



Common Reporting Standard

Offshore financial accounts to be reported

With the ATO set to automatically receive overseas account information on Australian taxpayers, holders of offshore bank accounts and financial instruments need to act now to ensure they are compliant.

March 2018

KPMG.com.au



This year the Australian Taxation Office (ATO) will start receiving annual information about Australians' offshore financial accounts from 77 jurisdictions including Switzerland, Singapore, the Cayman Islands, Bermuda, South Africa and Samoa. For more than a year, the ATO has been incrementally bringing into force automatic exchange agreements through an international convention, which has been adopted by 117 jurisdictions. The next automatic exchange of information jurisdictions to come into force include Israel, Hong Kong, Panama, The Bahamas, and the United Arab Emirates.

The unprecedented move is part of a global initiative driven by the OECD and known as the Common Reporting Standard (CRS). It is designed to crack down on global tax evasion.

Following the 2016 Panama Papers affair and mounting international pressure, more than 80 jurisdictions including known tax havens have committed to and are currently on track to automatically exchange information under the convention. Panama added its signature in January 2018.

Under the CRS, information is collected and exchanged in relation to new and existing accounts held with financial institutions around the world, leveraging information obtained under the 'Know Your Client' rules, supplemented by new requirements.

The CRS operates in addition to the European Commission's fourth Anti-Money Laundering Directive on 'Ultimate Beneficial Ownership', and the United States' Foreign Account Tax Compliance Act (FATCA) program.

It professes to create "a truly global exchange network for the automatic exchange of financial account information" using a common reporting standard for ease of data analysis.

Developments to date

In the 2015 financial year, more than 2,500 Australians made voluntary disclosures to the ATO under 'Project DO IT', which provided an amnesty to taxpayers who reported foreign source income. According to the ATO, the disclosures provided it with a "wealth of intelligence" for use in future investigations of tax avoidance.

Through Project DO IT, the ATO was able to identify a number of jurisdictions through which Australians commonly invest (by the holding of financial accounts or instruments) or establish offshore structures, including Switzerland, Israel, United Kingdom, Singapore and Hong Kong. In the course of that amnesty, the ATO identified more than 300 financial institutions that were being used by Australians for that purpose.

As new information flows under the CRS, the ATO will no doubt leverage it against the intelligence it already holds, and the information it can obtain from the 37-member Joint International Taskforce on Shared Intelligence and Collaboration of which it is a member and for which Commissioner Jordan is the sponsoring Commissioner.

Combined with the information the ATO already receives under Australia's bilateral treaties, Tax Information Exchange Agreements, the Panama Papers, the Paradise Papers, disgruntled former employees of 'service providers', and from informants and whistle-blowers, the ATO is strengthening its tax avoidance detection capabilities. It is only a matter of time before the ATO becomes aware of the non-disclosure of financial account information (potential foreign source income) and overseas structures for which Australian resident taxpayers have an interest.

The ATO means business – two new taskforces

The Tax Avoidance Taskforce:

- Funded with \$679 million over 4 years, led directly by Commissioner Jordan.
- Will further increase the ATO's specialist audit and investigation teams dedicated to addressing international tax risks and focusing on high net wealth individuals, trusts and tax scheme promoters.

The Serious Financial Crimes Taskforce (SFCT):

- Has received \$127.6 million of government funding over 4 years to pursue international tax evasion fraud, among other projects.
- Involves the ATO, AUSTRAC, the Australian Border Force, the Australian Federal Police, the Criminal Intelligence Commission and the Commonwealth Director of Public Prosecutions, and others.
- By 31 March 2017, the SFCT was already investigating more than 340 Australians with links to promoters of offshore tax schemes.

The Federal Minister for Revenue and Financial Services, the Hon. Kelly O'Dwyer MP warned in March 2017 that those who did not come forward and were caught "will face the full force of the law, including significant financial penalties, and in cases of criminality, possible jail time".

WHO NEEDS TO KNOW?

Who could be impacted?

For high net wealth individuals and Family Offices that are 'Australian tax residents' and have financial account information overseas, particularly in low tax or no tax jurisdictions such as Switzerland, Singapore, the Cayman Islands, Bermuda, South Africa and Samoa, there is potential to be exposed where they are in receipt of unreported foreign source income.

Exposure also arises for those taxpayers who reported under Project DO IT but have not DONE IT going forward, meaning they are in breach of their Project DO IT settlement agreements or other compliance agreements entered into with the ATO.

What information will the ATO receive?

Information about all controlling persons who are Australian tax residents (and about the account holder, if it is an Australian resident).

The information will be provided in a standard electronic format suitable for automated processing by the ATO, including data-matching with existing data already held by the ATO or obtained from other government agencies.

This information includes:

- names
- addresses
- tax identification numbers
- date of birth
- account numbers
- year-end account balances
- the total amount paid or credited to the account holder or distributed to beneficiaries
- details of investment income (including interest and dividends)
- account balances and sale proceeds from financial assets
- accounts held in the names of individuals and entities (including, companies, partnerships, trusts and foundations).

Passive entities will be 'looked through' to identify controlling persons. For example, the controlling persons of a trust are the settlors, trustees, protectors, beneficiaries and any individual exercising ultimate control over the trust. If the settlor, trustee, protector or beneficiary is an entity, then it is also looked through, and its controlling persons must be identified through the chain of ownership up to the controlling individuals.

Voluntary disclosures welcome

The ATO is still accepting voluntary disclosures and encourages those who believe they may have undeclared offshore income to come forward.

Taxpayers who make a voluntary disclosure may receive reductions in the heavy penalties and interest charges which typically apply to these types of arrangements where such income is not previously reported. Such penalty could potentially be as much as 90% of the shortfall amount of tax arising from the unreported income.

Criminal penalties may also be imposed. In our experience, those who come forward voluntarily are less likely to be referred for criminal prosecution.

How can we help?

If you have, or know of taxpayers who have, assets or income in tax havens overseas, chances are that information may be shared with the ATO one day. One of the ways in which the KPMG Law Dispute Resolution & Controversy team can help taxpayers to manage the risks and reduce any potential penalty and interest which may be imposed is to assist taxpayers with making voluntary disclosures and engaging with the ATO from an early stage.

We can provide confidential legal advice on taxpayers' positions to taxpayers and advisors drawing on our deep experience and insights gained from acting for both taxpayers and the ATO in offshore asset cases, responding to the ATO's amnesty programs and assisting taxpayers to make voluntary disclosures to the ATO. In our capacity as solicitors, our advice can be provided within a regime of confidentiality which attracts the common law right of legal professional privilege – this means the information shared with us cannot be obtained by the ATO through use of their compulsory information gathering powers.

The CRS is a:

progressive regime under which Australia will receive financial information from an increasing number of jurisdictions on an annual basis.

What's different about this information?

- targeted to exposing tax structures and controllers
- high quality – designed for 'data-matching'.

How will the ATO use it?

- new government taskforces and investigations
- collection of tax, penalties and interest
- potential criminal prosecution.

Contact us

We are available to discuss with you or your client, on a confidential basis, any potential exposure under the ATO's overseas financial information sharing regime and how best to respond.

For more information, please contact us on the contact details below.



Sarah Blakelock
Partner
KPMG Law, Brisbane
T: +61 7 3233 3116
E: sblakelock@kpmg.com.au



Brett Mitchell
Partner
KPMG Enterprise, Sydney
T: +61 2 9335 7398
E: bmittchell@kpmg.com.au



Clive Bird
Partner
KPMG Enterprise, Melbourne
T: +61 3 9288 6480
E: clivebird@kpmg.com.au



David Pring
Partner
KPMG Enterprise, Parramatta
T: +61 2 9455 9996
E: davidpring@kpmg.com.au



Charles Suttie
Special Counsel
KPMG Law, Sydney
T: +61 2 93 357 654
E: csuttie@kpmg.com.au



Brent Murphy
Partner
KPMG Enterprise, Sydney
T: +61 2 9455 9466
E: brentmurphy@kpmg.com.au



Dominic Pelligana
Partner
KPMG Enterprise, Melbourne
T: +61 3 9288 6386
E: dpelligana@kpmg.com.au



Ashley Miller
Partner
KPMG Enterprise, Adelaide
T: +61 8 8236 3316
E: amiller1@kpmg.com.au



Robyn Langsford
Partner
KPMG Enterprise, Sydney
T: +61 2 9455 9760
E: rlangsford@kpmg.com.au



Simon Thorp
Partner
KPMG Enterprise, Sydney
T: +61 2 9335 7973
E: sjthorp@kpmg.com.au



Bill Noye
Partner
KPMG Enterprise, Brisbane
T: +61 7 3233 3253
E: wnoye@kpmg.com.au



Agnes Vacca
Partner
KPMG Enterprise, Perth
T: +61 8 9263 7211
E: avacca@kpmg.com.au

KPMG.com.au

KPMG Law is an Australian partnership and an associated entity of KPMG. KPMG is an Australian partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity.

© 2018 KPMG Law, an associate of KPMG. KPMG is an Australian partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

Liability limited by a scheme approved under Professional Standards Legislation.

March 2018. N16393ENT