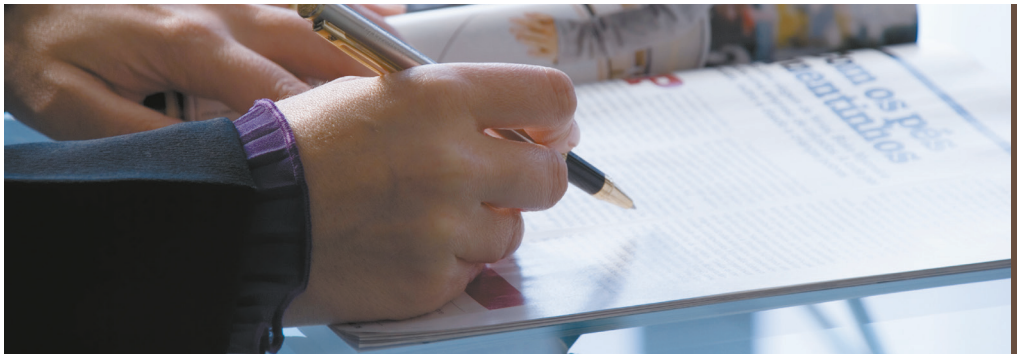

TECHNICAL UPDATE

AUTOMATIC EXCHANGE OF INFORMATION

FROM 1 JULY 2017 MANY AUSTRALIAN ENTITIES WILL HAVE TO REPORT INFORMATION ABOUT THEIR NON-RESIDENT INVESTORS, ACCOUNT HOLDERS, BENEFICIARIES ETC.

The Automatic Exchange of Information (AEOI) obligations are imposed on Australian Financial Institutions (FIs) under TAA 1953. The AEOI regimes comprise both FATCA and the Common Reporting Standard and require Australian entities to exchange financial account information with foreign jurisdictions. The term FI includes not only banks but also funds, private equity groups, investment advisers, trusts & corporate trustees, brokers, custodians, insurance entities, personal investment companies, real estate groups and others.

Background

In 2010 the U.S. enacted the Foreign Account Tax Compliance Act provisions to reduce tax evasion by U.S. taxpayers. The substantive FATCA requirements for financial institutions (FIs) started on 1 July 2014. On 28 April 2014, the Australian and US governments signed an intergovernmental agreement (IGA) under which financial information about U.S. taxpayers would be submitted by FIs to the U.S. tax authorities via the ATO. The IGA was implemented into domestic law by the *Tax Laws Amendment (Implementation of the FATCA Agreement) Act 2014* **which took effect on 1 July 2014**.

Subsequently the OECD and G20 developed a single global common reporting standard (the CRS) to act as the mechanism for the automatic exchange of information between multiple countries. On 3 June 2015 Australia signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information which facilitates the implementation of the CRS. This was implemented through subdivision 396-C of Schedule 1 to the *Taxation Administration Act 1953*. **CRS obligations start from 1 July 2017**.

SECTOR

Tax

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What others are doing for AEOI

BDO has worked with hundreds of clients across its global network to help them interpret and implement the requirements of both FATCA and CRS.

It is important to bear in mind that while CRS is based on the FATCA IGAs, there are a number of significant differences driven both by the multilateral nature of the CRS approach and specific U.S. aspects, including its methodology of taxation on the basis of citizenship rather than just residency. There are also differences in the classification of entities between the two systems with fewer 'exemptions' under CRS.

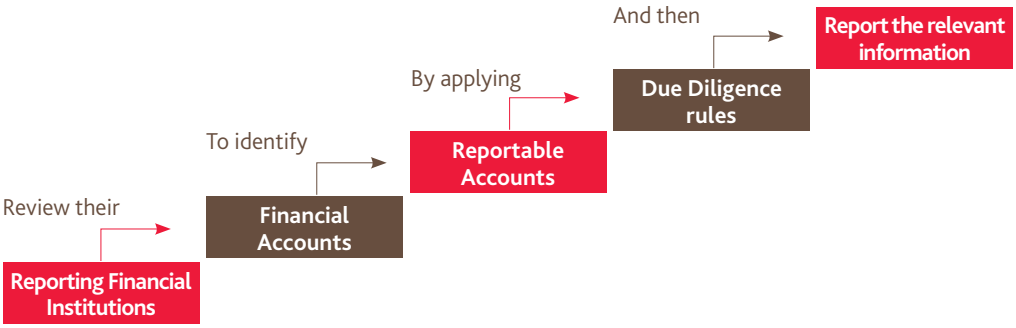
FIs are not just banks and include many entities that are unregulated and would never think of themselves as financial institutions including personal investment companies and trusts holding financial assets such as stocks and shares.

Once an entity is identified as an FI, it needs to assess the number of financial accounts that it maintains and to what extent these accounts are reportable. (Exclusion exists for low risk accounts).

This exercise requires the application of due diligence regulations segregated by entity and individual accounts as well as so-called 'pre-existing' and 'new' accounts determined by the date on which the account was opened. Under CRS in Australia the cut-off date for pre-existing accounts is 30 June 2017 after which FIs are required to have new account opening procedures in place.

Working in practice

Different clients have different needs. Ultimately all clients are seeking to meet the requirements of the decision tree shown in the diagram below.



As mentioned, the starting point is always the correct classification of entities within a group. In some cases, classification is straight-forward e.g. in the case of a bank. However, this is less so when dealing with private equity or other fund structures which may comprise not only the collective investment vehicle, but also co-invest & carry vehicles, general and limited partners as well as investment managers and advisers located across a number of jurisdictions.

A number of jurisdictions began implementing CRS a year to 18 months in advance of Australia including the UK and other European countries. BDO therefore has a great deal of experience derived from dealing with clients (and tax authorities) in these locations and can advise clients on how best to interpret this new legislation as well as ensure that they are following good practice and what their peer group is doing to comply.

Who and what is reported

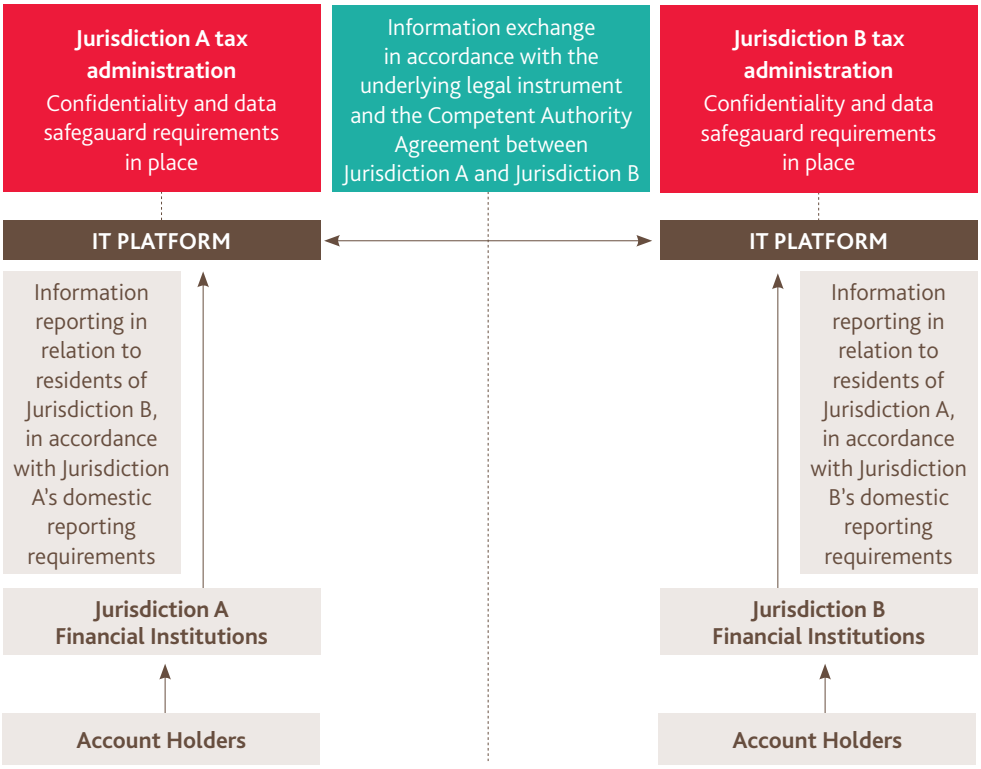
The ATO is effectively imposing a duty on Australian FIs to provide financial data about account holders who are invested in Australia, but reside overseas.

Although this may sound simple in theory, in practice it can require extensive work. Reportable financial accounts include not only deposit and other bank accounts, but also custodial accounts and equity and debt interests. For example, in the case of a bank, an account holder will be the entity or individual who has deposited funds with the institution. However, in the case of a fund, it will be the investors / equity holders in the investment vehicle. In the case of a trust, it will be the beneficiaries and other natural controlling persons.

Custodians, nominees and institutions providing margin accounts or otherwise holding client money will also have to consider whether they have any reporting obligations.

Once reportable accounts are identified, there is then an annual exercise to collate the required financial information for each account including year end balances and credits to accounts in the year. This information is then submitted to the ATO for onward submission to the relevant overseas authorities

At the same time as the ATO is forwarding information overseas, it will also start to receive information from foreign authorities in respect of Australian residents with assets overseas. In this way, it will be receiving information that it may previously have required the taxpayer in question to disclose in its tax return. The expectation is that the ATO will use this new information to carry out checks on taxpayers and cross-reference to information provided in lodged tax returns. This process is set out in the diagram below.



Establishing a process

As part of best practice and good governance, financial institutions should ensure that the AEOI approach adopted is documented and kept up-to-date. The scope of any formal policy manual or similar will depend on the type of organisation. However, as a general rule we would recommend that some form of approach and implementation policy be drawn up with a named individual responsible for its content. At a minimum, the document should cover the following:

Introduction and Executive Summary

- *Background to the AEOI legislation and recent developments*
- *Process summary*
- *Processes*
  - *Registration*
  - *Due diligence*

Reporting

- *General requirements*
- *FATCA returns*
- *CRS returns*
- *Approach to reportable information*

Controls and governance

- *Roles and responsibilities*
- *Technology*
- *Training*

Australian legislation also mandates that an entity must keep written records to document the due diligence procedures undertaken in establishing whether there are any reportable accounts - penalties can apply for failure to do so.

MORE INFORMATION

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