

China's Enforcement Against Offshore Assets Potentially About to Change



As signatory to the OECD CRS scheme, China's government will automatically receive financial, deposit, securities and banking information of its citizens from governments and banks from 96 countries.

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As China has opened to the outside world over the last three decades, its international trade and investment activities have continued to grow and globalize. The private sector is now more than half its economy, and Chinese families and high-net worth individuals ("HNWI's") have enjoyed an unusual financial and economic freedom abroad. Media reports about Chinese global investors doing businesses overseas are commonplace and increasing in frequency. Chinese global investment has taken a variety of corporate forms as well as individual family wealth driven structures. Many Chinese families and investors, despite the China tax codes requiring them to report and pay taxes on worldwide income, are believed to have maintained overseas bank accounts and assets without reporting the income or paying China taxes on this overseas income. These non compliant practices have so far taken place with impunity. That old-world reality will sunset effective January 1, 2016. Many Chinese families with assets overseas are unaware of the radical international banking, financial and tax changes happening globally.

for automatic exchange of information¹. Each of these countries has agreed to automatically collect financial information about all persons holding accounts in that country, and share it with the governments of other signatory countries. Since China has joined the CRS scheme, the Chinese government will automatically receive financial, deposit, securities and banking information of its citizens from overseas governments and banks. This includes 96 jurisdictions such as all British Overseas Territories, Hong Kong, USA, and Singapore.

It is expected that, with few exceptions, most nations in the world will join CRS. Possible exceptions will be North Korea and a handful of nations that have small mostly domestic economies. China is committed to implement automatic exchange of information by 2018, retroactive to January 1, 2016. Most offshore territories and major OECD compliant territories are already preparing to implement CRS in 2016-2018.

WHAT HAS CHANGED?

To date, 96 countries have agreed to implement the OECD's Common Reporting Standard ("CRS")

So far, over 50 nations have already signed the Multilateral Competent Authority Agreement ("MCAA"), which requires automatic

¹ <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/crs-by-jurisdiction/crs-by-jurisdiction-2018.htm>

information exchange. The MCAA will likely become the global system to enforce CRS. This will supplement the existing bilateral information sharing agreements between nations.

NEW WORLD REALITY INTRUDES ON PRIVACY

This new world reality can be characterized as the greatest challenge to the existing private wealth management systems ever seen, since many wealthy families keep assets outside of their home countries for financial and personal safety reasons, and the automatic disclosure of account information puts these families' wealth and security at risk.

The OECD has said "there's no place left to hide." The OECD is trying to persuade the public that privacy is only relevant to criminals. This false logic has been applied by authoritarian and intrusive governments throughout history. Privacy is recognized as a basic right under article 12 of the United Nations' Universal Declaration of Human Rights and is a right that is protected in almost all legal systems.

Many Old World jurisdictions which have been widely used for offshore private wealth and estate planning in the past are no longer safe from a privacy perspective. For example, the United Kingdom (including all British Overseas Territories²), New Zealand³, and others, are already moving to register trustees and to force disclosures of owners and beneficiaries, which were assumed to be private in the past. This means that old world structures such as trusts, double trusts and trusts over holding companies, which were mainstay wealth management tools

² <https://www.ogier.com/publications/the-register-of-people-with-significant-control>

³ <http://www.lexology.com/library/detail.aspx?g=1630993f-1552-4ae4-b0d5-c9b41075bd84>

of the old world, will no longer offer significant privacy.

THE CHALLENGE

Protecting the privacy of legitimate family investment groups while complying with the new world rules is what every investor and family group will want to balance in the coming years. Chinese overseas depositors should be aware of the new global law changes and should take steps to investigate the best ways to be compliant. Families that care about their privacy should examine the efficacy of their old world investment structures in a changing environment.

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