusts
- No changes planned.
Key Principle: ‘Access to information without alerting parties involved’

**Article 29 - Corporates & foundations**
- Register of beneficial owners.
- Public access to register.
- Trusts that hold companies?

**Article 30 - Trusts**
- Register “when the trust generates tax consequences”.
- Access only to competent authorities.

**Other issues**
- EU to pressure others to follow (e.g. Switzerland).
- Commission to publish black list of high risk countries.
Whole of EU is now committed to public register of corporate beneficial ownership (including foundations).

EU looks set to put pressure on its near neighbours.

Pressure on IFCs likely to grow - CD/OT position of ‘only when it is international standard’ may be hard to sustain.

EU Commission ‘high risk list’ will be powerful tool.

Pressure for trust registers may well return (the level playing field!).
Industry has typically been keen to promote the RBA, seeing it as way of simplifying processes in low risk cases.

In reality, RBA is now being implemented as focusing on enhanced measures when cases are deemed high risk.

This could be a major issue for trusts & some IFCs.
FATF & RBA

- Only wholly new FATF Recommendation (Rec 1) in 2012.

- Countries must conduct National Risk Assessments (NRA) & ensure measures in place to address high risks.

- FIs must identify & assess risks and put effective controls & procedures in place to manage & mitigate risk.

- Supervisors must monitor that FIs are effectively meeting their obligations under the RBA.
### Notable bank fines for AML & sanctions breaches:

<table>
<thead>
<tr>
<th>Bank</th>
<th>$bn</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commerzbank</td>
<td>1.4</td>
<td>2015</td>
</tr>
<tr>
<td>BNP Paribas</td>
<td>8.9</td>
<td>2014</td>
</tr>
<tr>
<td>JP Morgan Chase</td>
<td>2.1</td>
<td>2014</td>
</tr>
<tr>
<td>Standard Chartered</td>
<td>0.3</td>
<td>2014</td>
</tr>
<tr>
<td>HSBC</td>
<td>1.9</td>
<td>2012</td>
</tr>
<tr>
<td>Standard Chartered</td>
<td>0.7</td>
<td>2012</td>
</tr>
<tr>
<td>ING</td>
<td>0.6</td>
<td>2012</td>
</tr>
<tr>
<td>ABN</td>
<td>0.5</td>
<td>2010</td>
</tr>
</tbody>
</table>
Financial Institutions & RBA

FI & de-risking:

- Major retrenchment out of developing markets:
  - HSBC
  - Citicorp
  - Standard Chartered
  - RBC

- Sharp drop in correspondent banking relationships – 7.5% since 2011 (source BBA)

- “Crackdown on money laundering threatens to leave parts of developing world cut off from global finance” (FT, 13/11/2014).
By 2018, tax authorities will know who owns most accounts & where the economic benefit flows.

‘The issue of will jurisdictions have enough information and resources in place for automatic exchange of information will be a game-changer’

The risk based approach may see costs rising sharply for some centres and products (like trusts).
Transparency - Issues for Practitioners

- In a ‘golden era for compliance’ – have you enough resource?
- Are you ready for FATCA reporting by 31/5/2015?
- Are your clients ready for:
  - CRS reporting by 31/5/2017
  - Do they need to consider disclosure options?
- Are your CDD procedures ready for beneficial ownership reporting by 2017/18?
- Are your client’s structures still appropriate in a transparent regime.
Questions