Are you prepared for the Common Reporting Standard?

Many Irish financial institutions have made good progress managing their compliance obligations under Foreign Account Tax Compliance Act (FATCA) by requesting self-classifications and certifications from clients and successfully filing FATCA compliance submissions with Revenue. However, as Common Reporting Standard (CRS) started in Ireland and many other jurisdictions since 1 January 2016, financial institutions have a new, differing set of obligations to manage with significantly increased information collection requirements being a prime concern.

What is CRS?

The Common Reporting Standard (CRS) is the OECD's automatic exchange of information framework that has now been enacted in Irish domestic tax law. CRS creates a multi-lateral reporting regime which mandates that financial institutions must report information to Revenue relating to account holders that are tax resident in any of the jurisdictions that are adopting CRS.

The key difference between FATCA and CRS is that, whereas FATCA is primarily focussed on identifying US persons, the requirements of CRS require due diligence of nearly all of a financial institution's account holders and a greatly increased reporting burden.

Over 90 jurisdictions (including all jurisdictions in the EU and nearly all other major jurisdictions) have signed agreements to implement CRS into domestic legislation. The earliest adopters have legislated that CRS commenced on 1 January 2016 with other jurisdictions joining in subsequent years.

This means that financial institutions must treat accounts held by clients who are tax resident in one of over 90 jurisdictions as reportable.

CRS does not contain the threat of withholding tax being applied to payments (as with FATCA) but Irish domestic legislation will allow Revenue to charge significant penalties for non-compliance.

Revenue published draft guidance on how CRS will operate in Ireland on 21 July 2015.

Obligations under CRS

For financial institutions, the stages of the compliance process under CRS will be similar to FATCA. Financial institutions will need to:

- identify certain types of customers and investors within the scope of CRS;
- amend customer and investor take on procedures to ensure that the information gathered is sufficient to classify and verify the customer or investor under the regulations;
- conduct due diligence on existing customers and investors to determine their classification under CRS and whether they are reportable; and
- report annually to the relevant tax authority.

In Ireland, CRS started on 1 January 2016 with the first compliance submission deadline being 30 June 2017.

Key differences between FATCA and CRS

Though CRS has been developed using FATCA as a template, there are material differences between the two regimes that will result in Irish financial institutions needing to adopt significantly divergent procedures in order to comply with both regimes. The differences:

- FATCA aims to identify whether an account holder is a US person using citizenship and tax residency. CRS aims to identify the tax residency of the account holder;
- the entity definitions under FATCA and CRS and the resulting treatment under each regime are different;
- CRS does not contain significant exemptions that are afforded under FATCA such as a de minimis limit for pre-existing accounts held by individuals;
- reporting templates are different across jurisdictions;
- there is no requirement to register and receive a unique identifier of compliance under CRS;
- under FATCA, financial institutions must register with the IRS and receive a Global Intermediary Identification Number (GIIN); and
- these differences, in addition to others, mean that financial institutions and their clients are likely to encounter significant obligations as a result of the advent of CRS.

How CRS impacts non-financial entities

Although it may seem obvious that an organisation is not a target of the CRS, a number of circumstances may mean that a non-financial entity will come into contact with CRS.

Banks, brokers, and other financial institutions are obligated to identify the CRS classification of their clients and are often likely to do this through requesting self-certification forms from their customers. Trading companies may be asked to complete more self-certification forms. If a business cannot certify their status, the bank will either be required to report on it as being non-compliant or may choose not to transact with non-compliant customers.

The scope of the definition of financial institution is wide reaching, and can include entities which might not otherwise be thought of as being within the scope, such as trusts.

Next steps

For any Irish financial institutions who have not contemplated their position under CRS, next steps will be:

- to complete a gap analysis of how CRS affects them compared to FATCA. Particularly where W-8 and W-9 series forms have been used to meet FATCA compliance obligations, financial institutions will need to review take on procedures to ensure they gather the information required for CRS reporting (W-8 and W-9 forms do not gather the information required under CRS);
- to review client information systems to ensure that the appropriate fields are present to allow a robust CRS compliance position to be maintained (financial institutions will need to extract different information from client files in order to complete reporting under FATCA and CRS);
- to embark upon a significant client communications programme to explain to clients how CRS will affect them; and
- to consider how annual reporting will be completed.

What Grant Thornton offers

Our Financial Services Tax team has supported banks, investment funds, and affected insurance companies (CRS does not affect general insurance companies) with regard to CRS.

Should you wish to receive advice on your position under CRS, for example how you should self-certify or how to manage compliance obligations, Grant Thornton is able to conduct an impact assessment and FATCA and CRS gap analysis and provide support and guidance.

Contact

If you would like to discuss any of the issues raised, please contact a member of our team.

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