

# Order implementing CRS and FATCA

31 August 2016

## In brief

The Ministry of Finance published an order which implements the Common Reporting Standard (CRS). The order clarifies the process for uniform application of the CRS, Law 207/2015 regarding the Fiscal Procedure Code and the FATCA Agreement (Law 233/2015).

## In detail

### Important terms

- **“reporting jurisdiction”**, from the Romanian perspective, represents any other Member State of the European Union; any other jurisdiction, other than a Member State of the European Union and the United States of America, or the European Union, with whom Romania has an agreement in place under which the respective jurisdictions are obliged to provide information on financial accounts. The list of the reporting jurisdictions will be determined by order of the National Agency for Fiscal Administration (ANAF) President.
- **“reportable person”** means any person who is a tax resident in a reporting jurisdiction and held accounts subject to reporting, except accounts held by:
  - a company whose capital is regularly traded on one or more regulated markets or in one or more alternative trading systems and an affiliate of such a company;
  - a governmental entity;
  - an international organisation;
  - a central bank; or
  - a financial institution.
- **“reporting account”** represents a financial account that is managed by a reporting financial institution in Romania and is owned by one or more reportable persons or owned by a Passive NFE with one or more controlling persons which are reportable persons, with the condition that the account has been identified as such under tax diligence procedures.
- The Order introduces a list of NACE codes used to determine account holders classed as Passive NFE, including, but not limited to: 6420 - Activities of holding companies, 6810 - Buying and selling of own real estate, 6820 - Renting and sublease of own or leased real estate.
- **“Romanian financial institution”** means: any financial institution that is a resident in Romania, but excludes any branch of that financial institutions which is outside Romania; any branch of a financial institution which is not resident in Romania, but the branch is located in Romania.

### General dispositions

- The Order clarifies the uniform application of the MCAA (as ratified by Law 70/2016), CRS, Law 207/2015 in the interests of the uniform application of the provisions of Chapter I, Title X of the Fiscal Procedure Code, which transposes Directive 2011/16/EU provisions and the Agreement for improving international tax compliance and implementing FATCA (as ratified by Law 233/2015).
- ANAF is the competent authority in Romania for implementing the order's provisions.

### **Reporting obligation**

The reporting obligation lies with all financial institutions, namely:

- Depository institutions (e.g. banks, credit co-operative organisations, savings and credit banks for housing, mortgage loans banks);
- Custodial institutions;
- Investment entities; and
- Specified Insurance companies.

### **Categories of information to be reported to ANAF**

Reporting financial institutions are required to report to ANAF information:

- identifying the person (name, address, jurisdiction of residence, number/tax identification numbers (TIN), date and place of birth, if applicable);
- identifying the entity that is the account holder (name, address, jurisdiction/jurisdiction of residence, number/tax

identification numbers (TIN) of the entity and the person(s) controlling the entity, as well as their date and place of birth, etc.);

- regarding the account number, name and identification number of the reporting financial institution, information on the account balance or value;
- for deposit accounts, the total gross amount of interest paid or credited to the account during the calendar year;
- for custody accounts, the total gross amount of interest, dividends or other earnings generated from assets held in the account, as well as the amount of gross revenue from the sale or redemption of financial assets.

### **How to report**

- Financial institutions should use the single reporting scheme and the assistance software available on ANAF's portal, under the electronic declarations tab.
- Reporting is transmitted through the portal as an attached PDF with the XML file signed electronically by means of remote transmission.

*[Source: Minister of Finance Order No. 1939/2016 published in Official Gazette no. 648 on 24 August 2016]*

### **The takeaway**

- The Order implements the provision of the Common Reporting Standard (CRS) on financial accounts, as issued by the OECD;
- For financial institutions, the first deadline for FATCA reporting is 31 August 2016. For CRS, the deadline is 15 May 2017.

## ***Let's talk***

For a deeper discussion of how this issue might affect your business, please contact:



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