



# FATCA AND CRS: Compliance Obligations for Investment Funds and Investment Managers

**FATCA and CRS have far-reaching impacts on the investment fund industry, requiring investment funds to enhance on-boarding processes, collect additional information on investors and develop reporting processes and procedures.**

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# Overview

Malta has implemented separate regimes for the reporting of financial information under the Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS). FATCA and CRS are international automatic exchange of financial account information mechanisms aimed at addressing perceived tax abuse by a country's tax payers through the use of foreign accounts and structures.

FATCA requires non-US Financial Institutions to report detailed information about their US account holders. CRS requires financial institutions in a CRS participating country to report detailed information about account holders which are tax resident in another CRS participating country.

# Who does it affect?

FATCA and CRS apply to Financial Institutions, a term which is widely defined and generally captures persons who carry out investment management functions, as well as investment funds themselves.

Under these regimes, hedge funds, private equity funds and other structures like securitisation vehicles that constitute Financial Institutions are required to identify and report on relevant accounts held either by persons tax resident in a participating country, or in the US, or by non-financial entities that have controlling persons tax resident in a participating country or in the US.

Investment managers are generally also subject to the said regimes. However under FATCA, investment managers may, subject to certain conditions, apply the Certified Deemed Compliant exemption which, where applicable, exempts the entity from IRS registration and reporting. Under CRS, this specific carve-out afforded to investment managers is not available and generally these types of entities would be considered Financial Institutions, with compliance and reporting obligations.

Maltese investment funds and investment managers are generally required to perform FATCA and CRS due diligence on all investors and account holders and in certain circumstances, on the ultimate beneficial owners of investors, and are required to report certain prescribed information on reportable accounts to the Maltese tax authorities. As part of their due diligence obligations, Financial Institutions are required to obtain duly completed self-certification forms from their investors. There are also a number of data protection and privacy issues around the collection and processing of information about investors which requires the disclosure of certain details in fund application forms and subscription documents.

## Report Deadline:

**The next reporting deadline for FATCA and CRS is statutorily set at 30 April 2018 in respect of reportable accounts for calendar year ended 2017.**

# How to Prepare for the Reporting Deadline

To ensure proper compliance with the FATCA and CRS legislation, it is imperative that as an investment fund and investment manager, you are properly classified for FATCA and CRS, and where classified as a Financial Institution, that the entity is duly registered for FATCA purposes with the IRS and for FATCA and for CRS purposes with the Maltese tax authorities.

In addition, it is important that you have the required self-certifications on file and conduct the necessary due diligence to enable you to perform a classification exercise of your investors. This process should enable you to identify any reportable accounts and the required information to be reported.

It is therefore important that critical assessments are made well ahead of time to determine the extent of your compliance obligations under FATCA and CRS.



# How can KPMG help?

## Investor Review

KPMG can review the CRS/FATCA classifications of your investors by performing a reasonableness check of the self-certification forms against KYC documentation you hold on the investors.



## Registration

To comply with the FATCA and CRS regimes, we can assist with the FATCA registration of the investment management company and/or investment fund with the IRS and local registration for FATCA and CRS with the Maltese tax authorities.



## FATCA and CRS Classification

We can undertake a classification exercise of the investment management company and/or investment fund structure, or review your current classification. Depending on the classification, we can prepare the self-certification form for you to provide to your counterparties.

## Self-Certification Forms

We can assist in preparing or reviewing your self-certification forms for collation of comprehensive information from investors. Given that the FATCA and CRS legislation in Malta stipulate penalties for a failure to report, or for the reporting of inadequate information on investors, due care must be taken to ensure that your self-certification forms are updated in line with current FATCA and CRS legislation in Malta. We can also review your subscription documents and prospectus for FATCA and CRS compliance.



## Reporting

KPMG can assist you with the submission of your FATCA and CRS reports by converting the necessary information to be reported into the required XML format and submission thereof to the Maltese tax authorities on your behalf. Alternatively, under a license agreement, KPMG may provide you with access to the KPMG Reporting software in order to effect reporting in-house.



\*More information on FATCA and CRS can be found on our website at <https://home.kpmg.com/mt/en/home/insights/2016/12/kpmg-aeoi-reporting.html>

For further enquiries, please do not hesitate to contact us directly.

## Contact us:

KPMG member firms are here to help. We are among the leading service providers across the financial and non-financial industry arenas. Our FATCA and CRS Teams contain an experienced, multidisciplinary group of tax and advisory professionals that have worked on a range of global and national FATCA and CRS projects for some of the world's largest organisations. Our network of professionals can help you meet your reporting obligations with limited disruption to your business. We recognize that you face a number of regulatory requirements. Our approach to FATCA and CRS is consistent with our delivery of other regulatory consulting services, enabling you to achieve compliance synergies.



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## Follow KPMG in Malta:



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