

Changes to FATCA and CRS Requirements in Canada

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Introductory Remarks from the CRA

Benjamin Latta

Compliance Enforcement and Audits

Question I:

Penalties and enforcement are top-of-mind for most financial institutions. Related to enforcement:

- a) When does the CRA expect to commence on-site audits?
- b) Will other activities occur before an on-site audit is triggered (e.g. compliance questionnaires, other pre-screening activities, desk audits etc.)?
- c) Can you describe, in-general, the criteria that will be used to select those that will be subject to audit?
- d) Can you describe the anticipated audit approach in general (e.g. procedures and controls review, substantive testing of self certifications and reporting etc.) and the nature of the records that a financial institution will be expected to provide?

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Compliance Enforcement and Audits

Question 1 (cont'd):

Penalties and enforcement are top-of-mind for most financial institutions. Related to enforcement:

- e) Can you re-confirm that penalties, such as failure to report or failure to comply with a requirement of the Act, will not be assessed prior to a CRA audit or review occurring?
- f) Will the CRA potentially use extrapolation to assess penalties for non-compliance?

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Compliance Enforcement and Audits

Question 2:

Can you please describe the nature of enquiries coming back from other governments regarding FATCA and CRS files submitted and confirm whether the CRA responds directly to any enquiries received or whether all enquiries received are automatically passed on to the respective financial institution.

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Compliance Enforcement and Audits

Question 3:

FATCA and CRS Reporting:

- a) Is there a deadline for submitting amendments for FATCA and CRS returns filed for the 2021 reporting year?
- b) If amendments miss the first sweep but are submitted prior to the fall sweep, will they get included in the exchanges with other governments?

Administrative and Technical Matters

France Marengère and Lata Agarwal

OECD Public Consultation Document 22 March 2022

Question 4:

The OECD public consultation document released 22 March 2022 includes a proposal to expand the CRS commentary to indicate that if the domestic AML/KYC procedures applicable to a given financial institution are not consistent with 2012 FATF Recommendations, the financial institution will be required to apply procedures that are substantially similar to the 2012 FATF Recommendations for identifying controlling persons.

Can you comment on whether the CRA considers Canadian AML/KYC requirements (i.e. requirements under the Proceeds of Crime Anti-Money Laundering and Terrorist Financing Act), are considered consistent with 2012 FATF Recommendations such that financial institutions can be comfortable that compliance with PCMLTFA means that they are compliant with CRS identification requirements based on the proposed OECD wording changes.

Administrative and Technical Matters

France Marengère and Lata Agarwal

OECD Public Consultation Document 22 March 2022

Question 5:

Can you provide your views on potential timing of the Canadian adoption of the proposed CRS changes included in the public consultation document and how much time financial institutions may be given to adopt the changes once finalized?

Administrative and Technical Matters

France Marengère and Lata Agarwal

Canadian Guidance Matters

Question 6:

What is the CRA's view of when a self-certification has been "obtained"?

For example, if an FI obtains a self-certification at account opening and during the 90-day validation process discovers that the form is incomplete, will the FI be considered to have obtained a self-certification on account opening?

Are there certain fields that must be present for the self-certification to be considered "obtained"?

Administrative and Technical Matters

France Marengère and Lata Agarwal

Canadian Guidance Matters

Question 7:

Under paragraph 10.13 of the guidance, if a fund is notified by the dealer of its determination of the reportable status of a related account, the fund is relieved from conducting its own due diligence and must rely on the dealer’s determination unless it can reasonably be concluded by the fund that the dealer has failed to perform the due diligence.

- a) If a dealer provides a fund manufacturer with a “not reportable” status for an account holder, can the fund manufacturer rely on that status where the fund manufacturer has U.S. indicia in its records (e.g. a U.S. mailing address)?**

Does your answer change depending on the type of indicia on file?

- b) If a dealer has advised a fund manufacturer that a client account is not reportable, but it turns out that the dealer has failed to document this client name account and the fund manufacturer has no reason to know that the dealer has failed to comply with its obligations, will both the fund manufacturer and dealer be held responsible for incomplete or missing information since client name accounts are a shared responsibility between a Fund Manufacturer and a Dealer?**

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Question 8:

The 2020 version of the Guidance more formally tied the failure to obtain a valid self-certification when required to a penalty and now additional language with respect to what constitutes “effective measures” that may mitigate penalties has been included in the 2022 Guidance.

Investment fund managers have expressed concern that once an account is opened, they cannot freeze accounts because there appears to be some conflict between securities law and what is considered effective measures. Are there other measures that they or other financial institutions can take that would mitigate the penalty?

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Question 9:

As part of its 2022 Federal Budget, the Canadian government announced the creation of the tax-free first home savings accounts. Can these accounts be added to the list of excluded low risk accounts and, if yes, please provide your estimate of how long it may take to get the change approved to the extent necessary and the product added to the regulations.

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Question 10:

Estate accounts: Under paragraph 5.55 of the updated guidance notes released 10 March 2022, the CRA indicates that financial institutions are to treat the account of a deceased individual as a closed account at the time formal notification of the account holder's death is received.

- a) Is verbal notification from either a relative or the executor considered formal notification?
- b) Paragraph 5.56 of the FATCA guidance indicates that that an estate account is not required to be reported for the year of receipt of formal notification or a subsequent year - does this override paragraph 5.55 which states that reporting may be required for the year of receipt of formal notification of the death where the deceased was otherwise reportable immediately before death?

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Question 10 (cont'd):

Estate accounts: Under paragraph 5.55 of the updated guidance notes released 10 March 2022, the CRA indicates that financial institutions are to treat the account of a deceased individual as a closed account at the time formal notification of the account holder's death is received.

- c) What is the definition of an estate - the guidance indicates that an account will be considered held solely by the estate if it is only used to distribute the assets and manage the affairs of the deceased person but does not provide a definition of estate.**
- d) Is the CRA willing to consider alternatives to reporting the account as a closed account as this could create potential "split reporting" challenges?**

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Question II:

The Guidance issued 22 March 2022 indicates that financial institutions must have procedures in place to either be notified when an account holder that is a trust that is a passive NFFE/NFE makes a distribution to a discretionary beneficiary or to reach out annually to such account holders requesting confirmation of any such payments to enable documentation and reporting of controlling persons, as appropriate.

What should financial institutions do if account holders do not respond to requests for information on amounts distributed to discretionary beneficiaries in time for the FI to report for the relevant calendar year? If such information is received after the return has been filed for the year in question, is an FI required to amend its filing or can it treat the additional information as a change in circumstances applicable for the subsequent calendar year?

Closing Remarks from the CRA

Thank you to CRA

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