June 2016

# Global Tax Transparency: The New Normal

HSBC Private Bank

## Overview

The last ten years have seen significant developments in the way supranational organisations and countries have been collaborating to achieve greater transparency in respect of the tax compliance of their residents.

The global focus by governments on maximising tax revenues has resulted in a co-ordinated effort to achieve greater transparency in respect of assets which residents are holding offshore, and verifying that the income and gains generated on the assets have been correctly assessed to tax. This is complemented by an increased emphasis on civil and corporate deterrents in respect of those deemed to have been evading taxes or enabling tax evasion.

There are currently a plethora of information sharing arrangements which are either in place or are in the process of being implemented which assist governments with this aim. Different transparency regimes may apply depending on the jurisdiction in which the asset is located and the residence of the respective parties. For individuals holding assets in multiple locations, it is also possible that they will be subject to reporting under more than one regime.

Although there are subtle distinctions between the respective regimes, they all share the common objectives of increased transparency aimed towards ensuring tax compliance. The developments reflect the move to what the OECD refers to as "The New Pillars of International Tax Transparency".

*"The world has been moving steadily towards greater tax transparency. The new pillar of international tax transparency, the global standard on automatic exchange of information, is being implemented at great speed all around the world"*

*– Kosie Louw,*
*Chairman of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes*

We appreciate that it can be difficult for investors to keep up to date with their obligations under the various regimes. This document has been prepared to provide an overview of the key aspects of the main regimes, and to explain why HSBC has been contacting its clients for additional information in respect of the assets which clients hold with us.

### How the transparency regimes may impact clients

Information about the assets held by individuals and entities is increasingly becoming the subject of reporting to tax authorities of the jurisdiction(s) where those individuals and entities are tax resident. This may constitute reporting under one of the respective transparency arrangements or in response to a request for information by a fiscal authority pursuant to one of the transparency initiatives discussed below.

The measures are designed to capture a wide array of offshore investments. At its simplest, this may apply to bank accounts held outside the jurisdiction where the investor is tax resident. However, the measures may also capture more complex arrangements used for holding assets, such as trusts, Personal Investment Companies (PICs), investments in offshore collective investment schemes etc.

Although the emphasis is placed on the Financial Institutions to ensure that the reporting of information under the transparency arrangements is correctly applied, the developments may specifically impact clients with accounts at HSBC as follows.

- HSBC may be required to disclose via Intergovernmental Agreements personal information such as name, address, date of birth and Tax Identification Number (or National Insurance number etc.).
- HSBC may be required to disclose specific details regarding the assets which clients hold with us, such as the gross value of the account (or value of the asset), details of interest and dividends received, and any other forms of capital, revenue income or disposal proceeds.
- In order to allow HSBC to comply with the above requirements, we have been writing to clients to ask them to complete a tax residency self-certification form to ensure that we possess the information needed to comply with the reporting requirements of the respective transparency regimes.
- As you will appreciate, the speed with which the respective transparency regimes are evolving is significant, and the operation of a number of the regimes is still at the consultative stage. Accordingly, HSBC may subsequently contact its clients regarding future developments and requesting further information.

### How to use this document

HSBC is committed to ensuring that it is fully compliant with its obligations under the respective transparency regimes.

We appreciate that the speed with which the landscape of global tax transparency is changing can make it difficult to keep up to date with all of the developments. Accordingly, we have prepared this document to assist clients in the following key areas.

- Explain why HSBC are asking for additional information in respect of existing and new Financial Accounts.
- Provide an overview of the key initiatives and reporting regimes aimed at increasing investor tax transparency.
- Summarise which regimes impact certain jurisdictions and the expected disclosure requirements within those jurisdictions.

The information in this document is based on our knowledge of current tax legislation as at June 2016 and is not exhaustive. Also please remember that tax rules may change in the future and depend on individual circumstances. Clients should contact their Private Bank team for more information of the actions they are required to take in respect of financial accounts and assets subject to the respective regimes.

HSBC does not provide any tax advice and this document is not intended to and shall not be construed as tax advice. We recommend that you carefully review your tax affairs to ensure that these are correct and up to date, and consult your tax advisor if required.

## The New Pillars of International Tax Transparency

The problems historically faced by tax authorities looking to verify whether individuals are holding undeclared income offshore primarily related to transparency. There was no effective mechanism whereby the tax authorities could obtain details of the assets held by individuals to cross check the income and gains generated by the assets against the income and gains disclosed in their respective tax returns.

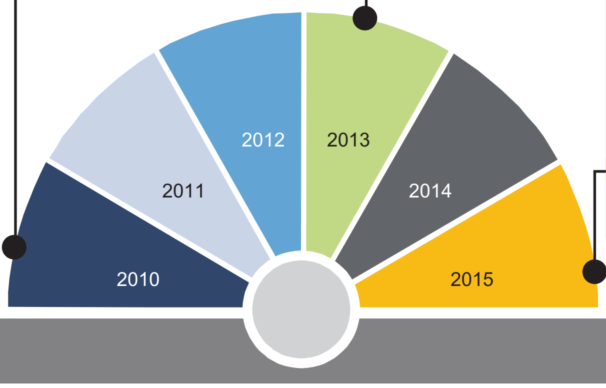
The timeline below outlines the development and evolution of the various transparency arrangements dating back to 2005.

A more detailed summary of each of the regimes together with the first scheduled dates for reporting is detailed below.

## Existing Transparency Regimes

**Swiss Withholding Tax (WHT) Agreements – January 2013**

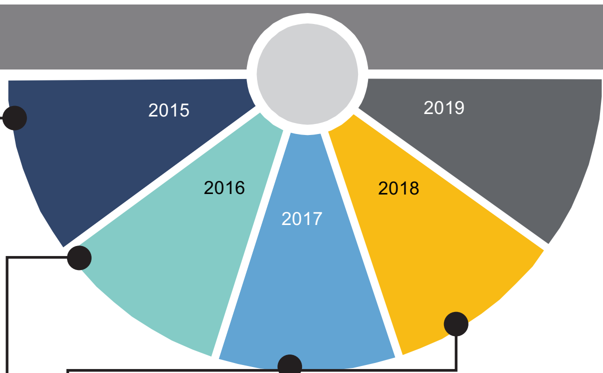
Switzerland entered in to WHT agreements with the UK and Austria to withhold tax on foreign income streams paid to UK and Austrian tax residents with the first reporting taking place in January 2013.




**FATCA – July 2014**

The US government introduced the Foreign Account Tax Compliance Act (FATCA) as part of the HIRE Act 2010, requiring details to be provided to the Internal Revenue Services (IRS) of financial accounts held offshore by US Citizens. The deadline for the first reporting was June 2015 (although different deadlines may have applied depending on the terms of the IGA ie 31 May 2015 for the UK).

## Forthcoming Transparency Regimes




**UK Consultation on "Tackling Tax Evasion"**

In July 2015 the UK Government issued a consultation aimed at Tackling Tax Evasion. Among the key features of the regime are enhanced civil and criminal penalties for those held to have 'evaded' tax, and new criminal and civil penalties for parties held to be 'enabling' tax evasion.

**CDOT – July 2014**

In 2014 the UK government entered in to agreements with 10 Crown Dependencies and Overseas Territories (CDOT) requiring the CDOT jurisdictions to provide to HM Treasury details of all financial accounts held by UK tax residents in CDOT jurisdictions. The first reporting is required to take place by September 2016.

**Fourth EU Anti-Money Laundering (AML) Directive – June 2017**

The Fourth EU AML Directive places tax evasion on an equal footing to other money laundering offences and requires Member States to publish a register disclosing the Ultimate Beneficial Owner (UBO) of companies and other legal structures (including trusts) by July 2017.

**CRS – January 2016 & 2017**

In February 2014 the OECD published its proposal for a Common Reporting Standard (CRS), proposing the common exchange of information on client data. 101 jurisdictions have currently committed to implementing CRS on a timeline with the first information exchanges taking place in 2017 and 2018.

## FATCA – A Paradigm Shift in Global Tax Transparency

The US government introduced the Foreign Account Tax Compliance Act (FATCA) as part of the HIRE Act 2010, requiring details to be provided to the IRS of financial accounts held offshore by US Persons. The deadline for the first reporting was June 2015 (although this varies for certain jurisdictions depending on the terms of the IGA). Although other initiatives such as the EU Savings Directive (EUSD) had previously been introduced with the objective of facilitating the cross-border sharing of information regarding investors, FATCA represented a paradigm shift in how governments looked to use information sharing arrangements as a mechanism to increase transparency and ensure tax compliance.

FATCA was the first multi-jurisdiction transparency regime to allow a government to have visibility of assets and financial accounts held offshore by US Citizens. This was achieved by requiring Financial Institutions based outside the US to identify accounts held by US Persons, and to report to the IRS on an annual basis specified details of the value of the asset and revenue/capital generated by the asset. Following receipt of the information, the IRS can then verify the information provided by the Financial Institutions against the information contained in the tax returns of the respective US Persons to ensure that all taxable income has been appropriately declared.

In addition to the disclosure of Financial Accounts held by US Persons, FATCA also required information to be provided in respect of the Ultimate Beneficial Owner (UBO) of certain types of vehicles being used for wealth management purposes. This means US Persons will be reported if they are UBOs or controlling persons of companies, beneficiaries of trusts, foundations and similar entities etc.

The first reporting of data under FATCA took place in June 2015 in respect of accounts/investments held at 31 December 2014, although this deadline was varied for certain jurisdictions depending on the terms of the IGA. For all subsequent periods, details of accounts/investments held at 31 December are required to be provided to the IRS (either directly or via the local tax authorities) by 30 June of the following year.

FATCA imposed stringent reporting obligations on Financial Institutions requiring many of them to undertake detailed and exhaustive upgrades to their client onboarding procedures to ensure that they possessed the prescribed information needed to fulfil their reporting obligations.

Although there are distinctions in respect of the information which Financial Institutions are required to provide in respect of assets held by account holders under other tax transparency regimes, FATCA can essentially be seen as the blue print on which subsequent transparency regimes have been designed.

## The Crown Dependencies and Overseas Territories Agreements

In 2014 the UK entered in to agreements with the 10 CDOT jurisdictions in respect of the provision of information relating to Financial Accounts held by UK residents with a Financial Institution based in a CDOT jurisdiction. The reporting requirements are largely one way, although in 4 jurisdictions the reporting will be reciprocal.

The framework for exchanging information is largely based on FATCA and CRS, with the first reporting on accounts held at 31 December 2015 to take place by September 2016.

The Crown Dependencies part of these agreements are Jersey, Guernsey and the Isle of Man. The Overseas Territories part of these agreements are The Cayman Islands, the British Virgin Islands, Bermuda, Anguilla, Turks and Caicos Islands, Montserrat and Gibraltar.

## The Common Reporting Standard (CRS) – Tax Transparency on a Global Basis

Following the introduction of FATCA and at the request of the G8 and G20, the OECD published the CRS and a bilateral Competent Authority Agreement (CAA) in February 2014.

The OECD described the CRS as "a coordinated effort to gain a truer picture of income and assets worldwide".

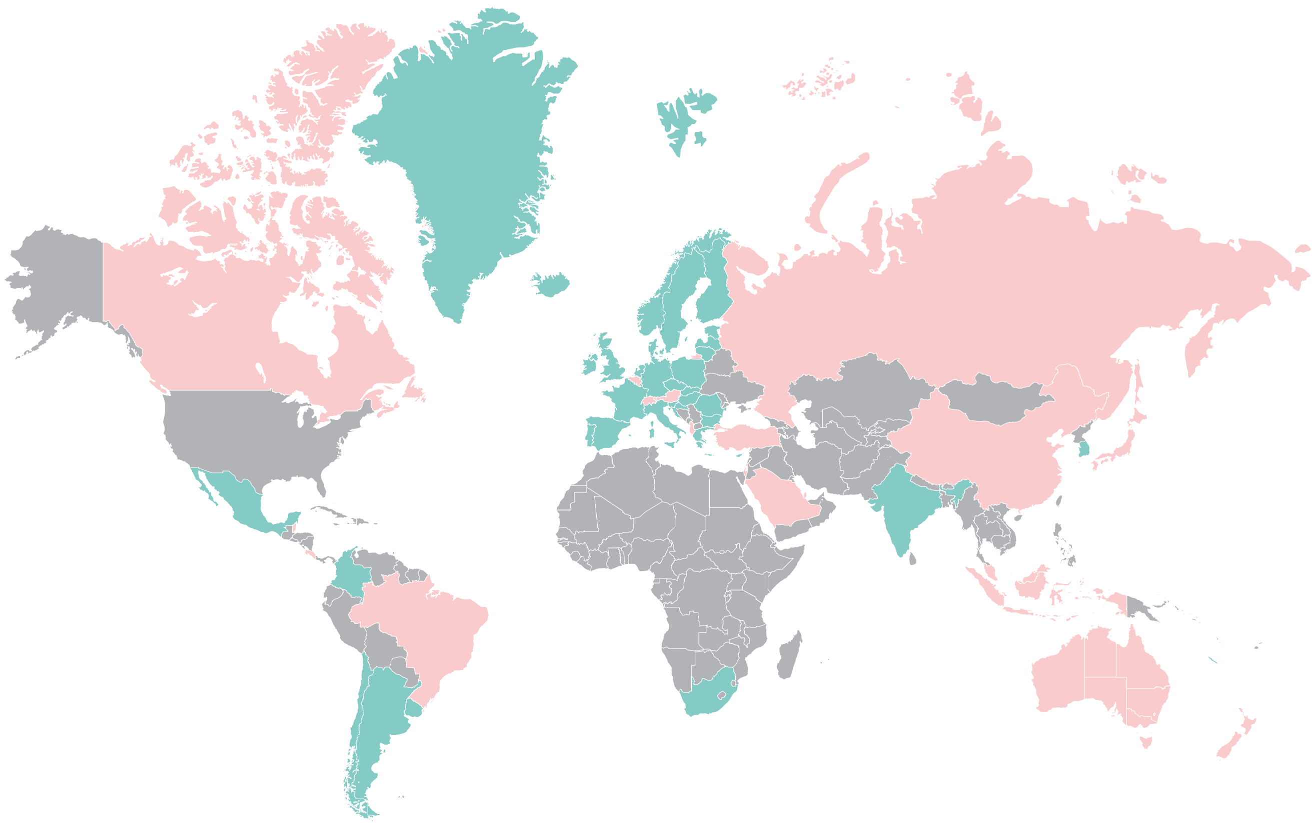
CRS draws extensively on work previously performed by the OECD in respect of Automatic Exchange of Information (AEoI). The CRS also incorporates global anti-money laundering (AML) standards and the intergovernmental approach to implementation used under FATCA.

CRS was intentionally designed to draw heavily on the international progress made following the implementation of FATCA. Accordingly, there are considerable synergies which can be drawn in respect of the composition of information required to be reported to the tax authorities.

Essentially, the same information must be reported under CRS as under FATCA, i.e. the identity and residence of Financial Account holders (including certain entities and their controlling persons), account details, account balance/value and income/sale or redemption proceeds.

One of the key differences between CRS and FATCA is that reporting is required to be performed on any reportable persons with a 'tax residence' in a jurisdiction party to the CRS, as opposed to the reference to details of Citizenship used under FATCA. Accordingly, in order to update their account holder records to document tax residence, many Financial Institutions are undertaking a self-certification process whereby account holders are being asked to provide details of any jurisdictions in which they are tax resident.

The exchange of information will start in 2017 for approximately 55 early adoption countries, with a further 46 countries currently committed to start reporting in 2018.



### Jurisdictions undertaking first reporting in 2017

Anguilla, Argentina, Barbados, Belgium, Bermuda, British Virgin Islands, Bulgaria, Cayman Islands, Colombia, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Dominica, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Greenland, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Montserrat, Netherlands, Niue, Norway, Poland, Portugal, Romania, San Marino, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Trinidad and Tobago, Turks and Caicos Islands, United Kingdom

### Jurisdictions undertaking first reporting in 2018

Albania, Andorra, Antigua and Barbuda, Aruba, Australia, Austria, The Bahamas, Bahrain, Belize, Brazil, Brunei Darussalam, Canada, Chile, China, Cook Islands, Costa Rica, Ghana, Grenada, Hong Kong (China), Indonesia, Israel, Japan, Kuwait, Lebanon, Marshall Islands, Macao (China), Malaysia, Mauritius, Monaco, Nauru, New Zealand, Panama, Qatar, Russia, Saint Kitts and Nevis, Samoa, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Sint Maarten, Switzerland, Turkey, United Arab Emirates, Uruguay, Vanuatu

## Civil and Criminal Deterrents for Tax Evasion

The transparency regimes discussed in this paper provide tax authorities with the framework for identifying residents who held assets offshore and to ensure that they have fulfilled their tax compliance obligations in respect of those assets.

Supplementing the transparency regimes are domestic measures in a number of jurisdictions to provide additional penalties and sanctions designed to deter individuals from committing tax evasion.

One of the main examples of these regimes is the UK governments consultation on 'Tackling Offshore Tax Evasion'. Although still at the consultation stage, it is proposed enhanced criminal and civil penalties can be levied against individuals held to have committed tax evasion. The consultation also proposes that penalties will be levied against individuals and companies deemed to have 'enabled' another person to commit tax evasion.

## Voluntary Disclosure Facilities

Ahead of the reporting under the respective transparency regimes, a number of countries have either introduced or made available the facility for individuals to voluntarily regularise their historical tax affairs using a voluntary disclosure facility.

A number of tax authorities have made it clear that they will apply reduced penalties to individuals correcting their tax affairs on a voluntary basis through these facilities.

## Financial Action Task Force (FATF) on Money Laundering and the EUs Fourth Anti-Money Laundering Directive

The FATF, which is part of the OECD, was established over 25 years ago to combat money laundering on a worldwide basis.

In 2012, the FATF added serious tax offences to the list offences for money laundering. In a similar measure, as part of the Fourth Anti-Money Laundering (AML) which was passed in 2015, the EU also requires Member States to implement provisions to treat serious tax offences as money laundering. By aligning serious tax evasion with money laundering, the investigative powers and sanctions available to the authorities can be far more pervasive and carry more serious sanctions.

A further initiative introduced by the Fourth AML Directive requires all Members States to publish a register detailing the UBO of all corporate and trust structures resident in the respective Member States. It has yet to be confirmed which parties will have access to the respective registers, but this will provide another mechanism for verifying the genuine ownership of complex offshore structures. This follows a similar initiative to be introduced in the UK from 2016 which will require all corporate entities incorporated in the UK to publish details of their UBOs on a centrally available public register. The UK government has also expressed its desire for a similar register to be adopted in CDOT territories, although there is at present no formal proposal for such a measure to be adopted.

## Summary of Cross Border Tax Transparency Regimes by Jurisdiction

The following table summarises on a country by country basis which of transparency regimes are either currently in operation or are in the process of being implemented. The table also details whether there are voluntary disclosure regimes in operation in the respective countries, and whether residents are taxed on their worldwide income.

| Country | CRS Wave I or II | US FATCA | UK CDOT | Voluntary Disclosure Program | Residents or Domiciles Taxed on Worldwide Income[1] |
|---|---|---|---|---|---|
| Argentina | I | n/a | n/a | √ | √ |
| Australia | II | √ | n/a | √ | √ |
| Austria | II | √ | n/a | √ | √ |
| Bahamas | II | √ | n/a | n/a | No |
| Belgium | I | √ | n/a | No | √ |
| Brazil | II | √ | n/a | √ | √ |
| British Virgin Islands | I | √ | √ | n/a | No |
| Canada | II | √ | n/a | √ | √ |
| Cayman Islands | I | √ | √ | n/a | No |
| Chile | II | √ | n/a | √ | √ |
| China | II | √ | n/a | No | √ |
| Columbia | I | √ | n/a | √ | √ |
| Cyprus | I | √ | n/a | n/a | No |
| Egypt | | n/a | n/a | No | √ |
| France | I | √ | n/a | √ | √ |
| Germany | I | √ | n/a | √ | √ |

| Country | CRS Wave I or II | US FATCA | UK CDOT | Voluntary Disclosure Program | Residents or Domiciles Taxed on Worldwide Income[1] |
|---|---|---|---|---|---|
| Greece | I | √ | n/a | √ | √ |
| Guernsey | I | √ | √ | n/a | No |
| Hong Kong | II | √ | n/a | No | No |
| India | I | √ | n/a | √ | √ |
| Indonesia | II | √ | n/a | √ | √ |
| Ireland | I | √ | n/a | √ | √ |
| Isle of Man | I | √ | √ | n/a | No |
| Israel | II | √ | n/a | √ | √ |
| Italy | I | √ | n/a | √ | √ |
| Japan | II | √ | n/a | √ | √ |
| Jersey | I | √ | √ | √ | No |
| Jordan | | n/a | n/a | n/a | No |
| Kuwait | II | √ | n/a | n/a | No |
| Lebanon | II | n/a | n/a | No | No |
| Liechtenstein | I | √ | n/a | √ | √ |
| Luxembourg | I | √ | n/a | n/a | No |
| Malaysia | II | √ | n/a | √ | No |
| Mexico | I | √ | n/a | √ | √ |
| Monaco | II | √ | n/a | n/a | No |
| Nigeria | | n/a | n/a | No | √ |
| Norway | I | √ | n/a | √ | √ |
| Panama | II | √ | n/a | n/a | No |
| Philippines | | √ | n/a | No | √ |
| Qatar | II | √ | n/a | n/a | No |
| Russia | II | √ | n/a | √ | √ |
| Saudi Arabia | II | √ | n/a | n/a | √ |
| Singapore | II | √ | n/a | n/a | No |
| South Africa | I | √ | n/a | √ | √ |
| South Korea | I | √ | n/a | √ | √ |
| Spain | I | √ | n/a | √ | √ |
| Sweden | I | √ | n/a | √ | √ |
| Switzerland | II | √ | n/a | √ | √ |
| Taiwan | | √ | n/a | No | √ |
| Thailand | | √ | n/a | No | √ |
| The Netherlands | I | √ | n/a | √ | √ |
| Turkey | II | √ | n/a | √ | √ |
| United Arab Emirates | II | √ | n/a | n/a | No |
| United Kingdom | I | √ | √ | √ | √ |
| United States | | √ | n/a | √ | √ |
| Uruguay | I | n/a | n/a | No | √ |
| Venezuela | | n/a | n/a | No | √ |

[1] A number of tax jurisdictions apply a cap to the amount of income which they levy on the worldwide income of residents. These thresholds will typically be relatively low. Accordingly, jurisdictions following this model have been treated as not taxing residents on their worldwide income for the purposes of the above analysis.

## Disclaimer

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