Compliance Note 2

CRS/FATCA – common errors and hallmarks of compliance

FATCA and the CRS have been in operation in Jersey since 2014 and 2016, respectively. Revenue Jersey began active compliance interventions in 2019.

Revenue Jersey has identified a number of common themes which can lead to Financial Institutions (FIs) not complying with their obligations under the rules. Some of these most-common errors are listed below.

At the same time, there are similarities in the way in which FIs which most successfully demonstrate compliance organise their approach to CRS/FATCA. These FIs are able to demonstrate evidence of clearly-defined oversight and governance, well-socialised policies and procedures, testing of integration of data held on different systems and quality control reviews over all stages of the processes involved.

Ideally FIs should have well-developed Schemes of Internal Control and Assurance which Revenue Jersey can test and validate. Where such systems do not exist, this increases the likelihood that Revenue Jersey will need to undertake increased testing of CRS/FATCA reports submitted at a granular level.

Common errors

1. ***Documentation and record-keeping***
   - 1.1 Account-holder documentation linked to the incorrect account.
   - 1.2 Insufficient documentation held to demonstrate the reasons for classifying or reporting the account in the manner performed.

2. ***Discrepancies between the CRS/FATCA report submitted and the underlying account data:***
   - 2.1 Flaws in the internal logic of the report-generating system, matching accounts to the incorrect holder.
   - 2.2 Inadequate integration of data held on multiple systems before generating the report.
   - 2.3 Inbuilt “default” positions applied by reporting software (for example, the use of a default residence country code element under certain circumstances).
   - 2.4 Contradictory information being held on different systems used by the FI.
   - 2.5 Reporting account holders of client entities as account holders of the entity submitting the report.

3. ***Other issues with quality of reporting***
   - 3.1 Only one of the account holders of a joint account being reported
   - 3.2 Joint accounts reported as entity accounts, with the account holders reported as controlling persons.
   - 3.3 Incorrect currency codes used, inflating or deflating the value of accounts reported.

3.4 Incomplete addresses reported, even where the full address is held.

4. ***Due diligence:***
   4.1 Self-certifications not being obtained and validated in every instance for new accounts.
   4.2 Lack of evidence of critical review of account holders claiming not to have TINs.
   4.3 Controlling persons not being identified for entity accounts.
   4.4 Incomplete documentation being accepted without appropriate levels of scrutiny.
   4.5 Changes of circumstances not followed up.
   4.6 No additional processes in place where an Account Holder or Controlling Person declares themselves to be tax resident in a jurisdiction identified by the OECD as having a potentially high-risk residence or citizenship by investment scheme.
   4.7 Lack of evidence of ongoing efforts to obtain US TINs for FATCA purposes.
   4.8 Not identifying/reporting all the controlling persons of corporate trustees.

5. ***Undocumented accounts:***
   5.1 Reporting accounts as being undocumented in circumstances other than where the only evidence of jurisdiction of residence held is a “care of” or “hold mail” address.
   5.2 Not annually undertaking a review of undocumented accounts.

<u>Hallmarks of effective implementation of CRS/FATCA</u>

1. ***Stakeholder collaboration and oversight***
   1.1 Clearly defined governance and oversight over CRS/FATCA obligations at board and operational levels, particularly where different parts of a business have responsibility for different stages of the process, such as client on-boarding, tax governance, IT and accounts preparation teams.
   1.2 Clear communication in relation to CRS/FATCA compliance, including regular discussion at board and operational team levels; and reporting of key metrics.
   1.3 Oversight responsibilities assigned to experienced, trained staff, leading to effective controls being in place.
   1.4 Where group functions are centralised, appropriate oversight by the Jersey reporting entity.

2. ***Training***
   2.1 Mandatory training for stakeholders and employees with responsibilities pertaining to CRS/FATCA rolled out to all relevant staff and repeated periodically (e.g. to capture new employees and those moving position within the business).

2.2 Training delivered to staff with specific CRS/FATCA compliance responsibilities, in particular in relation to on-boarding and the validation of documentation, reflecting specific issues likely to be encountered by these employees.

3. Documentation and record-keeping

3.1 Formal documented policies and procedures for tax governance and CRS/FATCA.

3.2 Adequate documentation associated with accounts, including documentation of internal review processes undertaken.

3.3 Evidence of the completion of enhanced procedures, such as for high-value pre-existing account holders or undocumented account holders.

4. Reporting systems, data extraction and report return preparation

4.1 Complete extraction and consistent quality of data where multiple legacy systems are used.

4.2 Effective integration, within systems used to generate CRS/FATCA reports, of account activity information with data held on client identification management systems.

4.3 Adequate procedures implemented to ensure the completeness and accuracy of the CRS/FATCA report such as analytical reviews, reasonableness checks and exception testing.

5. Due diligence

5.1 Self–certifications obtained and validated in every instance for new accounts, including collection of TINs.

5.2 Evidence of critical review where account holder claims not to hold a TIN.

5.3 Controlling Persons identified for entity accounts and changes of circumstances followed up.

5.4 Jointly-held accounts correctly identified as such and all account holders identified.

5.5 Additional processes in place where an Account Holder or Controlling Person declares themselves to be tax resident in a jurisdiction identified by the OECD as having a potentially high-risk residence or citizenship by investment scheme.

5.6 Evidence of ongoing efforts to obtain TINs for US residents and citizens.

5.7 Documented policies and procedures to identify and act on false self-certifications being submitted by clients.

For further details, please contact the International Tax team in Revenue Jersey on aeoi@gov.je or +44 (01534) 440605.

Revenue Jersey

May 2021