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CYPRUS TO REPORT FINANCIAL ACCOUNT INFORMATION IN 2017

OECD
COMMON REPORTING STANDARD

"knowledge"

Facts, information and skills acquired through experience or education; the theoretical or practical understanding of a subject.
OXFORD DICTIONARY

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Cyprus to report financial account information in 2017

1.0 Introduction

Many reputable jurisdictions around the world, including Cyprus, are set to implement the OECD Common Reporting Standard in either 2017 (for early adopting countries), or 2018, by automatically reporting financial account information on all non-tax resident individuals, entities and beneficial shareholders of those entities, to their respective tax residence country.

Cyprus, along with another 55 jurisdictions, including the UK, the BVI, Seychelles and Luxembourg, has opted to report in 2017 financial account information that existed in 2016.

2.0 General

In recent years and as a result of the global economic crisis, governments have been looking at ways of improving their budgets. The traditional methods of reducing the cost of running the government machine or increasing taxes, especially with regards to Value Added Tax (VAT), have proved insufficient. Politically, voters have been resenting the various austerity packages presented to them, whilst the increased pressure on state budgets from the recent arrival of migrants has exasperated the economic problems of many countries.

Looking to clamp down on tax evasion however can prove to be both politically acceptable and an important source of income. It may even be argued that it is ethically correct, depending on how one interprets the taxing obligations imposed by a state. Indeed, there are various theories as to what constitutes a fair distribution of taxing rights, some based on pure philosophical arguments, such as ethical behaviour of the individual (i.e. the individual has a moral duty to pay tax to the state that provides him with general benefits), and others based on state sovereignty arguments (i.e. the state has a right to exist and should therefore levy taxes through a legal framework, in order to secure its existence).

Whatever the case may be, countries have been eager to enter into agreements which make it more difficult for individuals to 'hide' their wealth in countries with low or nil taxes. Sometimes, this eagerness overtakes logic, and agreements are signed and promises made, without completing the conceptual framework and the practical details over how to implement what has been agreed. This is the case with the Common Reporting Standard (CRS), which is the subject of the present analysis.

3.0 Clamping down on tax evasion

Numerous measures have been implemented over the years throughout the world with the aim of combating tax evasion.

Double tax treaty conventions have been amended to include provisions for the exchange of information between tax administrations, whilst at the same time, provisions were removed that allowed tax authorities to refuse to exchange such information, e.g. by citing that there was no domestic interest. The treaties have also included other possible forms of administrative co-operation between states in the assessment and collection of taxes, including the recovery of foreign tax claims.

The EU Savings Directive, in place since 2005, imposes obligations for EU banks to automatically exchange information where an individual receives interest from an account(s) he/she holds with a financial institution in another EU country. As such, although a useful tax evasion tool, it had a limited scope as it only applied to cross-border credit of interest from a bank to an EU individual. Under the same umbrella, many non-EU countries were also either reporting, or applying a withholding tax (35%), on the interest income instead of reporting.

The United States, which imposes tax on US citizens, regardless of where they live, imposed its own system practically world-wide. The US Foreign Account Tax Compliance ACT (FATCA), which went into effect in 2014, imposes reporting requirements on US taxpayers about certain foreign financial accounts and offshore assets, as well as on foreign financial institutions about financial accounts held by US taxpayers or foreign entities in which U.S. taxpayers hold a substantial ownership interest.

The fourth EU Anti-Money Laundering (AML) Directive took effect from June 2015, with EU Member States having two years to transpose its provisions into their national legislation. One of the changes in the 4th AML Directive is the obligation to include tax crimes as a predicate offence, although countries have a degree of flexibility as to define such crimes and impose thresholds. Some countries had already amended their national laws to include tax crimes as a money laundering offense. Cyprus did this from 21 December 2012.

4.0 Common Reporting Standard (CRS) – What is it?

Formally referred to as the Standard for Automatic Exchange of Financial Account Information, CRS was developed by the Organisation for Economic Co-operation and Development (OECD), having been endorsed to do so by G20 Leaders at their meeting in Russia in September 2013, as a global model of automatic exchange. The idea is that one country will collect information from their financial institutions and automatically exchange this information with other countries on an annual basis.

As per the OECD, the standard consists of two components:

a) the CRS, which contains the reporting and due diligence rules; and
b) the Model Competent Authority Agreement (CAA), which is the agreement between the countries that will contain the detailed rules on the exchange of the information.

To prevent circumventing the CRS, it is designed with a broad scope across three dimensions:

a) The financial information to be reported with respect to reportable accounts includes all types of **investment income** (including interest, dividends, income from certain insurance contracts and other similar types of income) but also **account balances** and **sales proceeds** from financial assets.
b) The financial institutions that are required to report under the CRS do not only include **banks** and **custodians** but also other financial institutions such as **brokers, certain collective investment vehicles and certain insurance companies**.
c) Reportable accounts include accounts held by **individuals** and **entities (which includes trusts and foundations),** and the standard includes a requirement to look through passive entities to report on the individuals that ultimately control these entities.

The CRS also describes **the due diligence procedures that must be followed by financial institutions to identify reportable accounts**.

In August 2015, the OECD published The CRS Implementation Handbook to assist government officials in the implementation of the standard.

5.0 CRS – Which countries and when?

Most major countries have committed to implementing CRS, making it difficult for persons that are evading tax to find reputable jurisdictions in which to 'hide'. CRS is intended to be implemented i.e. the first reporting to be undertaken, in 2018, based on 2017 financial information. However, many countries have already decided to be early adopters of the legislation. This includes Cyprus.

Such countries will report in 2017, based on information that existed in 2016. As such, from the 1 January 2016, the financial institutions of these early adopting countries will commence obtaining and recording information for the purposes of the exchange. It remains a possibility that countries that will report in 2018, will also report on 2016 balances so as to not disadvantage the countries that are early adopters.

The tables below summarise the intended implementation timelines of the new standard[1,2]:

JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2017
Anguilla, Argentina, Barbados, Belgium, Bermuda, British Virgin Islands, Bulgaria, Cayman Islands, Colombia, Croatia, Curacao, Cyprus, Czech Republic, Denmark, Dominica, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Greenland, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Montserrat, Netherlands, Niue, Norway, Poland, Portugal, Romania, San Marino, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Trinidad and Tobago, Turks and Caicos Islands, United Kingdom.

JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2018
Albania, Andorra, Antigua and Barbuda, Aruba, Australia, Austria, The Bahamas, Belize, Brazil, Brunei Darussalam, Canada, Chile, China, Cook Islands, Costa Rica, Ghana, Grenada, Hong Kong (China), Indonesia, Israel, Japan, Marshall Islands, Macao (China), Malaysia, Monaco, New Zealand, Panama, Qatar, Russia, Saint Kitts and Nevis, Samoa, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Saint Maarten, Switzerland, Turkey, United Arab Emirates, Uruguay.

JURISDICTIONS THAT HAVE NOT INDICATED A TIMELINE OR THAT HAVE NOT YET COMMITTED
Bahrain, Nauru, Vanuatu

[1] The United States has indicated that it will be undertaking automatic information exchanges pursuant to FATCA from 2015 and has entered into intergovernmental agreements (IGAs) with other jurisdictions to do so. The Model 1A IGAs entered into by the United States acknowledge the need for the United States to achieve equivalent levels of reciprocal automatic information exchange with partner jurisdictions. They also include a political commitment to pursue the adoption of regulations and to advocate and support relevant legislation to achieve such equivalent levels of reciprocal automatic exchange.

[2] Source: OECD publication on the status of commitments as at 30 October 2015.

6.0 CRS – What will be included in the report?

The Central Bank of Cyprus has still not issued guidelines on what should be presented, even though Cyprus is one of the countries of early adoption. Other countries are in a similar position. It is clear that the reporting will include the name of the individual, together with identification information (e.g. passport number and residential address), personal balance if the person maintains a personal bank account, as well as name and information on a company, if the person is the ultimate beneficial owner of this company, together with details of the balances or portfolio held by the company.

This specific information will be collated by the financial institution and reported automatically to the Ministry of Finance of its own country. The Ministry will then exchange the information automatically with the Ministry of Finance in the other country, where the individual person is considered to be tax resident. Where a person is connected with more than one jurisdiction, the information of that person may be exchanged with all the jurisdictions connected with that person, unless the person can certify her/his residential status.

There are still details to be considered, such as whether the information will be regarding the closing balance or the average balance maintained by the company, or whether a minimum balance threshold will apply. It is also unclear how trusts, especially where these involve discretionary and irrevocable trusts, will be treated for CRS purposes. In our opinion, only the residency of the trustees is relevant for the purposes of the disclosure. The beneficiaries should only be disclosed where a distribution is physically made to them, and in this case, the financial institution where they maintain their accounts would be obligated to make the declaration and not the one where the trustees hold their accounts, where the two are different. There is however still no clarity regarding this.

7.0 Conclusion

The CRS is a powerful tool to combat tax evasion. Jurisdictions have however been very quick and eager to adopt early what is still effectively work-in-progress, without firstly having finalised the important technical and conceptual details. This will result in a significant increase in the cost of compliance, which will most probably be borne once again by the final consumers, as well as the unfortunate inconvenience that the customers of the financial institutions will likely experience as implementation of the CRS is rolled out.

Note:

The tax information contained in this publication is accurate as at the date of its publication and it is issued as guidance only. It should not be solely relied upon to structure business transactions without expert advice.

For professional consultation, please contact the Taxation Department of Costas Tsielepis & Co.