

FATCA, CRS & Automatic Exchange of Information (AEOI)

Understanding the Global Transparency Framework for Offshore Structures

Executive Summary

The global financial landscape has shifted decisively toward transparency. Regulatory frameworks such as FATCA (U.S.), CRS (OECD), and AEOI (Automatic Exchange of Information) now require financial institutions to report account holder information across borders. This has significant implications for offshore structures, trusts, and high-net-worth individuals who must now prioritize compliance, reporting, and proper tax residency classification.

Key Terms Defined

1. FATCA (Foreign Account Tax Compliance Act)

- Origin: Enacted by the United States in 2010.
- Scope: Requires foreign financial institutions (FFIs) to report information about U.S. persons holding accounts outside the U.S.
- Mechanism: Banks must register with the IRS and annually submit Form 8966, or risk a 30% withholding tax on certain U.S.-sourced payments.

2. CRS (Common Reporting Standard)

- Origin: Developed by the OECD and adopted by over 110 jurisdictions.
- Scope: Requires financial institutions to collect and report account information on non-resident clients to their local tax authority, which then exchanges the data with the client's country of residence.
- Details Collected: Includes account balances, interest income, dividends, sales proceeds, and account holder identity.

3. AEOI (Automatic Exchange of Information)

- Definition: The broader concept under which both FATCA and CRS operate. Refers to the systematic and periodic transmission of taxpayer financial information between jurisdictions.

Key Differences Between FATCA and CRS

While both regimes aim to curb tax evasion and promote transparency, they differ significantly:

- FATCA is unilateral (U.S.-centric); CRS is multilateral.
- FATCA identifies U.S. persons; CRS applies to non-residents of the reporting country.
- FATCA has direct agreements with each country (IGAs); CRS functions under a global framework administered by the OECD.

Impact on Offshore Companies, Trusts & HNWIs

- **Controlled Entities:** If a company or trust qualifies as a Passive Non-Financial Entity (NFE), the identities of controlling persons must be disclosed under both regimes.
- **Trusts:** Trustees of trusts that are Financial Institutions (FIs) must report beneficiaries, settlors, protectors, and any controlling persons.
- **Shell Entities:** Non-substance entities in jurisdictions with CRS exchange agreements are often classified as Passive NFEs, requiring look-through reporting to beneficial owners.
- **Nominees & Privacy:** The use of nominee directors or shareholders does not prevent reporting under FATCA or CRS. Banks are obligated to pierce the nominee layer to identify true controlling persons.

Examples

- A Belize IBC with a Swiss bank account and a U.S. beneficial owner: the Swiss bank must report the account under FATCA (to the U.S. IRS) and under CRS (if the beneficial owner is tax resident in a CRS-participating jurisdiction).
- A BVI trust with underlying bank accounts in Singapore: the Singapore bank may report under CRS all relevant information regarding the trust's controlling persons, including the settlor and beneficiaries.

Risk of Non-Compliance

- **Bank Rejection or Account Closure:** Many banks refuse to onboard clients unwilling to complete FATCA/CRS self-certification forms.
- **Regulatory Fines:** Financial institutions face penalties or loss of correspondent relationships if they fail to comply with AEOI obligations.
- **Disclosure Risk:** Beneficial owners relying on secrecy jurisdictions now face exposure through multilateral exchange networks.

Strategic Considerations

- **Tax Residency Planning:** Clients must clearly define and prove tax residency to avoid dual reporting and compliance conflicts.
- **Substance-Based Structuring:** Economic substance (e.g., office, staff, real operations) can shift classification from Passive NFE to Active NFE, avoiding mandatory reporting in some cases.
- **Use of Reporting FI Structures:** Where appropriate, clients may structure through licensed Financial Institutions that fulfill reporting obligations on their behalf, reducing administrative burden.
- **Early Declaration:** Proactively declaring tax residency and account ownership can reduce the risk of future scrutiny or audit.

Conclusion

In 2025, operating across borders requires not just banking access and legal structuring—but proactive management of information transparency. FATCA, CRS, and AEOI are no longer theoretical obligations. They define the reality of offshore compliance, and those who ignore them face real-world consequences ranging from bank rejection to regulatory exposure.