

PRACTICE BRIEFING

Key facts about AEOI/CRS, AML/ CFT AND FATCA

INTRODUCTION

As signatory to several international initiatives relating to finance and taxation, New Zealand has introduced a number of regulatory and compliance requirements which include measures relating to the supply of legal services. This guide is intended to provide “at a glance” information to lawyers in private practice on three of the most important.

AEOI/CRS (AUTOMATIC EXCHANGE OF INFORMATION/COMMON REPORTING STANDARD)

AEOI is a global information collection and reporting regime which came in to force on 1 July 2017. Inland Revenue (IRD) oversees the regime to enable New Zealand to fulfil international obligations. The regime has implications for lawyers as ‘entities’, also in their advisory capacities and as trustees.

New Zealand lawyers need to collect information from clients prior to funds being placed on interest bearing deposits (IBD). This information is provided to the bank holding a law firm’s trust account to enable it to fulfil its due diligence and reporting requirements. The scope and format of the information to be collected and shared is known as the common reporting standard (CRS). This includes comprehensive due diligence requirements.

Lawyers acting in an advisory capacity or as trustees should be aware of AEOI’s implications for trusts. This includes specific obligations lawyers may have themselves as trustees.

Currently lawyers should:

- » Ensure familiarity with IRD’s guidance and the New Zealand CRS Applied Standard. Watch for any changes to the guidance and publication of further resources by IRD.
- » Contact their bank to check its CRS requirements, including use of self-certification forms.
- » Advise clients about the implementation of the CRS regime. This may include providing clients with a copy of IR1033 (Account Holders).
- » Review work already undertaken for FATCA (see below) and in train for Anti-Money Laundering (AML)/KYC (know your client) to see what work can be leveraged to ensure the correct CRS processes are in place. This could include review of the due diligence processes already in place and adapting AML/CFT forms to cover AEOI/CRS and FATCA requirements.
- » Consider amending their terms of engagement to reflect the requirement to obtain and

disclose client information under the AML/CFT, FATCA and AEOI/CRS regimes. Remind clients of the need to notify the firm of any relevant change in circumstances which may affect their AEOI/CRS status. Law firms may need to clarify for clients that funds are unable to be placed on interest bearing deposit without the provision in advance of required information including valid self-certifications.

AML/CFT (ANTI-MONEY LAUNDERING AND COUNTERING FINANCING OF TERRORISM)

Lawyers will be reporting entities under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 from 1 July 2018. AML is about more than just suspicious cash transactions.

Lawyers need to take the following steps before **1 July 2018**:

- » Appoint a Compliance Officer (CO). The CO will lead implementation of a firm's compliance framework and monitor AML developments.
- » Prepare and maintain a written risk assessment and compliance programme. Section 56 of the Act says that a reporting entity must undertake an assessment of the risk of money laundering and the financing of terrorism that it may reasonably expect to face in the course of its business. The firm's risk assessment and compliance programme must be subject to regular review.

After 1 July 2018 law firms will need to:

- » Conduct customer due diligence (CDD) on an ongoing basis.
- » Monitor transactions for unusual behaviour and report any suspicious activity to the Police Financial Intelligence Unit (FIU).
- » File prescribed transaction reports (in relation to domestic cash transactions over \$10,000 and international wire transfers over \$1,000) to the FIU.
- » File an annual report with their AML/CFT supervisor (this is the Department of Internal Affairs).
- » Arrange an independent audit of AML/CFT documents and procedures every two years.

FATCA (FOREIGN ACCOUNT TAX COMPLIANCE ACT)

FATCA is also an information collection and reporting regime which preceded the implementation of AEOI/CRS. It is similar, but there are some differences. It requires New Zealand lawyers to collect information from clients to provide to their bank when funds are to be placed on interest bearing deposit (IBD). FATCA requires foreign financial institutions (the lawyer's bank) which are not exempt to report on financial accounts held by United States taxpayers or certain foreign entities with controlling persons who are US taxpayers (US reportable accounts).

Law firms should have already:

- » Determined their status under FATCA and made an election by notifying their bank and/or registering with the US IRS/IRD. Many law firms will have already elected to be a non-financial foreign entity (NFFE) and provided notification to their bank,



- » Commenced obtaining self-certifications from each client in respect of whom non-exempt money is held on IBD (from and inclusive of the date on which the law firm elected to be an NFFE). A law firm's bank may require the firm to use the bank's own form.

Lawyers need to be familiar with the penalty and anti-avoidance provisions which apply to both the AEOI/CRS and FATCA regimes under Parts 9 and 11B of the Tax Administration Act 1994.

FURTHER RESOURCES AVAILABLE TO ASSIST YOU

AEOI/CRS and FATCA

IRD's website contains comprehensive general information, including a summary of CRS obligations and its practical application. See: <http://www.ird.govt.nz/international/exchange/crs/aeoi-crs/aeoi-crs.html#01>

The New Zealand Law Society's suggested FATCA/CRS self-certification form templates are available at: <http://www.lawsociety.org.nz/news-and-communications/latest-news/news/nzls-provides-suggested-fatca-and-aeoi-self-certification-forms>

The OECD's AEOI portal provides general information and a useful FAQ guide on the practical application of CRS is available at: <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/CRS-related-FAQs.pdf>

The New Zealand Law Society also has other Practice Briefings which provide greater detail:

FATCA: FATCA and New Zealand Law Firms https://www.lawsociety.org.nz/practice-resources/practice-briefings/FATCA-and-New-Zealand-Law-Firms_Oct-2016.pdf

AEOI/CRS: Automatic Exchange of Information and Common Reporting Standard <http://www.lawsociety.org.nz/practice-resources/practice-briefings/Automatic-Exchange-of-Information-and-Common-Reporting-Standard-June-2017.pdf>

AML/CFT: Preparing for becoming a reporting entity under the AML/CFT Act <http://www.lawsociety.org.nz/practice-resources/practice-briefings/Preparing-for-becoming-a-reporting-entity-under-the-AML-CFT-Act.pdf>

NEW ZEALAND LAW SOCIETY

Law Society Building
26 Waring Taylor Street
WELLINGTON 6011

PO Box 5041
Lambton Quay
WELLINGTON 6145

(04) 472 7837

Information in the Practice Briefing series is provided by the Law Society as a service to members. This briefing is intended to provide guidance and information on best practices. Some of the information and requirements may change over time and should be checked before any action is taken.

November 2017