

FORUM ON TAX ADMINISTRATION

Automatic Exchange of Information

Guide on Promoting and Assessing Compliance by Financial Institutions



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Disclaimer

The purpose of the FI Compliance Guide is to assist government officials and FIs regarding the obligations to monitor and ensure compliance of FIs who have reporting obligations under CRS and FATCA and to provide a practical overview of what a robust compliance regime may involve.

Against this background, this Guide is drafted in plain language, with a view of making the content as accessible as possible to readers. The Guide is not intended to replicate the obligations under the CRS and FATCA nor does the Guide alter any of the obligations required under the CRS or FATCA. Therefore, if there is any uncertainty over the requirement, depending on the issue, the CRS or FATCA wording should be consulted.

Tax administrations operate in varied environments, and the way in which they each administer their taxation system differs in respect to their policy and legislative environment and their administrative practice and culture. As such, a standard approach may be neither practical nor desirable in a particular instance and each jurisdiction should instead have an approach best suited to their local context.

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Abbreviations

AEOI	Automatic Exchange of Information
AML	Anti-money laundering
CBI	Citizen by Investment
CRS	Common Reporting Standard
CEO	Chief Executive Officer
CFO	Chief Financial Officer
COO	Chief Operations Officer
EOI	Exchange of Information
FATCA	Foreign Account Tax Compliance Act
FATF	Financial Action Task Force
FAQs	Frequently Asked Questions
FFI	Foreign Financial Institution
FI	Financial institution
FTA	Forum on Tax Administration
IGA	Inter Governmental Agreement
KYC	Know Your Customer
LOB	Lines of Business
NFE	Non-Financial Entity
OECD	Organisation for Economic Co-operation and Development
PDF	Portable document format
QI	Qualified Intermediary
RO	Responsible Officer(s)
RBI	Residency by Investment
SOW	Statement of Work
SME	Subject Matter Experts
TIN	Tax Identification Number
US	United States

Executive summary

Automatic Exchange of Information (AEOI) under the Common Reporting Standard (CRS) and the United States Foreign Account Tax Compliance Act (FATCA) involves the exchange of large amounts of information on financial accounts between tax administrations. The CRS was inspired by the introduction of FATCA and in 2020 under the CRS information was exchanged with over 100 jurisdictions in respect of more than 80 million accounts. The information exchanged concerns the financial accounts of both natural persons and entities held in financial institutions (FIs) in another jurisdiction to that in which they are tax resident. These new AEOI initiatives have made significant amounts of tax relevant information available for the first time to tax administrations across the globe, increasing tax transparency and helping to combat offshore tax evasion.

However, for the receiving tax administration to be able to use this information effectively to assure tax compliance relies on the quality and completeness of both the due diligence checks as to the tax residency of account holders and the accuracy of the account information. That, in turn, requires that the sending tax administration undertakes appropriate checks, as set out in both the CRS and FATCA, that all FIs that are required to send information do so, and that the due diligence and reporting processes employed by financial institutions are sufficiently robust.

As both the CRS and FATCA move past their implementation phases, tax administrations are now addressing their obligations to monitor and ensure the compliance of FIs that have reporting obligations in their jurisdictions and are relying on each other to implement effective compliance regimes. (The reference to “tax administration” in this document also refers to any other authority to which the jurisdiction has delegated the requirement to ensure compliance by its FIs.)

Tax administrations generally have extensive experience in monitoring taxpayer compliance, but often have less experience in assessing the implementation of third-party reporting regimes such as the CRS and FATCA. This is because a large portion of the rules are of a regulatory, rather than a tax nature. Against this background, the Forum on Tax Administration (FTA) identified that there is benefit in collective work to help inform what a robust FI compliance regime might involve. A pilot group consisting of the tax administrations of Canada, Singapore, the United Kingdom and the United States (US) has jointly taken this work forward.

This Guide reflects the views of the pilot group on the key aspects to consider when tax administrations promote and assess compliance by FIs with the obligations placed on them by the CRS and FATCA. It is designed to help inform the thinking of jurisdictions that are currently in the process of developing a compliance regime for FIs and to allow those jurisdictions with frameworks in place to review and enhance their own arrangements.

It is hoped that this will also help tax administrations in being able to document and demonstrate the practices and measures that they have taken in this area. As regards to the CRS, the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) will carry out reviews of the implementation of the CRS. This will include looking at the measures in place to ensure that FIs correctly carry out the due diligence and reporting requirements.

To help inform this Guide and gain insights into the actual challenges faced by FIs in meeting their CRS and FATCA obligations, the pilot group has worked with a number of FIs, particularly in the banking and insurance sectors. This has helped the group to obtain a detailed view of the different approaches that FIs have taken to ensure compliance with due diligence and reporting obligations. In addition to assisting tax administrations to meet their obligations, it is hoped that this Guide will also be useful for FIs in helping them to assess and test the robustness and completeness of their own approaches.

Finally, it should be noted that the methodologies set out in this Guide are not intended to be prescriptive. It is recognised that there are many approaches through which FIs can achieve a compliant outcome based on their internal systems and risk factors. Equally, tax administrations will have differing approaches to risk assessment and as to how they interact with their FIs. Depending on the domestic context, including the features of their financial sector, tax administrations could adopt a judicious balance of activities – including raising awareness, promoting compliance and implementing compliance review processes – that would best meet their needs and circumstances in ensuring the effective implementation of the CRS and FATCA.

Format

This Guide has two parts:

- **Part I** focuses on promoting and supporting compliance. While this concerns activities that are likely to be ongoing, reflecting experiences gained over time, it may be of particular benefit in the early stages of the implementation of the CRS and FATCA when FIs are setting up and adapting their internal processes to meet the new requirements. This Part looks briefly at tax administration organisational issues, the range of possible activities to both promote and support compliance and the identification of the FI population.
- **Part II** focuses on assessing compliance. The first chapter of this part looks at the elements of risk-based approaches that tax administrations may wish to consider when verifying FI compliance. The subsequent chapters look at the hallmarks of effective CRS and FATCA compliance by FIs as identified by the pilot group. These hallmarks are organised around the key themes of governance, due diligence and reporting systems and procedures. Finally, Annex A includes a matrix of the various methods that may be used to verify CRS and FATCA compliance by FIs.

The intention is that this Guide will be updated periodically based on experiences of tax administrations and financial institutions. Feedback is therefore welcomed and should be sent to FTA@oecd.org.

Technical note

For FATCA compliance purposes, tax administrations may consider the content of this Guide in light of whether there is a Model 1 or Model 2 Intergovernmental Agreement in place. The chapter on due diligence in Part II refers to the FATCA obligations outlined in the Intergovernmental Agreements and does not include any additional options for FIs contained in US Treasury Regulation 1471. Where references to terms in FATCA have broadly similar equivalents for CRS purposes, the CRS term is used in this Guide. For instance, the CRS terms “Financial Institution”, “Non-Financial Entity” and “Reportable Account” respectively encompass the FATCA terms of “Foreign Financial Institution”, “Non-Financial Foreign Entity” and “US Account for FATCA”.

Part I – Promoting and Supporting Compliance by Financial Institutions

Part I looks at the initiatives that tax administrations may wish to consider to promote and support compliance by Financial Institutions (FIs) with their CRS obligations.

The first chapter looks at the initiatives related to education, service initiatives and the development of self-help tools. Many of these activities will be more effective when carried out in co-operation with other agencies, industry associations and other stakeholders as well as with FIs themselves.

The second chapter looks at the options for the identification of the FI population. These include registration requirements, the use of analytical tools, dialogue with industry associations and other stakeholders as well as risk-based compliance activities.

While the initiatives described in this Part will be carried on as ongoing activities, there may be particular value in the early period following the introduction of the CRS and FATCA to help build in compliance from the start. This can reduce the need for resource-intensive downstream compliance interventions.

1 Implementation Assistance

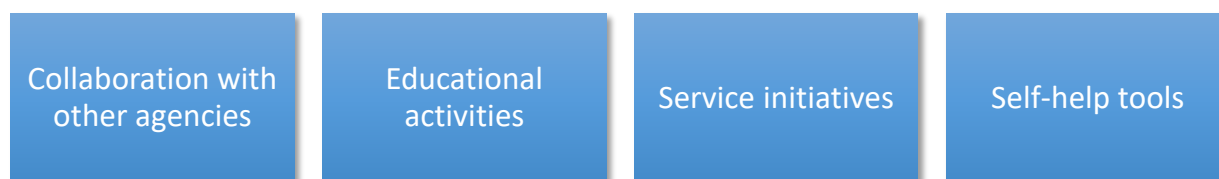
Introduction

1. In order to effectively support and promote compliance by FIs with their CRS and FATCA obligations, tax administrations will need access to people with diverse capabilities, knowledge and skills, in particular in the following areas:

- Understanding of domestic and international legislation relevant to the CRS and FATCA;
- Technical knowledge of the CRS and FATCA;
- Understanding of the financial industry, for example, business models, products, risks, etc;
- Customer service;
- Compliance, risk management, audit and enforcement;
- Information systems; and
- Data and analytics.

2. Depending on a jurisdiction's specific circumstances, these capabilities may be centralised within the international tax department or Exchange of Information ("EOI") unit, decentralised to other functional departments within the tax administration (e.g. the legal department, tax audit teams, etc.), or even carried out to some extent by other government agencies (e.g. financial regulators). The important thing is that whatever the organisational arrangements are, there is a joined-up strategy and set of activities for supporting and promoting CRS and FATCA compliance.

Figure 1.1. Activities for promoting compliance



Collaboration with other agencies

3. Within jurisdictions, close interagency cooperation between the tax administration and other relevant government agencies can facilitate CRS and FATCA implementation and compliance activities. Establishing points-of-contact and working arrangements with other government agencies can facilitate information sharing, gathering of intelligence for compliance planning and identification of FIs, particularly when the definition of FIs under the CRS and FATCA can be broader than the traditional definition of financial institutions known to tax administrations and regulators. (This is explored further in the next chapter.)

4. Government agencies commonly involved in the work relating to the CRS and FATCA include financial regulators, as well as the finance or justice ministries. Given that financial regulators typically oversee the financial industry for other regulatory compliance such as anti-money laundering and know-your-customer rules (“AML/KYC”) and thus may have a better appreciation of trends and developments on the ground, tax administrations may consider working closely with them to identify potential CRS and FATCA risks in the industry.

5. To better understand and appreciate common issues, practical difficulties and potential compliance risks faced by FIs and their industry in implementing the CRS and FATCA, it is important for tax administrations to also engage with the relevant industry bodies / associations (representing banks, investment entities, insurance companies, trusts, etc.), service providers and consultants. Some examples of engagement activities would include:

- consultations on key policies (e.g. compliance approaches);
- sharing of developments in the industry; and
- the establishment of platforms to gather feedback on policy implementation from the industry.

6. Regular communication and collaboration between tax administrations from different jurisdictions can also help to build a more robust compliance regime. In particular, providing timely feedback on the quality of CRS and FATCA data exchanged would enable tax administrations to more effectively implement compliance programmes and address data quality issues with domestic FIs. This can take place through various communication platforms such as emails, teleconferences, multilateral international forums and bilateral Competent Authority meetings.

Educational activities

7. As the CRS and FATCA are relatively new international initiatives, certain FIs may initially not be entirely familiar with all their obligations. Tax administrations may therefore wish to raise awareness of the CRS and FATCA through outreach and educational activities. These early interventions can encourage FIs to get compliance right from the start, which may in turn reduce the downstream compliance efforts by tax administrations, as well as minimise FIs’ compliance costs in the long run. Over time, tax administrations may then expect FIs to be increasingly familiar with these initiatives as FIs integrate the requirements into business-as-usual processes.

8. Most commonly, jurisdictions have made information available through dedicated CRS and FATCA webpages. These can serve as one-stop information repositories, with links to published guidance and FAQs that aim to deepen the understanding of domestic regulations and reporting obligations by FIs. These webpages should be regularly reviewed to ensure that content remains up to date, and that the layout of information is intuitive and reader-friendly for users.

9. Further, seminars, webinars, conference calls and workshops offer tax administrations various opportunities to engage with particular industry segments, tailoring content to their needs. Consultation sessions with the relevant industry bodies and associations on legislation and regulations are also useful in deepening engagement with the industry. These consultations and engagement sessions help tax administrations to better understand challenges on the ground, as well as leverage the reach of industry bodies and associations in building industry knowledge on the CRS and FATCA, where it would otherwise be challenging for tax administrations to reach out to the FIs independently.

10. In some jurisdictions, tax administrations have formed working groups with relevant stakeholders to augment this process. These working groups consist of key representatives from the industry. This includes consultancy firms and representative bodies for example, covering banks, building societies, insurance companies, trusts, etc. As not all FIs are members of the representative bodies, there might still

be limited reach. Smaller FIs in particular may benefit from other outreach and engagement sessions such as seminars and workshops conducted by the tax administrations.

Box 1.1. Examples of educational initiatives

One tax administration has published an industry feedback webpage, which provides a mechanism for the industry to submit questions and concerns pertaining to FATCA. These are reviewed periodically and may be included as new FAQs or other forms of clarifying guidance where appropriate. This feedback loop creates a robust mechanism to improve industry understanding of the requirements.

Another tax administration consulted FIs from various sectors in the financial industry (e.g. banks, insurance companies, asset managers and trustees) as well as their service providers when formulating its CRS compliance guidelines. Through a series of half-day consultations, the tax administration was able to co-develop with the industry an agreed set of best practices that FIs should put in place to demonstrate the sufficiency and robustness of their internal controls for CRS compliance.

Service initiatives

11. In the initial implementation period, which may span several years, tax administrations can expect a considerable number of queries from FIs on their CRS and FATCA obligations. In responding to queries from FIs, tax administrations may utilise various contact channels, including dedicated CRS and FATCA email boxes, telephone helplines and face-to-face meetings. In this regard, it is important that CRS and FATCA teams are sufficiently staffed such that FIs receive the necessary clarifications in a timely manner. In particular, during peak reporting periods, tax administrations may face a significant increase in the number of queries. To manage this, they may consider hiring and training temporary staff, redeploying resources from other areas of work e.g. EOI units, and/or identifying and publishing FAQs on the website.

12. In addition to posting information on its website, tax administrations may also want to consider proactively sending early written or electronic reminders on FIs' filing obligations in advance of the domestic statutory deadlines (as well as reminders of registration obligations in jurisdictions with a registration regime). These reminders can also be communicated via industry bodies and associations. Where the contact volume is manageable, tax administrations may also consider directly calling FIs who have yet to file their CRS and FATCA returns closer to the reporting deadline.

13. Assistance with the filing of returns by FIs is another area where proactive assistance may be useful. With the introduction of new IT systems and processes under the CRS and FATCA, FIs commonly face technical issues when making returns. Where possible, tax administrations should render timely assistance in troubleshooting such reporting issues, which would help reduce the number of reporting errors, hence enhancing the quality of information being reported. Tax administrations may also consider encouraging FIs to participate in reporting trials prior to actual reporting. This may help resolve technical issues upfront and reduce contacts from FIs during the reporting peak period as well as help administrations to develop FAQs for common problems.

14. Compared to larger and established FIs with more resources, smaller FIs will often require more assistance in complying with new standards and regulations. It may therefore be useful for tax administrations to give particular attention to how to support and promote compliance by smaller FIs, including through simplification measures that do not compromise the overall integrity of these initiatives.

Box 1.2. Facilitating CRS and FATCA Filing by Smaller FIs

Smaller FIs with fewer resources may face challenges in preparing their returns in the prescribed XML formats. As smaller FIs typically have a lower volume of reportable accounts, tax administrations have implemented solutions to simplify the filing process for these entities.

For example, some tax administrations have published online web forms to cater to FIs with lower volumes of reportable accounts, while others have published a fillable PDF form which allows small numbers of reportable accounts to be reported in a non-automated manner.

These tools have removed the need for smaller FIs to acquire an independent reporting tool to generate their CRS and FATCA returns in XML format. Such initiatives have been successful in easing the filing process and reducing compliance costs for smaller FIs, while ensuring they meet their CRS and FATCA obligations.

Self-help tools

15. Given the demand of CRS and FATCA implementation on administration resources, a number of tax administrations have also developed and promoted self-help tools to encourage self-service by FIs. This is to help FIs comply with their CRS and FATCA obligations at the onset and get it right from the start. Such initiatives have encouraged voluntary compliance by FIs and reduced the need for tax administrations to address relatively simple queries (which, though simple, may still take some time to answer). Timely support will reduce the need for compliance efforts downstream, which can be more resource-intensive. Some examples of these initiatives include publishing specific error codes and their descriptions alongside guidance on XML schema, as well as developing checklists and self-assessment tools where appropriate.

Box 1.3. CRS Entity Classification Self-Review Tool and CRS Compliance Guidelines Self-Review Toolkit

Having received a large number of queries relating to entity classification for CRS purposes, one tax administration has developed and published a CRS entity classification self-review tool. This assists entities in determining their CRS entity classification under domestic regulations, and the corresponding registration and reporting obligations. Entities using the tool will answer a series of yes / no questions and at the end, the tool will automatically generate a report stating the entity's CRS classification status and the corresponding domestic CRS requirements based on the entity's inputs.

The same tax administration has included in its published CRS compliance guidelines a set of hallmarks or desired outcomes that FIs should achieve to demonstrate their effective CRS compliance domestically. To assist these FIs in complying with the guidelines, the tax administration has designed an optional self-review toolkit containing recommended internal controls that FIs may use to assess the sufficiency and robustness of their CRS internal controls. The toolkit would also help FIs identify potential gaps in their current CRS internal control frameworks and address them in a timely manner.

2 Identifying the Financial Institutions Population

Introduction

16. One of the CRS and FATCA risks pertains to non-reporting by FIs which have reporting requirements. This may be deliberate or unintended. In this regard, it is important for tax administrations to put in place a process to try and identify its FI population for CRS and FATCA purposes. The following sections describe some best practices and measures taken by tax administrations in addition to the self-help classification tools, educational and service initiatives described in the previous chapter.

Registration requirements and nil returns

17. While registration is not a requirement under the CRS some jurisdictions have opted to legislate a requirement to register with the tax administration as a way to identify FIs similar to the requirements to register under FATCA as a Foreign Financial Institution (“FFI”). Maintaining a list of registered FIs can offer tax administrations insights to the profile of the financial industry, which may complement their risk assessment process. For jurisdictions with no registration requirement, establishing a separate “nil return” reporting requirement may have a similar effect of identifying their FI population. These jurisdictions would, though, still need to ensure that all FIs that should have reported “nil returns”, have done so.

The matching process

18. To identify the FI population, some tax administrations conduct matching exercises. For example, to identify the FI population for CRS purposes, some tax administrations match their known FI population for CRS purposes (either through registration or nil returns) against other regulatory listings. These include the FATCA FFI list, lists of registered entities for tax purposes, as well as industry or regulatory license listings obtained from financial regulators or other government agencies.

19. Some other sources of information complementing such a matching process could include feedback from partner jurisdictions and information obtained through the processing of EOI requests.

20. It is important for tax administrations embarking on matching exercises to bear in mind that “new” entities identified in the process may not necessarily be FIs for CRS or FATCA purposes. For example, insurers that only provide general insurance would be wrongly identified as potential FIs under the CRS and FATCA if the list of all insurance license holders registered with the financial regulators is used to match against the tax administration’s list of FIs.

21. A separate analysis would therefore be required to understand the underlying differences between the nature of the various listings before a tax administration could categorically determine non-compliance

by an entity. If necessary, this process may be supplemented with further queries and clarifications to the “new” entities identified through the matching process before a determination is made.

22. In their follow-up actions, tax administrations may consider the use of behavioural insights or nudging techniques to encourage prompt registration or reporting by entities identified through the matching process.

Box 2.1. Approaches to the Matching Process

In its matching exercise for CRS purposes, one tax administration compared its list of CRS-registered FIs with the industry list from the financial regulator as well as the FATCA FFI List from the United States Internal Revenue Service. Those identified as potential non-CRS registrants were then analysed further and grouped by their business types. This helped the tax administration to prioritise its follow-up actions, focusing on those entities that were more likely to have CRS obligations (e.g. asset managers compared to investment holding companies in the non-financial sector).

In its follow-up correspondence to identified entities, the tax administration incorporated nudging techniques to encourage prompt response and actions from those entities. For example the correspondence:

- Communicated the domestic legal obligation to register for CRS and the potential penalties upfront in the query letters issued;
- Included a list of resources that would assist the entities in determining their registration or reporting statuses; and
- Incorporated clear “call-to-action” messages in their letters. For example, to draw the attention of the identified entities, the tax administration indicated clearly in the heading of the letter that it requires the entities’ immediate action. Another example was to have an obvious “call-to-action” box within the letter, stating clearly the actions required of the entity, i.e. using the attached educational materials to determine its registration or reporting status; registering or reporting immediately if required; and replying to the letter with reasons for non-registration or reporting.

Another tax administration cross-referenced between multiple lists (e.g. FATCA FFI List, list of regulated depository institutions, providers of insurance, regulated investment providers and lists from other domestic reporting regimes). To augment this approach, the tax administration verified with FIs whether any of their account holders would also be considered FIs under the CRS and FATCA. This helped to identify any entities which had not reported accounts under the CRS and FATCA, and had either negligently or deliberately declared themselves to be FIs to prevent being reported.

Identifying non-regulated FIs

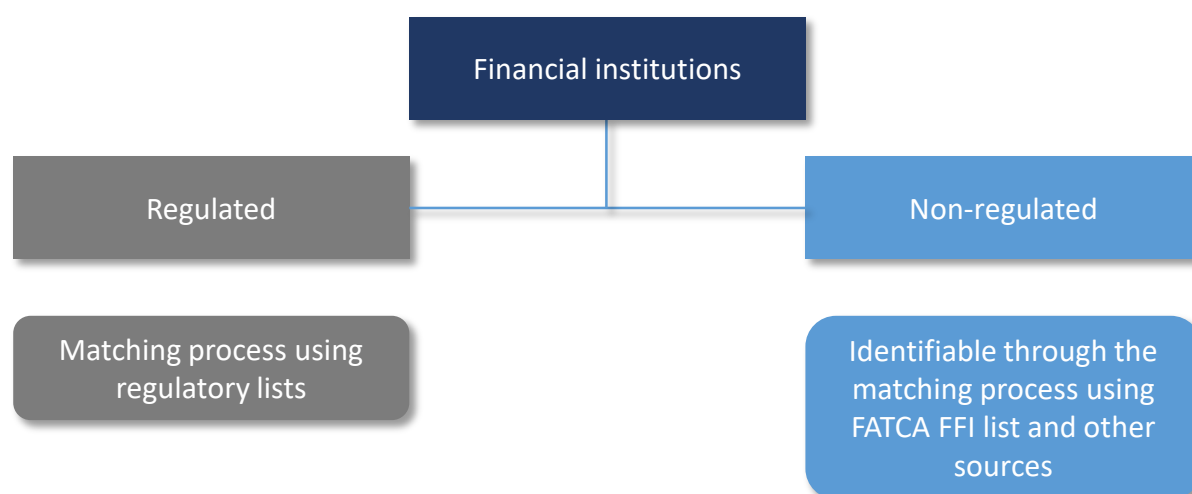
23. Compared to regulated FIs, non-regulated FIs are likely to be less visible to tax administrations making it more difficult to ensure compliance. This section looks at upstream processes for identifying non-regulated FIs as well as downstream compliance activities.

Upstream processes

24. As discussed above, as a primary approach, tax administrations may first match their existing FI population against the FATCA FFI list and regulatory listings, such as industry listings obtained from

financial regulators. Since the resulting gap may comprise both regulated and non-regulated entities, tax administrations would need to further analyse the gap (e.g. through further matching to other non-public regulatory listings such as corporate or trust registries, and analysis of the underlying differences between the nature of the listings used). This could help to identify non-regulated entities that may potentially have domestic CRS and FATCA obligations. Following this process, and depending on their overall risk-based approach for CRS and FATCA purposes, tax administrations may decide to raise further queries and clarifications to an identified group of non-regulated entities before making a determination on their CRS and FATCA statuses.

Figure 2.1. Matching framework to identify regulated and non-regulated FIs



25. Non-regulated FIs may also be identified indirectly from other sources of information, including through discussions with the financial industry, advisers and financial regulators. Using insights gained from these discussions, tax administrations may consider raising awareness to identified higher-risk sectors. For example, if the use of a specific fund structure for wealth planning purposes is gaining popularity in a jurisdiction due to a recent change in domestic laws, the tax administration in this jurisdiction may publish targeted guidance on its website to educate the sector about the potential CRS and FATCA implications of such a fund structure. It may also reach out to the relevant industry body (e.g. fund manager associations) to assist through industry-specific seminars and programmes as well as possible direct approaches to potential non-regulated entities.

Downstream compliance activities

26. Where the FATCA FFI list and regulatory listings such as industry sources or those obtained from financial regulators do not exhaustively cover the entire population of FIs within the scope of CRS and FATCA, tax administrations may consider alternative sources of information. These would generally be through the established relationships that non-regulated FIs may have with other actors in the conduct of their business. Some examples may include trustees, fund managers, fund administrators and banks. This information can also be used from time to time to validate the main regulatory listings used in the first instance.

27. In addition, tax administrations may match their existing FI population against selected account holders of higher-risk FIs or types of FI (e.g. those which are likely to maintain accounts of non-regulated FIs). For example, some tax administrations may identify institutions that set up investment funds for high

net worth individuals as a potentially higher-risk segment. The tax administration may approach some of these institutions and request a list of account holders that meet the following criteria:

- account holders that are investment funds (or any other type of FI that is less straightforward to identify) and declared themselves as FIs to the institution;
- account holders that gave a discretionary investment mandate to the institution; and/or
- account holders that meet certain other risk factors (if any) e.g. having a local address.

28. After the tax administration receives a list of account holders meeting these criteria, they may wish to match their known FI population against this list. Where a gap exists, the tax administration may raise queries and clarifications to an identified group of non-regulated FIs before making a determination on their CRS and FATCA status.

29. This approach requires that tax administrations have a good understanding of their financial industry (e.g. sectors within the financial industry, their sizes, trends, etc.) in order to apply a risk-based approach effectively and efficiently.

Part II – Assessing Compliance

Part II covers activity to assess compliance with CRS and FATCA requirements by Financial Institutions (FIs).

The first chapter sets out the core elements of a risk-based approach which will be necessary in most jurisdictions given the large number of FIs.

The subsequent chapters set out the three core areas that tax administrations may wish to address when reviewing compliance by FIs with their obligations under the CRS and FATCA. These are: governance and implementation; due diligence obligations; and reporting requirements. Within each chapter these core areas are further broken down into their main elements. Each element has assigned hallmarks (descriptions of acceptable outcomes); a brief explanation of particular issues which need to be considered and overcome and a set of questions that tax administrations may wish to pose to FIs.

Annex A sets out a number of review methods that can be used to verify the compliance of FIs with each hallmark in a matrix format.

Finally, it should be stressed that these hallmarks are meant as a tool to assist tax administrations in their reviews of FI compliance and are not, in themselves, necessarily determinative of compliance.

3 Developing a Risk-Based Approach Towards CRS and FATCA Compliance

Introduction

30. On downstream CRS and FATCA compliance, tax administrations generally recognise that seeking to prevent all failures may result in an excessive and disproportionate regulatory burden on FIs as well as on their own resources. Therefore, in balancing the needs for jurisdictions to ensure effective CRS and FATCA compliance by FIs and achieve administrative efficiency, tax administrations would typically adopt a risk-based approach in monitoring and assessing CRS and FATCA compliance by FIs.

31. A risk-based CRS and FATCA compliance approach would help tax administrations manage potential regulatory non-compliance by focusing on FIs and/or areas which pose a higher risk of non-compliance. The nature and intensity of downstream compliance activities by tax administrations would then reflect their assessment of risks of FIs' non-compliance with the CRS and FATCA.

32. It should be noted that a starting point to compliance is having all FIs correctly identified, as referenced in Chapter 2 of Part I above. Such an internal list of FIs should therefore be developed and maintained on an ongoing basis, for example supplemented and expanded based on the results of the ongoing compliance activities including feedback from exchange partners.

33. The following paragraphs elaborate on a typical risk management process that tax administrations may undertake when adopting a risk-based approach to monitor FIs' CRS and FATCA compliance.

34. It should, though, be noted that while it is not a consistent practice of tax administrations in general, some supplement their risk-based approach with an element of random case selection when identifying FIs for their compliance activities. Doing so may be helpful to: (i) ensure that the risk identification processes in place are broad enough and cover the right areas; and (ii) encourage FIs to ensure that they have the right governance and systems in place, hence preventing CRS and FATCA compliance from being a "tick-the-box" exercise.

Designing a risk management process

35. The risk management process allows tax administrations to systematically identify, prioritise, analyse and address risks of potential CRS and FATCA non-compliance by FIs figure 4.1 suggests one possible end to end approach. In practice, the end-to-end process can be documented by way of a risk register. A risk register also serves as a monitoring and planning tool for tax administrations by providing an overview of how CRS and FATCA risks are managed and the status of the various compliance

programmes or activities undertaken by the tax administration. Jurisdictions with a small FI population still have the same compliance obligations but may simplify the process (for example by auditing a wide scope of FIs).

36. As the management of risk is an ongoing process, tax administrations may conduct periodic reviews of the risk register to ensure that CRS and FATCA risks remain relevant and are documented contemporaneously.

Figure 3.1. Risk management processes



Risk identification

37. The first step of a risk management process involves the identification of risks. In doing so, tax administrations may consider both “top-down” and “bottom-up” approaches to ensure that CRS and FATCA risks are identified comprehensively.

38. A “top-down” approach in identifying risks may involve external scanning of the environment for potential CRS and FATCA risks. For example, through regular reviews of news articles and external publications, tax administrations may be able to identify certain risks within the financial industry or structures that are being actively marketed by intermediaries to potentially avoid the CRS or FATCA. Tax administrations may also engage in industry dialogues or discussions with counterparts to identify such risks. Additionally, they may conduct profiling exercises on domestic FIs and analyse the reports submitted by FIs to obtain an overview of reporting trends and draw further insights into potential CRS and FATCA risks.

39. Conversely, a “bottom-up” approach in identifying risks may involve drawing insights from tax administrations’ daily operations. For example, tax administrations may be able to identify common issues from the emails or calls handled. Such common enquiries may indicate a lack of understanding on specific CRS and FATCA issues within the industry which may suggest a potential risk of non-compliance by FIs in general. Other sources of information which can feed into the “bottom-up” approach may include feedback received from treaty partners, the OECD CRS disclosure facility, the CRS peer review questionnaire and/or discussions with the financial regulators.

Box 3.1. Risk Identification Approaches

Tax administrations may want to risk assess an FIs’ compliance partly from the content of the information provided. IT tools or manual processes could search for words or content which might be indicative of inaccurate information or “visible errors”. Follow-up actions could then be taken based on these “visible errors”, which may then lead to indications of “invisible errors” such as lack of proper governance, inadequate resources or a misunderstanding of the rules within FIs. Tax administrations may want to establish a list of “visible errors” as a sound starting point to initiate risk identification activities. Potential “visible errors” could include:

- Above average number of undocumented or recalcitrant accounts;
- Use of terms such as “Ltd.” or “trust” to describe Controlling Persons;
- Missing information in fields (e.g. consistently missing addresses or TINs);
- Use of 1/1/1900 or 1/1/1901 for DOB;
- Inclusion of “bank”, “authority” “test”, or “plc” in the name field (could indicate that accounts may have been reported which should not have been).

In applying a “bottom-up” approach to assess the compliance risk of FIs, tax administrations may want to consider, among other things, a combination of factors such as business profile and activities of the FI, its track record in fulfilling its CRS obligations, its track record in other relevant areas of tax and regulatory compliance, and feedback received from exchange partners. The following table shows a non-exhaustive list of risk factors that could be used in this approach:

Category	Risk Factors (Non-exhaustive)
Business profile and activities	Industry and sector within the industry Type and complexity of business Size of business Client profile Geographical presence Whether the FI is part of a larger domestic/multinational group Resources allocated for CRS compliance
Track record in fulfilling CRS and FATCA obligations	Timeliness of reporting Completeness and quality of reporting
Track record in other areas of regulatory compliance	Compliance with AML/KYC Procedures Compliance with tax reporting
Feedback received from CRS partners	Data quality and completeness Timeliness of data verification and correction

Risk prioritisation

40. Once CRS and FATCA risks have been identified, the next step would be to prioritise them by analysing the level or magnitude of the risks based on their likelihood and impact. The likelihood of a risk

can be defined as the chance that a particular risk would occur. On the other hand, impact of a risk can be defined as the degree or severity of the possible effects, results or consequences of an event happening (e.g. level of pervasiveness, extent of remedial action required, irreversibility of damage etc.) on the integrity of CRS and FATCA.

41. For example, if a tax administration has identified the existence of undocumented accounts as a possible CRS risk, the next step would be to analyse the likelihood and impact of the risk taking into consideration its domestic context and circumstances. The questions that the tax administration may ask itself can include:

- Relative to other identified risks, what would be the likelihood that such a risk may prevail across the industry or is it more likely that the risk is more prevalent in a certain sector within the industry?
- What would be the impact or consequence of the risk of undocumented accounts to the integrity of CRS, vis-à-vis the other possible risks?

42. This process may be necessary to ensure that resources are used most efficiently and channelled towards the riskier areas of CRS and FATCA non-compliance.

Root-cause analysis

43. After the tax administration has prioritised its list of potential CRS and FATCA risks, the next step would be to perform a root-cause analysis. By doing so, tax administrations seek to identify the underlying factors leading to possible non-compliance, and design the appropriate risk treatments. Using the same example of undocumented accounts above, the root cause for reporting such accounts could be due to several possible reasons e.g. misunderstanding the definition of undocumented accounts in the CRS or historical business acquisitions made by the FI. Both of these root causes may require tax administrations to apply different risk treatments to address the same risk relating to the reporting of undocumented accounts.

Risk treatment

44. After analysing the underlying risks and its factors, tax administrations can then calibrate the risk treatments to address the root causes, and design appropriate and targeted compliance activities which typically include a combination of detective, preventive and corrective measures.

45. For example, where the risk level is assessed to be relatively low and the root cause analysis points towards a general misunderstanding of certain requirements of the CRS or FATCA, tax administrations may consider using broad-based solutions such as education or outreach to address such common but low risk errors that can be made by FIs.

46. On the other hand, where the risk level is assessed to be relatively high and the root cause analysis points towards a systematic and behavioural issue with an FI or a cluster of FIs, tax administrations may consider using more targeted compliance measures and thematic reviews. The method for doing so could include issuing questionnaires, conducting desk-based audits or on-site visits to FIs.

47. Tax administrations may also consider the behaviour of the FIs in the context of their overall compliance environment for purposes of applying appropriate risk treatments. The behaviour of FIs can be broadly categorised into four groups: (i) voluntarily compliant; (ii) ignorant; (iii) negligent; and (iv) errant. For example, for FIs that are considered to be generally compliant but have made small mistakes, the tax administration may consider preventive treatments such as providing timely assistance and education. On

the other hand, for FIs that are found to be negligent (e.g. similar mistakes made repeatedly) or deliberately non-compliant, tax administrations may consider corrective measures such as warnings or penalties.

Implementation of compliance programmes

48. The implementation of compliance programmes by tax administrations may involve desk-based and on-site reviews. Desk-based reviews would typically involve the FI responding to questionnaires and clarifications from the tax administration within a reasonable timeframe and providing evidence where necessary. On-site reviews would typically involve the tax administration visiting the premises of the identified FI and include conducting face-to-face interviews with relevant personnel to review the FI's CRS or FATCA policies, processes and documentation.

49. As a best practice, because such reviews can be resource intensive, tax administrations may consider adopting a more collaborative approach with FIs in implementing compliance programmes for the initial years. Such a collaborative approach may include working together with the identified FI on a reasonable and mutually agreeable timeline for the preparation and planning of compliance reviews. Also, as part of the compliance review process, the tax administration may seek to better understand the FI's business model and operations, its CRS and FATCA regulatory risks and issues faced during implementation, as well as its internal controls and measures taken to manage those risks and issues.

50. Tax administrations may also consider the involvement of other parties in the implementation of their compliance programmes. Government agencies such as financial regulators may be relevant in this process, especially for jurisdictions which may have limited resources available in the tax administration.

51. While CRS and FATCA compliance reviews are an essential part of the compliance activities, the nature and intensity of such reviews should ultimately reflect the tax administration's assessment of the FIs' risks of non-compliance with the CRS and FATCA. Unless it is deemed necessary, a tax administration might prefer to focus a review on a known concern as well as cover a couple of related issues, rather than carrying out a full review of all CRS and FATCA compliance aspects.

52. Following a compliance review, tax administrations may issue recommendations for the FI to address gaps in its CRS and FATCA compliance and for it to undertake timely corrective actions. They may also consider working with the FI to set clear plans to mitigate risks or remedy deficiencies within a specified timeline. As part of the collaborative approach in the initial years, the tax administration may follow up with the FI on issues identified during the compliance reviews and request further explanations and/or documentation. In situations where the tax administration remains dissatisfied with the FI's measures and corrective actions, the tax administration may, where appropriate, request ad-hoc attestations by independent reviewers such as internal or external auditors.

53. It may be noted that some FIs may rely on internal or external reviewers to perform CRS and FATCA compliance reviews and attest to their compliance with some or all of their CRS and FATCA requirements. These reviews may be undertaken as part of the FI's overall risk management framework. They are typically performed by external auditors, internal auditors and/or internal reviewers who are not involved in the FI's CRS and FATCA policy formulation or day-to-day operations. In such situations, tax administrations may consider the results and documentation of such reviews as a measure of assurance as to the FI's level of compliance with domestic CRS and FATCA requirements. The extent of reliance of such reviews may depend on the reviewers' level of independence as well as their competencies (e.g. auditing skills and technical CRS and FATCA knowledge).

Monitoring, evaluation and measurement

54. Finally, in order for the tax administration's risk management process to be robust, tax administrations should monitor the progress and effectiveness of the implemented compliance programmes based on clear indicators or measurements of success. This would allow tax administrations to adjust their compliance activities over time, and recalibrate the approach to compliance where appropriate for continuous improvements. Such an iterative process may offer insights to the identification of new risks, and enable redistribution of resources to focus on emerging risk areas.

4 CRS and FATCA Governance and Implementation

Introduction

55. With a view to ensuring that FIs effectively carry out their CRS and FATCA obligations, it is key that they implement and maintain an appropriate overall governance structure. The governance structure should be reviewed regularly, including when CRS and FATCA guidance is updated, and be reflected in an FI's training programs and documentation practices. Evaluating these areas can provide tax administrations with an understanding of how FIs implement and continually monitor their adherence to CRS and FATCA initiatives set forth in legislation and other guidance.

56. This section identifies various governance and implementation hallmarks that FIs should take into account when fulfilling their CRS and FATCA compliance obligations.

Figure 4.1. Core elements of CRS and FATCA governance and implementation



57. Each industry sector and/or entity may have unique challenges to overcome and tailored approaches when fulfilling their CRS and FATCA obligations. Further, as CRS and FATCA guidance and implementation varies by jurisdiction, there is not a one-size-fits-all approach to governance and implementation. Therefore, this section highlights governance and implementation considerations that tax administrations can use to evaluate FI compliance with the CRS and FATCA.

58. For smaller FIs, specific aspects of governance and implementation may not be as robust, structured or defined as they might be for larger FIs, but they should still exist and be performed so the same standard of compliance is achieved.

CRS and FATCA project organisation

Box 4.1. CRS and FATCA project organisation: Hallmarks

- FIs take appropriate steps to ensure they are organised in a manner to successfully implement and maintain their CRS and FATCA obligations.
- Project organisation of the FI evolves over time and takes into account:
 - lessons learned by that FI, including changes to business operations (e.g., new products and services, changes in jurisdiction);
 - industry guidance;
 - legislative and regulatory guidance; and
 - other tax administration-specific published and unpublished guidance.
- FIs have a risk management framework incorporating CRS and FATCA compliance risks arising from changes in business activities or operating processes.
- The FI has processes to identify, evaluate and manage CRS and FATCA risks to ensure that these are addressed in a timely manner.

59. When reviewing the CRS and FATCA project organisation of an FI, the tax administration may retroactively evaluate steps taken when the legislation was first introduced. Tax administrations may gain meaningful insight by understanding the evolution of how the institution operated in the past compared to how it has progressed to its current state.

60. An FI may have multiple legal entities within a jurisdiction, as well as globally. It is critical for the FI to ensure it has an accurate assessment of the various legal entities for which the FI itself has a responsibility for ensuring any aspects of CRS and FATCA compliance. The FI should be aware of the various jurisdictions in which it performs business and the types of business operations performed in those jurisdictions.

61. It is important to understand if the FI has a centralised, decentralised or hybrid approach to CRS and FATCA implementation. For example, some FIs may group their functions based on global regions. This is important when assessing the institution's legal entity management, client on-boarding, reporting, withholding (for FATCA), training and documentation functions. FIs may also group their CRS and FATCA implementation functions based on lines of business (LOBs) or based on products offered to clients, based on their unique factual circumstances.

Box 4.2. CRS and FATCA project organisation: Sample questions

- Does the FI maintain a list of its legal entities (for FATCA purposes)?
- Does the FI have a process in place to ensure the legal entity list is updated regularly to account for new entities, entities that have liquidated, and entities absorbed via mergers and acquisitions (for FATCA purposes)?
- Does the FI review its business operations (and that of each applicable legal entity, where required) to ensure it has a proper CRS and FATCA classification?
- Does the FI appropriately document all jurisdictions where business is performed globally for FATCA purposes?

- Does the FI have proper change management policies in place to ensure that its compliance environment remains effective despite exposure to business changes internally or externally?
- Does the FI have a risk management framework that incorporates risks specific to CRS and FATCA?
- Can the FI clearly delineate between its centralised, decentralised and hybrid functions, and articulate which of its group entities perform which of its CRS and FATCA functions?
- Does the FI maintain a descriptive list of products and services offered to its clients, and an analysis of how accounts are impacted by CRS and FATCA?

Stakeholder Collaboration

Box 4.3. Stakeholder collaboration: Hallmark

- To ensure successful implementation and ongoing compliance of CRS and FATCA, the FI has a written or documented project plan in place that should involve key stakeholders within the FI that have oversight and responsibility for all aspects of CRS and FATCA implementation, compliance and maintenance.

62. Stakeholders may include, but are not limited to:

- Tax Department;
- Operations Departments (e.g., departments responsible for payments, submission of documentation to tax authorities, etc.);
- Legal Counsel;
- Department responsible for Information Reporting & Withholding (for FATCA);
- Key Departmental roles (e.g., President, Vice President, Senior Officers, and Managing Directors (COO, CFO, CEO);
- Subject Matter Experts (SME);
- Responsible Officer(s) (RO) for FATCA; and
- External Service Providers, where appropriate.

63. Stakeholders have an active role in assessing the implementation and ongoing activities pertaining to the FI's CRS and FATCA compliance obligations. It can be expected that there would be periodic meetings, whether in person or by telephone, to discuss implementation, ongoing compliance activities such as on-boarding, withholding (for FATCA), reporting, self-certifications, and due diligences, as well as challenges and items that need to be escalated. The aforementioned is not an exhaustive list.

64. There may be issues, both internal and external, that may need to be escalated to the appropriate stakeholder(s) for a resolution. Issues requiring an escalation process may include, but are not limited to:

- Differences on interpretation of legislative guidance;
- Client disagreement on policies and associated required documentation;
- Newly assessed CRS and FATCA risks; and
- Need for a risk-based decision.

65. FIs may have diverse approaches to implementing new legislation. CRS and FATCA implementation, compliance and maintenance efforts may require funding, monitoring and approval from internal stakeholders. Some FIs may require a rigorous evaluation process before implementation can begin. The FI's approval process may involve a risk-based approach to determine how the CRS and FATCA guidance impacts their business and clients.

Box 4.4. Stakeholder collaboration: Sample questions

- Has the FI identified its CRS and FATCA stakeholders?
- Is there active participation of the FI stakeholders to ensure ongoing compliance with CRS and FATCA?
- Does the FI have periodic established meetings to discuss CRS and FATCA compliance?
- Does the FI have an escalation process for raising ad-hoc internal or client matters pertaining to CRS and FATCA?
- Can the FI provide documentation of its collaboration with internal stakeholders for initial CRS and FATCA implementation, such as internal meeting minutes and correspondence noting key implementation decisions?
- Can the FI describe its CRS and FATCA implementation process beyond the provided documentation and/or in lieu of documentation?
- Can the FI provide documentation of its collaboration with internal stakeholders for its ongoing CRS and FATCA compliance obligations, such as internal meeting minutes, documentation indicating the assignment of responsibilities, including the Responsible Officer for FATCA purposes?

Roles, responsibilities and accountability

Box 4.5. Roles, responsibilities and accountability: Hallmarks

- The FI has clear delineations of its functions as they pertain to CRS and FATCA.
- FIs have the same understanding of any CRS and FATCA functions produced by their external service providers.
- The FI has a documented assessment of its applicable functions, a description of such functions, identified parties responsible for the functions and where the responsible personnel reside.
- **FATCA only:** For FATCA purposes, upon implementation (before, during or upon completion), the FI assigned a RO who is responsible to ensure the institution maintains its FATCA obligations.
- **FATCA only:** The RO(s) is aware of its role and responsibilities as they pertain to FATCA.
- FIs have a defined guidance intake process to monitor changes and supplemental information released pertaining to the CRS and FATCA.
- CRS and FATCA developments are assessed regularly to determine if there are direct or indirect impacts to the FI's operations or specific markets, and such developments are communicated to the appropriate local and global stakeholders on a timely basis.

66. The functions of an FI for CRS and FATCA purposes include, but are not limited to:

- Client / Account on-boarding;
- Documentation validation;
- Withholding (for FATCA);
- Reporting;
- Documentation and communication;
- Automatic Exchange of Information (CRS and FATCA); and
- Anti-money Laundering (AML)/ Know Your Customer (KYC).

67. Documentation of each function is important to ensure that the applicable CRS and FATCA obligations have been correctly performed.

68. There may be various approaches to satisfying the above. For example, each FI within a group may be responsible for its own documentation validation or all documentation validation processes may be handled by a central office in a particular jurisdiction or by a third-party service provider.

69. FIs may implement the CRS and FATCA with the assistance of their key internal stakeholders and/or may consult and engage with external service providers such as law firms, accounting firms and other third-party service providers. If external service providers are utilised for implementation and ongoing activities, the FI must understand that it remains liable for its CRS and FATCA obligations, rather than the service providers. In addition, there should be a delineation of which CRS and FATCA services are being provided by whom and the terms and duration of such services.

70. When utilizing external service providers, the FI should ensure it has a recorded history and access to all information (e.g., records, files, reporting forms, edited files, etc.) that is in the service provider's possession, under the service provider's control and obtained by the service provider in carrying out its services.

Under FATCA the RO role and responsibilities include, but are not limited to:

- FATCA Registration of legal entities for Global Intermediary Identification Number (GIIN);
- Renewal of FFI Agreement;
- FATCA RO Certifications;
- Withholding for FATCA;
- Reporting; and
- Various continuous due diligence procedures.

71. Depending on the FI, there may be one RO or multiple ROs. When selecting a RO, the FI should consider turnover and role changes.

Box 4.6. Roles, responsibilities and accountability: Sample questions

- Does the FI have a clear and descriptive delineation of its functions and those responsible as they pertain to the CRS and FATCA?
- Does the FI document their use of external service providers and the context of such services?
- Does the FI maintain the contracts and/or statement of work (SOWs) between itself and external service providers?
- Do the external service provider contracts/SOWs delineate provider services, liability and duration?

- **FATCA only:** Has the FI assigned a RO where required?
- **FATCA only:** Does the FI maintain a history of the RO(s)?
- **FATCA only:** Are the RO(s) aware of their roles and responsibilities within the FI?
- Does the FI have a process to monitor and assess updates pertaining to the CRS and FATCA?
- Does the FI have a process to communicate updates pertaining to the CRS and FATCA?
- Does the FI perform impact assessments based on updates to legislative guidance?

Training

Box 4.7. Training: Hallmarks

- As new legislation or local guidance is introduced, FIs assess such these changes to determine the impact to its multiple functions across its various LOBs on a timely basis.
- The FI's training schedule, timelines and materials are assessed and updated regularly.
- FIs regularly update their public webpages and inform clients about how the CRS and FATCA apply to them.

72. New legislation or guidance will likely require updated communications and/or training to ensure that the FI's stakeholders and clients are aware of the changes that may follow.

73. There should be initial training and communications to ensure all stakeholders involved with the implementation process, at inception, are familiar with the requirements under the CRS and FATCA.

74. FIs may have diverse approaches in assessing and implementing their training needs. Given technological advancements, training has evolved and should be accessible to a wide audience, where appropriate. FIs may face fewer challenges in providing training across various regions and time zones by using conference call, updates to intranet pages, web meetings (live or pre-recorded sessions), on demand web trainings that encourage user participation via periodic questions or knowledge assessment tests, at intervals or at the end of a training session.

75. Training may be unique to the CRS and FATCA or provided as an enhancement of more comprehensive training on, for example, information reporting and withholding (for FATCA), general tax issues, AML/KYC issues, on-boarding, or document validation. It is important to understand how an FI provides training internally. Training may be targeted to specific employees and stakeholders whose responsibilities will be impacted by CRS and FATCA.

76. Some FIs may offer periodic training while others offer a one-time training for new guidance initiatives. If an FI employs a one-time training approach, it would be helpful to understand how new stakeholders and employees are trained on the CRS and FATCA and how stakeholders and employees are informed of changes in guidance or procedures.

77. As some FIs may experience a high volume of employee turnover, training information and materials may be incorporated in the procedural materials (e.g., desk procedures, training guides, policy & procedures) available to employees.

78. In addition, updates to guidance must be communicated to stakeholders and employees where there is direct or indirect impact. FIs should evaluate periodically and update their written training materials, as needed.

Box 4.8. Training: Sample questions

- Does the FI require mandatory training for stakeholders and employees who have responsibilities pertaining to the CRS and FATCA?
- Is the FI's training updated on an annual basis to account for legislation or guidance changes?
- Does the FI have periodic evaluation of changes and accompanying communications on these changes, whether by training or other means?
- Did the FI have training specific to employees responsible for on-boarding and documentation validation, such as self-certifications and Forms W-8s?
- Did the FI inform its clients of their CRS and FATCA obligations?
- Did the FI update its intranet and public webpage to address CRS and FATCA?

Documentation and record-keeping

Box 4.9. Documentation and record-keeping: Hallmark

- FIs prepare and keep documentation of their business operations, due diligence processes and reporting procedures that are related to the CRS and FATCA and ensure that such documentation is accessible to the tax administration and kept in a secure environment.

79. To determine if this outcome has been achieved, tax administrations should confirm that FIs retain appropriate records to support an account holder's status. Rules in respect of keeping records, including its form, retention period and where they can be located will usually be outlined in a jurisdiction's domestic legislation.

80. FIs must retain records to support an account holder's status for a sufficient period of time - no less than five years following the date by when the FI must report the information. A self-certification must also be retained for this minimum period of time following the closure of the last account related to its account holder. All other records should be retained to the end of the calendar year in respect to their relevant account.

81. Records can be retained as originals or photocopies and can exist in paper or electronic format. Records that are retained electronically should be in an electronically readable format. An FI can receive documentary evidence in the following manner:

- Form or document scanned and received electronically; for example: an image embedded in an e-mail;
- Portable document format (.pdf) attached to an e-mail;
- Facsimile;
- Electronic signature.

82. FIs using electronic business systems should ensure that sufficient detail is captured and retrievable so that the proper determination and verification may be performed by the tax administration to identify whether an account is reportable.

83. Records obtained or created in connection with a reporting obligation, such as self-certifications and documentary evidence, must be available to assess the validity of the reporting system. In some instances, FIs may rely on notations of records or documents reviewed. However, a notation regarding the review of a self-certification cannot be solely relied upon. Where an FI can rely on notations of records or documents reviewed, it should also retain in its files:

- The date the documentation was reviewed;
- The type of document and jurisdiction of issue (for example, a passport from a specific jurisdiction, a driver's licence);
- The document's identification number where present (for example, passport number).

84. All retained records must be clearly labelled and stored in a secure environment – either at the FI's place of business, or an equally secure external location. Typically, a back-up of the electronic records is stored at a site other than the business location for security/business resumption planning purposes.

85. The records must be made available on request to the tax administrations for audit purposes. Tax administrations may accept a copy of the records kept outside the jurisdiction of the FI. These should be provided in an electronically readable and useable format and contain adequate details to support the information filed with the tax administration.

86. An FI that keeps records electronically is not relieved of any of the record keeping, readability, retention, and access responsibilities should it contract out its record keeping and reporting obligations to a third-party service provider – the compliance obligations remain on the FI.

87. In addition, other documents such as self-certifications and documentary evidence that assist in the determination of the account holder status are considered part of the books and records of the FI and must be made available to the tax administration.

88. The FI is responsible to ensure electronic records are retained for the duration specified by the jurisdiction, and should provide the required information to the tax administration in an electronically readable format on request.

Box 4.10. Documentation and record-keeping: Sample questions

- Did the FI establish policies and procedures for the implementation, compliance and maintenance of CRS and FATCA documentation?
- Does the FI routinely review and update its policies and procedures?
- How long is information retained?
- In what format are the records and related documentation retained?
- Does the FI have an electronic repository where its policies and procedures are catalogued and stored?
- Do the FI's employees have access to proprietary documentation as needed to fulfil their roles and responsibilities (e.g., policy and procedures, training documentation, etc.)?
- Does the FI document issues, decisions, and resolutions from its stakeholder collaboration meetings (e.g., meeting minutes)?
- Does the FI have robust documentation describing and supporting its implementation plan and efforts?
- Is the information reported by a third party service provider?

Key sector-specific issues to be considered regarding external service providers

89. When assessing the CRS and FATCA compliance of a fund or corporate trust service providers, it is key to ascertain the agreed upon division of responsibilities between the entity and its external service provider(s) (transfer agents, accounting firms, law firms, etc.), as applicable. At all times the compliance obligations remain on the FI.

Box 4.11. CRS and FATCA Governance and Implementation - Key sector-specific issues to be considered regarding external service providers

'Project organisation' and 'Roles, responsibilities and accountability'

Hallmark references

- FIs have a risk management framework incorporating CRS and FATCA compliance risks arising from changes in business activities or operating processes.
- The FI has processes to identify, evaluate and manage CRS and FATCA risks to ensure that these are addressed in a timely manner.
- CRS and FATCA developments are assessed regularly to determine if there are direct or indirect impacts to the FI's operations or specific markets, and such developments are communicated to the appropriate local and global stakeholders on a timely basis.

Potential questions

- Do you inform or obtain assurance from your external service provider that legislative updates which impacts their functions have been taken into consideration?
- For risk or time sensitive matters, do you have a process to inform or escalate the matter to the external service provider?
- Is there an agreed upon timeframe for responses or resolutions?

Suggested documentation to be reviewed

- Risk Management Framework;
- Escalation Procedures;
- Escalation communications with external service providers.

'Roles, responsibilities and accountability' and 'Documentation'

Hallmark references

- The FI has clear delineations of its functions as they pertain to CRS and FATCA.
- FIs have the same understanding of any CRS and FATCA functions produced by their external service providers.
- The FI has a documented assessment of its applicable functions, a description of such functions, identified parties responsible for the functions and where the responsible personnel reside.
- FIs prepare and keep documentation of their business operations, due diligence processes and reporting procedures that are related to the CRS and FATCA and ensure that such documentation is accessible to the tax administration and kept in a secure environment.

Potential questions

- Where in the Statement of Work (“SOW”) are the external service providers roles, duties and responsibilities laid out?
- What is the recourse for lack of performance on the obligations?
- What are your due diligence procedures to ensure the external service provider is performing its role in the capacity agreed upon?
- Does the external service provider handle potential inquiries from tax authorities?
- Were there any gaps in services for functions performed by the external service providers?
- If so, who (person and or department) assumed the responsibilities in the interim?

Suggested documentation to be reviewed

- SOWs / contracts from service providers.

‘Roles, responsibilities and accountability’ - FACTA only hallmarks regarding a ‘Responsible officer’*Hallmark references*

- For FATCA purposes, upon implementation (before, during or upon completion), the FI assigned a Responsible Officer (RO) who is responsible to ensure the institution maintains its FATCA obligations.
- The RO(s) is aware of its role and responsibilities as they pertain to FATCA.

Potential questions

- Is the RO aware of functions performed by the external service provider for which the RO is ultimately responsible?
- If the external service provider maintains the FATCA registration (GIIN registration and maintenance), how does the RO obtain assurance?
- What reviews of external service providers functions are performed to ensure the RO can make an accurate FATCA certification?

Suggested documentation to be reviewed

- Trainings that may have RO specific information;
- Roles and Responsibilities Matrix / Policy and Procedure documents.

5 Ensuring FIs have Fulfilled Due Diligence Obligations

Introduction

90. The due diligence requirements for the CRS and FATCA are the same irrespective of type or size of the FI. Checking whether an FI has complied with these requirements can often be done through a series of “yes or no” questions and may require less in the way of subjective consideration on the part of the tax administration when compared to assessing the adequacy of an FI’s governance or systems. Compliance with due diligence obligations is often a straightforward confirmation from FIs that the rules have been fulfilled, with tax administrations asking for evidence where appropriate to ensure that this is in fact the case.

91. However, dependent on a number of factors, including the size and type of the FIs involved, tax administrations will still come across variances in the practical implementation of the due diligence requirements for both FATCA and CRS.

92. For example, a family trust managed by a professional trustee (but where all other account holders are members of the same family) may qualify as an Investment Entity if it is managed by a FI. However, the trustee would be unlikely to use the same type of due diligence systems and processes to identify whether the account holders are Reportable Persons as the systems used by a large regulated retail fund that offers investments to the general public.

93. Because of the potential variances in practical implementation of the rules, tax administrations will want to take into consideration the FI’s particular circumstances when considering whether the FI has put in place the necessary due diligence procedures to ensure compliance.

94. The following sections describe the principal due diligence obligations to be carried out by FIs. Tax administrations may wish to consider these when ensuring the FI’s compliance. In order to ensure that FIs are applying the correct due diligence in respect of each type of account, consideration of how account identification and monitoring procedures being undertaken by FIs can be reviewed by tax administrations has also been included.

95. This Chapter also includes a section on **key sector-specific issues**, which both tax administrations and FIs will need to consider and overcome to ensure the implementation of the requirements is effective. These areas have been identified where the way in which a particular sector operates leads to specificities in which FIs could comply with CRS and FATCA obligations. Both the FI and the tax administration will need to work through these issues to ensure the FI has met its obligations. As outcomes and solutions will be based on the facts and circumstances, of each case, this section of the Guide aims to highlight these issues to help tax administrations and FIs consider how to meet the compliance obligations.

Figure 5.1. Core elements of due diligence obligations



Accounts are identified and monitored

Box 5.1. Accounts are identified and monitored: Hallmarks

General

- FIs have systems and processes to identify which due diligence procedures should be applied to a particular account.

Excluded accounts

- FIs should be able to demonstrate that the only accounts that they have excluded from due diligence and reporting are those that meet the definitions and/or requirements of Excluded Accounts as set out in domestic law.

Change of circumstances

- The FI has processes in place to monitor and identify each change of circumstances and to follow up with the necessary due diligence processes.

General

96. For example, if an FI has accounts that are treated as Excluded Accounts, the FI should have systems and processes to:

- Ensure that all such accounts meet the definitions of Excluded Accounts; and
- Ensure that any accounts that do not meet this definition, including accounts which cease to meet the definition during the calendar year, are not treated as Excluded Accounts and are subject to the correct due diligence procedures.

97. To ensure that the correct due diligence procedures are applied to the right account, FIs will need to be able to identify which accounts meet the varying definitions within CRS and FATCA.

98. This will include identifying:

- pre-existing and new accounts;
- high and lower value accounts;

- entity and individual accounts;
- excluded accounts; and monitoring these different types of accounts for changes in circumstances.

Account balance thresholds

99. FIs which have elected to apply thresholds based on (aggregated) account balances are likely to need to maintain further due diligence processes in order to:

- identify where accounts should be aggregated;
- calculate total aggregated account balances; and
- ensure all accounts are correctly identified as low value, high value etc. on the basis of the aggregated account balance.

100. These FIs will need to be able to determine which due diligence rules to apply to which accounts, and should have sufficient processes in place to identify and aggregate the balances of all associated accounts in line with the balance aggregation and currency conversion rules.

Excluded and dormant accounts

101. In order ensure that the accounts are subject to the correct due diligence this FIs should have procedures to identify any changes in accounts that would affect their Excluded Account status. Including being able to identify any breaches in the terms and conditions of the accounts, either by the account holder or the FI, that would mean the account no longer qualifies for Excluded Account status.

102. The terms and conditions of all accounts offered by the FI which they treat as Excluded Accounts should be in line with the domestic requirements and definitions. The tax administration may wish to review the terms and conditions of a sample of these accounts to verify the FI's compliance.

103. Where an FI has dormant accounts that have been excluded from due diligence or reporting, (i.e. as per the example in the CRS, dormant accounts with a balance of under USD 1 000) the FI will need to ensure that it has correctly identified these accounts. The FI should also be able to identify changes or activity on these accounts that would mean that they cease to qualify as Excluded Accounts.

104. Tax administrations might also wish to ensure that if a dormant account is subsequently closed by the account holder, the correct due diligence procedures are applied by the FI on closure in accordance with the CRS and FATCA. And that the closure of the account is recorded and reported accurately where the account is identified as a Reportable Account.

105. FIs will have to verify that all accounts which they treat as Excluded Accounts meet the definitions of such accounts (as identified in domestic law or guidance), including dormant accounts that are treated as such.

106. Analysis of how Excluded Accounts are being monitored by FIs for compliance purposes could also assist tax administrations in determining whether these types of accounts continue to remain low-risk. And may help to ensure that they are not being used to frustrate the purposes of CRS and FATCA.

Change of circumstances

107. A change in circumstances should trigger a number of due diligence processes. This should occur in cases including:

- where the account balances exceed a due diligence threshold;
- where one or more new indicia becomes associated with the account; or

- where the FI becomes aware of information that leads it to believe the existing classification of the account or account holder is unreasonable or unreliable.

108. Where an FI has Relationship Managers in place, they should have sufficient understanding of the CRS and FATCA rules to know which circumstances require action (see Relationship Manager).

109. Tax administrations can ask about the FI's procedures in a number of scenarios involving a change in circumstances. They could also ask FIs to provide them with a demonstration of how such changes are tracked and how these processes are triggered.

Box 5.2. Accounts are identified and monitored: Sample questions

Account balance thresholds

- How do your systems identify which accounts are High Value Accounts? Including any accounts that were previously Lower Value Accounts but have subsequently become High Value Accounts?
- How do your systems and relationship manager knowledge permit, to determine whether the balance exceeded \$1,000,000 at 31 December 201X? And how do you take into account:
 - the requirement to consider the differences in currencies for accounts; and
 - the requirement to aggregate the balances across all Financial Accounts held by the account holder?

Dormant accounts that are excluded accounts

- For any dormant accounts where you have not applied due diligence rules or reported the account;
 - How do you identify circumstances which would mean that the account should no longer be treated as dormant?
 - And what processes do you have in place to end the dormant account status and commence due diligence and reporting?

Change of circumstances

- If an Account Holder notifies you of a change of circumstances which results in new indicia for a Reportable Jurisdiction or the US (such as a change in address), what procedures will be triggered for CRS and FATCA due diligence and reporting purposes?
- What is the treatment and follow-up action, if any, where the Account Holder does not respond to any outreach made to cure indicia identified due to a change of circumstance?

Compliance with rules on pre-existing individual accounts

Box 5.3. Compliance with rules on pre-existing individual accounts: Hallmarks

Residence address test - Lower value accounts (CRS only)

- **CRS only:** FIs should have sufficient processes in place to ensure that they only apply the residence address test to Pre-existing Individual Accounts where there is a current address for the Account Holder, and that address is based on acceptable Documentary Evidence.

- **CRS only:** FIs should demonstrate that they have identified all systems where account details are maintained, and all forms in which account holder address is captured, in sufficient detail to ensure that Reportable Jurisdictions can be identified.

Electronic record search

- The Electronic Record Search was carried out in all circumstances (for FATCA purposes where the relevant account value thresholds required it to be undertaken).

Paper record search

- The FI should have processes in place to identify where it DOES, and where it does NOT hold all required indicia in an electronically searchable format for pre-existing High Value Accounts.
- The FI should also have processes in place to ensure that a Paper Record Search is undertaken for those High Value Accounts where the FI does NOT hold all the required information in an electronic format. This includes a search of the master file and, to the extent that this information is not contained in the current master file, any other specified documents.

Relationship managers

- The FI should have reviewed their operations and determined whether they have Relationship Managers in line with the definitions under the CRS and FATCA.
- If the FI does have Relationship Managers, then the FI should also have put in place sufficient processes to ensure both that Relationship Managers are able to fulfil their CRS and FATCA obligations, and can demonstrate that they have done so. If the FI does not have any position equivalent to a Relationship Manager, is there any process to ensure that CRS and FATCA obligations with respect to high value accounts are being fulfilled?

Undocumented accounts (CRS only)

- **CRS only:** The FI has adequate processes to correctly identify and report any undocumented accounts. Where accounts are undocumented, the FI has systems and rules to ensure that they continue to fulfil ongoing obligations in respect of these accounts, including the domestic reporting of information on such accounts.

Residence address test - Lower value accounts (CRS only)

110. Where FIs have used the residence address test, only current addresses are used for this test. If no current address is held then the FI should carry out an Electronic Record Search in every case where the address the FI has was not current.

111. FIs should also have only used the residence address test where addresses were collected in line with acceptable Documentary Evidence.

112. Where an FI relies on a previous entity's due diligence, such as following a merger, the FI should be able to demonstrate the adequacy of the previous entity's on-boarding procedures; and that Documentary Evidence was used to verify addresses.

113. Some FIs will hold account holder information across multiple systems. This is likely to be particularly common for larger institutions, FIs which have formed through mergers and acquisitions, and parts of the industry with specific security requirements over the protection of customer information.

114. Where accounts are maintained on multiple systems, including as a result from previous mergers, acquisitions or legacy accounts, the FI's systems should always ensure that such Reportable Jurisdiction addresses continue to be captured.

Electronic record search

115. For FATCA purposes, an Electronic Record Search for U.S. indicia should be carried out for all Lower Value Accounts exceeding USD 50,000.

116. For CRS purposes an Electronic Record Search for Reportable Jurisdiction indicia should be carried out in the case of all High Value Accounts, and also in respect of any Lower Value Account where the residence address test was not carried out.

117. When the residence address test is applied for Pre-existing Lower Value Accounts the FI should have processes to ensure that:

- a self-certification and new Documentary Evidence are obtained within the later of 90 days or, the end of the calendar year following the notice or discovery of a change in circumstances; and
- if the FI cannot obtain these documents, the electronic record search is conducted on such accounts.

118. When an electronic record search is undertaken for Lower Value accounts, the FI is only required to look for indicia based on electronically searchable data.

119. For example, if the FI does not maintain telephone numbers in an electronically searchable format then it is not required to carry out any further search in respect of telephone numbers.

120. However, tax administrations will want to understand what information is kept in an electronically searchable format. Particularly to determine whether the FI has carried out the Paper Record Search where it is necessary for High Value Accounts.

121. Tax administrations may ask for evidence, sample accounts, or to see a demonstration of how the Electronic Record Search worked in order to ensure that this has been carried out correctly.

Paper Record Search

122. If the FI does not hold all required indicia in an electronically searchable format for pre-existing High Value Accounts, then they must undertake a Paper Record Search on those accounts for all remaining indicia. This should include a search of any master file held, and to the extent that this information is not contained in the current master file, any other specified documents.

123. Not all FIs will need to undertake paper record searches as some of them may maintain sufficient electronic records to check all of the required indicia. These indicia will be outlined in domestic law/guidance but are required to include:

- The Account Holder's residence;
- The current mailing or residence address (including a post office box) of the Account Holder;
- The current telephone numbers of the Account Holder;
- Whether there are standing instructions to transfer funds from any account to an account maintained in the US, or for an account other than a Depository Account to an account maintained in a Reportable Jurisdiction;
- Whether there is a current effective power of attorney or signatory authority for the account;
- Whether there is an "in-care-of" address in a reportable jurisdiction or "hold mail" instruction for the account;

- For FATCA only, whether there is an unambiguous indication of a US place of birth.

124. Having identified which of the information above is held in electronically searchable format, the tax administration will know which information the FI is required to look for in the Paper Record Search. The tax administration may also want to consider what paper records (including scanned records) are maintained and whether master files are held for each account holder.

125. If the FI does need to conduct a paper record search then the paper record search should include a review of the current master file and, to the extent that they are not contained in the current master file, any additional specified documents. These documents will be outlined in domestic law/guidance but are expected to include the following documents associated with the account and obtained by the Financial Institution within the last five years:

- The most recent documentary evidence collected with respect to the account;
- The most recent account opening contract or documentation;
- The most recent documentation obtained by the Financial Institution for AML/KYC procedures or other regulatory purposes;
- Any power of attorney or signatory authority currently in effect; and
- Any standing instructions to transfer funds currently in effect (other than for a Depository Account).

126. Ensuring that the FI has complied with the Paper Record Search can be done by reviewing a sample of accounts, alongside a systems demonstration of the Electronic Record Search.

Relationship Managers

127. Not all FIs will have Relationship Managers as defined by the CRS and FATCA.

128. A relationship manager will be an employee or officer of the FI who has been assigned responsibility for specific account holders on an ongoing basis and will provide advice to account holders regarding their accounts, as well as recommending and arranging for the provision of financial products, services and other related assistance.

129. The FI may have a number of customer service agents who could be referred to as “Relationship Managers”. However the level of engagement which they have with the Account Holder may mean that these agents do not meet the definition of “Relationship Manager”.

130. The Tax administration will need to consider whether the FI has understood the meaning of Relationship Manager for CRS and FATCA compliance purposes and is applying this definition correctly. This would be a separate issue to that of whether the FI has taken sufficient steps to ensure that their Relationship Managers understand their due diligence obligations under CRS and FATCA and are fulfilling them correctly. However to avoid confusion tax administrations may want to seek assurance on both of these questions together.

Undocumented Accounts (CRS only)

131. Although the CRS outlines the criteria in order to be undocumented, the term “undocumented” is open to misinterpretation.

132. It has often been taken to (incorrectly) mean any account for which a self-certification was requested but not obtained, or any account where no indicia was held on record. However the CRS only permits pre-existing accounts to be treated as undocumented, and these accounts can only be identified as undocumented where there is only a hold mail instruction or an in care of address associated with the account and where the indicia search results in no indicia being identified. There is an obligation in the CRS on tax authorities to follow up on all undocumented accounts reported.

133. Although the classification of undocumented accounts is subject to the same “hallmarks” of adequate due diligence as other pre-existing accounts, the widespread misinterpretation of the Undocumented Account classification means that consideration of how an FI identifies and fulfils their obligations in respect of Undocumented Accounts may be a helpful indicator of how well the FI has understood and complied with their wider obligations.

134. This incorrect classification of an account as an undocumented account can result in accounts which have reportable indicia being mistakenly reported as undocumented, and the information therefore may not be exchanged with the Reportable Jurisdiction. Tax administrations may wish to outline to FIs the circumstances where undocumented accounts arise and verify that the procedures have been correctly applied.

135. In the case of High Value Accounts, where an account is identified and reported as undocumented, the FI is then required to carry out enhanced review procedures annually until the account ceases to be undocumented. This annual review consists of both an electronic record search and a paper record search where applicable.

136. Tax administrations may want to ensure that the FI not only maintains a record of these undocumented accounts as required, but also that they are applying these procedures to the High Value Accounts every calendar year to determine whether they are still undocumented.

137. Where Lower Value Accounts that were previously reported as undocumented become High Value Accounts, the FI will have to apply the enhanced review procedures both for that calendar year and then on an annual basis. This will require the FI having adequate processes to identify this change in status.

138. Tax administrations can also seek assurance that no New Accounts were reported as undocumented accounts. This will also help identify whether the FI has fulfilled the due diligence requirements on New Accounts.

139. For accounts which do not qualify as undocumented but where indicia have been identified for multiple Reportable Jurisdictions. If no self-certification or cure for the indicia has been obtained then tax administrations may also want to ensure that the FI is correctly reporting these accounts in respect of all relevant Reportable Jurisdictions.

Box 5.4. Compliance with rules on pre-existing individual accounts: Sample questions

Residence address test - Lower Value Accounts (CRS only)

- How do you make sure that where the residence address test has been applied, that you used a current address for account holders in every case?
- Where you did not hold a current address, such as for accounts where mail was returned, did you apply the Electronic Record Search?
- For all pre-existing accounts, did your procedures verify the addresses provided by account holders against Documentary Evidence?
- How many systems do you maintain account holder details on? And what processes do you have in place to identify all such systems?
- What processes do you have in place to ensure that details held across all of these systems are considered as part of your due diligence on the account holder?
- What process do you have in place in case of inconsistent information held across systems?

Electronic Record Search

- Was the Electronic Record Search applied in the case of
 - every High Value Account; and
 - every Lower Value Account where the residence address test could not be applied for CRS purposes?
- Was the Electronic Record Search applied in the case of every Lower Value Account where the balance exceeded \$50,000 for FATCA purposes?
- Which indicia related information is held in an electronically searchable format?
- Where indicia of a CRS Reportable Jurisdiction have been discovered, did you report all such accounts? Or did you obtain self-certifications and Documentary Evidence to cure the indicia?
- Where US indicia have been discovered, did you report all such accounts? Or did you apply the rules to cure the indicia under subparagraph B (4) of Annex I, section II of the IGA?

Paper Record Search

- Do you maintain master files for all High Value Accounts? If so, do they contain all of the required indicia that could not be searched for electronically?
- If no master files are maintained, or if they do not contain all of the required indicia, then please outline what further paper documentation you reviewed.

Relationship Managers

- Do you have any officers or employees who are assigned responsibility for specific High Value account holders on an on-going basis, who advise the account holders on financial matters and/or arrange the provision of any financial products, services or assistance to meet their needs?
- What processes do you have in place to identify which officers or employees hold these roles?
- What processes do you have in place to ensure that where a Relationship Manager has actual knowledge that an Account Holder is a Reportable Person, it is recorded and the account is treated as a Reportable Account accordingly?

Undocumented accounts (CRS only)

- The criteria for an account to be reported as undocumented can be found in subparagraphs B (5) and C (5) of Section III of the CRS. Do all of the accounts which you have reported as undocumented meet these criteria?
- If any of the undocumented accounts are High Value Accounts, do you re-apply the procedures described in paragraph C of Section III annually?
- Do the accounts you have identified as undocumented include any New Individual Accounts?
- What processes do you have in place to ensure that accounts with uncured indicia for more than one Reportable Jurisdiction are currently reported in respect of all relevant Reportable Jurisdiction?

Compliance with rules on new individual accounts

Box 5.5. Compliance with rules on new individual accounts: Hallmarks

Obtaining and Validating Self-certifications

- The FI has processes in place for obtaining and validating self-certifications in the case of all New Individual Accounts, unless an exception explicitly foreseen in CRS or FATCA applies.

RBI/CBI Schemes

- The FI has systems in place that can take into account all relevant information available to determine whether it has reason to know that a self-certification or Documentary Evidence is incorrect or unreliable.

Obtaining and Validating Self-certifications

140. FIs must obtain valid self-certifications for all New Individual Accounts, unless an exception applies such as the account holder also holding a pre-existing account. If the FI is not able to verify that an exception does apply then a self-certification must be obtained.

141. Where due to the specificities of the business sector it is not possible for the FI to obtain and/or validate a self-certification on the opening of the account, then the FI should have adequate systems and processes which ensure that a self-certification is obtained and/or validated within 90 days as per FAQ22.

142. The FI must also confirm the “reasonableness” of the self-certification to ensure that the information provided by account holders is not inconsistent with other information held. For example, the FI should have adequate processes in place to verify the self-certification information against information obtained pursuant to AML/KYC. Staff involved in the validation of these self-certification will need to have sufficient understanding of the CRS and FATCA in order to carry out this task.

143. Verification of the self-certification and the FI’s reasonableness checks will ensure that the risk of an account holder misreporting their tax residency is reduced.

144. In order to verify compliance, tax administrations will want to understand the customer on-boarding processes, how self-certifications are obtained as part of these processes, and how this on boarding process interacts with the FI’s verification of AML and KYC documentation.

145. The FI should also have sufficient process in place to cater for situations where the self-certification cannot be validated and have processes in place to take appropriate action when this happens. For example: the FI might obtain a reasonable explanation and supporting evidence for any discrepancies, seek a new self-certification or report the account based on all of the jurisdictions of residence indicated in the information held.

146. Tax administrations should also ensure that the form of self-certifications used by the FI are in line with the requirements of CRS and FATCA reporting. And that where appropriate they contain the necessary fields and information in order to prompt accurate information from account holders.

RBI/CBI Schemes

147. When determining whether an FI has reason to know that a self-certification or Documentary Evidence is incorrect or unreliable, the FI should take into account all relevant information available. Including the results of the OECD's analysis¹ of high-risk CBI/RBI schemes.

Box 5.6. Compliance with rules on new individual accounts: Sample questions

Obtaining and Validating Self-certifications

- How do you ensure that you obtain a valid self-certification in the case of every new account?
- What procedures are in place to ensure that the tax residency provided in a self-certification is in line with the "reasonableness test"?
- Where the initial reasonableness test fails, do you seek to obtain either a valid self-certification or a reasonable explanation and documentation (as appropriate) to support the reasonableness of the self-certification?

RBI/CBI Schemes

- What additional processes are triggered if an Account Holder or Controlling Person declares themselves tax resident in a jurisdiction included on the OECD list as having a potentially high risk residence and citizenship by investment (CBI/RBI) scheme?

Compliance with rules on pre-existing entity accounts

Box 5.7. Compliance with rules on pre-existing entity accounts: Hallmarks

General

- The FI is able to correctly determine whether the Entity and/or its Controlling Persons are Reportable Persons.
- The FI has processes in place to seek self-certifications from the Account Holder or Controlling Persons to identify whether the Controlling Persons are Reportable Persons.

Reliance on AML/KYC procedures

- Where FIs rely on information collected and maintained pursuant to AML/KYC procedures, the FI should be able to demonstrate that those AML/KYC procedures were carried out correctly.

General

148. To do this FIs will need to demonstrate how they identify; either

- the place of incorporation or organisation of the Entity; or
- whether the address of the Entity is in a Reportable Jurisdiction or the US.

¹ www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/residence-citizenship-by-investment/

149. The FI must also record the details of any determination of the Account Holder's status made on the basis of information that is either publicly available, or already in the FI's possession including details of the information on which this determination was based.

150. The FI should ensure that any self-certification provided by the Account Holder contains all required information and has been signed or approved by a person with authority to act on behalf of the Entity.

151. Tax administrations will need to understand what information the FI maintains and has reviewed to determine whether the Entity is a Reportable Person or a Specified US Person or whether the Entity is a Passive NFE with one or more Controlling Persons that is a Reportable Person or a Specified US Person.

152. Tax administrations may also wish to ensure that FIs that identified an account as a reportable account based on information they held in relation to either place of incorporation or organisation, or address, but then subsequently did not report the account based on a self-certification stating that the account was not reportable, have correctly fulfilled rules in relation to self-certifications.

153. The self-certifications for Entity Accounts will be different from those issued by FIs for purposes of Individual Accounts. Tax administrations may wish to consider the form and content of the self-certification to ensure that it collects all required information, including:

- details on tax residency and TIN of the Entity;
- the status of the Entity (e.g. Passive NFE); and
- details on Controlling Persons where the Entity is a Passive NFE (see *Obtaining and Validating Self-certifications*).

154. FIs may determine, based on information in its possession or publicly available, an account:

- to be not reportable (if it meets the definition of Financial Institution for example); or
- to be held by an Active NFE.

155. In such cases, tax administrations can ask FIs to demonstrate that these sources are sufficiently reliable, in line with the examples of "publicly available" information set out in the CRS.

156. Depending on the election made by the jurisdiction and the decision of the FI, Pre-existing Entity Accounts may not be subject to review, identification or reporting until aggregate balances exceed USD \$250,000 for CRS purposes or USD \$1,000,000 for FATCA purposes. FIs should have correctly identified accounts in line with these requirements on account balance aggregation and currency conversion. They should also be able to identify pre-existing accounts that did not previously meet this threshold, but do meet the threshold at the end of a later year (see *Change in Circumstances*).

157. Where an Entity Account Holder is determined to be a Passive NFE, and the aggregated balance exceeds USD 250,000 for CRS purposes or USD 1,000,000 for FATCA purposes the FI should seek self-certifications from the Account Holder or Controlling Persons to identify whether the Controlling Persons are Reportable Persons.

Reliance on AML/KYC procedures

158. Where an FI is regulated for AML/KYC purposes, the tax administration may wish to ensure that the FI has carried out its obligations pursuant to those rules. This could involve a sample review of accounts, a review of the FI's AML/KYC procedures, or consideration of any reports (public or requested directly) from the AML regulator.

159. Alternatively, where the FI is subject to an AML regulation, the tax administration might consider it prudent to consider compliance with AML/KYC rules only where a risk is brought to their attention; such

as through publicly available information or as part of the tax administration's cooperation with the regulator. For example, AML regulators could notify tax administrations whenever they suspect non-compliance with AML/KYC rules that might affect the accuracy of CRS and FATCA reporting.

160. Where FIs are unregulated, and do not have existing AML/KYC regulation, tax administrations may wish to review a sample of accounts to ensure that the FI has correctly fulfilled their obligations in gathering this information (e.g. the identification of Controlling Persons in accordance with the FATF 2012 Recommendations). Particularly where the definitions may differ from how such entities might traditionally consider control.

Box 5.8. Compliance with rules on pre-existing entity accounts: Sample questions

General

- How did you determine whether an Entity was a Reportable Person or a Specified U.S. Person?
- If existing information on place of incorporation or organisation, or address was used, please outline how your processes identified this information.
- Did you use publicly available information to determine the reportable status of any Pre-existing Entity Account, including whether the Entity is a Reportable Person or a Specified U.S. Person and whether it is an Active NFE? If yes, please outline what publicly available information sources were used.
- How do you identify Entity accounts that were previously below the threshold for review, identification or reporting but subsequently came above the threshold? How do you ensure that this identification takes into account requirements for account balance aggregation and currency conversion?
- Did you attempt to obtain self-certifications in respect of Controlling Persons in the case of every Pre-existing Entity Account that was identified as a Passive NFE and where the balance exceeded USD 1,000,000?

Reliance on AML/KYC procedures

- *For unregulated FIs:* Can you please outline which Documentary Evidence you have considered to verify the identity of account holders and any Controlling Persons, and to ensure the reasonableness of their self-certifications?

Compliance with rules on new entity accounts

Box 5.9. Compliance with rules on new entity accounts: Hallmark

- The FI has processes in place for obtaining and validating self-certifications in the case of all New Entity Accounts, unless an exception applies or it can be determined based on information in the possession of the Financial Institution or that is publically available that the Entity is not a Reportable Person.

161. Unless an explicit exception applies, for New Entity Accounts, the FI should obtain a self-certification on account opening for every account. The FI should also have clear processes for where an exception applies, such as the account holder also holding a pre-existing account.

162. Tax administrations may want to ensure that self-certifications have been obtained in the case of all New Entity Accounts, unless an exception applies such as the account holder held a pre-existing account. This self-certification should determine whether the Entity is a Reportable Person, and whether the Entity is a Passive NFE with one or more Controlling Person that is a Reportable Person.

163. The FI should also confirm the reasonableness of the self-certifications, and where FIs rely upon AML/KYC procedures to determine the Controlling Persons of a Passive NFE Account Holder those procedures should have been carried out correctly.

164. The form of self-certification should contain the necessary fields and information in order to prompt accurate information in relation to account holders and Controlling Persons. The tax administration may also want to ensure that the reasonableness of these self-certifications is confirmed by the FI, and that the FI reported all accounts where a Reportable Jurisdiction or US tax residency was identified. Unless the FI used appropriate information sources in its possession, or publicly available information, to reasonably determine that the account was not a Reportable Account (e.g. where the Account Holder is a Government Entity) (see Obtaining and Validating Self-Certifications).

165. In some cases domestic laws or other restrictions may prevent an FI from obtaining a self-certification as a pre-condition of opening the account for basic banking services. Where the FI was unable to either obtain or validate a self-certification on account opening, then the FI should be able to show that they have adequate systems and processes which ensure that a valid self-certification is obtained within 90 days.

166. Tax administrations may also wish to ensure that where AML/KYC procedures have been relied upon to determine Controlling Persons that these procedures were correct (see Reliance on AML/KYC Procedures).

Box 5.10. Compliance with rules on new entity accounts: Sample questions

- Did you use information in your possession or publicly available information to determine the reportable status of any New Entity Account? Including whether the Entity is a Reportable Person and whether it is an Active NFE? If yes, please outline what publicly available information sources were used.
- How do you ensure that you obtain a valid self-certification in the case of every New Entity Account from the Account Holder where required?
- Did you obtain a valid self-certification from the Account Holder or Controlling Persons to determine the Controlling Persons are Reportable Persons?
- If you were unable to either obtain or validate the self-certification on account opening what procedures do you have in place to obtain a valid self-certification within the next 90 days? What follow-up steps are taken to obtain this self-certification from the account holder?
- If you are unable to obtain a valid self-certification within 90 days what action will you then take with regard to the account?

Key sector-specific issues to be considered

167. There are sector specific issues which have been identified where how that sector operates may not be readily compatible with CRS and FATCA obligations. As outcomes and solutions will be based on the facts and circumstances of each case this section aims to highlight these issues to help tax administrations and FIs consider at an early stage how they expect to meet the compliance obligations set out under the CRS and FATCA.

Banks

168. Retail banking is one of the most highly regulated industries in the world. Although many CRS and FATCA requirements are designed to be compatible with international regulatory standards (such as AML/KYC) in other areas regulatory requirements may conflict with CRS and FATCA, or impose restrictions on how the bank is able to conduct their due diligence.

169. The tax administration should work with the financial regulators to understand the areas where there are conflict/cross over – for example if there is a legal obligation for banks to offer basic banking services to all citizens, what does this mean for a new account customer who is unable to provide valid documentary evidence to support a self-certification?

170. Many banks will store data across multiple systems meaning this data will need to be “searched” or “gathered” for due diligence purposes.

171. If the bank is large and has undergone many mergers or acquisitions in the past then these systems may not be compatible with each other and extracting data can be a complex process. Tax administrations should consider both information held, and the form of the data.

172. In some jurisdictions customer data can be held on separate systems for regulatory purposes, to protect the data from misuse or aggregation. In these cases the tax administrations will need to consider any domestic legal restrictions on the accessibility of customer data and how they interact with CRS and FATCA obligations when considering how the bank undertakes their due diligence on their customers.

173. Retail banks are likely to have a much larger number of customer facing staff than most other financial institutions. Many of these staff will be responsible for gathering due diligence documentation for new account openings, such as self-certifications.

174. If the face to face staff are not able to make decisions on issues such as the reasonableness of a self-certification then what systems or day two procedures has the bank put in place to manage this risk?

175. A large retail bank will hold historic data on many of its customers, including out of date but uncured indicia. As many of these customers will be unconcerned over CRS and FATCA reporting (they will not have any foreign tax obligations) obtaining a response from the customer to cure the indicia can be extremely difficult.

176. Many FIs such as funds, trusts and disregarded entities will hold some or all of their assets with a banking entity. Uncertainty over how these entities should be classified can cause complex problems for the responsible bank, with disagreements between the bank and the FI customer over classification status potentially resulting in either double reporting or non-reporting of accounts.

Box 5.11. Ensuring FIs have fulfilled due diligence obligations - Key sector-specific issues to be considered regarding banks

Potential questions

- How is the account holder information gathered for new accounts?
- How is account holder information reviewed for pre-existing accounts?
- What are the triggers for identifying a change of circumstance of the account holder?
- How do you determine the reasonableness of a self-certification?
- What steps do you take to cure any indicia identified?

Suggested documentation to be reviewed

- Account opening documentation
- Review of internal bank due diligence procedures
- Sampling of different types of accounts reviewed to test efficacy of systems

Insurers

177. Identification of a “cash value” contract is difficult. The insurance industry offers a highly diverse range of products with different conditional criteria for pay-out meaning that economically similar but legally distinct products may have differing classifications.

178. Many insurers have historically offered mixed products which combine cash value elements with conditional insurance elements. Under CRS/FATCA insurers are permitted to split these products and report on the cash value element only, but this is a complex process so not all insurers will do this.

179. Insurance is a highly regulated sector, however the regulations over customer data and product sales can vary significantly between jurisdictions. Domestic regulation may impact on both the level of data that the insurance entity is able to require of their customer, and their ability to apply sanctions in case of non-response.

180. Many products offered by the insurance industry are long term products (70y+). This means that original customer checks can vary significantly and are unlikely to meet modern KYC requirements. The duration of the policies and the fact that many will only pay out on termination also means that customers are more likely to emigrate from the jurisdiction in which they purchased the original product.

181. Some products offer benefits for contingent or determinant beneficiaries, meaning that the beneficiary of the policy may change multiple times, or not even be known until the policy pays out.

182. On-selling of blocks of pre-sold policies or “back books” is common in the industry, meaning that the current reporting entity may not have been in control of the initial due diligence process.

183. Even where the account is still held by the initial vendor products are often sold through third parties or intermediaries (wealth managers/retail banks etc.) so the reporting entity may not hold the customer relationship.

Box 5.12. Ensuring FIs have fulfilled due diligence obligations - Key sector-specific issues to be considered regarding insurers**Potential questions**

- How do you determine which of your products are “cash value” products?
- Does this change depending on the stage in the life of the policy, i.e. can a non-cash value product become a cash value product following a triggering event? If so how is this monitored.
- Please describe the processes in place to (i) define, (ii) identify and (iii) document New Accounts (both Entity and Individual Accounts) opened via various distribution channels (e.g. tied representatives, independent financial advisers, insurance brokers, bancassurance, direct purchase insurance, etc.) for appropriate FATCA/CRS treatment/due diligence procedures. Are you in control of the customer due diligence process on account opening? If so then what are the process requirements? If not then what steps do you take to ensure that the originating party

have complied with CRS and FATCA obligations for third party providers (when policies are sold through agents or other FIs) and for previous issuers (e.g. when historic books change hands)?

- How do you maintain records of your customer data?
- Is it all electronically searchable? Is it in a consistent format? If not then how do you manage these issues?
- What steps do you take to “cure” unreliable or missing data?

Suggested documentation to be reviewed

- Sales material for new policies – what customer information is required;
- Sampling of insurance contracts;
- Details of purchase requirements for historic policies (back books).

Funds

184. The terminology for CRS and FATCA is based in banking concepts. Many Funds do not have the concept of an “account” or “account holder”, and for those that do the definition is often different to that used for CRS and FATCA. This is also the case for other concepts such as “nominee entities”, these terms can be used to mean very different things depending on what they are being used for.

185. Under CRS it is possible for some Fund “accounts” to be tradeable financial assets, and the “account holders” can change on a regular basis. This could be up to 100s of times a day if the “account” is subject to automated trading.

186. The most frequently exchanged “accounts” are expected to be held and exchanged between custodial institutions rather than reportable account holders, but some Funds will also still see a rapid and continual turnover of account holders.

187. Domestic legislation in many jurisdictions can prevent the Fund (or other commercial party) from impeding a transfer of Fund “accounts”, meaning that the Fund cannot require self-certification of the transferee as a condition of transfer. This is the case for most regularly traded accounts, but can be the case for other interests as well (such as direct purchase of an interest from the previous account holder).

188. A Fund can often involve a large number of entities in an ownership chain between the account holders and the underlying asset pool. This may be the case even where there is no umbrella fund. This means that information can often be held in multiple different entities without any single FI having full oversight.

189. Valuation for non-regularly traded funds can be very complex and the methodology may vary dependent on the underlying asset pool.

190. Valuation of account interests can also be complex. Some Funds may operate different investment tiers, meaning that the relative proportion of the assets attributable to each investor cannot be determined until liquidation.

191. Not all Funds will be FIs, some may be passive NFEs. The likelihood of a Fund being a passive NFE will vary depending on the sector in which they operate, the customer base which they service and the regulatory conditions which they have to comply with.

192. It is also possible that some Type B investment entities who invest in a mixed asset pool (i.e. financial and non-financial assets) may fall within the FI definition in some years but not others.

Box 5.13. Ensuring FIs have fulfilled due diligence obligations - Key sector-specific issues to be considered regarding funds

Potential questions

- Who is the client/account holder? And who holds that relationship/customer data?
- If this is NOT done by the Fund; is it done by an associated party in the fund structure (such as a transfer agent)? Or is it done by a third party service provider (such as a custodian or broker)?
- How does the Fund ensure that due diligence requirements are being met if a third party is involved?
- How do you maintain up to date information on account holders?
- How do you undertake valuation of your assets?
- How do you determine the relative interests of your account holders?

Suggested documentation to be reviewed

- Sales and marketing material provided to investors;
- Legal investment contracts with investors;
- Valuation reports provided to investors;
- Any service agreements with associates or third parties that relate to CRS and FATCA obligations.

Corporate and trust service providers

Corporate and trust service providers may provide a number of services to FIs, depending on their needs, varying from:

- Advice and support in setting up internal systems;
- Provision of IT and/or infrastructure (including automated due diligence);
- Outsourced data validation;
- Full outsourced due diligence and reporting services.

193. Domestic data protection rules may restrict what forms of data are passed to outsourced service providers for some sectors (especially retail banking).

194. Some FIs may have limited understanding of the services they have procured, especially if the service provider is providing a partial service. Tax administrations may want to consider whether FIs using service providers do understand which obligations have been outsourced, and which will still need to be conducted by the FI themselves.

195. If the service provider undertakes due diligence or validation checks on behalf of the FI then the service provider may also have responsibility for collection of the customer data, but alternatively it may rely on having this data provided by either the FI or another service provider.

196. If the due diligence is being undertaken by a party other than the one which holds the customer data then this will add complexity and process risk.

197. In some areas (for example wealth and asset management) customer and account data may be held across many different entities. Rather than passing data back to the FI some of these data holding entities may operate as service providers and undertake due diligence, or other obligations, on their behalf.

In these cases it will be important to understand how the contractual obligations of all these different entities and data holders interact to fulfil the legal obligations of the FI.

198. Many jurisdictions do not have specific legislation to cover the actions of outsourced service providers. The CRS and FATCA obligations remain with the FI and although the use of service providers is allowed they have no legal standing or obligations.

199. This may mean that tax administrations have no legal route through which to review the activities of these service providers directly. Tax administrations may therefore need to undertake any reviews in collaboration with the FI who is the contractual client of the service provider. This may limit any potential review to the level of oversight to which the FI is entitled under their Service Agreement.

Box 5.14. Ensuring FIs have fulfilled due diligence obligations - Key sector-specific issues to be considered regarding corporate and trust service providers

Potential questions

- What kind of services do you offer to FIs?
- If undertaking due diligence or data validation on behalf of the FI
 - How do you ensure quality and completeness of data provision?
 - What assurance processes does the FI have to ensure delivery quality?
 - Do they use these processes?
- What kind of feedback process do you have with the FI in case of errors or inability to provide services?
- If the service provider identifies errors or invalidations in the data provided, are they able to feed back to the FI and obtain “corrections”? And if so then how?

Suggested documentation to be reviewed

- Service level agreements (there may be several between different parties)
- Any quality assurance material reported to the FI and/or maintained in case of FI checks/reviews.

6 Reporting Systems and Procedures

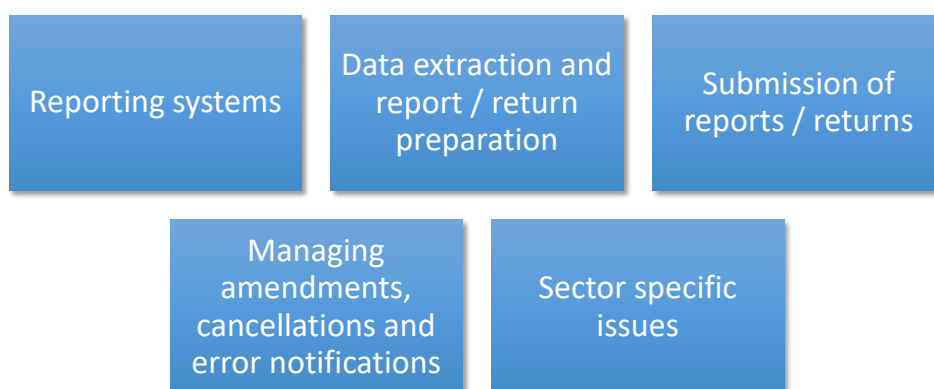
Introduction

200. Tax administrations receive, on an annual basis, financial account information identified by FIs based on common reporting and due diligence procedures. A nil report/return is also required by some jurisdictions when no accounts are reportable.

201. Depending on the circumstances of the FI and its volume of reportable accounts, the collection of information may be automated in order to facilitate the process of reporting and sharing the data with the tax administration, or it may be captured manually.

202. Regardless of the circumstance of the FI, complete and accurate information must be extracted to prepare reports/returns in accordance with CRS and FATCA XML Schema as adopted by the jurisdiction and the tax administrations' user guide. Furthermore, information collected for reporting must be properly safeguarded and accessible to the tax administration for review purposes, whether it is collected electronically or manually or by a third-party service provider.

Figure 6.1. Core elements of reporting systems and procedures



Reporting systems

Box 6.1. Reporting systems: Hallmark

- FIs have systems and procedures in place to ensure the required information is being collected, processed, and stored in an appropriate manner.

203. To determine if this outcome has been achieved, tax administrations should understand and examine the structure of the reporting systems of their FIs. Depending on the circumstances of the FI, the account information may be collected and/or captured in an electronic business system or it may be in paper format.

204. Some FIs may collect information on paper and capture it on a spreadsheet while other FIs may use an electronic business system to create, process, store, maintain and provide access to financial records of a person. Either way, control measures must be in place to ensure that the information is kept organized, secure, and accessible for review.

205. Account holder identification and financial data may be stored in separate electronic business systems and then reported by a different system within a given FI. One branch of an FI may also have its data in an electronic business system that is separate from the main office responsible for the reporting. There may also be different systems to report CRS and FATCA data. Account information that is stored electronically should be available in an electronically-readable format and provide the information necessary to determine the status of the account holder.

206. FIs may have updated existing electronic business systems or developed an entirely new system, or both, to capture CRS and FATCA data. There may be pros and cons to both approaches, and current and historic data files should be archived or backed up adequately to meet record keeping obligations.

207. To ensure the reliability, integrity and authenticity of electronic records, reporting systems should be able to combine information from multiple systems in an electronically readable format, and compare/match/merge the separate data sets for complete and accurate information reporting.

Box 6.2. Reporting systems: Sample questions

- How is the account information maintained?
- Is there one system that manages all reporting, or are there different inter-related systems?
- Were new systems built to manage CRS and FATCA reporting, were legacy systems updated/modified, or both?
- Where information is captured in multiple systems, what procedures are in place to reconcile the CRS and FATCA information with the source data?

Data extraction and report/return preparation

Box 6.3. Data extraction and report/return preparation: Hallmark

- FIs extract complete and accurate CRS and FATCA data and prepare reports/returns in accordance with the updated CRS and FATCA XML schemas as adopted by the tax administration.

208. To determine if this outcome has been achieved, tax administrations should understand and examine how information is extracted from an FI's systems and validated to ensure it complies with the relevant schemas as implemented by the tax administration.

209. The electronic records must show an audit trail from the source document(s), whether paper or electronic, to the summarized financial accounts that are submitted to the tax administration.

210. The requirement field for each data element and its attribute indicates whether the element is needed for validation or optional in the schema. “Validation” elements MUST be present for ALL data records in a file. As such, they can be used for validation checks to ensure the accuracy and completeness of data. It is important to note that under the CRS XML Schema, “(optional) mandatory” data e.g. TINs should be reported where available. FIs should perform data validations using XML tools to ensure all “Validation” elements are present and, if they are not, correct the file. Such validations may also help ensure that account holder and balance/payment information has been correctly transposed from the FI’s internal systems to the reported data.

211. The most recent procedures outlining the FI’s electronic record management policies, along with a sampling of accounts, will assist in validating the reliability, integrity and authenticity of electronic records.

Box 6.4. Data extraction and report/return preparation: Sample questions

- What procedures are in place to ensure that the extraction of the information is performed correctly and in a manner that ensures complete and accurate reporting?
- What steps are taken (e.g. analytical reviews, exception testing, etc.) to ensure the completeness and accuracy of the CRS and FATCA report/return?
- What procedures are in place to ensure that the format of the reports/returns conform with the most updated CRS and FATCA schema as adopted by the tax administration?

Submission of reports/returns

Box 6.5. Submission of reports/returns: Hallmark

- The FI ensures that the CRS and FATCA report/return is reviewed and submitted to the tax administration in a timely manner.

212. To determine if this outcome has been achieved, tax administrations should understand and examine the process and work flows established by the FI, as well as any supporting tools, that support timely reporting of original returns to the tax administration (e.g. activity logs).

213. To monitor and manage the submission process for CRS and FATCA reporting, tax administrations should evaluate the FI workflow process to ensure they support timely reporting – individual processes should be identified by a status (e.g. notification received, action taken, etc.).

214. The approval process may differ based on the circumstances of the FI and may comprise several steps – for example:

- Automated process that guides users through various steps to ensure work is completed and approved the same way every time;
- Manual validation and approval process;
- Systematic validation checks built in to procedures – e.g. checking the residency of the account holder on the self-certification against the account holder records to ensure accuracy; and
- Segregation of duties between staff involved in report/return preparation and those involved in the process of reviewing/approving the report/return for filing with the tax administration.

215. Policies and procedures should be in place to ensure records are kept up to date and that validation checks are performed to reconcile accounts and submit nil reports/returns.

Box 6.6. Submission of reports/returns: Hallmark

- What procedures are in place to monitor submission deadlines to ensure timely reporting to the tax administration?
- What procedures are in place to ensure that internal checks are performed and approvals obtained prior to making the report/return submission to the tax administration?
- Where Nil reporting is required, what procedures are in place to ensure that Nil reports/returns are submitted to the tax administration when no reportable account is maintained in the relevant calendar year?

Managing amendments, cancellations and error notifications of report/return

Box 6.7. Managing amendments, cancellations and error notifications of report/return: Hallmark

- The FI ensures that corrected data and submission errors are addressed, and resubmissions are completed in a timely manner.

216. To determine if this outcome has been achieved, tax administrations should understand and examine the process and work flows established by the FI, as well as any supporting tools, that support the identification and correction of errors and subsequent reporting to the tax administration.

217. Routine reviews should be undertaken to detect discrepancies or errors in reportable accounts and to ensure all information is accurate at the time of original filing. If discrepancies are discovered following initial filing with the tax administration, the FI must file corrected data with the tax administration as it becomes available.

218. Detection of discrepancies or errors should be reported to a designated person within the organization to identify root causes. Once identified, the FI should have a process in place to resolve the root cause and confirm ongoing accuracy of reported information following a process or systemic change.

219. FI must have procedures in place to respond to and action error notifications received from the tax administration. Timeline should be developed and monitored to allow for the review of all impacted accounts in relation to identified errors. In some cases, the FI may need to initiate contact with account holders in order to make the necessary corrections. The affected reports/returns should be corrected, approved as required, and resubmitted in accordance with timelines agreed with the tax administration.

Box 6.8. Managing amendments, cancellations and error notifications of report/return: Sample questions

- What procedures are in place to monitor account information and correct discrepancies related to previously-filed reports/returns in a timely manner?
- What procedures are in place to investigate and address the root causes of errors to prevent similar occurrences in future reporting?

- When error notifications related to reports/returns are issued by the tax administration, what procedures are in place to ensure that corrections are submitted to the tax administration in a timely manner?

Key sector-specific issues to be considered

Banks

220. Some information may be stored in the core banking system and some systems may cross multiple platforms. In many cases there is consolidation of static customer data (e.g. address) for banking purposes but not specifically for CRS/FATCA, and AML/KYC information is usually housed separately. While building a pipeline to the reporting system from all the different systems is particularly challenging, the use of siloed systems may lead to inconsistencies in reporting processes.

221. In many cases, each business line has its own system to gather information and produce reports; however for many small FIs, reports may be pulled manually from various business line systems to create one report that breaks out individuals and entities into a human readable format in XML. Once the reports are pulled for review, individual entries may be reviewed manually to ensure that data fields are in place and that information is not missing.

222. For retail banking, the process to review accounts is more onerous and requires a manual review of account information, including classification and controlling persons. Accounts that pass review are then included as part of the XML report that is submitted to the tax administration. If a smaller number of accounts are being submitted, they may be uploaded manually slip by slip through the tax administrations' upload tool.

223. The detection and review for potential reporting and change in circumstances requires sophisticated systems and knowledge and expertise that can be difficult to attain and resource intensive to develop. This challenge is more pronounced for entities because they cover such a broad range of categories.

Box 6.9. Reporting systems and procedures - Key sector-specific issues to be considered regarding banks

Potential questions

- How is the account information maintained?
- Is there one system that manages all reporting, or are there different inter-related systems?
- Who does your reporting?
- If it is a third party, what steps are taken to ensure the completeness and accuracy of the information provided to the service provider for reporting purposes?

Suggested documentation to be reviewed

- Reconciliation tools that give comfort that the full number of accounts have been processed;
- Sampling where different types of accounts reviewed to test efficacy of systems.

Insurers

224. Some insurers are still struggling to identify reportable products, and some may have several administrative systems in which they store account information. In calculating the cash value of an insurance contract, several systems may interact with one another, and the identity of a beneficiary is usually stored in a separate system. Insurers may also have separate systems for group and retail business lines.

225. The cash value of an insurance contract to be reported will usually be determined based on the amount of the surrounding value that would be paid out at a given moment, and is reported net of policy loan and surrendered value. Policy loans are challenging - one pragmatic approach is that anything that would be payable is reportable.

226. Insurers often sell their products through banks, in which case the reporting information will come from the bank. Also, who holds the client name impacts who performs which task – e.g. if a dealer holds the account, they perform the due diligence and report to the insurers. The process is similar for variable annuities.

Box 6.10. Reporting systems and procedures - Key sector-specific issues to be considered regarding insurers

Potential questions

- How do you calculate the cash value of an insurance contract?
- Are the charges and fees included in the calculation?
- Do you provide financial arrangements to employers that offer employment-based benefits of a low risk nature or only individuals and entities?
- How many employees are participating in the group plan (with cash value)?

Suggested documentation to be reviewed

- Sampling of insurance contracts.

Funds

227. Most sectors use their own reporting process; however, in the fund sector the dealers often transmit information to fund managers using a transmission services system provider. For example, transmission services systems may allow the passing of account data quality information (e.g. missing TIN) and controlling persons' information, to ensure trades are processed in an accurate, timely, and secure manner.

228. There should be an agreement between the dealer and fund manager to define roles and responsibilities and prevent doubled reporting. Most reporting is done by fund managers, but it may be outsourced to a service provider.

229. Fund managers usually do not vet the information and will not change the information - they need the dealers to do so. Umbrella sub-funds are a challenge – it is not always known which funds are open and which are not. Both new and old funds are closed frequently, which has a significant impact on knowing which FIs are reportable.

230. Information is usually pulled from a central point for personal information and exported into XML. The fund manager would contact the dealer to obtain information about the account holder, as the dealer

has the relationship with the account holder. AML teams have separate interaction with clients to support their review activities.

231. Most fund managers act as Qualified Intermediary (QI) for the US and must obtain a QI certification, which is based on internal controls. Most funds are held by trusts or limited partnership in order to hold the assets; when the fund is a trust the FI will usually act as the trustee.

Box 6.11. Reporting systems and procedures - Key sector-specific issues to be considered regarding funds

Potential questions

- Are you acting as a QI?
- Have you undertaken any internal health checks?

Suggested documentation to be reviewed

- Internal health check documents;
- Agreements between dealers and managers to define roles and responsibilities.

Corporate and trust service providers

- May file on behalf of the FI, depending on the jurisdiction;
- May have sophisticated IT solutions to facilitate reporting to tax authorities;
- May provide a number of services to FIs, depending on their needs, including:
 - Building an in-house reporting system;
 - Data validation;
 - Conversion of account information into XML for reporting purposes;
 - Filing with the tax authority.

Box 6.12. Reporting systems and procedures - Key sector-specific issues to be considered regarding corporate and trust service providers

Potential questions

- What kind of services do you offer FIs?

Suggested documentation to be reviewed

- Service agreements.

Annex A. Review Methods Matrix

This annex sets out a set of possible methods to review the compliance of FIs with each of the individual hallmarks set out in the first three chapters of this section. For each hallmark, the possible methods are grouped along the three main review methods, i.e. questionnaires, desk reviews and on-site reviews.

Table A A.1. Possible methods to review the compliance of FIs

Compliance hallmark		Review method		
		Questionnaire	Desk review	On-site review
CRA and FATCA governance and implementation				
1-4	Project Organisation.	Include sample questions within CRS and FATCA Project Organisation section to ascertain the soft or hard documentation which is available for desk or on-site review.	Review and reconcile list of legal entities Inventory of process and procedures document and applicable CRS and FATCA sections Descriptive list of products and services offered Risk Management Framework.	Review and reconcile list of legal entities Inventory of process and procedures document and applicable CRS and FATCA sections Descriptive list of products and services offered Risk Management Framework.
5	Stakeholder Collaboration.	Include sample questions within CRS and FATCA Project Organisation section to ascertain the soft or hard documentation which is available for desk or on-site review.	Support for identification of CRS and FATCA stakeholders Review of meeting minutes and documentation noting key implementation decisions Documentation for initial and on-going stakeholder collocation for CRS and FATCA obligations.	Support for identification of CRS and FATCA stakeholders Review of meeting minutes and documentation noting key implementation decisions Documentation for initial and on-going stakeholder collocation for CRS and FATCA obligations.
6-8	Roles, Responsibility and Accountability. (including service providers.)	Include sample questions within CRS and FATCA Project Organisation section to ascertain the soft or hard documentation which is available for desk or on-site review.	Matrix/documentation indicating roles and responsibilities and delineation of functions Contacts / SOWs with external service providers (if applicable).	Matrix/documentation indicating roles and responsibilities and delineation of functions Contacts / SOWs with external service providers (if applicable.)
9-10	Roles, Responsibility and Accountability. (FATCA only.)	Include sample questions within CRS and FATCA Project Organisation section to ascertain the soft or hard documentation which is available for desk or on-site review.	Documentation of current Responsible Officer (RO) Assessment of RO's awareness of their responsibilities with FATCA Documentation of RO turnover (names, dates), as applicable.	Interview with RO pertaining to their role and responsibilities as the FATCA RO Documentation of current Responsible Officer (RO) Assessment of RO's awareness of their responsibilities with FATCA Documentation of RO turnover (names, dates), as applicable Review of FATCA Registration system for compliance activities relates to Renewal of FFI Agreement, Registration, Certifications, etc.

Compliance hallmark		Review method		
		Questionnaire	Desk review	On-site review
11-12	Roles, Responsibility and Accountability. (Legislative changes.)	Include sample questions within CRS and FATCA Project Organisation section to ascertain the soft or hard documentation which is available for desk or on-site review.	Monitoring process of updates and developments related to CRS and FATCA Communication of updates to staff, business units and other foreign offices Impact assessment of impact of legislative updates.	Monitoring process of updates and developments related to CRS and FATCA Communication of updates to staff, business units and other foreign offices Impact assessment of impact of legislative updates.
13-15	Training.	Include sample questions within CRS and FATCA Project Organisation section to ascertain the soft or hard documentation which is available for desk or on-site review.	Training to staff, business units and other foreign offices based on impact assessment of legislative updates Training schedules, timelines, materials, proof of completion (including training on W8/Self-certifications) Public FI webpage information on CRS and FATCA.	FI Intranet for employee access to information on CRS and FATCA Training demo if web-based Training to staff, business units and other foreign offices based on impact assessment of legislative updates Training schedules, timelines, materials, proof of completion (including training on W8/Self-Certifications) Public FI webpage information on CRS and FATCA.
16	Documentation and Record-keeping.	Include sample questions within CRS and FATCA Project Organisation section to ascertain the soft or hard documentation which is available for desk or on-site review.	Documentation as it pertains to: Business Operations and Due Diligence procedures CRS and FATCA Reporting FATCA Certifications FATCA RO Role and Responsibilities 3rd Part Service Provider contracts/ SOWs Implementation efforts Key decisions on ongoing compliance Retention policy Inventory.	Documentation as it pertains to: Business Operations and Due Diligence procedures CRS and FATCA Reporting FATCA Certifications FATCA RO Role and Responsibilities 3rd Part Service Provider contracts/ SOWs Implementation efforts Key decisions on ongoing compliance Retention policy Inventory (electronic repository).
Ensuring FIs have fulfilled due diligence obligations				
17	FIs have systems and processes to identify which due diligence procedures should be applied to a particular account.	Description of FI procedures, supporting documentation, etc.	Review documentation.	Verify information provided in response to questionnaire. Sample checks.
18	FIs should be able to demonstrate that the only accounts that they have excluded from due diligence and reporting are those that meet the definitions and/or requirements of Excluded Accounts as set out in domestic law.	Description of FI procedures, supporting documentation, etc.	Review documentation.	Verify information provided in response to questionnaire. Request for in-scope / out-of-scope product list/analysis Sample checks.
19	The FI has processes in place to monitor and identify each change of circumstances and to follow up with the necessary due diligence processes.	Description of FI procedures, supporting documentation, etc.	Review documentation Review of details of follow up actions for change of circumstances. Consider contact via letter or telephone to address/discuss issues.	Verify information provided in response to questionnaire. Follow up to ensure issues identified, perhaps via letter or telephone contact, have been addressed.

Compliance hallmark		Review method		
		Questionnaire	Desk review	On-site review
20	<p>FIs should have sufficient processes in place to ensure that they only apply the residence address test to Pre-existing Individual Accounts where there is a current address for the Account Holder, and that address is based on acceptable Documentary Evidence.</p> <p>(CRS ONLY)</p>	Description of FI procedures, supporting documentation, etc.	Review documentation.	Verify information provided in response to questionnaire. Sample check.
21	<p>FIs should demonstrate that they have identified all systems where account details are maintained, and all forms in which account holder address is captured, in sufficient detail to ensure that Reportable Jurisdictions can be identified.</p> <p>CRS ONLY</p>	Description of FI procedures, supporting documentation, etc.	Review documentation.	Verify information provided in response to questionnaire. Verify information recorded in database to match with documentation obtained Sample check.
22	The Electronic Record Search was carried out in all circumstances where the relevant account value thresholds required it to be undertaken.	Description of FI procedures, supporting documentation, etc.	Review documentation.	Request for a walkthrough of the Electronic Record Search Verify information provided in response to questionnaire. Sample check.
23	The FI should have processes in place to identify where it DOES, and where it does NOT hold all required indicia in an electronically searchable format for pre-existing High Value Accounts.	Description of FI procedures, supporting documentation, etc.	Review documentation.	Verify information provided in response to questionnaire. Sample check.
24	The FI should also have processes in place to ensure that a Paper Record Search is undertaken for those High Value Accounts where the FI does NOT hold all the required information in an electronic format. Including a search of the master file and, to the extent that this information is not contained in the current master file, any other specified documents.	Description of FI procedures, supporting documentation, etc.	Review documentation Review of details of follow up actions taken where not all indicia are held for a high value account. Consider contact via letter or telephone to address/discuss issues.	Request for a walkthrough of the Paper Record Search Verify information provided in response to questionnaire. Follow up to ensure issues identified, perhaps via letter or telephone contact, have been addressed.

Compliance hallmark		Review method		
		Questionnaire	Desk review	On-site review
25	The FI should have reviewed their operations and determined whether they have Relationship Managers in line with the definitions under CRS and FATCA.	Description of FI procedures, supporting documentation, etc.	Review documentation Review of details of roles and job specs for identified Relationship Managers. Potentially review job specifications for customer facing relationship manager roles which are identified as NOT Relationship Managers for CRS and FATCA.. Consider contact via letter or telephone to address/discuss issues.	Verify information provided in response to questionnaire. Follow up to ensure issues identified, perhaps via letter or telephone contact, have been addressed. Sample interviews with Relationship Managers.
26	If the FI does have Relationship Managers, then the FI should also have put in place sufficient processes to ensure both that Relationship Managers are able to fulfil their CRS and FATCA obligations, and can demonstrate that they have done so.	Description of FI procedures, supporting documentation, etc.	Review documentation.	Verify information provided in response to questionnaire. Review and assess sufficiency of processes for Relationship Managers to highlight change of circumstance Sample interviews with Relationship Managers.
27	The FIs has adequate processes to correctly identify and report any undocumented accounts. Where accounts are undocumented, the FI has systems and rules to ensure that they continues to fulfil ongoing obligations in respect of these accounts. CRS ONLY	Description of FI procedures, supporting documentation, etc.	Review documentation.	Verify information provided in response to questionnaire. Sample check.
28	The FI has processes in place for obtaining and validating self-certifications in the case of all New Individual Accounts, unless an exception explicitly foreseen in CRS or FATCA applies.	Description of FI procedures, supporting documentation, etc.	Review documentation.	Verify information provided in response to questionnaire. Sample check.
29	The FI has systems in place that can take into account all relevant information available to determine whether it has reason to know that a self-certification or Documentary Evidence is incorrect or unreliable.	Description of FI procedures, supporting documentation, etc.	Review documentation Review of details of follow up actions for incorrect or unreliable self-certification or Documentary Evidence. Consider contact via letter or telephone to address/discuss issues.	Verify information provided in response to questionnaire. Follow up to ensure issues identified, perhaps via letter or telephone contact, have been addressed.

Compliance hallmark		Review method		
		Questionnaire	Desk review	On-site review
30	The FI is able to correctly determine whether the Entity and/or its Controlling Persons are Reportable Persons.	Description of FI procedures, supporting documentation, etc.	Review documentation.	Request for a walkthrough of the process to identify whether the Entity and/or its Controlling Persons are Reportable Persons. Verify information provided in response to questionnaire. Sample check.
31	The FI has processes in place to seek self-certifications from the Account Holder or Controlling Persons to identify whether the Controlling Persons are Reportable Persons.	Description of FI procedures, supporting documentation, etc.	Review documentation.	Verify information provided in response to questionnaire. Sample check.
32	Where FIs rely on information collected and maintained pursuant to AML/KYC procedures, the FI should be able to demonstrate that those AML/KYC procedures were carried out correctly.	Description of FI procedures, supporting documentation, etc.	Review documentation.	Verify information provided in response to questionnaire. Sample check.
33	The FI has processes in place for obtaining and validating self-certifications in the case of all New Entity Accounts, unless an exception applies or it can be determined based on information in the possession of the Financial Institution or that is publicly available that the Entity is not a Reportable Person.	Description of FI procedures, supporting documentation, etc.	Review documentation.	Verify information provided in response to questionnaire. Sample check.
Reporting systems and procedures				
34	FIs have systems and procedures in place to ensure the required information is being collected, processed, and stored in an appropriate manner.	Description of FI procedures, supporting documentation, etc.		Verify information provided in response to questionnaire.
35	FIs extract complete and accurate CRS and FATCA data and prepare reports/returns in accordance with the updated CRS and FATCA XML schemas as adopted by the tax administration.	Description of FI procedures, supporting documentation, etc.	Data analysis – evidence of systemic errors, missing information, incorrect reporting. Consider contact via letter or telephone to address/discuss issues.	Verify information provided in response to questionnaire. Follow up to ensure issues identified, perhaps via letter or telephone contact, have been addressed.
36	The FI ensures that the CRS and FATCA report/return is reviewed and submitted to the tax administration in a timely manner.	Description of FI procedures, supporting documentation, etc.	Review of submission dates to identify instances of late filing. Consider contact via letter or telephone to address/discuss issues.	Verify information provided in response to questionnaire. Follow up to ensure issues identified, perhaps via letter or telephone contact, have been addressed.

Compliance hallmark		Review method		
		Questionnaire	Desk review	On-site review
37	The FI ensures that corrected data and submission errors are addressed, and resubmissions are completed in a timely manner.	Description of FI procedures, supporting documentation, etc.	Review of submission details for corrections etc. to confirm timeliness. Consider contact via letter or telephone to address/discuss issues.	Verify information provided in response to questionnaire. Follow up to ensure issues identified, perhaps via letter or telephone contact, have been addressed.

FORUM ON TAX ADMINISTRATION

Guide on Promoting and Assessing Compliance by Financial Institutions

Automatic Exchange of Information (AEOI) under the Common Reporting Standard (CRS) and the United States Foreign Account Tax Compliance Act (FATCA) involves the exchange of large amounts of information on financial accounts between tax administrations. For the receiving tax administration to be able to use this information effectively requires both the sending administration and all Financial Institutions (FI) to have sufficiently robust due diligence and reporting processes in place.

The purpose of this compliance guide is to assist government officials and financial institutions regarding the obligations to monitor and ensure compliance with reporting obligations under CRS and FATCA. It also provides a practical overview of what a robust compliance regime may involve.



For more information:

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