The Common Reporting standard

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Contents

Overview

The Common Reporting Standard (CRS) was developed in response to the G20 request which was the result of a series of meetings between G20 finance ministers and central bank governors to discuss tax avoidance in 2014. On the 15gth of July 2014, the Organisation for Economic Co-operation and Development's (OECD) council approved the Common reporting standards.

The CRS calls on countries governments to acquire information from their financial institutions and automatically exchange that information with other countries governments on an annual basis.It specifies what financial account information is required to be exchanged, which financial institutions are required to report, the different types of accounts are covered, the different types of taxpayers are covered and sets out common due diligence procedures to be followed by financial institutions.

History of the Common Reporting Standards

Since the world has become more globalised it has become much easier for all tax paying individuals and companies to make, hold and manage investments through financial institutions outside of their country of residence. This allows vast amounts of money to be kept offshore in order to avoid paying tax in their home Country. Offshore tax avoidance is a serious issue for many countries all over the world. Many countries have a shared interest in tracking derogatory tax avoidance and maintaining the integrity of their tax systems. In order to reduce tax evasion, Governments would need to rely on co-operation between theirs and other governments tax administrations and a key aspect of this would be the exchange of financial information between them.

The opportunities presented by the automated exchange of information became a key political interest in 2012.On the 19th of April 2013, the G20 finance ministers and central bank governors endorsed automatic exchange as the expected new standard. This decision was made after France, Germany, Spain, Italy and the United Kingdom announced their intention to develop and pilot multilateral tax information exchange based on the Model Intergovernmental Agreement to Improve International Tax Compliance and to implement the Foreign Account Tax Compliance Act, developed between these countries.On the 22nd of May 2013, the European council unanimously agreed to prioritise efforts to extend the automatic exchange at EU and global level and welcome the on-going efforts made in the G8, G20 and by the OECD to develop a global standard.

On the 19th of June 2013, the G8 leaders approved the OECD Secretary General's report 'A Step Change in Tax Transparency' which sets the concrete steps that need to be undertaken to put a global model of automatic exchange into practice. On the 6th of September 2014, the G20 leaders committed to the automatic exchange of information being the new global standard and supported the OECD's work with G20 countries to present a single global standard in 2014. Ultimately, in February 2014, the G20 finance ministers and central bank governors endorsed the Common Reporting Standard for the automatic exchange of tax information and by May 2014, over 60 countries had committed to swiftly implementing the Common Reporting Standard and integrating it into their domestic law and an additional 44 countries also agreed to a common time in the future to implement the standard.

Chinas adoption of the Common Reporting Standards

Being a G20 member, China has consistently supported the OECD's initiatives for the automatic exchange of information to combat cross border tax evasion and improve tax transparency. In December 2015, China's State Administration of Taxation signed the Multilateral Competent Authority Agreement which allowed it to progress with the automatic exchange of information as advocated by the OECD's Common Reporting Standard.On the 19th of May 2017, the Administration of Taxation, Ministry of Finance, Peoples Bank of China and the China Insurance Regulatory Commission jointly announced and issued the administrative measures for due diligence on non-resident financial account information, in line with the market expectations and the OECD's global Common Reporting standardwhich was to come into effect on the 1st of July 2017. These measures were the legal framework for the implementation for the automatic exchange of information in China and require financial institutions to comply with the due diligence procedures advocated by the measures to identify the tax residency of financial account holders and to collect and record the information all reportable information.

RFIs

After the initial date of the measures being implemented, The Reporting Financial institutions (RFIs) must hand over their information before the 31st of May 2018. According to the OECD's Common reporting standard, the definition of a RFI includes:

- Commercial banks and rural credit cooperatives which accept deposits from the public, and policy banks.
- Securities companies.
- Futures companies.
- Securities investment fund management companies, private fund management companies, and partnerships engaging in private fund management.
- Insurance companies which offer cash value insurance contracts or annuity contracts, and insurance asset management companies.
- Trust companies.

Due diligence provisions

Starting from the 1st of July 2017, all RFIs must have had due diligence procedures in place to collect information from account holders and controlling person(s) who are non-residents. The following measures set out the due diligence requirements for all RFIs:

- RFIs are not allowed to open new accounts without obtaining a valid self-certification from customers. (A new account refers to an account that was opened on or after the 1st of July 2017 and a pre-existing account refers to an account which was opened and maintained before the 30th of June 2017)
- Pre-existing account holders must have an account balance of at least 1Million USD to be classed as a high value customer.
- RFIs are authorised to carry out residency tests for low value pre-existing individual customers.
- Due diligence procedures for new accounts can be used for pre-existing accounts, however, the due diligence procedures do not have to be carried out on insignificant low-value pre-existing accounts.
- RFIs are required to carry out due diligence procedures for high value pre-existing individual customers bythe 31st of December 2017, and for the rest of the pre-existing customers by the 31st of December 2017.
- RFIs can use third party agencies to fulfil the due diligence obligations on their behalf.

Reporting, Enforcement rules and Sanctions

All RFIs must register with the State Administration of Taxation's website by the 31st of December 2017 before filling the first CRS report. The information to be reported includes the account holders and all controlling persons: name, address, tax residence, tax identification number, place of birth, date of birth and other information such as: depository accounts, custodial accounts, special insurance contracts, annuity contracts, & interest in shares of financial institutions. The State Administration of Taxation also stated that the reporting of the financial account information will be governed by separate regulations which are still to be issued.

RFIs are expected to fully comply with these measures and are required to continue monito their CRS compliance status and perform annual reviews. Written reports are required to be submitted annually to the relevant regulators by the 30th of June. Failing to comply with the requirements will result in the State Administration of Taxation reporting non-compliant RFIs to the financial authorities. This includes non-compliance by the RFIs, RFIs senior management and employees, and any other individual directly responsible. In the case of a serious violation of the Common Reporting Standards, the RFIs operating permit may be revoked, and the employees involved may be prohibited from working in the financial industry as well as being subject to disciplinary punishment.

The introduction of tax identification numbers

A Tax Identification Number (TIN) is used to identify and facilitate the administration of countries national tax affairs. TINs are useful as they help identify both domestic and foreign tax payers and are much more reliable than other identifiers such as names and addresses. China’s State administration of Taxation implanted a new TIN regime in October 2015. Under this new regime, the TIN of an individual is their credibility code. The new and old TINs will coexist until the old TINs are phased out in 2018.

The TIN of an individual depends on the type of identification held by the individual. For a Chinese citizen using a Chinese ID card foridentification, their TIN will be their ID card number. For an individual using any other form of identification such as a passport or any other acceptable form of ID for identification, their TIN will be assigned by the local tax office. In some regions, a passport number may also be recognized as an individual’s TIN.

The financial institutions which are required to report to the State Administration of Taxation are required to collect and report their customers TINs along with all of the other information which is required to be collected and reported to the Administration of Taxation on an annual basis. TINs currently is only provided to the self-tax-registered expat, e.g. the IIT self-reporting expat, the expat need to issue invoice etc., for filing purpose. It is a series number starting with “W” or “L”. For expatriates that need to declare China sourced income in China but are not on a work visa in China, they would apply for a TIN when applying to pay any required tax in China.China does not have TINs for expatriates working on work visas in China yet.They are registered using their passport, but this is not following the TIN number structure or system under the CRS. China has intention to implement TINS soon since CRS has been effective from July.

Current worldwide tax regulations

Double tax agreements

The Double taxation is when tax is levied by twodifferent countries tax administrations on the same income which may havearisen in country but paid to an individual or companyin another country.To stop this from happening, many countries worldwide have made double taxation agreements with each other to determine under which circumstances, whichcountries tax administration would levy tax fromthe taxpayer. Over 3000 of these double tax agreements have been made worldwide between numerous countries. China currently has tax treaties with 102 countries. These agreements were made within the last 35 years with the first one being made with japan on the 9th of September 1983 and the most recent one with Zimbabwe on the 1st of December 2015. Double tax agreements incentivise foreign trade, foreign direct investment and can help resolve civil tax matters such as offshore tax evasion.

Tax treaties incorporate many different forms of tax in the agreements, including corporate income tax, individual income tax, withholding taxes and dividend tax. These treaties are not only beneficial to companies that have a presence in two different countries; but also, companies that only have a presence in one country but may want to charge for services to a foreign based country as such transactions would be subject to withholding tax, however, under an applicable double tax agreement, this tax charge may be reduced.

Tax Information Exchange agreements

The Tax Information Exchange Agreements are a model agreement for the exchange of information in tax matters. The model was developed by the Organisation for Economic Co-operation and Development (OECD) and released in April 2002, with the purpose to promote international co-operation in tax matters through the exchange of information.The model agreement stemmed off the work undertaken by the OECD to address harmful tax practices as it was found that the lack of the exchange of tax information between foreign tax administrations was a key factor in tax administrations ability to uncover harmful tax practices. This agreement represents the standard of effective exchange of information for OECD’s initiative on harmful tax practices and is a non-bindinginstrument that contains the models for two bilateral agreements.

Under the agreement, both countries tax administration may request information from each other and when a request has been made, the requested party is obliged to hand over the information providing they have the information. If the requested party does not possess the information, then they are also obliged to gather the information. Information, under this agreement is loosely defined as financial account information and incudes details such as names, addresses, tax identification numbers, tax residence, account balances, account numbers and dates of birth of the owners and controlling persons of banks accounts, companies and capital assets such as shares, securities, mutual funds and bonds. The information provided is protected by confidentiality obligations and disclosure of the information can only be made to the courts or judicial forumsfor the determination, assessment and collection of taxes, the recovery and enforcement of tax claims and the investigation or prosecutionof the tax matters. Representatives from one countries tax administration may also be permitted to conduct tax examinations in the territory of another party which may involve interviewing individuals and the examination of tax records. Different agreements between different pairs of countries will differ from each other as the OECD’s Tax Information Exchange agreement is only a model. There are currently over 500 agreements between countries worldwide and china has currently only made 3 agreements with Argentina, Bermuda and the Bahamas.

The impact on enforcement

The Chinese government has been very active in taking various measures to tackle cross-border tax fraud, tax evasion and to maintain an integral tax system, promote international tax compliance and transparency, as can be seen by the implementation of the Common Reporting Standards, Double Taxation Agreements and information agreements.as a result of this, it will become more difficult for companies and high net value individuals to reduce their tax expenses through offshore tax planning.

Companies and High net vale Individuals would have to adjusttheir tax planning strategies around the Common Reporting Standards, Double Tax Agreements and Information Exchange Agreements requirements, as not doing so could result in penalties. Another way around this would be to setting up your tax jurisdiction in countries that do not participate in the exchange of tax information. One of these countries is the United States. The United States IRS is active with demanding U.S taxpayer information from other countries through the Foreign Account Tax Compliance Act, however (FACTA), however, The United States does not want to participate in the exchange of tax information and the FACTA is only a one-way data sharing request and does not require the US to share tax data to other foreign Tax administrations. Setting up tax residence in the US would mean that your information would only be accessed by the IRS which means you would only pay income tax to the IRS and transaction withholding taxes to other foreign tax administrations for international transactions.

For financial institutions, this will also be headache as bank-client information Confidentiality is a big deal within the finance industry and breaches in bank-client information confidentiality could result in financial institutions losing clients. However, the Common Reporting Standards and Information Exchange Agreements make such confidentiality illegal. Having to report client information to a tax authority means that there will be a gateway to allow such information to be exchanged at the utmost discretion and this would need to be tightly guarded by technology and secure procedures and keeping this information safe would be a complex issue to be handled between tax administrations and financial institutions. Financial institutions will also face several operational issues when adapting to comply with the Common Reporting Standard. These issues would include changes in IT systems, updating documentation, employee training and communication and compliance assurance all whilst maintaining their customer experience.

Professional Services

Audit & Assurance

External Audit

China Statutory Audit

US GAAP Audit

IFRS Audit

Hong Kong Statutory Audit

Internal Audit

Fraud Investigation

Forensic Accounting

Special Purpose Audit

Foreign Currency Audit

Royalty Audit

Capital Verification Audit

Valuation Services

Corporate Valuation

Damage Assessment Valuation

Intellectual Property Valuation

Asset Valuation

Special Purposes Valuation

Corporate Finance

Debt Restructuring

Acquisition, Disposal & Financing

Mergers & Acquisitions

Transaction Advisory

M&A Divesture

M&A Integration

Financial Due Diligence

Business Services

Company Registration & Maintenance

Market Entry Advisory

Updating Company Certificates

Annual Inspection & Reporting

Company Secretarial Services

Company Ownership Transferring/Corporate Restructuring

Background/Credit Checking

Company Deregistration & Bankruptcy

HR Support Services

China Visa Services for Expatriates

Social Welfare Structures

Outsourcing Services

Accounting & Bookkeeping

Budgeting & Forecasting

Financial Statement Preparation

Head Office Reporting

Financial Management

Interim Financial Management

Finance Manager Function

CFO Function

Cash Flow Management

Treasury Management

Set-up of Bank Account

Payroll Services

Payroll Processing Setup

Expatriate Employees

Local Employees

Secondment & Temping Service

Chop Custodian Services

Taxation Services

Individual Tax Planning (IIT)

Tax Immigration & Investment Review

US & Overseas Personal Income Tax Planning & Filing

IIT Tax Payment Facilitation

Application for Individual Income Tax Refund

Expatriate Staff Individual Income Tax Staff Filing

Local Staff Individual Income Tax

Company Taxation (CIT)

Tax Consulting

Corporate Tax Planning

Business Restructuring

Value Chain Review

Onshore / Offshore Investment

Transfer Pricing

Tax Compliance

Tax Due Diligence

Tax Deregistration

Negotiation of Tax Penalties

Tax Refund Application

Tax Representatives for Tax Audit

VAT & Customs Duty Clearance

PRC Tax Receipt Verification

VAT Application

VAT & Sales Tax Filing

Corporate Income Tax Reporting

Specialist Accounting & Risk Management

Internal Controls

Systems

Risk Management

Sarbanes - Oxley (SOX 404)

GAAP, SEC & IFRS Compliance

US GAAP

US GAAP Financial Statement Preparation

US GAAP Conversion

Other GAAP

GAAP Conversion

Public Company Compliance

Financial Statement Preparation

IFRS

IFRS Accounting Repackaging

IFRS Financial Statement Preparation

IFRS Public Company Compliance

SEC

SEC Public Company Compliance

Legal Services

Legal Advisory

Labour Legal Advisory

Workforce Downsizing Advisory

Labour Tribunal Assistance & Advisory

Labour Law Review & Audits

Review & Preparation of Employment Contracts

Corporate Legal Advisory

Legal Due Diligence

Corporate Restructuring Advisory

Review & Preparation of Articles of Association (AoA)

Review & Preparation of JV Contracts

Review & Preparation of Repatriation Agreements

Other Legal Services

Dispute Mediation & Advisory

Trademark & Intellectual Property Advisory

Debt Collection Assistance

Litigation Support

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