

Implementing regulations regarding the automatic exchange of tax information between states (CRS)

18 November 2015

17 November 2015 saw the publication of Royal Decree 1021/2015 of 13 November 2015 by the Ministry of Taxation and Public Administration in the Official State Gazette. The above Royal Decree establishes the obligation to identify the tax residence of persons holding or controlling certain financial accounts and to report them within the context of mutual assistance.

[Link to Royal Decree 1021/2015 of 13 November 2015, regarding CRS](#)

It transposes into domestic legislation the rules on the information to be reported to the tax authorities in respect of financial accounts and due diligence procedures that must be applied by affected financial institutions when obtaining such information per Directive 2011/16/EU of the Council, amended by Directive 2014/107/EU of the Council of 9 December 2014 as regards mandatory automatic exchange of information in the field of taxation and the provisions of article 29 bis and additional provision twenty-two of General Taxation Law (GTL). The Royal Decree is set to enter into force on **1 January 2016** and Spanish financial institutions must therefore report the relevant information relating to 2016 to the tax authorities in 2017.

The following chart summarises the deadlines for compliance with the main CRS requirements.

Requirement	Deadline
Identification of new accounts	1 January 2016
Remediation of preexisting individual accounts > 1MM \$	31 December 2016
Remediation of preexisting individual accounts < 1MM \$	31 December 2017
Remediation of entity accounts	31 December 2017
First reporting to STA	by 31 March 2017?

Identification requirement

For these purposes, “financial institutions” shall be deemed to refer to institutions that (i) accept deposits in the course of their banking activity, (ii) act as custodians of securities or financial instruments (iii) primarily conduct as a business activity investment in the name and behalf of customers and (iv) are insurance companies that issue or are obligated to make payments on cash-value insurance contracts or annuity contracts. Nonetheless, the obligations set forth in the Royal Decree expressly exclude certain types of financial institutions and provide for the possibility of extending the list of excluded institutions by Ministerial Order.

The Schedule to the Royal Decree specifies the due diligence rules and procedures to be implemented by financial institutions obliged to report financial accounts held thereat, in order to identify the tax residence of the persons holding or controlling such accounts and comply with the annual reporting obligation where they are tax resident in any of the following countries or jurisdictions:

- a) Another member state of the European Union, any territory subject to Directive 2011/16/EU of the Council, amended by Directive 2014/107/EU, or any other country or jurisdiction with which the European Union has entered into an agreement whereby the country or jurisdiction in question must furnish the information specified in article 5 of the Royal Decree.
- b) Another country or jurisdiction with respect to which the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information being published has taken effect and with which there is a mutual exchange of information.
- c) Any other country or jurisdiction with which Spain has entered into an agreement for the mutual exchange of information provided for in article 5 of the Royal Decree on the terms set forth therein.

The annual informative report must be submitted in the manner and place and by the deadline specified in the Order of the Ministry of Taxation and Public Administration, which will include the list of countries or jurisdictions with respect to which accounts held or controlled by persons with tax residence therein must be reported.

Information to be reported

The information to be reported in respect of each account subject to reporting obligations, notwithstanding the exceptions detailed in the Royal Decree, is stated in article 5 as follows:

- a) Name and surnames or company or complete name, domicile, country/countries or jurisdiction/s of residence and taxpayer ID of all account-holder individuals or legal entities subject to a reporting obligation.

In the case of individual account-holders, their date and place of birth must also be reported.

Where the account-holder is a passive non-financial entity with one or more controlling persons and where such persons are subject to reporting obligations, the above information must be reported with respect to the entity and each of the persons exerting control over such entity.

- b) The account number.
- c) The name and ID number of the financial institution obliged to report information.
- d) The account balance or value at the end of the calendar year under consideration. In the case of cash-value insurance contracts or annuities contracts, the cash or surrender value must be reported.
- e) In the case of custodial accounts:
 - 1. The total gross amount of interest, dividends, and other income generated with respect to the assets held in the account, in each case paid or credited to the account or with respect to the account during the calendar year.
 - 2. The total gross proceeds from the sale or redemption of financial assets paid or credited to the account during the calendar year with respect to which the reporting financial institution acted as a custodian, broker, nominee, or otherwise as an agent for the account holder.
- f) In the case of a depository account, the total gross amount of interest paid or credited to the account during the calendar year.
- g) In the case of non-custodial or depository accounts, the total gross amount paid or credited to the account holder with respect to the account during the calendar year with respect to which the reporting financial institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the account holder during the calendar year.

The information reported must specify the currency in which each amount is denominated.

Other noteworthy aspects

In addition to the above, the following aspects provided for in the Royal Decree are worth bearing in mind:

- The tax residence of all persons holding or controlling the financial accounts on the terms set forth in the Royal Decree (“*wide approach*” of the CRS) must be identified.
- The obligations on financial institutions detailed in this Royal Decree must be interpreted in line with the OECD Commentaries on the Model Competent Authority Agreement and the Common Reporting Standard.
- Before reporting information to the Spanish tax authorities, financial institutions must inform individual account-holders that the information on them referred to in the Royal Decree will be reported to the tax authorities and disclosed to the relevant member state pursuant to Directive 2011/16/EU. In accordance with the provisions of Additional Provision no. 22 of the GTL, such notification must be served before 31 January of the calendar year following the first year in which the account becomes subject to a reporting obligation.
- Under the Intergovernmental Agreement Between the United States of America and the Kingdom of Spain (IGA) to implement FATCA, in 2017 financial institutions will have to obtain the US TIN of persons holding or controlling US financial accounts opened before 30 June 2014, where such TINs have not been obtained beforehand.
- The scope of Council Directive 2011/16/EU, amended by Directive 2014/107/EU, is acknowledged to be broader than the scope provided for in Council Directive 2003/48/EC of 3 June 2003, on taxation of savings income in the form of interest payments, and the former is acknowledged to prevail over the latter. With this in mind, with a view to avoiding duplication, certain provisions have been eliminated from Royal Decree 1065/2007 of 27 July 2007, approving the General Regulations on tax management and inspection procedures and proceedings and implementing the common rules on procedures to manage, collect and inspect taxes.

Lastly, note that breaches of the obligations set forth in the above Royal Decree are classified under additional provision no. 22 of the GTL, partially amended by Law 34/2015 of 21 September 2015, which, as well as detailing the penalty regime, provides for the obligation to block any improperly identified financial accounts within 90 days of the date on which the application to open the account was made.

In short, the publication of this Royal Decree sets in place the legislative framework required to implement Council Directive 2011/16/EU, following its amendment by Directive 2014/107/EU, as well as to start the automatic exchange of tax information between the US and Spain.

Please do not hesitate to contact the FATCA and Automatic Exchange of Information team at KPMG Abogados, S.L. should you require any clarification in this regard.

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