The role and burden of intermediaries in an increasingly transparent landscape

Brandi Caruso | 7th International Conference on Taxpayer Rights
Agenda

1. Introduction
2. The regulatory context
3. Qualified Intermediary regime
4. Foreign Account Tax Compliance Act (FATCA)
5. Common Reporting Standard (CRS)
6. EU DAC6
Introduction
Setting the stage

The real reason the IRS is behind in processing tax returns

Processing paper returns by hand 'doesn't just seem crazy. It is crazy,' says the national taxpayer advocate

Switzerland faces sanctions over banking secrecy

- Finance ministers meet in Berlin to demand tax transparency
- Switzerland must agree 12 information-sharing treaties

French Bank Ordered to Pay Damages to Customer Following Inaccurate Personal Data Sharing Under FATCA
March 22, 2022

Internal Revenue Service Faces Increased Workload with Fewer Resources

Percent change from 2010 to 2021 (funding adjusted for inflation)

<table>
<thead>
<tr>
<th>IRS budget</th>
<th>IRS staff</th>
<th>Tax returns filed</th>
</tr>
</thead>
<tbody>
<tr>
<td>-19%</td>
<td>-22%</td>
<td>7%</td>
</tr>
</tbody>
</table>
The regulatory context

Timeline

- **2001**: John Doe summons
- **2005**: FATCA, US DoJ program
- **2009**: EUSD, Switzerland adopts Article 26 of OECD Model
- **2013**: QI, BEPS, OECD standard (CRS), Beneficial ownership registry
- **2014**: OECD standard (CRS), Beneficial ownership registry, BEPS
- **2016**: MDR, Combating tax residency schemes, DAC6
- **2017**: OECD standard (CRS), Beneficial ownership registry, BEPS, DAC6
- **2018**: MDR, Combating tax residency schemes, DAC6
- **2019**: MDR, Combating tax residency schemes, DAC6
- **2021**: WHT code of conduct, TRACE

- **QI**: (Automatic) exchange of information
- **FATCA**: Attribution of profits to the country where they occur
- **BEPS**: Simplification of procedures for granting tax relief
- **MDR**: Ad-hoc investigations and relief programs
- **DAC6**: Combination of (automatic) exchange of information and simplification of procedures for granting tax relief

**Italian queries**
Qualified Intermediary (QI)
Functioning of the QI system (simplified)

Purpose

1 IRS: Internal Revenue Service
2 FFI: Foreign Financial Institution

- Withholding tax reduction/relief at source: Application of appropriate US withholding tax rate on payments to Foreign Persons
- Disclosure of US Persons (since 1 July 2014, largely substituted by FATCA reporting)
Common Reporting Standard (CRS)
Functioning of the CRS system – the Swiss example

- Reporting financial institutions (FIs)
- Swiss tax authorities
- Due diligence
- Exchange of information
- Reporting
- Foreign tax authorities in jurisdictions of account holders and controlling persons
- Reporting under FATCA
- Reporting individual account holders
- Reporting entity account holders
- Controlling person(s)
Overview of the reporting mechanism

EU intermediaries must comply with reporting obligations:

- **New arrangements**: Reporting must generally be completed within 30 days of the start date of an RCBA.
- **Historic arrangements**: One-off reporting in respect of RCBAs implemented between 25 June 2018 and 30 June 2020.

Coordination rules for situations with multiple intermediaries or cases where an intermediary has a relevant nexus to more than one EU member state.

Any person to whom an RCBA is made available for implementation, or who is ready to implement an RCBA, or who has implemented the first step of an RCBA.

In case no EU intermediary is involved (i.e. only non-EU intermediaries or in-house arrangements) or the EU intermediary is not required to report the RCBA (due to legal professional privilege), a subsidiary reporting obligation exists for the relevant taxpayer.
### Information to be reported generally

<table>
<thead>
<tr>
<th>Account Holder / Controlling Person information</th>
<th>Account information</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Name</td>
<td>• Account number</td>
</tr>
<tr>
<td>• Address</td>
<td>• Reporting FI name and identifying number</td>
</tr>
<tr>
<td>• Jurisdiction(s) of residence</td>
<td>• Account balance or value or closure attribute</td>
</tr>
<tr>
<td>• Taxpayer Identification Number</td>
<td>• Dividend, interest and other income payments as well as gross proceeds to / with respect to the Account</td>
</tr>
<tr>
<td>• Date and place of birth (individual Account Holders and Controlling Persons only where required by local law)</td>
<td></td>
</tr>
<tr>
<td>• Controlling person type</td>
<td></td>
</tr>
</tbody>
</table>

### Potentially conflicting legal obligations

**General Data Protection Regulation (GDPR)**

- **Article 5 Principles relating to processing of personal data**
  1. Personal data shall be:
     a. “Processed lawfully, fairly and in a transparent manner [..]”
     b. “collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes [..]”
     c. “adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed [..]”

- **Art. 17 GDPR Right to erasure (‘right to be forgotten’)**
  1. “The data subject shall have the right to obtain from the controller the erasure of personal data [..]”
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