

TAX ISSUES

Challenges in complying with the first Common Reporting Standard in Nigeria – The way forward

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Background
Nigeria joined other signatories to the Common Reporting Standard – Multilateral Competent Authority Agreement (CRS-MCAA) in August 2017 as part of its commitment to combat tax evasion globally. Subsequently, the Federal Government via the Federal Inland Revenue Service (FIRS) issued the Income Tax Common Reporting Standard Regulations, 2019 (the Regulation) as the legal basis for the implementation of the Automatic Exchange of Information (AEOI) in Nigeria.

According to the Regulation, financial institutions (FIs), including banks, asset management companies, life insurance companies, funds are required to prepare and submit CRS returns, covering information on reportable persons, to FIRS for onward exchange with tax authorities of other participating jurisdictions. While some FIs successfully filed their CRS return before the deadline, several stakeholders encountered challenges in the preparation and filing of the return as 2020 was the first year of compliance in Nigeria.

This article highlights some of the challenges noted in complying with the CRS Regulation and recommends ways to ease compliance for FIs in Nigeria going forward.

Overview of the CRS Compliance Requirements

The CRS Regulations require FIs in Nigeria to submit information of reportable persons annually to the FIRS by 31st May of every year, in a machine language known as the "XML" format. The reportable information includes name of the customer, Tax Identification Number (TIN), country of residence, address, account balance, account number, phone number etc.

In identifying the reportable persons, FIs are required to conduct a review of their customer database by performing due diligence procedures on customer accounts. This entails verifying the tax residency of the customer by confirming the existence of indicia such as mailing or residential address or phone number in a participating jurisdiction, standing instructions to transfer funds to an account maintained in a reportable jurisdiction, valid power of attorney issued to a person with an address in a reportable jurisdiction and a hold mail instruction or in-care-of address in a reportable jurisdiction. The accuracy of a FI's due diligence is dependent on how accurate and up to date its records on customers are in its database. This is essential to avoid the potential exposure to the stiff penalty (as stipulated in the Regulation) for transmitting false data to FIRS.

Therefore, to enable collation of up to date data, FIs are required to send self-certification forms to be completed by preexisting account holders who are suspected to be resident in any of the participating jurisdictions. Also, self-certification



forms are required to be sent in instances of inadequate documented information on a customer and to new account holders who opened their account on or after 1 July 2019.

In addition, the Regulation requires taxpayers to keep records of the steps undertaken and any evidence relied upon or any information obtained or created for the purpose of complying with the Regulation for a minimum of six (6) years.

In performing the above-mentioned activities, taxpayers encountered several challenges ranging from difficulty in verifying customers' residency as a result of reluctance in completing the self-certification forms; inadequate sensitization of the public on their role as customers of FIs; delayed publicity of the new requirement for FIs in Nigeria; and difficulty with submission on the portal. Regardless of the fact that the issues noted may be connected to the novelty of the exercise, stakeholders will have to work hand-in-hand to ensure a hitch-free compliance process in the submission of FY2021 returns and beyond.

Key challenges encountered and suggested recommendations

Due diligence

One of the major challenges encountered in performing due diligence for the 2020 filing is outdated information which was insufficient in determining the tax residency of some customers. It is common knowledge that some Nigerians have migrated to other countries in recent times, without their Nigerian FIs having up-to-date information on them. Also, certain fields, such as the Tax Identification Number (TIN) of the individuals in their country of residency, were absent from the database of FIs, thereby making the required information for CRS returns incomplete.

As predicted by the CRS Guidelines ("the Guidelines") the use of self-certification forms therefore became paramount in achieving the successful fulfillment of the CRS requirements. However, the completion and retrieval of these forms posed serious challenges in filing the 2020 returns. Several customers refused to complete the forms, citing as an additional administrative bur-

den. Others refused to provide their foreign TIN, (or its equivalence such as social security number) stating it as not applicable in their respective jurisdiction or that it is confidential information. This is due to the sensitivity of the TIN/social security number which may be linked to other delicate information.

On the other hand, FIs especially Banks in Nigeria were unable to compel unwilling customers to provide the required information. Measures such as; penalizing the recalcitrant customers could not be taken. This is on the strength that these customers have not contravened any of CBN's KYC requirements (as provided in the Anti Money Laundering (AML) and Combating the Financing of Terrorism (CFT) in Banks and Other Financial Institutions in Nigeria Regulations, 2013. Hence, some FIs simply relied on the limited information at their disposal in submitting the required returns in order to ensure that the deadline was met.

To combat this problem, customers should be continuously enlightened about the CRS requirements, their role in enabling the FIs fulfill their CRS obligations and the commitment of the tax authorities in ensuring customer data is well protected. FIs should also require customers to update their details regularly, knowing that the CRS compliance obligations have come to stay. This will assist FIs to easily identify where there is a change in circumstance thereby making the individual/entity reportable or not. Additionally, as the May 2021 deadline draws near, FIs are advised to follow up closely with customers yet to respond to the self-certification forms with the aim of amending any incomplete information previously filed in FY 2021 returns.

Furthermore, in achieving more success with the self-certification forms, FIRS may have to harmonize its requirements with that of CBN's. This will empower the banks to enforce compliance in line with the existing regulatory framework as well as minimize the administrative burden for customers.

Awareness

Despite the CRS Regulation being issued over a year ago, in August 2019, before the returns were due for filing in October 2020, many FIs had little or no knowledge of the reporting

requirements and therefore struggled to meet up with the timeline. It is commendable that FIRS organized sensitization programs and training sessions for the relevant institutions. However, this commenced in August 2020, which made its impact not to be as far reaching as it should have been. Therefore, many of the stakeholders were not sufficiently or deeply sensitized.

While currently there are no available statistics on the percentage of non-compliance with respect to the 2020 CRS filing, from casual observations, it would appear that several FIs were yet to be aware of this obligation let alone comply as at 30 October 2020 which is over four (4) months after the initial deadline of 31st May 2020.

In view of the gap noted in the level of compliance with the 2020 CRS filing, it is necessary for FIRS to continue to sensitize companies in each specific sub-sector of the financial services industry from time to time. This will ensure that the desired outcome of full participation can be achieved.

Further to the above, it was noted that FIRS' publicity on the self-certification forms caused uproar among stakeholders (particularly customers of Nigerian banks). The public notice insinuated that all account holders in FIs should complete the forms compulsorily without reference to the provisions of the Guidelines (Part II, Sections III and IV). These sections provide that the forms should be completed by preexisting customers with an indication of being reportable and all new customers (with accounts opened from 1st July 2019). Nevertheless, the tax authorities later clarified in a subsequent communication that only holders of reportable accounts are required to comply with this requirement. The initial notice made it more challenging for FIs to achieve much success with the self-certification forms.

It is pertinent that the populace be well notified on tax obligations that may affect them. FIRS should continue to engage with taxpayers on their expectations regarding the forms. This will assist to douse contradictions as much as possible and also strengthen the efforts of FIs in achieving a higher compliance with the self-certification forms.

Submission of returns

As stated in the Guidelines, the reporting format for the CRS return is a machine language known as XML format. Reporting in this format is essential to preserve the confidentiality of information submitted to FIRS as well as aid easy exchange with other participating jurisdictions. During one of the training sessions organized by FIRS, they stated that a software provider had been employed for the creation of the CRS submission portal. This portal enables the registration and submission of reportable information provided by FIs.

However, due to the nature of this software, reportable information collated by FIs had to be split into the different jurisdiction categories before they could be successfully submitted on the portal. This made

the submission process cumbersome for FIs with large data relating to several jurisdictions as the return had to be split into different XML files per jurisdiction before uploading. It may be beneficial to update this software ahead of the 2021 submissions with the ability to accept data in a single file which can be automatically split into the different jurisdictions by the portal. This will make submission easier for taxpayers thus improving the time it takes to comply with the CRS obligation.

Furthermore, the CRS portal went live on 1 September 2020, which is a little too close to the deadline. Thus, FIs in Nigeria were left with just 30 days to file their returns before the deadline was subsequently moved to 31 October 2020. As a result, the portal encountered a lot of downtimes which may have been due to congestion caused by several FIs accessing the portal at the same time in a bid to meet up with the deadline.

To resolve this issue, FIRS is encouraged to ensure the CRS portal is up and running well ahead of the 31 May 2021 deadline which is only a few months away. This will encourage early submissions and avoid congestion close to the 2021 deadline. Additionally, a bigger bandwidth to accommodate more taxpayers may be considered due to taxpayers who typically wait till the eleventh hour to comply, thus both early and late filers can be accommodated seamlessly on the portal.

Final thoughts

Undoubtedly, stakeholders are expected to encounter teething problems given that it was the first year of compliance in Nigeria.

Whilst several FIs, especially in the banking industry, did not allow the above challenges to deter them from fulfilling their CRS obligations, the compliance rate could have been higher if other subsectors in the FS space also recorded high compliance rates. Thus, it is important that the 2021 compliance processes are better and easier to accomplish to achieve greater successes. Therefore, my final thoughts to FIs are that they should commence promptly their internal arrangements aimed at ensuring early compliance with the May 2021 deadline.

Lastly, to the FIRS; it is commendable that the Federal Government now reviews the Nigerian tax laws and issue amendments through the annual Finance Act, as it ensures that our laws are in tandem with current realities. Similarly, a regular review of the CRS Regulation and Guidelines to ensure that inadequacies are removed is advised, and further improvements made to achieve more success with each compliance cycle. Also, upgrades to the CRS software should be done regularly to enhance the efficiency of the CRS process in Nigeria. This will aid the ease of receiving information and ultimately bolster compliance.

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