

## The common reporting standard

The OECD published the Common Reporting Standard (CRS) for the Automatic Exchange of Financial Account Information on 13 February 2014. Financial institutions resident in CRS countries will report account holder information to their local tax authorities who will then exchange information with countries where account holders are tax residents.

The Common Reporting Standard is a game-changer in the global fight against tax evasion. More than 90 jurisdictions have already committed to adopting CRS and there are more than 50 early adopters with the first automatic information exchanges in 2017.

CRS will work in a very similar way to the United States FATCA regulations, although it does not itself impose withholding taxes for non-compliance.

In the European Union, CRS will be implemented through the Directive on Administrative Co-Operation. Whilst the United States has no immediate plans to adopt CRS, it is already receiving financial account information through the FATCA regulations.

There are very few hold-outs who have not yet agreed to adopt CRS – Bahrain, the Cook Islands, Nauru, Panama and Vanuatu.

### Determining CRS status

The first step is to determine whether an entity is a financial institution (FI), with registration and reporting obligations, or alternatively a non financial entity (NFE). Financial institutions comprise:

- banks;
- custodians;
- investment entities;
- specified insurance companies.

Financial institution carries out due diligence

Financial institution reports information to local tax authority

Local tax authority exchanges information with CRS jurisdictions

Under CRS, investment entities are:

- entities which primarily conduct as a business investing, administering or managing funds, for and on behalf of a customer; or
- investment companies, trusts, funds or partnerships where gross income is primarily attributable to investing, reinvesting or trading financial assets, and the entity is itself managed by an FI.

Thus, a money box trust managed by a professional trustee is likely to be an FI, whereas a property company or trust is likely to be an NFE since its income is not primarily attributable to financial assets.

'Specified insurance companies' are those that deal with investment products such as cash value insurance contracts and annuities.

Financial Institutions such as retirement funds are not required to report information, nor are trusts where the trustee is itself a 'reporting financial institution' and reports all information on the trust.

An NFE can be active or passive according to the source of its income. Active NFEs derive their income primarily from trading whereas passive NFEs derive their income primarily from investments. The distinction is important since passive NFEs will be required to disclose relevant controlling persons. In the case of a trust, controlling persons include the settlor, the trustees, the protector, the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust.

### Due diligence requirements

Reporting FIs will be required to carry out due diligence with the objective of identifying foreign account holders in CRS jurisdictions:

- existing AML/KYC documentation;
- electronic record search;
- where relevant, a paper record search over the last five years, searching for indicia of residence such as mailing address, telephone number, standing instructions to transfer funds to another account, an 'in care' address or a power of attorney over the account.

Where the account holder is itself a passive NFE, there is a requirement to identify relevant controlling persons. The active or passive status of an NFE is determined by self-certification and controlling persons are identified using normal AML/KYC procedures.

### Information to be reported

The information to be reported in respect of each reportable account is:

- the name, address, taxpayer identification number, and date and place of birth of each account holder and controlling person;
- the account number;
- the name and identifying number of the reporting financial institution;
- the account balance or value at the end of the reporting period (or date of closure);
- income arising on deposits and custody accounts;
- gross proceeds arising on sales and redemptions in custody accounts; and
- gross amounts paid or credited to the account holder on other accounts.

### Retirement accounts and estate accounts are not reportable

The information to be reported includes the equity interest in a trust or partnership that qualifies as an investment entity. For a trust, the equity interest can be held by a settlor or beneficiary, or any other person exercising ultimate effective control over the trust. Beneficiaries include those entitled to a mandatory distribution, and those who may receive, directly or indirectly, a discretionary distribution from the trust.

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