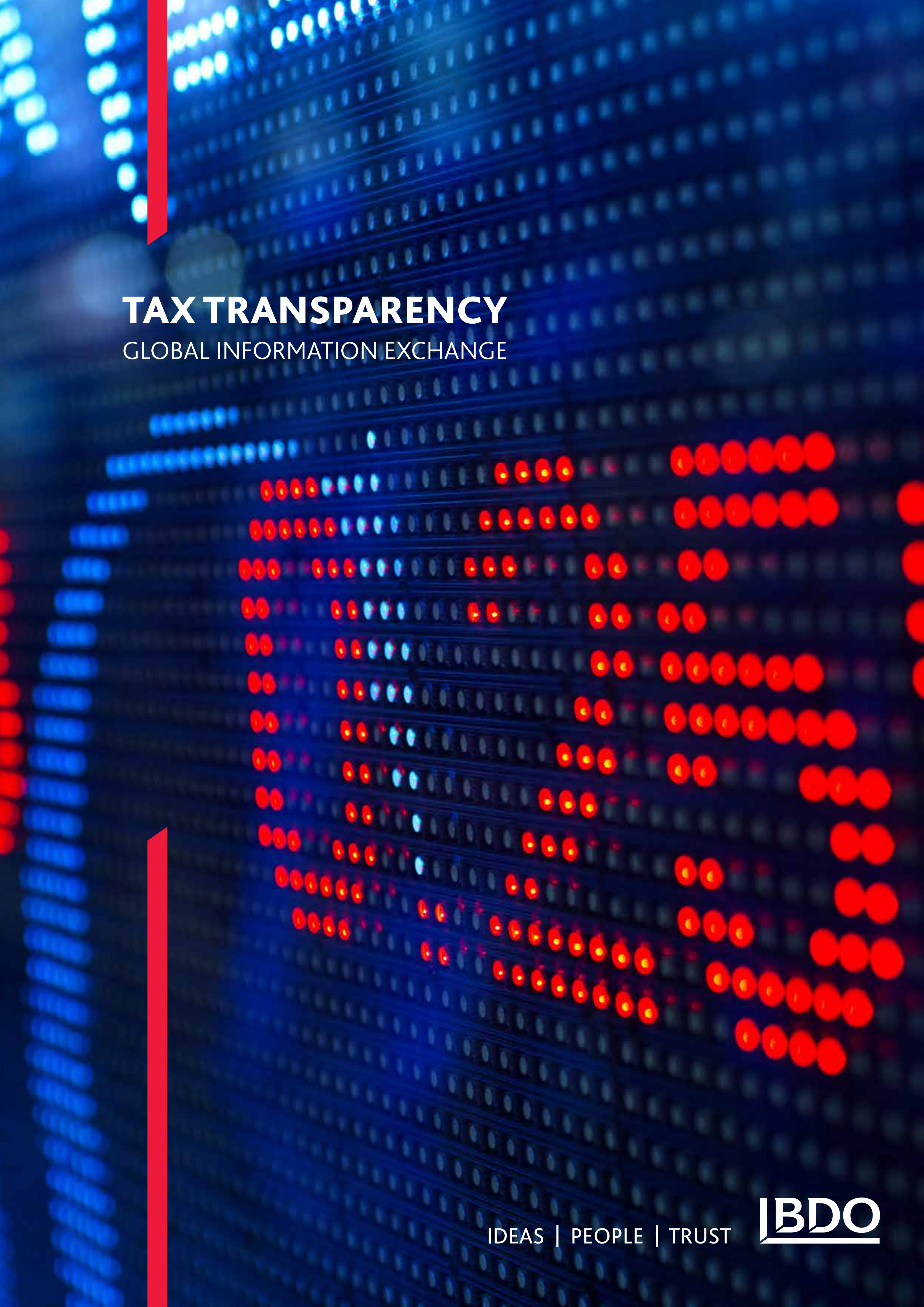


TAX TRANSPARENCY

GLOBAL INFORMATION EXCHANGE

IDEAS | PEOPLE | TRUST

A COMMON REPORTING STANDARD ACROSS THE WORLD

INTERNATIONAL TAX REPORTING COMES OF AGE

In conjunction with the G20, the OECD developed the Common Reporting Standard (CRS) as a global standard for the automatic exchange of information. This was approved by the OECD Council in July 2014, and nearly 50 jurisdictions began exchanging data in 2017: by June 2019 there were 90 jurisdictions participating in a global transparency initiative and information has been exchanged on 47 million offshore accounts, with a total value of around EUR 4.9 trillion.

HOW IT WORKS

Each participating jurisdiction has passed domestic legislation requiring 'Financial Institutions' (FIs) in the jurisdiction to provide their local taxation authorities with financial data on relevant persons (broadly asset owners) who are resident in other participating countries. This means that FIs have to make reports on their clients who are resident in other countries: this includes the beneficial owners of bank accounts and those with an interest in trusts and other entities.

As with reporting required under FATCA (the USA's Foreign Account Tax Compliance Act), the FIs that must provide data include banks, insurance companies, trusts, TCSPs, collective investment vehicles, funds of all types, private equity groups, 'carry' vehicles, brokers other depository and custodial institutions, investment entities, some insurance companies and even charities. However, unlike FATCA, there are fewer exempt institutions.

The reported data will be passed on automatically to the relevant countries (within nine months of the end of the relevant calendar year) in a standard format that can easily be imported into the taxpayer databases of each country. The data will be analysed to identify those who may have evaded or avoided tax in their country of residence and even those who may simply have made an error in their tax returns.

A core feature of the CRS rules is that local reporting FIs have to do due diligence on account holders. The level of diligence required differs for new and existing accounts, high and low value accounts as well as individual and entity accounts. The obligations include a review of electronic data for evidence of where each of their customers is resident (including PO boxes, 'care-of' addresses, 'hold mail' instructions and standing instructions to send funds to resident based accounts) but can also include a 'paper search' of existing documents, self-certification by the client and an 'actual knowledge' test for client relationship managers.

WHOSE DATA IS BE EXCHANGED

FIs must report on financial accounts, which includes bank accounts, custodial accounts, debt and equity investments as well as interest in trusts and partnerships, but also includes interests in trusts and other entities. Passive entities will be 'looked through' with reporting taking place in respect of the persons controlling those entities. Note that the US$50,000 de minimis threshold, that applies to individuals under the FATCA, is not replicated in the CRS, so many more account holders need to be identified and reported on.

REPORTABLE INFORMATION

ABOUT THE OWNER/S	ABOUT THE ASSET	INCOME / GAINS / MOVEMENTS
Full name	Name of the financial institution and its identifying number	Gross interest received
Address	Type of asset (financial accounts/ products as well as interests in trusts/ holding entities)	Dividends received
Date of birth	Local account number / identifier	Gross capital sale proceeds received into account
Place of birth	End of the year balance for cash deposits	Any other income derived from financial assets
Tax identification number	Cash value for other assets	Amounts credited to the beneficial owners

IMPLICATIONS FOR FINANCIAL INSTITUTIONS AND THEIR CLIENTS

CRS PLACES SIGNIFICANT RESPONSIBILITIES ON FIS

With so many countries involved, such a wide range of assets covered and a very broad spectrum of owners and asset controllers to report on, even those already reporting under FATCA saw a step change in their compliance tasks when CRS began.

Clearly, communicating effectively with clients is key to managing these reporting responsibilities: all customers (including controllers of certain entities resident overseas) have to be informed about the reporting requirements for participating countries, and must provide identifying information when opening accounts.

WHERE ARE YOUR CLIENTS TAX-RESIDENT?

In many cases, clients of FIs should be able to self-certify the country in which they are tax-resident. However, in certain cases the situation may be complex creating an area of concern for FIs. FIs and their clients need to ensure that the information held by the FI accurately reflects the true tax position.

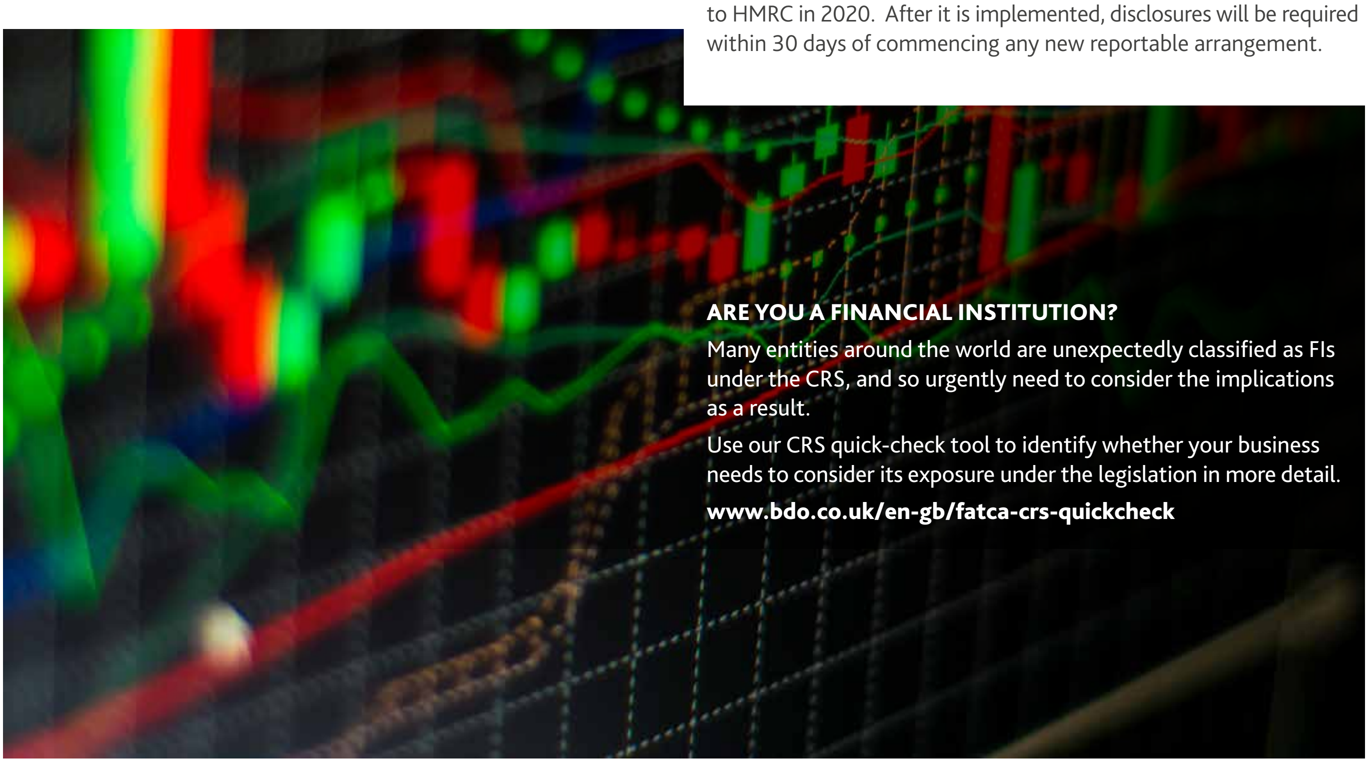
Although it is often a difficult message to give to new clients, it is vital that they are warned of potential tax consequences of reporting under the CRS. If the relevant income or gains that must be reported have not previously been reported in their country of residence (even for legitimate reasons) they are likely to be investigated by the local tax authorities and could face a large tax bill or worse. No matter which country they live in, putting any tax irregularities right or simply explaining their overseas assets to the tax authorities before the first report for the client is always likely to be the best option.

REPORTING AVOIDANCE ARRANGEMENTS

The OECD has considered ways to address arrangements that seek to circumvent reporting under the CRS and the use of non-transparent structures. This resulted in the publication of Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures (MDR) in March 2018. Jurisdictions can choose whether to implement these rules, however chapter IX of the CRS, to which over 100 jurisdictions have committed, requires these jurisdictions to have rules in place to prevent CRS avoidance arrangements and clearly the MDR can play an important role here. In June 2019, the OECD published an information exchange framework to support the MDR and a multilateral competent authority agreement that countries will sign to implement the framework: it is expected that this will be in place from 1 January 2021.

The aim is for jurisdictions to be able to pass on details of financial arrangements that fall within the rules to the jurisdictions in which the users of the arrangements are tax resident. It will then be possible for the jurisdiction to take action to adjust their local tax laws to make the arrangements ineffective or take enforcement action where the arrangements already breach local tax law.

In addition, an EU directive known as DAC 6 (it is the sixth update of the Directive on Administrative Cooperation) also imposes disclosure requirements on cross-border tax arrangements. This incorporates the MDR but also applies to a wider set of arrangements. EU member states must implement DAC 6 for relevant arrangements entered into from 25 June 2018 onwards. Currently, the UK is planning to implement DAC6 and the first reports under this new regime are due to HMRC in 2020. After it is implemented, disclosures will be required within 30 days of commencing any new reportable arrangement.



ARE YOU A FINANCIAL INSTITUTION?

Many entities around the world are unexpectedly classified as FIs under the CRS, and so urgently need to consider the implications as a result.

Use our CRS quick-check tool to identify whether your business needs to consider its exposure under the legislation in more detail.

www.bdo.co.uk/en-gb/fatca-crs-quickcheck

A TIMELINE OF RECENT CHANGES IN GLOBAL TRANSPARENCY AND REPORTING

15 JULY 2014

Common Reporting Standard (CRS) as a global standard for the automatic exchange of information approved.

2017

Early adopters committed to the CRS, including the UK.

APRIL 2017

Requirement to Correct period began – requiring taxpayers with overseas assets to correct any issues with their historic UK tax position.

MARCH 2018

OECD issued new mandatory disclosure rules requiring intermediary advisers to inform tax authorities of any schemes they put in place for their clients to avoid reporting under the OECD/G20 Common Reporting Standard (CRS).

MAY 2018

Sanctions and Anti-Money Laundering Act passed, including clauses forcing British Overseas Territories to make publicly publish registers of company beneficial owners – this is expected to happen by 2023.

25 JUNE 2018

EU mandatory disclosure rules for avoidance arrangements (DAC6) took effect with disclosures made to local tax authorities from 1 July 2020.

30 SEPTEMBER 2018

Common Reporting Standard (CRS) information exchange began.

Requirement to Correct deadline -beginning of Failure to Correct regime.

JUNE 2019

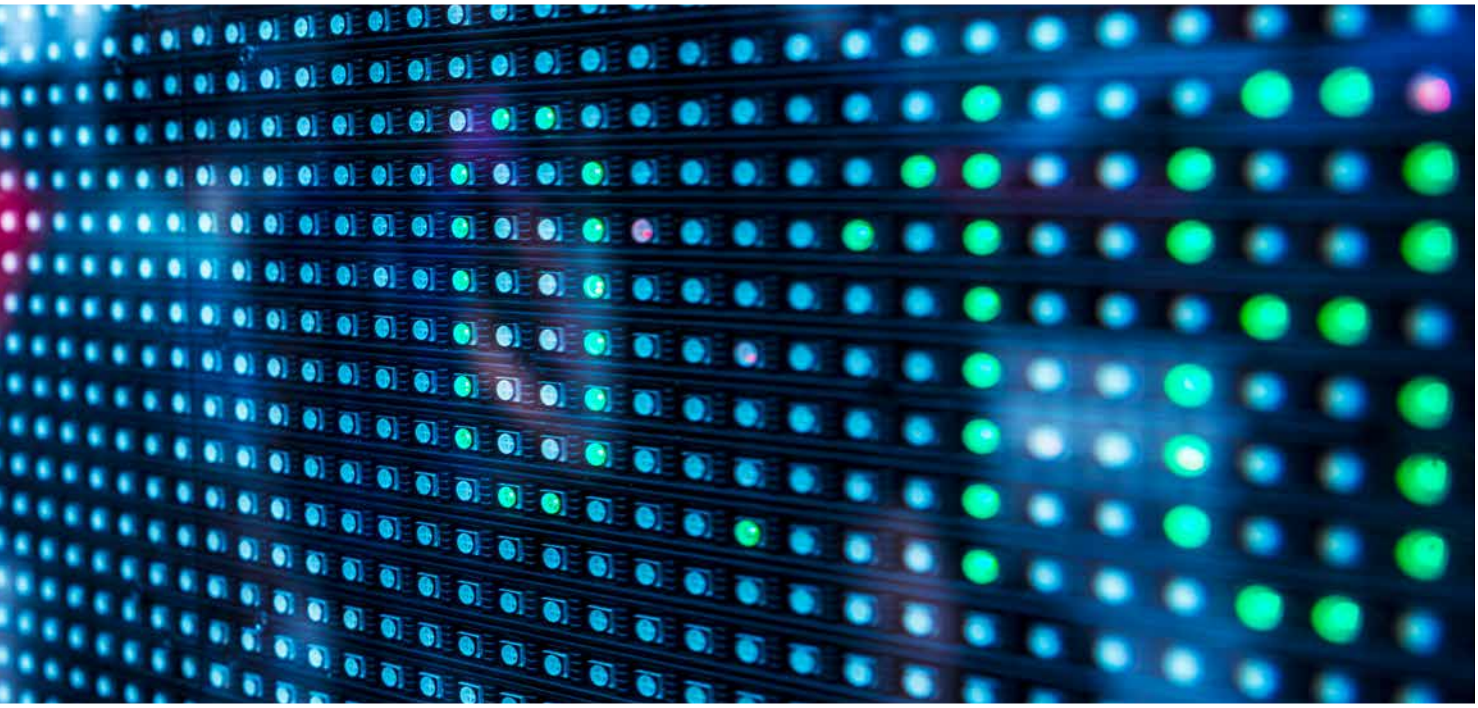
OECR published an information exchange framework to support the mandatory disclosure rules for avoidance arrangements. Countries will sign a multilateral competent authority agreement to implement the framework from 1 January 2021.

1 APRIL 2020

OECD Exchange of tax rulings XML schema comes into use.

1 JANUARY 2021

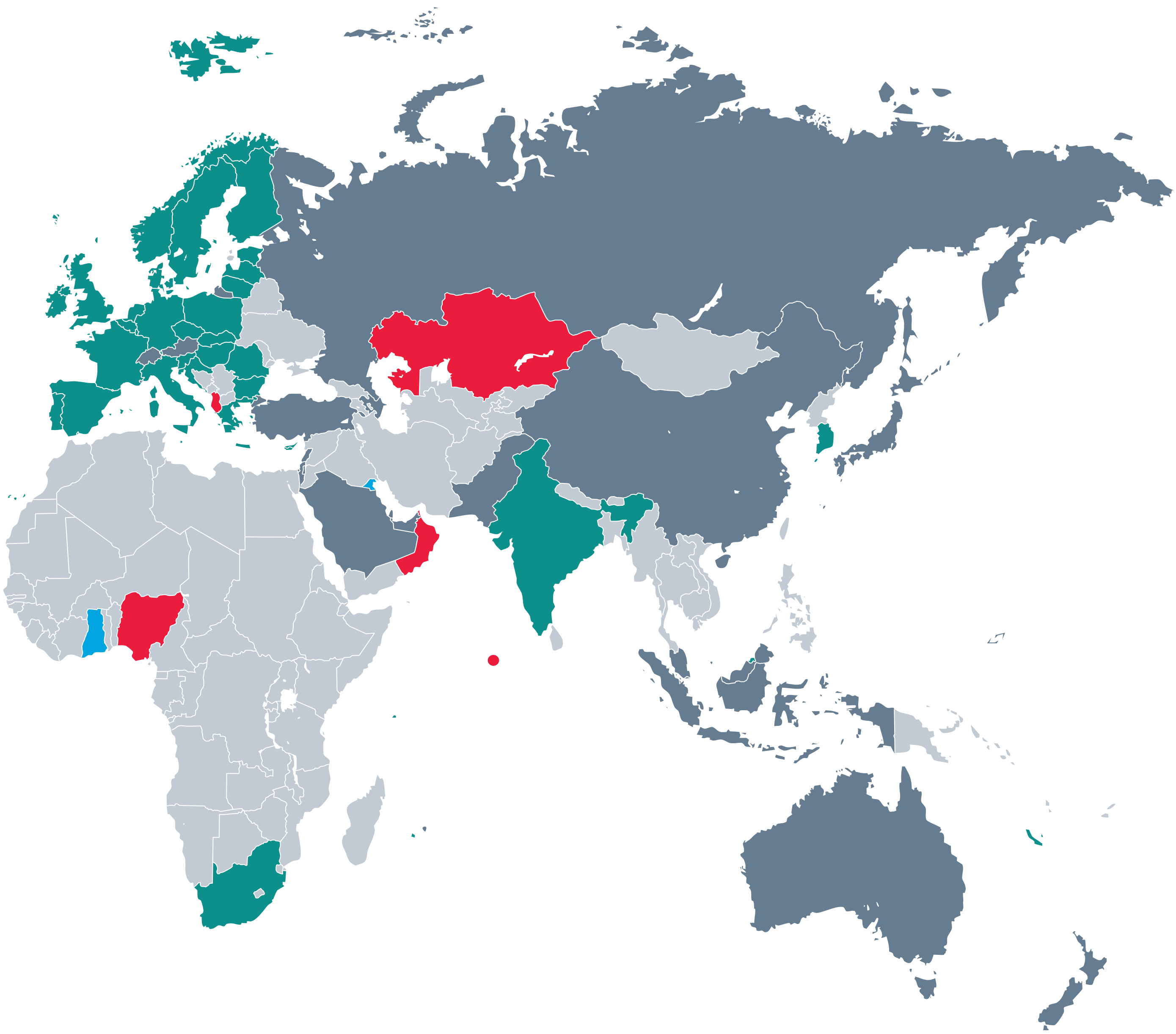
OECD XML schemas for Common Reporting Standard information and Country-by-Country reporting information come into use.



A COMMON REPORTING STANDARD ACROSS THE WORLD

JURISDICTIONS EXCHANGING DATA SINCE 2017 - EARLY ADOPTERS

Anguilla
Argentina
Belgium
Bermuda
British Virgin Islands
Bulgaria
Cayman Islands
Colombia
Croatia
Cyprus
Czech Rep.
Denmark
Estonia
Faroe Islands
Finland
France
Germany
Gibraltar
Greece
Guernsey (Channel Islands)
Hungary
Iceland
India
Ireland
Isle of Man
Italy
Jersey (Channel Islands)
Korea
Latvia
Liechtenstein
Lithuania
Luxembourg
Malta
Mexico
Montserrat
N. Cyprus
Netherlands
Norway
Poland
Portugal
Romania
San Marino
Seychelles
Slovakia
Slovenia
South Africa
Spain
Sweden
Turks and Caicos Islands
United Kingdom



JURISDICTIONS EXCHANGING DATA IN 2018 - SECOND WAVE ADOPTERS

Andorra
Antigua and Barbuda
Aruba
Australia
Austria
Azerbaijan
Bahamas
Bahrain
Barbados
Belize
Brazil
Brunei Darussalam
Canada
Chile
China
Cook Islands
Costa Rica
Curaçao
Dominica
Greenland
Grenada
Hong Kong
Indonesia
Israel
Japan
Lebanon
Macao
Malaysia
Marshall Islands
Mauritius
Monaco
Nauru
New Zealand
Niue
Pakistan
Panama
Qatar
Russia
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Samoa
Saudi Arabia
Singapore
Sint Maarten
Trinidad and Tobago
Turkey
United Arab Emirates
Uruguay
Vanuatu

2019

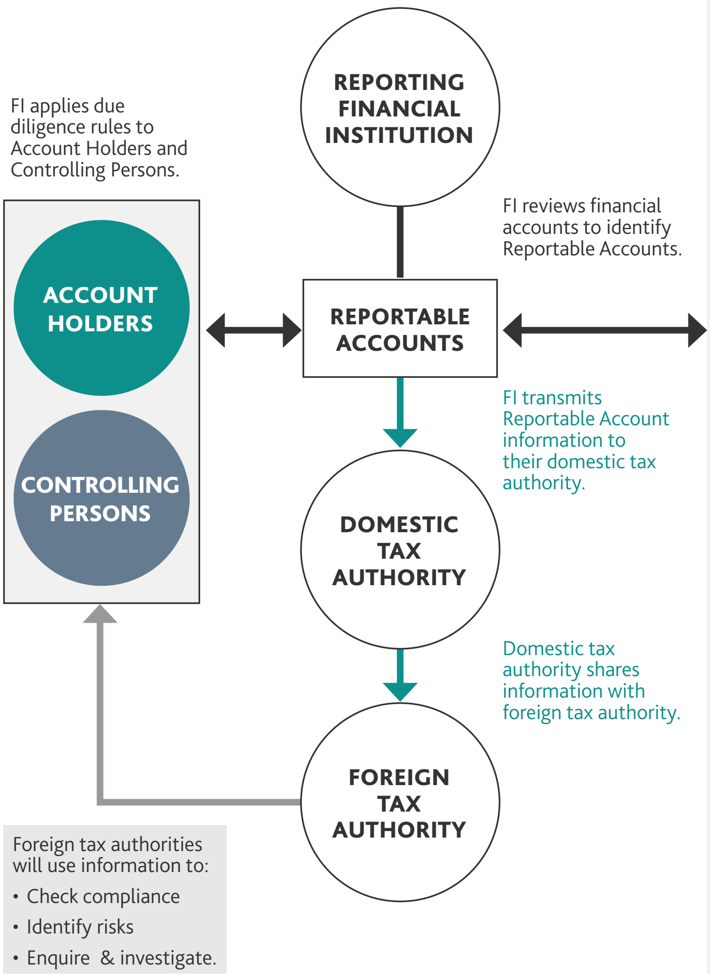
Ghana
Kuwait

2020

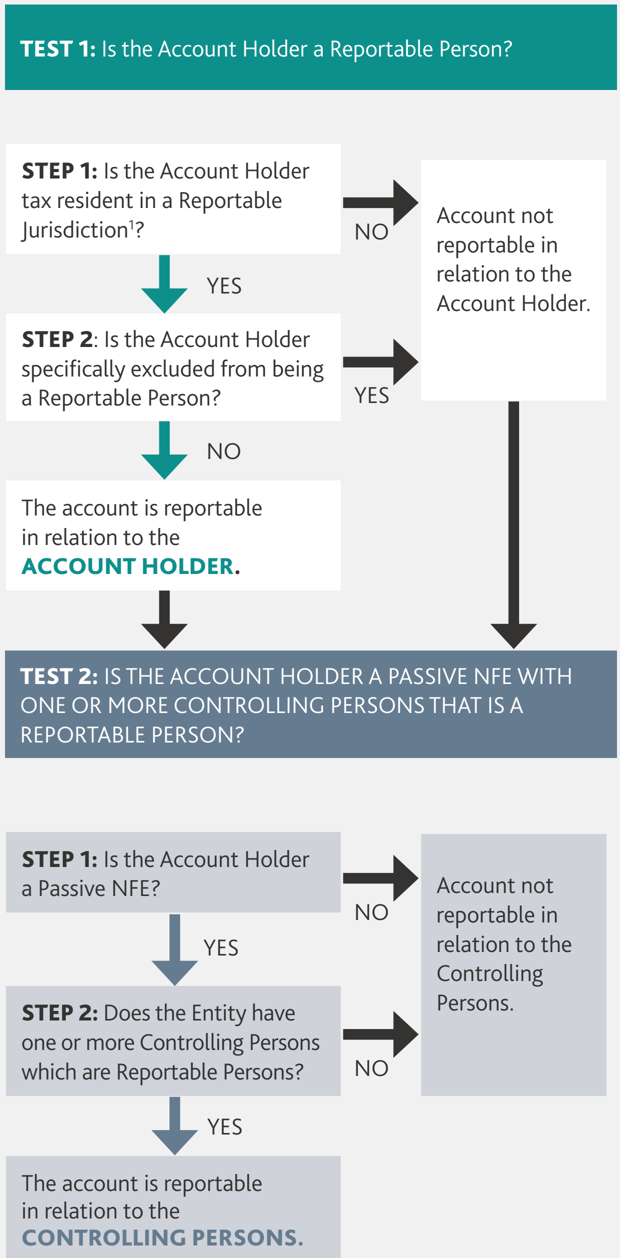
Albania
Ecuador
Kazakhstan
Maldives
Nigeria
Oman
Peru

EXCHANGE OF INFORMATION FRAMEWORK

The CRS provides the framework by which FIs will review and report customer information.



REPORTABLE ACCOUNTS



[1] In general, a jurisdiction will be a Reportable Jurisdiction if it has an agreement is in place for the exchange of information under the CRS. Each jurisdiction must publish a list of Reportable Jurisdictions.

UK APPROACH TO TAX TRANSPARENCY

The UK has been at the forefront of global initiatives to increase international tax transparency and HMRC's "No Safe Havens policy" is designed to increase offshore tax compliance and clamp down on tax avoidance.

UK ASSET OWNERSHIP

Companies

Since 2016, UK companies' annual confirmation statements to Companies House must contain details of its beneficial owners. The details must also be provided when companies are incorporated, and both limited liability partnerships and Societas Europaea must report on the people who own or control their businesses: companies whose shares are listed on a regulated stock market are exempt from these rules. Anyone is be able to request to see the information in a company's register unless the company refuses and informs the court of its refusal.

Companies must identify and report substantial information (name, address, nationality etc.) of 'persons with significant control' over the company, ie anyone who:

a) Directly or indirectly owns more than 25% of the shares
b) Directly or indirectly holds more than 25% of the voting rights
c) Directly or indirectly holds the right to appoint or remove the majority of directors
d) Otherwise has the right to exercise, or actually exercises, significant influence or control
e) Holds the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm which is not a legal entity, but would itself satisfy any of the first four conditions if it were an individual.

Trusts

Since January 2018, any trust liable to UK tax must be registered with the UK's national trust register, this includes trusts where:

1. All individual trustees are UK tax resident or the corporate trustee that is incorporated in the UK
2. The settlor was UK resident or UK domiciled at the time it was created
3. It is offshore but has UK assets or income from a UK source.

The trustees must provide basic details of trust itself (including its tax residence status and the assets it holds), its beneficial owners and any potential beneficiaries.

Land and property beneficial owner register

Various methods already exist for the registration of legal title to land in both England, Wales and Northern Ireland and separately in Scotland.

However, it is proposed, albeit currently subject to public consultation, that a register will be established from 2021 which will record the identity of offshore beneficial owners of UK property and those who control them, for example non UK resident companies and their shareholders.

Registration is expected to be enforced through the land registration process for transfers of UK property which take place after the register comes into operation. Existing owners of property will be given a period of time within which they are required to comply, currently expected to be at least a year from the date the register comes into operation. Further obligations will apply to update the register on changes in beneficial ownership, for example, when the shares in an offshore company change hands under a sale or inheritance.

Unexplained Wealth Orders

Since February 2018, HMRC can ask the UK High Court to issue an 'Unexplained Wealth Order' where there are reasonable grounds for suspecting that the person's known lawfully obtained income was insufficient to enable him to obtain the property and that fraud or criminal behaviour has occurred. The order allows HMRC to demand information from the asset owner on how it was acquired.

HMRC USE OF DATA

EXCHANGED DATA

As well as information on individuals, businesses and other entities obtained passively via the CRS and country-by-country reports and the EU directive on mandatory automatic exchange of information, HMRC can also request access to a wide variety of offshore data on UK taxpayers. Where there is a suspicion of omitted income or gains from UK tax returns, HMRC can make specific requests for data on specific taxpayers for other tax jurisdictions with which it has a Tax Information Exchange Agreement.

HMRC'S RISK AND INTELLIGENCE SERVICE

HMRC's has a dedicated central department that uses data gathered from a wide array of sources to identify UK residents who may not be declaring all their income and gains. For example, where CRS data on offshore accounts is not reflected in an individual's UK tax return HMRC will investigate further – it may cross-check with information from UK sources such as Companies House and the Land Registry) and even review the social media posts of the individual to assess whether their lifestyle is consistent with their income.

This may sound like a daunting task but HMRC has a purpose built analysis tool – CONNECT – which can process very high levels of data to compile financial profiles of individuals and businesses. This helps to automate HMRC's processes: for example, if CRS data about an offshore bank deposit has not be reported on the individual's tax return, an automated 'nudge letter' may be sent to the individual to prompt them to correct their tax position as needed and pay any additional tax due.

UK legislation contains a legal 'Requirement to Correct' any omissions from tax returns relation to overseas assets with substantial tax penalties for those who did not put things right voluntarily (for tax years to 2015/16) by 30 September 2018. Penalties for failures to correct can be up to 200% of the tax originally due. Asset based and offshore asset moves penalties may also be imposed in some circumstances, along with publishing of taxpayers' details. Significant penalties can be charged for later tax years too.

Individuals who do not respond to these 'nudge letters' are likely to face a thorough tax enquiry. These can range from a standard self-assessment enquiry to a serious civil investigation or a criminal investigation. HMRC will open these checks, rather than sending 'nudge letters', in some cases. Where HMRC finds more tax is due it may assess up to 20 years' tax depending on why the failure or error occurred.

Of course, there will be many circumstances where an apparent discrepancy is entirely innocent – for example, where a non-UK domiciled individual is claiming the remittance basis of taxation on offshore assets. It is important that such circumstances are explained clearly to HMRC to resolve the position quickly.

PUTTING THINGS RIGHT

Voluntary Disclosures

Where it is clear that a person's UK tax returns contain inaccuracies, it is always better to put things right before HMRC discovers them through its risk assessments. Making a voluntary disclosure and paying all tax due, will help to resolve the issue quickly and reduce the tax penalties that may arise. In addition, the taxpayer is likely to escape being named on HMRC's website and the risk of a criminal prosecution is removed.

Help From BDO's Expert Team

Our success in resolving all kinds of investigations, ranging from simple tax enquiries to complex investigations and voluntary disclosures, enables us to minimise the stress and anxiety associated with reaching a resolution with HMRC.

With extensive experience of disclosure and investigation practices, tactics and strategies, we guide our clients smoothly through the process and are fully equipped to protect our clients' interests. We strive to achieve the best possible result for our clients.

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