

COMMON REPORTING STANDARD ("CRS") AND THE IMPACT ON EMPLOYEE BENEFIT TRUSTS ("EBTS")

Ocorian previously issued a briefing in November 2015 ("first update") to all its clients and intermediaries regarding the status of CRS for such clients and structures administered by Ocorian in Jersey. Please [click here](#) to access the first briefing.

WHAT IS CRS?

As previously stated, CRS is the result of the drive by G20 nations to develop a global standard for the automatic exchange of financial account information. This follows the approach taken to implement United States ("US") Foreign Account Tax Compliance Act ("FATCA"). A Financial Institution ("FI") in a participating jurisdiction will be required to report certain financial information on reportable clients to its local tax authority, who in turn may exchange that information with any jurisdiction where the client or Controlling Persons are known to be tax resident.

WHO DOES CRS AFFECT?

In our first update we identified 48 jurisdictions that were participating in CRS. This number has significantly increased and at present 101 countries will implement CRS. Jersey and the United Kingdom are early adopters of CRS with first reporting to be completed in 2017 for the year ending 31 December 2016. This covers reportable accounts in participating jurisdictions for early adopters. A full list of jurisdictions is available from our website; please [click here](#) to review the current list.

Whilst UK FATCA has transitioned to CRS, it should be noted that the US has not committed to CRS reporting and thus, there will be no transition from US FATCA reporting

to CRS reporting for US tax payers. Therefore, all entities will be required to comply with CRS in addition to US FATCA.

HOW DOES CRS AFFECT EBTS?

Whilst there are similarities between each regime and they follow the same processes, there are technical differences that affect certain structures. There are two significant areas of concern for EBTS.

Firstly, for FATCA an exemption under 7.13 of the Jersey FATCA guidance notes dated 9 June 2016 was introduced to ease a reporting burden when shares become allocated within an EBT and the trustee is directed as reasonably possible to transfer the assets. HMRC has recently introduced a similar exemption under CRS, although currently such an exemption is not available in Jersey. Ocorian are involved in co-ordinating with the Chief Minister's Office in Jersey to have a similar exemption available for trustees in Jersey.

Ocorian's view is that it is reasonable to apply the exemption to the regulations which implement CRS in the same circumstances as it has been applied to the regulations implementing both the US and the UK Intergovernmental Agreements as it will in these circumstances at least lead to an equivalent outcome and not frustrate the purpose.

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There are only limited plan types that fall within the 7.13 exemption and the remaining plans may be required to report financial accounts.

responsible for ensuring Ocorian, our clients and structures remain compliant with both US FATCA and CRS.

The second area of concern is paragraph 214 in the OECD's implementation handbook. This paragraph directs trustees to look through the corporate settlor entity and identify any natural person that owns 25% or more of the shares in issue. If there are no natural persons who meet the ownership test, then the handbook directs the trustees to identify any Senior Managing Officials providing effective control of the corporate settlor. Most listed companies, and some privately owned companies, would fail to meet the natural person test, therefore the trustee would be provided to identify, for example, the Chairman, CEO and CFO. If these individuals are tax resident in a participating jurisdiction then they may be deemed as a reportable Financial Account.

Ocorian are continuing to monitor this issue and we have discussed a suitable approach to take with our advisers and peers in the industry. As a prudent approach we will shortly be requesting the information from you in respect of the settlor company but we will only report if we, and our advisers, are satisfied that it is necessary.

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If there are no natural persons who meet the ownership test, then the handbook directs the trustees to identify any Senior Managing Officials providing effective control of the corporate settlor.

WHAT ACTION HAVE OCORIAN UNDERTAKEN

When US FATCA was introduced we anticipated CRS requirements and designed processes that could be followed when implementing CRS. We have an established dedicated Tax Compliance team to focus on all the implications of the legislation and have undertaken an in-depth review of the guidance notes and handbook and refined procedures in consultation with our appointed advisors. We have also deployed bespoke software to generate reports in the specialist XML format and we have significant reporting experience, having successfully undertaken reporting for over 7,500 FATCA Reportable Accounts for 2015.

HOW CAN WE ASSIST?

As mentioned, we shall be shortly requesting the information as required by paragraph 214 and intend to provide a short-form document in order to make this as painless as possible. Therefore if you would like to discuss the details of this briefing in more detail then we would be happy to arrange a meeting with your usual Ocorian point of contact and our Head of Tax Compliance and Reporting, who is

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