

CRS and FATCA



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Introduction

Within the context of combating tax evasion, improving tax transparency and protecting the reliability of the tax system, governments worldwide require financial institutions to collect tax information from their clients and report this information to relevant tax authorities of each country.

The Foreign Accounts Tax Compliance Act, known as the FATCA, was imposed by the USA and came into force in July 2014. The Cyprus Minister of Finance has signed the FATCA Intergovernmental Agreement between Cyprus and USA (Intergovernmental Model 1 Agreement Foreign Account Tax Compliance Act) with the US ambassador, on the 2nd December 2014.

The Common Reporting Standard, known as the CRS, was promoted by the Organization for Economic Co-operation and Development (OECD) as an additional international initiative based on the development of a single global standard for the automatic exchange of information between tax authorities. Since December 2015, 102 countries, including Cyprus, have adopted the CRS, with the number of participating countries constantly increasing. A full list of the committed participating jurisdictions can be found at the link <http://www.oecd.org/tax/transparency/AEOI-commitments.pdf>. Cyprus Government, as well as another 49 jurisdictions, have agreed to early adoption of the CRS and undertake the necessary CRS obligations from **1st January 2016** (the first exchange of information took place in 2017).

What is CRS

The OECD Common Reporting Standard (CRS), is a global standard for the automatic exchange of financial account information.

The CRS is aiming at improving international tax compliance and preventing tax evasion, through the automatic exchange of information between the countries that implement CRS.

The CRS is applied by all authorized credit institutions and other financial institutions, which are located in countries that participate in the CRS, and applies to all account (individuals and entities). It requires the financial institutions that are in countries which implement the CRS, to submit information on financial accounts that are held by account holders who are tax residents of countries which implement CRS.

For the purpose of identifying tax residence, the financial institutions are required to obtain from the direct and indirect account holders (both individuals and entities), self-certifications which include the country of tax residence and tax identification number(s) as well as the Entity's classification, if the account holder is an Entity.



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The CRS has been implemented in the EU as from 1 January 2016 through the EU Council Directive 2014/107/EU of 9 December 2014 (commonly referred to as “DAC 2”). In addition, Malta has entered the OECD Multilateral Competent Authority Agreement; therefore, Malta’s automatic exchange partners include all the Member States of the EU and all the signatories of the Multilateral Competent Authority Agreement.

What is FATCA

In an effort to stop tax avoidance, the US Congress passed The Foreign Account Tax Compliance Act (FATCA), into law as a part of a larger legislative bill- the Hire Incentives to Restore Employment Act.

FATCA is focused on strengthening information reporting and withholding compliance with respect to US persons who invest directly or indirectly through the ownership of foreign interests. To achieve its purposes, FATCA dictates non-US Financial Institutions to identify accounts falling under the FATCA scope and report certain details on these accounts to the US Authorities.

In other words, its aim is to detect, deter and discourage offshore tax evasion by U.S. citizens or residents, who either directly or indirectly, invest outside the USA through foreign financial institutions. Several countries, including Cyprus, signed an Intergovernmental Agreement with the USA (IGA), in order to facilitate the implementation of FATCA provisions by financial institutions in their jurisdictions.

Under FATCA and IGAs (Intergovernmental agreements), the Foreign (non-US) Financial Institutions (FFI), in a careful and persistent procedure, are required to identify amongst its financial account holders those account holders who are US persons. Then, on an annual basis, these FFI are required to report certain personal and financial information of those US reportable accounts to the AEOI Portal of the local tax authorities, who will subsequently automatically exchange such information with the IRS.

All other entities worldwide are either Active or Passive Non-Financial Entities.

Individuals and the NFE, have to reveal its FATCA status to the Banks and other Financial Institutions where they hold accounts, whereby the Passive NFE also have to disclose any considerable US owners or US Controlling Persons.

Impacts of CRS and FATCA

CRS and FATCA have an impact on both Financial and Non-Financial Entities.

In general terms, the following categories of entities are affected and detailed analyses are however recommended to achieve more tailored results.

- Depository institutions: an institution that accepts deposits in the ordinary course of a banking or similar business.
- Custodial institutions: entities that hold, as a substantial portion of their business, financial assets for the account of others.
- Investment entities: the definition of Investment Entities vary under FATCA and CRS. However, the term generally includes entities:
 - Whose primary business involves certain asset management or financial services for or on behalf of customers; or
 - Whose gross income is primarily attributable to investing, reinvesting, or trading in financial assets, and where such entity is managed by another financial institution.

Where entities do not fall within any of the listed categories, they must be classified as an appropriate type of Non-Financial Entities in terms of Maltese FATCA and CRS legislation.



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