

New Developments on International Automatic Financial Information Exchange and Disclosure

November 3, 2014

We last updated our clients and friends in February 2014 ([Feb 2014 Memorandum](#)) on issues related to the disclosure and automatic exchange of financial information on an international basis.

Since then, the pressure from the OECD, G20 and individual countries has been growing rapidly for broad and automatic exchange of information.

There have been two major developments of which you should be aware, and which are likely to have a significant impact on business over the coming months and years.

Common Reporting Standard

On 21st July, 2014, the OECD released the full version of a new global standard for the exchange of information between jurisdictions. This was developed by the OECD working with G20 countries. The Standard for Automatic Exchange of Financial Account Information in Tax Matters sets the parameters for annual automatic exchange between governments of financial account information. This document includes the Common Reporting and Due Diligence Standard ("CRS"), which will form the basis for the scope and nature of information that will be shared under subsequent agreements between countries. That information will include account balances, interest and dividends received, and sales proceeds from financial assets, as reported to governments by financial institutions, and covering accounts held by individuals and entities, including trusts and foundations. Additional information to be shared will include the name, address, and date and place of birth of relevant individuals (and the same information for individuals who are controlling persons of entities).

The CRS is not legally enforceable, and it requires adoption by participating countries in bilateral or multilateral competent authority agreements. It does, however, standardize and harmonize the type and amount of information that will need to be disclosed in the relevant countries.

Multilateral Competent Authority Agreement

In Berlin on 29th October, 2014, 51 countries signed a Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (the "Multilateral Agreement"). The Multilateral Agreement forms a framework agreement only, and is based on (and takes effect pursuant to) the Convention on Mutual Administrative Assistance in Tax Matters. Each country that has signed the Multilateral Agreement will then notify the OECD once the necessary national laws for implementation are in place. Following that notification, that country will join the list of active jurisdictions who will automatically exchange the relevant information with each other.

The countries that have signed the Multilateral Agreement are : Albania, Anguilla, Argentina, Aruba, Austria, Belgium, Bermuda, British Virgin Islands, Cayman Islands, Colombia, Croatia, Curacao, Cyprus, Czech Republic, Denmark, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hungary, Iceland, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Montserrat, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Turks & Caicos Islands, and the United Kingdom. Most have indicated that their first information exchanges will take place in September 2017, with a few deferring until September 2018.

Other countries have indicated commitment to the project. In relation to the United States of America, which has not signed the Multilateral Agreement, the OECD acknowledged that there is considerable overlap between FATCA^[1] and the Standard, and that significant information exchanges will be taking place between the United States and other jurisdictions. That said, branches and subsidiaries of U.S. financial institutions in any country that has implemented the Multilateral Agreement, will need to comply with the reporting rules in that jurisdiction.

Commentary

The Multilateral Agreement imports the confidentiality obligations from the Convention on Mutual Administrative Assistance in Tax Matters, which provides that the information disclosed is generally only to be used for tax purposes. Some countries have expressed reservations about confidentiality issues (for example, India, which did not sign the Multilateral Agreement).

It is not yet clear how the disclosure and exchange regime, which will flow from the implementation of the Multilateral Agreement, will fit with the existing bilateral arrangements in force between multiple nations (for example, intergovernmental agreements ("IGAs") pursuant to FATCA and FATCA-like IGAs between third countries such as the United Kingdom and the Cayman Islands).

We will continue to keep you updated on these important developments. Over the next two to three years, members of the OECD and the G20 and many significant other jurisdictions will be receiving annual disclosures from financial institutions and will be sharing the financial and tax information obtained on an automatic basis with each other. The compliance burdens for many of our clients will be increasing, and businesses will need to prepare rapidly for the necessary due diligence and notifications that will be required. The pace of change is rapid, and it is not inconceivable that a taxpayer will, in the foreseeable future, have to assume that his financial information will be shared each year with all jurisdictions.

[\[1\]](#) The Foreign Account Tax Compliance provisions enacted as part of the United States 2010 Hiring Incentives to Restore Employment (HIRE) Act and codified in Sections 1471 through 1474 of the Internal Revenue Code.

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