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OECD: Three documents aim at ending offshore tax evasion

The Organisation for Economic Co-operation and Development (OECD) on 7 August 2015 released three documents in connection with implementation of the global standard for automatic exchange of financial account information in tax matters (referred to as the Common Reporting Standard, or CRS).

- The first document is the CRS Implementation Handbook (the Handbook) created to assist government officials with the implementation of the CRS. The Handbook also contains guidance that may be useful to financial intuitions in better understanding the CRS and how to implement it more efficiently.
- The second document is the Update on Voluntary Disclosure Programmes, which suggests that countries consider launching, enhancing, or publicizing their voluntary disclosure programs to help taxpayers come into compliance before the implementation of the CRS. The Update on Voluntary Disclosure Programmes discusses a number of design considerations and details the practical experiences of 47 countries.
- The final document is the Model Protocol for the Purpose of Allowing the Automatic and Spontaneous Exchange of Information Under a TIEA, which is relevant for government authorities considering an update of their existing legal framework for the exchange of information to allow for automatic exchange under the CRS or country-by-country reporting for multinational enterprise groups.

The Handbook Detailed Review

The Handbook provides an overview of the legislative, technical, and operational issues for governments in implementing the CRS. It also provides a detailed discussion of key definitions and procedures contained in the CRS. The intention for the Handbook is for it to be a living document that is updated over time. The Handbook is structured into three sections and a frequently asked questions (FAQs) annex.

- Section I provides an overview for government officials, with the steps to implement the CRS and key conceptual considerations in the process.

- Section II provides a more detailed discussion on the conceptual framework of the CRS, including key definitions and procedures. This section also provides more in-depth guidance regarding the treatment of trusts (both as financial institutions and non-financial entities) under the CRS.
- Section III provides a comparison of the CRS with the FATCA Model I IGA, and includes an explanation of the rationale behind some of the differences. This section also discusses how governments might attempt to address some of those inconsistencies.
- The FAQ section contains answers to several questions raised by both businesses and governments, and is intended to promote consistency in interpretation. Updated FAQs will be published periodically on the OECD portal for automatic exchange of information.

The Handbook is likely to be influential in how jurisdictions implement the CRS, so financial institutions need to be aware of the guidance it provides.

KPMG Observation

The FAQs provide guidance on a number of important issues, but a number of practical questions remain unresolved. For example, the FAQs make clear that cash pooling for related entities does not, by itself, make an entity a “depository institution.”¹ The FAQs also make clear that a direct interest in real property does not include an interest in another entity that directly holds real property.² The FAQs clarify that TIN verification by financial institutions is not required, but is recommended for financial institutions to avoid queries from governments.³

On the other hand, the FAQs do not address the key question of what happens when a self-certification is not received by financial institution during the account opening process (e.g., the financial institution uses a “Day 2 process” to collect self-certifications).

Other FAQs provide guidance that may increase the administrative burdens on financial institutions and their customers. For example, one FAQ appears to narrow the circumstances in which a new account of a preexisting customer may be treated as a preexisting account.⁴ Another FAQ also provides that account holders resident in jurisdictions that have not implemented the CRS must determine their CRS status by applying the law of the jurisdiction in which the

¹ Handbook Annex I FAQ Section VIII(A)(1).

² Handbook Annex I FAQ Section VIII(A)(4).

³ Handbook Annex I FAQ Section II-VII(6).

⁴ Handbook Annex I FAQ Section II-VII(12).

account is held.⁵ In addition, a non-financial entity must determine its status under the law of the jurisdiction in which the account is held, unless that jurisdiction permits the entity to apply the law of its residence jurisdiction.⁶ This approach could create a significant burden on the account holders in determining their entity status under the CRS.

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⁵ Handbook Annex I FAQ Section II-VII(15).

⁶ *Id.*