Common Reporting Standard

Service area / Corporate

Location / Jersey

Date / February 2016

What is the CRS?

The Common Reporting Standard (CRS) has been developed by the Organisation for Economic Co-operation and Development (OECD) as the new global standard for the automatic exchange of information (AEOI) to improve tax compliance and counter tax evasion. Over 90 jurisdictions have already signed up to the CRS (Participating Jurisdictions). Early adopters include the Crown Dependencies (Jersey, Guernsey and the Isle of Man)and many British Overseas Territories (including the Cayman Islands, the British Virgin Islands and Gibraltar).The Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Jersey) Regulations 2015 (the Regulations) implement Jersey's obligations under the CRS and came into effect on 1 January 2016.

What does the CRS do?

In order to comply with the CRS, Financial Institutions (defined as a custodial institution, a depository institution, an investment entity, or a specified insurance company in the CRS and therefore including banks, custodians, brokers, certain collective investment vehicles and insurance companies) will need to report Financial Information on the Reportable Accounts of Reportable Persons which are tax resident in Participating Jurisdictions to the Jersey tax authority. These terms are defined below.

The CRS broadly covers the following:

- **Financial Information** – the financial information to be reported by Financial Institutions (defined above) relates to all types of Financial Assets, which includes investment income, account balances and the proceeds of the sale of financial assets (i.e. any interest in a security, partnership interest, commodity swap, insurance contract or annuity contract) in respect of Reportable Accounts.
- **Reportable Accounts** – captures accounts held by individuals and entities (such as a corporation, partnership, trust, or foundation) with Financial Institutions,and also includes a requirement for Financial Institutions to look through passive entities to report on the individuals that ultimately control them. The intention here is to ensure that, for example, trusts cannot be used by individuals as a shield against reporting requirements.
- **Reportable Persons** – includes those individuals or entities which are tax resident in Participating Jurisdictions, other than government entities, international organisations, central banks, Financial Institutions, or corporations with stock traded on established securities markets.

Impact on Jersey fund structures

Financial institutions in Jersey are already subject to a number of reporting obligations under the European Union Savings Directive (EUSD), the US Foreign Account Tax Compliance Act (US FATCA), and its UK equivalent (UK FATCA). However, the introduction of the CRS will broaden the reporting requirements to include more financial information on a wider range of clients to a greater number of revenue authorities.

From a funds perspective, it will be necessary to have regard to the following:

- **Reporting Financial Institutions** – includes those businesses undertaking asset management or financial services for or on behalf of a customer or whose gross income is primarily attributable to investing, reinvesting, or trading in financial assets, if the entity is managed by another financial institution. This definition will therefore capture regulated and unregulated funds;

- **Exempt Collective Investment Vehicles** – investment entities which are regulated as collective investment vehicles are exempt from reporting under the CRS, provided that all of the interests in the collective investment vehicle are held by or through individuals or entities that are not Reportable Persons. This does not extend to passive entities with controlling persons who are reportable. In practice,this exemption may be too narrow an exemption as it requires (i) that the fund is regulated and, (ii) all interests are not held by Reportable Persons;
- **Due diligence challenges** – the CRS poses challenges for fund managers as funds may be required to conduct due diligence to identify financial accounts held directly or indirectly by residents in a large number of Participating Jurisdictions. Where a fund range includes funds resident in different Participating Jurisdictions, managers will need to contend with differences in interpretation of the CRS that may be applied by each such jurisdiction; and
- **Differences from FATCA** – the broader scope of the CRS compared with FATCA, which brings certain funds previously outside of scope of FATCA within the scope of the CRS. Under the CRS there is no exemption for funds 'regularly traded on an established securities market', which therefore brings interests in exchange traded funds and other listed fund vehicles within the scope of CRS reporting requirements. In addition, funds resident outside of Participating Jurisdictions but which hold bank accounts in Participating Jurisdictions will now have a compliance burden as passive Non-Financial Entities (NFEs). NFE's are defined by the CRS as any entities which are not Financial Institutions and must only provide information about themselves or the individuals that ultimately control these entities to the Financial Institutions where they hold accounts.

Interplay with UK FACTA

UK FATCA will likely be replaced by the CRS in 2016 although US FATCA is expected to remain in place.

The CRS replaces the Alternative Reporting Regime (ARR) under FATCA for UK resident non-domiciled individuals. Therefore from 1 January 2016 in Jersey, it will no longer be possible for Financial Institutions to report under the ARR. However, Financial Institutions which have already elected to report under the ARR may continue to report under the ARR in respect of the 2014 and 2015 years. Unlike the UK legislation for CRS (which has sought to combine FATCA, CRS and the EUSD dealing with international tax compliance), the Regulations only focus on the CRS and therefore it will be necessary to continue to be mindful of the various obligations under FATCA and EUSD.

Penalties for non-compliance

A reporting Financial Institution must prepare an annual return to the Comptroller of Taxes in Jersey on or before 30 June in the year following the calendar year to which there turn relates (i.e. for the calendar year 2016, a return must be submitted on or before 30 June 2017). A fine of £300 is imposed on reporting Financial Institutions for failure to comply (in addition to a daily default penalty of £60 per day which may be increased if the failure continues for more than 30 days), and a fine not exceeding £3,000 is imposed for providing inaccurate or late financial information. Unlike US FATCA, the CRS does not require that a 30% withholding tax be applied to Financial Institutions that do not report the necessary information.

How to respond

Managers of funds should contact Carey Olsen to ascertain whether the correct information is being obtained to determine the tax residence of investors in their funds as this determines their reporting obligations under the CRS.
More generally, Financial Institutions should consider these steps in response to the CRS:

- Revised due diligence to determine the tax status and residence of both current and new account holders, and associated ongoing reporting obligations;
- Annual reporting systems which facilitate the recording and reporting of all relevant information;
- Classification of pre-existing accounts with a phased in timetable to allow remediation of accounts opened prior to 1 January 2016; and
- Updating offering documents and subscription agreements for Jersey investment funds to incorporate appropriate references to the CRS.

Conclusion

Given the broad scope of change introduced by the CRS, both financial institutions and non-financial entities alike should seek professional advice to ensure compliance with the CRS. Carey Olsen has extensive experience in advising Jersey Financial Institutions and individuals on issues arising from FATCA, the CRS and other obligations for the automatic exchange of information and would be delighted to assist with your queries.

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