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*German Tax and Legal News*

## **Guidance issued on the automatic exchange of information and FATCA reporting**

Official guidance covers the application of the automatic exchange of information under the CRS and FATCA

On March 3, 2017, the German fiscal authorities issued official guidance (dated February 1, 2017) on the application of the automatic exchange of information under the OECD common reporting standard (CRS), as well as under the US Foreign Account Tax Compliance Act (FATCA).

An official guidance is an instruction to German fiscal authorities how to treat specific tax facts (in this case how FATCA and CRS have to be implemented by German financial institutions). Taxpayers can rely on an official guidance, but also challenge it.

### **Background**

In 2010, the US enacted FATCA, which requires that financial institutions outside the US agree to perform specified due diligence procedures to identify US persons that hold accounts with them and report information about these US persons to the US tax authorities. Germany, like many other jurisdictions, opted to collect and exchange the information required to be reported under FATCA on the basis of a “model 1” [FATCA intergovernmental agreement \(IGA\)](#) signed with the US in May 2013.

Many of the jurisdictions implementing FATCA on an intergovernmental basis showed interest in leveraging the investments made to implement FATCA to establish automatic information exchange relationships with other jurisdictions introducing similar rules. The OECD, together with G20 countries and in close cooperation with the EU, developed the [Standard for Automatic Exchange of Financial Account Information in Tax Matters](#), including the CRS, to tackle offshore tax evasion and other forms of tax noncompliance.

On October 29, 2014, Germany committed to implement the CRS, and the relevant legislation (FKAustG) was enacted into German law on December 21, 2015.

To fulfil their obligations under the CRS, German financial institutions have to identify foreign taxpayers among their account holders and report details of the financial assets they hold on behalf of taxpayers from jurisdictions with which Germany exchanges information to the Federal Central Tax Office (BZSt). The BZSt will then exchange the financial account information on an annual basis, starting in 2017 for 2016, with the respective tax authorities of participating jurisdictions.

### **New guidance**

The official guidance issued on March 3, 2017 covers the automatic exchange of information under both the CRS and the FATCA IGA. Over 96 pages, the guidance details the due diligence obligations for identifying and reporting on foreign reportable accounts under the CRS and FATCA. This guidance replaces the previously issued guidance on the application of the FATCA agreement.

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