The Common Reporting Standard
Key Facts and Considerations

November 2015

This memo refers to FATCA, The Foreign Account Tax Compliance Act, enacted by the U.S. in 2010. Readers unfamiliar with FATCA are encouraged to read our October 2014 FATCA Explanatory memo which is appended to this document in electronic form.

The reporting requirements introduced by FATCA, although focused on U.S. information demands, represent a significant expansion in the cross-border flow of personal financial information. Ensuring compliance with FACTA has been for the past five years a major and expensive task for providers of financial services and their clients.

The OECD's new global standard for Automatic Exchange of Financial Information in Tax Matters, otherwise known as the Common Reporting Standard (CRS), is a regulatory development, based on FATCA concepts, that is likely to result in an even greater expansion in the cross-border flow of personal financial information.

What Is CRS and What Are Its Implications?

Historically, countries that have signed Tax Treaties or Tax Information Exchange Agreements with each other have shared information upon request. The major change introduced by CRS is that financial information that is collected by one country about residents of another country will be shared automatically on an annual basis between countries that have signed up to CRS. No request will be necessary.

CRS will establish a common framework, closely following the FATCA Model 1 IGA, under which signatory countries will oblige local financial institutions to report tax information on their "account holders". This information will then be passed on by signatory countries to the tax authorities in the signatory countries in which those account holders are tax resident.

EXAMPLE: Countries A and B are both signatories to CRS, while country C is not. Mr X is tax resident in countries B and C and has a bank account in country A. Under CRS, country A would automatically report tax information on Mr X to the tax authorities in country B, but not to country C. However, if country C became a signatory to CRS, then country A would automatically start reporting tax information on Mr X to the tax authorities in country C as well.

Jurisdictions Implementing CRS

CRS has been endorsed by 96 jurisdictions, including all the G20 group of countries. Thus far, 74 have signed a Multilateral Competent Authority Agreement ("MCAA") that commits them to CRS, with the remaining 22 having committed to do so. From the 74, 53 (including 10 G20 members and all EU Member States) have agreed to implement CRS from 1 January 2016. This means that these jurisdictions are expected to start exchanging information with each other by the end of September 2017 based on information that they possess during the calendar year 2016. The remaining 21 signatories will begin exchanging information in 2018 based on information that they possess during the calendar year 2017.

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The OECD's most current[1] list of jurisdictions that have signed the MCAA, as well as their intended first information exchange date, is appended to this document in electronic form. One notable jurisdiction that has not committed to CRS is the U.S. However, the U.S. has confirmed that with effect from 2015 it will be exchanging information in terms of FATCA protocols, "with which they are satisfied".

How is CRS Different to FATCA?

From an administrative perspective, CRS differs very little from FATCA. The CRS reporting obligations of an entity classified as a Financial Institution ("FI") are effectively the same as those of a Foreign Financial Institution in a FATCA IGA jurisdiction. What is significantly different is the scope of the reporting obligations.

FATCA at first only triggered reporting on U.S. Persons/tax residents. Subsequently, the U.K. enacted its own version of FATCA with a focus on U.K. tax residents. By contrast, CRS will affect a far broader group of individuals, with information on their "financial accounts" being automatically reported by the jurisdiction where the financial account is maintained to the tax authorities of the jurisdiction or jurisdictions in which the owner of the financial account is resident.

CRS – Three Key Summary Questions

Who or what has to report?

Entities defined as FIs have to collect data and report. Entities and businesses that are not FIs do not have to do so but they will have to provide information to the FIs with which they maintain financial accounts. It should be noted that the definition of an FI is potentially quite broad and certainly more extensive than banks. Depending on certain conditions being met, trusts, companies, funds and foundations can all be categorised as FIs.

When will automatic exchange of tax information begin?

Annual reporting will begin in September 2017 for some jurisdictions and September 2018 for others.

What will be reported?

Information reported by FIs on their account holders includes:

- Name, address, tax residence and tax identification number of the account holder
- All types of investment income, account balances and gross proceeds from the disposal of financial assets

How Trident Trust can assist

Key to CRS' impact will be when and how individual countries implement the new standard. Trident Trust's experienced FATCA and CRS advisory team is available to work with clients to determine in consultation with their professional advisors the best route to compliance with CRS and also to assist in reviewing existing corporate and fiduciary structures.

[1]Accurate as of 29 October 2015

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A Brief History of FATCA

Origins

FATCA is unarguably the most significant global development to impact the providers of financial services since the momentous events of 2008.

The **Foreign Account Tax Compliance Act** was promulgated by the United States Congress in 2010 as a chapter of the US Hiring Incentives to Restore Employment (HIRE) Act. At the time **FATCA** received very little attention and was not the subject of widespread consultation, lobbying or even congressional debate. Its overriding objective was to prevent *US taxpayers* from evading taxes by hiding their money in offshore accounts, whether directly or through layers of structures such as trusts, foundations and companies.

Congress chose a bold and remarkable extra-territorial method of enforcement. It defined the types of entities and businesses most likely to be used by *US taxpayers* and imposed upon those (hereinafter referred to as **Foreign Financial Institutions** or **FFIs**) an obligation (effective 2014) to identify *US taxpayers* and (effective 2015) to report their financial details to the **US Internal Revenue Service** or **IRS.** Congress then added a truly complex maze of legal, registration and regulatory infrastructure around the rules before finishing with two further flourishes.

Sanctions and international reach

Firstly, it imposed a regime of punitive withholding taxes and transaction taxes on payments of US source income and capital proceeds to non-compliant businesses and entities. Secondly, it persuaded many countries (currently in excess of 100) to enter into **tax treaties** with the US in terms of which the **FATCA regime** is endorsed and adopted into the local legal framework of the treaty country concerned – even to the extent that in many instances the treaty country had to change its data protection and bank secrecy laws.

The narrative at this point (*circa* January 2013) was that **FFIs** around the world were to structure their businesses and regulatory compliance around the very complex requirements (enforceable under their local legal rules) to identify and report *US taxpayers*.

The international community reacts

Then the narrative took a dramatic turn. Other countries, having been persuaded by the US to sign **tax treaties** obligating them to implement rules to enforce **FATCA,** began to realise the potential of using this approach to get the same **FFIs** to identify and report the *taxpayers of the treaty countries*. For example, the **United Kingdom** was quick off the mark to force the various **Crown Dependencies and British Overseas Territories** to agree to identical protocols and timelines in respect of *UK taxpayers*. When the **OECD** endorsed **FATCA** as the "gold standard of automatic exchange of information", the momentum for international co-operation increased. There are now some 89 countries poised on the threshold of introducing a **Common Reporting Standard** or **CRS.** Modelled closely on **FATCA** and reliant on

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the enormous infrastructure created by **FATCA, CRS** will impose upon the treaty countries obligations to force **FFIs** to identify the tax residence of clients and to report their financial details *to the countries of their tax residence*. A significant development on **CRS** has been the announcement that **CRS** will not rely on individual **tax treaties** between the treaty countries. Instead they will sign up to an agreed **Protocol Treaty** – a "big bang" approach as it were.

Key Concepts and Issues

Automatic international exchange of tax information

The technicalities and legal uncertainties surrounding **FATCA** and **CRS** are legion. In simple terms, however, **FATCA** has heralded the birth of a completely new and internationally co-operative approach to automatic cross-border exchange of the financial information which businesses and entities hold in respect of their clients and account holders.

Data collection and reporting by financial institutions

The key to **FATCA** and **CRS** is the concept of **FFIs** having to harvest data about their clients and account holders and then passing those data on to the relevant tax authorities. So, for example, Person A with a bank or brokerage account with Bank A (Cayman) can look forward to an approach from Bank A, which will now need to determine whether Person A is a *US taxpayer* and whether Person A is a *UK taxpayer*. If so, Bank A will ask for the relevant taxpayer reference numbers and will then, on an annual basis, submit reports to the **IRS** and/or the UK revenue authorities **(HMRC)** on the financial information it has about Person A. It is possible that Bank A will also ask Person A if he/she is *a taxpayer of any other country* – as Bank A may have decided to start preparing now for **CRS** (the first phase of which is due to come into effect on 1 January 2016). Similarly, Company A or Trust A with a bank or brokerage account with Bank A (Cayman) can look forward to an approach from Bank A, who will be looking to identify the individual owners and controlling persons involved and will then be applying the same rules to those individuals.

The identification of **FFIs** is thus crucial to **FATCA** and to **CRS. FFIs** have to harvest data and report. Entities and businesses that are **not FFIs** do not – *but they will have to provide information to the **FFIs** with which they have financial relations*.

Distinguishing between FFIs and non-FFIs

Millions of private trusts, foundations and companies will not be **FFIs** and will thus be dealing with their banks, brokers and investment managers on the basis outlined above. However, millions of private trusts, foundations and companies will be **FFIs** and will need to comply with the obligations described above. Already, libraries-full of academic papers and articles have been written about the technical challenges of determining whether an "entity" is or is not an **FFI** – it is, after all, a crucial distinction.

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Within the fiduciary industry, it is (just) possible to offer some rules of thumb:

i. Trusts, foundations and companies established for private or family purposes *will not be* ***FFIs*** *if they are managed and administered by family members or individuals connected with the family;*

ii. Trusts, foundations and companies established for private or family purposes *will be* ***FFIs*** *if they are administered or managed by professional fiduciaries or if their assets are managed by professional asset managers*.

The impact of the distinction between FFIs and non-FFIs

These rules of thumb are not infallible; but for present purposes they allow us to make an important distinction between the first category and the second. In the case of the former, those entities (the **non-FFIs**) will be dealing with their banks, brokers and investment managers – who will be responsible for ensuring full **FATCA** and (in due course) **CRS** compliance in respect of the individuals who own and control them. In the case of the latter (the **FFIs**), the entities will be obliged to ensure that they themselves comply with **FATCA** and **CRS** – their banks, brokers and investment managers will be relieved of that obligation (provided they have satisfied themselves that the entities concerned have demonstrated to them compliance with the complicated legal, registration and regulatory framework referred to above).

Practical Considerations

Advisory framework

In practical terms, **non-FFIs** will need to take professional advice before submitting the appropriate and relevant information to their banks, brokers and investment managers in order for them to satisfy their obligations. **FFIs,** in order to comply with their own obligations, will ordinarily rely on their professional fiduciary – both to steer them through the legal and practical steps and to ensure that they are compliant with the rules when dealing with their banks, brokers and investment managers and when determining the extent of any reporting obligation.

Clients of Trident Trust

Trident Trust has clients in each of the categories represented above. Our immediate challenges are to present **FATCA** and **CRS** to our clients in a contextual and understandable way and then to engage with them on the issue of determining the best route towards **FATCA/CRS** compliance.

Clients falling into the **non-FFI** category are going to need their own professional advisers as they will find their banks, brokers and investment managers reluctant to offer advice to their clients and account holders on these issues. Indeed, many will be constrained by their own legal and compliance rules from so doing. Practically, these clients will need to engage advisers who are familiar with the **FATCA/CRS** rules *and also with the ownership, control structures, financial assets and activities of the trusts, foundations and companies concerned* – as much of the pathway to the requisite compliance will flow from these *key components*. Whilst

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Trident Trust will be willing to assist these clients to understand the basic principles involved, our ability to advise them will be severely limited by our lack of knowledge of the *key components* outlined above.

Clients falling into the **FFI category** are going to rely primarily on their professional fiduciaries or professional asset managers. In many instances, these clients will have professional fiduciaries outside of **Trident Trust;** but many will have engaged **Trident Trust** as their professional fiduciaries with **Trident Trust** providing trustees, directors, shareholder services, bank account signatories or a selection from these services. In such circumstances **Trident Trust** is able to provide clients with tailored solutions.

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SIGNATORIES OF THE MULTILATERAL COMPETENT AUTHORITY AGREEMENT AND INTENDED FIRST INFORMATION EXCHANGE DATE

Status as of 29 October 2015

JURISDICTION FROM WHICH THE COMPETENT AUTHORITY IS FROM	INTENDED FIRST INFORMATION EXCHANGE BY: (ANNEX F TO THE AGREEMENT)
1. ALBANIA	September 2018
2. ANGUILLA	September 2017
3. ANTIGUA AND BARBUDA	September 2018
4. ARGENTINA	September 2017
5. ARUBA	September 2018
6. AUSTRALIA	September 2018
7. AUSTRIA	September 2018
8. BARBADOS	September 2017
9. BELGIUM	September 2017
10. BELIZE	September 2018
11. BERMUDA	September 2017
12. BRITISH VIRGIN ISLANDS	September 2017
13. BULGARIA	September 2017
14. CANADA	September 2018
15. CAYMAN ISLANDS	September 2017
16. CHILE	September 2018
17. COLOMBIA	September 2017
18. COOK ISLANDS	September 2018
19. COSTA RICA	September 2018
20. CROATIA	September 2017
21. CURAÇAO	September 2017
22. CYPRUS	September 2017
23. CZECH REPUBLIC	September 2017
24. DENMARK	September 2017
25. ESTONIA	September 2017
26. FAROE ISLANDS	September 2017
27. FINLAND	September 2017
28. FRANCE	September 2017
29. GERMANY	September 2017
30. GHANA	September 2018
31. GIBRALTAR	September 2017

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32. GREECE	September 2017
33. GRENADA	September 2018
34. GUERNSEY	September 2017
35. HUNGARY	September 2017
36. ICELAND	September 2017
37. INDIA	September 2017
38. INDONESIA	September 2018
39. IRELAND	September 2017
40. ISLE OF MAN	September 2017
41. ITALY	September 2017
42. JAPAN	September 2018
43. JERSEY	September 2017
44. KOREA	September 2017
45. LATVIA	September 2017
46. LIECHTENSTEIN	September 2017
47. LITHUANIA	September 2017
48. LUXEMBOURG	September 2017
49. MALTA	September 2017
50. MARSHALL ISLANDS	September 2018
51. MAURITIUS	September 2017
52. MEXICO	September 2017
53. MONTSERRAT	September 2017
54. NETHERLANDS	September 2017
55. NEW ZEALAND	September 2018
56. NIUE	September 2017
57. NORWAY	September 2017
58. POLAND	September 2017
59. PORTUGAL	September 2017
60. ROMANIA	September 2017
61. SAINT LUCIA	September 2018
62. SAINT VINCENT AND THE GRENADINES	September 2018
63. SAMOA	September 2018
64. SAN MARINO	September 2017

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65. SEYCHELLES	September 2017
66. SINT MAARTEN	September 2018
67. SLOVAK REPUBLIC	September 2017
68. SLOVENIA	September 2017
69. SOUTH AFRICA	September 2017
70. SPAIN	September 2017
71. SWEDEN	September 2017
72. SWITZERLAND	September 2018
73. TURKS & CAICOS ISLANDS	September 2017
74. UNITED KINGDOM	September 2017