FATCA & CRS compliance services

The OECD automatic exchange of financial account information in tax matters: what does it mean for you?

The OECD Common Reporting Standard ("CRS"), largely inspired by FATCA's annual reporting principles, creates the obligation for Luxembourg Reporting Financial Institutions ("FIs") to report, on an annual basis, detailed financial and personal information (the "Information") on the accounts and the account holders that have been identified and classified as reportable by the FI to the Administration des Contributions Directes (the "ACD").

While conceptually similar to FATCA, CRS is different and new in terms of volume of information and number of account holders in scope.

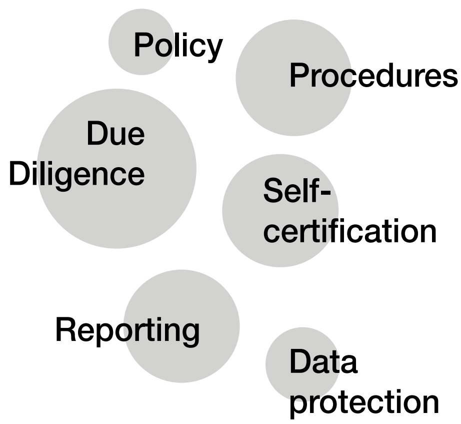
The Luxembourg law of 18 December 2015 transposing the CRS imposes FIs to: (i) apply a due diligence process compliant with CRS requirements as from 01 January 2016, in order to identify the tax residency of each account holder and, if relevant, its controlling person(s), (ii) classify each non-Lux tax resident (or non-exempt) account holder as reportable (the "Reportable Accounts"), and (iii) report the Information to the ACD by 30 June 2017 through any of the Luxembourg authorised communication channels (SOFiE or Fundsquare).

Based on the tax residency of each account holder, the ACD will annually transmit the information to each CRS participating jurisdictions' tax authority (84 countries as at 5 June 2015).

Our approach

Most FIs intend to leverage on their FATCA experience when identifying and classifying Reportable Accounts. Although similar to FATCA in its conception and approach, CRS requires a significant upgrade of due diligence and reporting processes and we therefore believe that one solution does not fit all FIs' needs.

Whether you are a bank, an insurance company, a fund or a non-supervised investment entity; whether your client base is predominantly local or international; whether your entity is small, medium or large - we offer you the opportunity to benefit from Arendt's strong expertise wherever you need it. Thanks to our customized assistance and flexible solutions, we can support you in all steps of your CRS project.



Who is impacted?

Well, pretty much everyone, as there are only few exemptions from the scope of the CRS!

Alongside traditional bank accounts, which immediately come to mind when tax transparency is discussed, accounts held by "Investment Entities" (funds, asset and wealth managers) as well as those held by life insurance companies will very much fall within the scope of CRS:

- **You are an investment fund, a private equity fund or a transfer agent:** you are IN. Either as an Investment Entity or, in the event of delegation, because you maintain the fund's register.
- **You are a management company:** even if you do not hold financial accounts on behalf of customers, the funds you service will probably expect you to apply and monitor the CRS compliance strategy which their boards will have determined.
- **You are a portfolio manager or adviser:** even if you do not hold any cash or instruments for your clients, you most likely have all the information on your clients which the tax authorities would expect to receive: as a result, you're IN.
- **You are a bank, with deposits and/or financial instruments accounts:** you are most definitely IN. Prior to reporting to the ACD, you will have to identify and classify your account holders.
- **You are a life insurance company:** Unless you do not maintain any annuity or cash value insurance contracts, you too fall within the scope of CRS.

What do you need to know?

First, you do not have much time to face up such regulatory challenges, with CRS being a much harder nut to crack than FATCA. Second, you can organise your path towards FATCA and CRS compliance in four steps:

- **Determine your compliance strategy**
  Assess the FATCA and CRS obligations applicable to your structure according to your clients' and accounts' profiles (i.e. do they qualify or not), coordinate with your service providers and organise implementation or delegation. Make sure you can rely on reliable tax advice for any question/hesitation you may have.
- **Communicate with your client**
  Prepare for a much closer client relationship, as you will be required to revert more often than in the past to your client. Update contractual documentation, draft relevant policy and procedures, and make sure you have complied with all required steps in terms of applicable personal data protection regulations. Review current processes, roles and responsibilities. Grab opportunities to offer additional services.
- **Collect and process a high volume of information**
  Identify and classify clients from no less than 84 different countries, distinguishing between citizens and non-citizens (for FATCA) and residents and non-residents (for FATCA and CRS), FIs and non FIs, individuals and entities, pre-existing and new accounts, low-value and high- value, together with a number of residence-linked indicia. At this point, update client onboarding process, review and complete existing documentation and update self-certification templates for clients, both individuals and entities.
- **Report on a high volume of information**
  Identify and extract reportable information in the desired format, drawing identified data from different sources. Perform deep internal analysis, since certain data will be difficult to compute, such as dynamic data (gross proceeds from sales or redemptions). Build or acquire a strong tool, which should be as much automated as feasible given the amount of information to process and report as well as flexible and scalable given that more countries are expected to join and more country specificities are expected to be detailed over time.

Our solution

In addition to helping you to become familiar with FATCA and CRS, through training sessions or tailored workshops, our experts from Arendt Regulatory & Consulting, assisted by Arendt & Medernach for any legal issues, can assist you in defining your compliance strategy, adapting your operating model and managing operational, legal, and organisational impacts and providing a FATCA and CRS hotline. We may also support you in the implementation of the comprehensive tool we have developed and that encompasses both the due diligence obligations and the reporting duties to be filed from 2017.

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