



TaxNewsFlash Canada

Fls — Ensure Self-Certifications Meet CRS & FATCA Rules

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Canadian financial institutions should review their procedures for reporting under the Common Reporting Standard (CRS) and Foreign Account Tax Compliance Act (FATCA) as a result of updated guidance released by the Canada Revenue Agency (CRA). The CRA released separate guidance revisions for each regime on April 20, 2020 that, among other changes, provide penalties of up to \$2,500 per account where self-certifications are not collected on a timely basis. These penalties are effective January 1, 2021. In addition, the guidance clarifies the self-certification Tax Identification Number (TIN) requirements, introduces new CRS due diligence procedures, and addresses the FATCA reporting requirements where a self-certification is not received.

As a result of these significant changes, Canadian financial institutions should review their due diligence and reporting procedures to ensure they fully comply with CRS and FATCA rules. This is important especially because the new penalties that will apply for 2021 could be significant where they are applied to numerous accounts.

Background

Canada's CRS rules require reporting financial institutions to identify accounts held by tax residents of jurisdictions outside of Canada and the United States (including persons with dual or multiple tax residency) and report specific information relating to these accounts directly to the CRA each year. This information can include account balances and certain amounts paid or credited to the account including interest, dividends, and proceeds from the sale of financial assets.

A reporting financial institution must file a prescribed information return with the CRA by May 1 of each year. This return must provide information relating to reportable accounts that it maintained at any time during the preceding calendar year.

As part of CRS and FATCA due diligence procedures, a financial institution is required to obtain a self-certification to establish whether an account holder is reportable under either regime. A self-certification provides key information in respect of the account holder, including identification details and tax residency.

Canada's CRS rules include concepts that are largely drawn from the U.S.-based FATCA, which has a similar focus on financial accounts and the financial institutions that maintain them. As a result, Canadian financial institutions may be able to leverage certain aspects of the systems they currently have in place to meet the Canadian rules that require them to comply with FATCA.

Recently, the CRA announced that it would extend the reporting deadlines for information returns related to FATCA and CRS to September 1, 2020 (from May 1, 2020). For details, see *TaxNewsFlash-Canada* 2020-40, "[CRA Extends Deadlines for FATCA and CRS Returns](#)".

Valid self-certifications required “day one”

The CRA's updated CRS and FATCA guidance expands on the requirement for financial institutions to collect self-certifications and review them for reasonableness and validity as part of the account opening process. In particular, where a financial institution cannot complete self-certification on the day the account is opened because this process is undertaken later by a back-office, the financial institution must complete the review process within 90 days of the account opening. In limited instances where a self-certification cannot be obtained on the day an account is opened due to the specificities of a particular business sector, the financial institution must obtain and review the self-certification for reasonableness and validity as quickly as feasible, and no later than within 90 days of account opening.

If a self-certification is not provided during the account opening process, the financial institution may have to report the account for CRS and/or FATCA purposes. A financial institution that fails to obtain a self-certification in any case may incur a maximum penalty of \$2,500 for each such failure, effective January 1, 2021. Further, financial institutions that do not obtain a required self-certification for certain changes in circumstances on an account that has already been opened may also be assessed these penalties.

KPMG observations

Financial institutions should ensure they obtain a self-certification as part of the account

opening process to avoid penalties. For financial institutions that are required to comply with both CRS and FATCA rules, the penalty could be up to \$5,000 per account.

Obtaining TINs

The CRA's revised guidance also clarifies that a self-certification is not invalid just because the account holder did not provide a TIN, a TIN may be collected through other means. Regardless of whether an account holder provides a TIN, a financial institution must still report any account determined to be reportable to the CRA by filing the applicable information return. The CRA also states that an account holder that has a Canadian TIN should report it on their self-certification. Account holders that fail to provide a TIN on request may be liable to penalties.

KPMG observations

Financial institutions should use reasonable efforts to obtain an account holder's foreign TIN where the account holder is a reportable person and the jurisdiction of residence of the reportable person issues and collects TINs.

Citizenship and residence by investment schemes

In the revised CRS guidance, the CRA states that reporting financial institutions should adjust their self-certification review procedures to address certain concerns raised by the OECD relating to citizenship and residence by investment (CBI/RBI) schemes. Generally, CBI/RBI schemes permit foreign individuals to obtain citizenship or temporary or permanent residence rights in a number of jurisdictions through making local investments or paying a flat fee. Some CBI/RBI schemes, such as those that do not require an individual to spend a significant amount of time in the location and impose a low income rate on offshore financial assets, can be misused to undermine the CRS due diligence procedures.

The revised CRS guidance addresses situations where the residence of an account holder or controlling person is in a jurisdiction that offers a potentially high-risk CBI/RBI scheme. In these cases, the revised CRS guidance suggests certain additional procedures that financial institutions may undertake.

FATCA reporting where no self-certification received

The CRA's revised FATCA guidance notes that, effective January 1, 2020, where a financial institution opens an account but does not obtain a self-certification, this account is not considered reportable for FATCA purposes as long as certain due diligence procedures are performed and no U.S. indicia are identified. Under previous versions of the guidance,

financial institutions were generally required to treat the account as reportable for FATCA purposes.

Note that the financial institution may still be subject to the penalty of up to \$2,500 for failure to obtain a self-certification.

We can help

Canadian financial institutions should ensure that their due diligence and reporting procedures are in compliance with CRS and FATCA rules. Please reach out to your local KPMG tax advisor for additional assistance.

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