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WEALTH MANAGEMENT

The Impact of Global Reporting Requirements on Multinational Families

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As adoption of the Common Reporting Standard (CRS) continues around the world, financial institutions and their clients must prepare for its obligations. For families with assets and entities outside the countries in which they live, there is much to do to ensure that they are compliant. Although not all jurisdictions currently participate in the CRS, it is advisable for multinational families to stay ahead of these tax and reporting issues to avoid additional costs or penalties.

WHAT IS THE COMMON REPORTING STANDARD?

The CRS was developed and passed on July 15, 2014, by the Organisation for Economic Cooperation and Development (OECD) at the request of the G20 countries. To aid in the fight against global tax evasion and improve tax compliance by tax residents of the member countries, it calls on member jurisdictions to obtain information from their financial institutions and automatically exchange that information with other member jurisdictions on an annual basis. It also sets out the type of information to be exchanged, which institutions are required to report and on whom they must report.

Previously, under a patchwork of treaties and tax information exchange agreements (TIEAs), countries shared tax information only on request.

The legal framework behind the CRS is based on a combination of the Multilateral Convention on Mutual Administrative Assistance of Tax Matters (hereafter, the Multilateral Convention), the OECD model Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (MCAA) and, alternatively to the MCAA, various bilateral agreements, double tax treaties, tax information exchange agreements and EU directives that countries may rely on.

The MCAA, which is based on Article 6 of the Multilateral Convention, specifies what information will be exchanged and the timing of that exchange. Under Article 7 of the MCAA, in order for any bilateral exchanges to occur or enter into effect, countries must file a notice confirming the following:

- That domestic CRS legislation is in place and whether it is reciprocal or non-reciprocal
- Specifications of the transmission and encryption method for data
- Specifications of data protection requirements to be met regarding the information exchanged by the jurisdiction
- That the jurisdiction has the appropriate confidentiality and data safeguards in place
- A list of its intended exchange partner jurisdictions under the MCAA

Only those countries who have signed the MCAA, have filed the above notifications and have listed each other may engage in bilateral exchanges. The OECD maintains a regularly updated list of activated relationships on its website.[1]

By early 2019, more than 100 countries had committed to exchange information. This represents most developed and many developing nations, including China, Hong Kong and, more recently, Panama.

It is interesting to note that the CRS was enacted on the heels of the U.S. Foreign Account Tax Compliance Act (FATCA), which specifically requests information on U.S. taxpayers. The CRS has been informally referred to as "GATCA," the global equivalent of FATCA. However, the CRS is broader in scope, requiring each of the member countries to exchange information with one another; FATCA only requires that countries report back to the U.S. In addition, the categories of reportable persons[2] under the CRS are much more extensive, including trust protectors and some classes of beneficiaries who are not considered reportable under FATCA.

[1] http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchangerelationships/#d.en.345426
[2] The OECD allows participating countries to determine what accounts and persons are "reportable." Typically, this refers to accounts owned by residents of the respective partner jurisdictions.

The current stance of the U.S. is that because of FATCA and the U.S. Intergovernmental Agreement (IGA) regime, the U.S. does not find it necessary to sign up to the CRS. This has been the subject of much controversy and accusations that its failure to join has ironically made the U.S. the largest tax haven in existence.

THE IMPACT OF THE CRS ON MULTIJURISDICTIONAL FAMILIES

Much has been written to help financial institutions prepare for their obligations under CRS. Conversely, there has been minimal guidance for the multinational clients of these financial institutions. The due diligence required by banks, investment firms and trust companies as they work toward full CRS compliance is causing considerable angst among their clients. Long-time customers are often shocked at what are perceived as invasive and unnecessary questions about their background. This increased scrutiny stems from the CRS mandate for the annual exchange of all of the following pieces of information related to each reportable account:

- Name, address, taxpayer identification number, and date and place of birth of the reportable persons associated with the accounts
- Account number
- Name and identifying number of the reporting financial institution
- Account value as of the end of the year, or if closed prior to year-end, the value on the date of closure

Customers with accounts or other financial interests outside their home countries must be prepared to furnish this information or face the likelihood that their "foreign" accounts will be closed.

Privacy is a major concern for clients as well as for their financial providers. As noted earlier, the CRS requires financial institutions and participating governments to invest in and monitor robust systems for data collection and transmission. Further, before sending confidential client data, countries want to ensure this information will be secure in the hands of the receiving jurisdiction. Diverging degrees of system security have caused delays in finalizing bilateral exchanges, particularly those involving less developed countries. However, recognizing the importance of participating in the CRS, many of these countries are investing in more robust data security. Clients moving to a smaller or less developed jurisdiction to escape the reach of the CRS may soon find their reprieve to have been short-lived.

Participating countries have the option of expanding their minimum reporting requirements and definitions of residency. There are significant differences in these areas. For example, the Cayman Islands allow trusts to report all assets under a structure—including those for private investment companies (PICs)—under a trustee documented trust (TDT) exemption, while other jurisdictions may require reporting at both the PIC and trust level. Clients with accounts and entities outside their home country are advised to consult expert counsel to review the rules and forms for each jurisdiction, as well as their existing structures and the tax residences of beneficial owners, trust protectors and beneficiaries.

This being a dynamic situation, families with assets and entities outside their home countries also need to monitor ongoing guidance as it is released by various countries. If they discover they've been non-compliant, they may want to enter an amnesty program. These programs typically involve paying back taxes, interest and possibly penalties. However, these sums are typically much less than what clients would pay if their non-compliance were discovered by the local tax authorities. Countries often offer specific amnesty programs for limited time periods, close them for a while, then reopen new versions with steeper penalties. Waiting to consider participating in a later "offshore voluntary disclosure program" rarely pays off.

THE IMPACT OF GLOBAL TRANSPARENCY ON MULTINATIONAL PLANNING

Transparency in tax matters across jurisdictions is a growing trend. With the strong encouragement of the OECD, most countries are falling in line with the CRS. While some jurisdictions may not be participating in CRS today, they will likely join in the next few years. Late adopters and nonconformists, including the U.S., will receive continued pressure to do so as soon as possible. Clients will find that moving assets to alternative locations and/or changing structures in an attempt to avoid the CRS will be expensive and potentially fruitless. They will be better served by selecting reputable jurisdictions and working with professionals well schooled in the tax and reporting issues related to the countries their family members are connected to.

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As a senior director and global wealth strategist, Joan works closely with families and their advisors to provide comprehensive wealth planning. She specializes in multinational planning, business succession, family governance and philanthropy. With more than 25 years of experience working with large, multi-generational families, she is frequently invited to speak to client and professional groups such as the American Bar Association, the American Institute of CPAs, STEP and numerous estate planning councils. Her unique style is highly interactive, emphasizing real- life examples and practical tools. Joan is a frequently quoted fiduciary and family governance expert and author of articles in business publications, including The Wall Street Journal, the New York Times, Trust and Estates magazine and Barrons. In addition, she is past Chair of the Board of Directors of the Community Foundation of Broward and she serves on the Executive Committee of the Florida Bankers Trust Division. Joan earned a master of business administration from Rollins College, a bachelor of education from Queens University and a bachelor of music from McGill University. She is a Certified Financial Planner™ professional and has earned the designation of Certified Trust and Financial Advisor from the American Bankers Association and Trust and Estate Practitioner from the Society of Trust and Estate Practitioners (STEP), the premier international wealth planning organization.

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