



FATCA and CRS Service Offerings

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What is FATCA?

In an effort to curb perceived tax abuse by US persons with offshore bank accounts and/or investments, 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 – which was signed into US law on 18 March 2010.

FATCA introduced a new regulatory compliance and reporting regime which compels certain non-US entities to identify and disclose US persons with offshore financial accounts. This stated intent is achieved by imposing a punitive 30% withholding tax on withholdable payments paid, directly or indirectly, to non-US financial institutions and certain other non-US entities that fail to comply with FATCA.

Malta signed an Intergovernmental Agreement ("IGA") with the US on 16 December 2013 to improve international tax compliance and to implement FATCA. Under this agreement, the Maltese government committed that all Malta Financial Institutions will comply with the identification and reporting requirements under the IGA.

What is CRS?

Similar to FATCA, the Common Reporting Standard (CRS) is an initiative led by the Organisation for Economic Cooperation and Development (OECD). The CRS is aimed at the disclosure of income earned by individuals and entities outside their country of tax residence by mandating annual automatic exchange of Financial Account information between governments. To make the exchange of information possible, Financial Institutions (as broadly defined under domestic and international law) in jurisdictions which have implemented the CRS must report information according to the CRS on accounts held by non-resident individuals and entities.

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 into 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.

Who is affected by FATCA and CRS?

In broad terms, the following categories of entities are affected by FATCA and CRS. Detailed analyses are however recommended to achieve more tailored results.

- **Depository institutions: entities that accept 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:**

(i) Whose primary business involves certain asset management or financial services for or on behalf of customers; or

(ii) Whose gross income is primarily attributable to investing, reinvesting, or trading in financial assets, and where such entity is managed by another financial institution.

- **Specified insurance companies: insurance companies that issue or are obligated to make payments for cash value insurance contracts or annuity contracts**
- **Holding Company or Treasury Centre forming part of a group of Related Entities which include a Financial Institution (for FATCA purposes only).**

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

What are some of the differences between FATCA and CRS?

In Malta, the CRS does not include several of the exemptions found in the FATCA regulations or IGAs. The following categories of financial institutions that are excluded from FACTA Model 1 IGA are not excluded from the CRS:

- Financial institutions with a local client base
- Local banks
- Certain retirement funds
- Financial institutions with only low-value accounts
- Sponsored investment vehicles
- Some investment advisors and investment managers
- Certain investment trusts

Given that these exceptions are specific to FATCA, the CRS impacts more financial institutions than FATCA in any implementing country.

Obligations for Financial Institutions under FATCA and CRS

FATCA and CRS as implemented in Maltese law requires Malta Financial Institutions to:

- Register with the US Internal Revenue Services
- Register with the Malta Commissioner for Revenue
- Implement a FATCA and CRS compliance programme which includes due diligence documentation through the use of self-certification forms
- Identify all new and pre-existing accounts
- Report on Specified US Persons (for FATCA) and CRS Reportable Persons to the Malta Commissioner for Revenue

How can KPMG help you?

KPMG member firms are here to help. We are among the leading service providers across the financial and non-financial industry arenas. Our AEOI Teams contain an experienced, multidisciplinary group of tax and advisory professionals that have worked on a range of global and national AEOI projects for some of the world's largest organizations. 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.

Tailored services from the KPMG AEOI Team include:

Entity Classification & Registration

The first and most important step in determining the scope of your FATCA and CRS compliance obligations is to properly identify and classify entities as Financial Institutions or Non-Financial Entities. KPMG can assist with the classification of all your entities / confirm the correctness of your classification for FATCA and CRS purposes. KPMG can also assist with registration of your entities with the Internal Revenue Service and Malta's Commissioner for Revenue, as required.

On-Boarding

FATCA and CRS have introduced extensive due diligence requirements. The requirements under FATCA and CRS will affect the due diligence requirements of an entity and on-boarding procedures. KPMG can assist with confirming that your new customer on-boarding and on-going procedures are sufficient to ensure compliance with FATCA and CRS. This may include a review of your KYC/AML procedures as well as on-boarding forms. KPMG can also assist by preparing and/or delivering tailor-made training to your relevant members staff.

Existing Customers Identification

FATCA and CRS introduced extensive due diligence requirements for examining the accounts of pre-existing account holders to determine whether any relevant indicia is found that identify account holders as reportable for FATCA and CRS purposes. In this respect, KPMG can issue a tailor-made memo outlining the due diligence procedures necessary for the proper remediation of pre-existing accounts. KPMG can also assist by preparing and/or delivering tailor-made training to your necessary staff.

Reporting

FATCA and CRS reporting in Malta have an annual deadline of 30 April. It is a prerequisite for compliance that entities develop processes to collect the relevant information in advance of their reporting deadline. KPMG can define and confirm FATCA and CRS reporting requirements as well as consider how your personnel, processes and infrastructure can be modified to deliver an output that meets FATCA and CRS reporting requirements. KPMG can also assist by providing tailor-made tools to assist with the FATCA and CRS reporting requirements. Specifically, KPMG has developed a FATCA and CRS reporting tool to assist Financial Institutions to convert the Financial Information of their account holders into the XML format as required by law. More details on the KPMG FATCA and CRS Reporting tool can be found here <https://home.kpmg.com/mt/en/home/insights/2016/12/kpmg-aeoi-reporting.html>

Ad hoc Advice

KPMG may provide any further FATCA and CRS related assistance and respond to complex queries on an ad hoc basis. This may also include training and workshops to educating front line staff as well helping senior management understand the appropriate tax and business-related areas of focus.



Contact us:

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