

1 Introduction

1. The CRS was designed to promote tax transparency with respect to financial accounts held abroad and requires the collection and automatic exchange of information of the identity of account holders, as well as the balance and the income paid or credited to the accounts. Since the CRS was adopted in 2014, over seven years have passed, in which over 100 jurisdictions have implemented the CRS.
2. As such, there is now solid experience with the CRS both by governments and Financial Institutions. The OECD has therefore conducted the first comprehensive review of the CRS, with the aim of improving the operation of the CRS. To that end, the OECD has taken on board input from jurisdictions that have implemented the CRS, as well as from Reporting Financial Institutions reporting under the CRS, in order to determine areas meriting a review. This has resulted in amendments in two key areas.
3. Firstly, new digital financial products are included in the scope of the CRS, as they may constitute a credible alternative to holding money or Financial Assets in an account that is currently subject to CRS reporting. In this regard, the CRS now covers Specified Electronic Money Products and Central Bank Digital Currencies. In light of the development of the CARF, changes are also made to the definitions of Financial Asset and Investment Entity, to ensure that derivatives that reference Crypto-Assets and are held in Custodial Accounts and Investment Entities investing in Crypto-Assets are covered by the CRS. The CRS now also contains provisions to ensure an efficient interaction between the CRS and the CARF, in particular to limit instances of duplicative reporting, while maintaining a maximum amount of operational flexibility of Reporting Financial Institutions that are also subject to obligations under the CARF.
4. Secondly, the amendments enhance the reporting outcomes under the CRS, including through the introduction of more detailed reporting requirements, the strengthening of the due diligence procedures, the introduction of a new, optional Non-Reporting Financial Institution category for Investment Entities that are genuine non-profit organisations and the creation of a new Excluded Account category for capital contribution accounts. In addition, further details have been included in the Commentary to the CRS in a number of locations to increase consistency in the application of the CRS and to incorporate previously released Frequently Asked Questions and interpretative guidance.
5. In order to accommodate the expanded reporting requirements under the amended CRS, an Addendum to the CRS MCAA has been developed that provides an updated legal basis for participating jurisdictions exchanging CRS information under the CRS MCAA.

Covering new digital financial products

Digital money products

6. Certain e-money products, as well as Central Bank Digital Currencies (CBDCs) representing a digital fiat currency issued by a Central Bank, can be considered functionally similar to a traditional bank account from the perspective of customers and may therefore entail tax compliance concerns similar to those associated with bank accounts currently covered by the CRS. To ensure a level-playing field between digital money products and traditional bank accounts and to ensure consistent reporting outcomes, the following amendments to the CRS have been made:

- the term Specified Electronic Money Product is introduced, covering digital representations of a single fiat currency that are issued on receipt of funds for the purpose of making payment transactions, that are represented by a claim on the issuer denominated in the same fiat currency, that are accepted by a natural or legal person other than the issuer; and that, by virtue of regulatory requirements to which the issuer is subject, are redeemable at par for the same fiat currency upon request of the holder of the product. A carve-out is included for products that are created solely to facilitate a funds transfer pursuant to instructions of a customer and that cannot be used to store value;
- the term Central Bank Digital Currency (CBDC) is introduced, covering any official currency of a jurisdiction, issued in digital form by a Central Bank;
- the definition of Depository Institution and the related Commentary are amended to include those e-money providers that are not already Depository Institutions under the current definition and that are relevant from a CRS perspective by virtue of holding Specified Electronic Money Products or CBDCs;
- the definition of Depository Account is amended to include accounts that represent the Specified Electronic Money Products and CBDCs held for customers;
- a new category of Excluded Account is added to bring out of scope low-risk digital money products that represent a low-risk in light of the limited monetary value stored, namely Specified Electronic Money Products whose rolling average 90-day end-of-day account balance or value does not exceed USD 10,000 in any consecutive 90 day period; and
- additional wording is included on the definition of Non-Reporting Financial Institution to clarify that a Central Bank is not considered a Non-Reporting Financial Institution when it holds CBDCs on behalf of Non-Financial Entities or individuals.

Coverage of derivatives referencing Crypto-Assets and Investment Entities investing in Crypto-Assets

7. In order to ensure consistency between derivatives referencing Crypto-Assets and derivatives referencing (other) Financial Assets, the latter of which are already covered under the CRS, derivative contracts referencing Crypto-Assets are included in the definition of Financial Assets, thereby allowing Reporting Financial Institutions to apply the same due diligence and reporting procedures to derivatives referencing different types of assets.

8. Beyond the direct transacting in and holding of Crypto-Assets, investors can alternatively invest in Crypto-Assets through funds and other wealth management vehicles, whose purpose is to acquire and hold Relevant Crypto-Assets for investment purposes. By doing so, investors can obtain exposure to price fluctuations of the fund's underlying Crypto-Assets, without directly owning any Crypto-Assets.

9. Interests in funds and wealth management vehicles are already subject to reporting under the CRS, either as Equity or Debt Interests in Investment Entities or as Financial Assets held in Custodial Accounts. However, the definition of Investment Entity does not currently contain Crypto-Assets as a category of eligible investments that would bring the Entity in scope of the CRS, as the definition presently only encompasses Financial Assets and money. The definition of Investment Entity is therefore expanded to include the activity of investing in Crypto-Assets.

Further amendments to improve CRS reporting

10. As set out above, a set of further amendments are made to the CRS and Commentary with a view to improving the quality and usability of CRS reporting. Each of the changes is briefly outlined below.

Expansion of the reporting requirements in respect of Account Holders, Controlling Persons and the Financial Accounts they own (Section I – Reporting requirements)

11. When the CRS was designed, the reporting requirements set out in Section I were primarily focused on the transmission of key identification items in respect of Account Holders and Controlling Persons, as well as on information related to the income realised and balances present on Financial Accounts.

12. At the same time, Reporting Financial Institutions may have knowledge of a set of other facts and circumstances surrounding the Account Holders, Controlling Persons and the Financial Accounts they own, which, if reported, allow tax administrations to better contextualise the information they receive under the CRS and to facilitate the use of the data for tax compliance purposes. The reporting requirements under the CRS are therefore expanded to cover the following:

- the role of Controlling Persons in relation to the Entity Account Holder and the role(s) of Equity Interest Holders in an Investment Entity – this ensures that tax administrations have visibility on the role(s) a Controlling Person/Equity Interest Holder plays with respect to the Entity, allowing a distinction between those Controlling Persons/Equity Interest Holders that have an interest through ownership, control or as beneficiaries, as opposed to those that have a managerial role (e.g. senior management officials, protectors, trustees);
- whether the account is a Preexisting Account or a New Account and whether a valid self-certification has been obtained – this information gives tax administrations visibility with respect to the due diligence procedures applied, and therewith gives insights into the reliability of the information;
- whether the account is a joint account, as well as the number of joint Account Holders – this information permits tax administrations to take the fact into account that the income and balance on joint accounts may not be attributable in full to each Account Holder, but would rather need to be apportioned, as appropriate, between the Account Holders; and
- the type of Financial Account – this distinction between Depository Accounts, Custodial Accounts, Equity and debt Interests and Cash Value Insurance Contracts allows tax administrations to better understand the financial investments held by their taxpayers.

Reliance on AML/KYC Procedures for determining Controlling Persons (Section VI – Due diligence requirements)

13. The conditions under which a Reporting Financial Institution can rely on AML/KYC Procedures to determine the Controlling Persons of a New Entity Account Holder have been moved into the text of the CRS itself. In particular, it is specified for New Entity Accounts that AML/KYC Procedures must be in line with 2012 FATF Recommendations. In addition, it is clarified that, if AML/KYC Procedures are not consistent with 2012 FATF Recommendations, the Reporting Financial Institution must apply substantially similar procedures.

Exceptional due diligence procedure for cases where a valid self-certification was not obtained, in order to ensure reporting with respect to such accounts (Sections II – VII – Due diligence requirements)

14. As the CRS requires Reporting Financial Institutions to obtain and validate self-certifications for all New Accounts, the CRS does not foresee any fall-back due diligence procedure to be applied in exceptional cases where a Reporting Financial Institution did not comply with the requirement to obtain a valid self-certification.

15. Reporting Financial Institutions are therefore required to temporarily determine the residence of the Account Holders and/or Controlling Persons on the basis of the due diligence procedures for Preexisting Accounts. It should be noted that this is not a standard procedure and is not an alternative to the requirement to obtain a valid self-certification.

Qualification of certain capital contribution accounts as Excluded Accounts (Section VIII(C)(17)(e) – Definition of Excluded Account)

16. So-called capital contribution accounts, the purpose of which is to block funds for a limited period of time in view of the incorporation of a new company or a pending capital increase, are now considered Excluded Accounts, provided that adequate safeguards are in place to avoid the misuse of such accounts. This is the case where such transactions are subject to regulation and, as a matter of law, are required to take place via a dedicated bank account, whereby the underlying funds are frozen until the capital contribution has taken place and, in the case of an incorporation, when the company has been legally established and registered in the jurisdiction's commercial register. As soon as the company is legally established and registered, the capital contribution account is then transformed into a regular Depository Account or the capital amount is transferred to a Depository Account and the initial capital contribution account is closed. On the contrary, if the company is not established, the contributions would be refunded to the subscriber(s).

17. In order to ensure that such accounts are only used for the completion of an imminent capital contribution transaction, such an account is treated as an Excluded Account only where the use of such accounts is prescribed by law and for a maximum period of 12 months.

Non-Reporting Financial Institution category for genuine charities

18. While most Active NFEs are not treated as Investment Entities even if they meet the Investment Entity definition, this carve-out does not apply to Entities that are Active NFEs by virtue of being a non-profit Entity as defined in subparagraph D(9)(h) of Section VIII. Representatives from the philanthropy sector have highlighted that this can lead to highly undesirable outcomes, requiring genuine public benefit foundations to apply due diligence procedures in respect of all beneficiaries of grant payments and report on grant payments to non-resident beneficiaries, such as for instance disadvantaged students receiving scholarships. At the same time, concerns have been expressed by governments that simply extending the carve out from the Investment Entity definition to all non-profit Entities described in Subparagraph D(9)(h) of Section VIII could give rise to situations where Investment Entities would circumvent their reporting obligations under the CRS by improperly claiming the status of non-profit Entities.

19. In light of these considerations, the CRS now contains an optional new Non-Reporting Financial Institution category for genuine Non-Profit Entities that (i) reflects the substantive conditions of Active NFEs pursuant to subparagraph D(9)(h) of Section VIII and (ii) makes the carve-out subject to adequate verification procedures by the tax administration of the jurisdiction in which the Entity is otherwise subject to reporting as an Investment Entity.

20. The Commentary language to Paragraph B of Section VIII now includes language outlining these conditions for excluding Qualified Non-Profit Entities from reporting obligations under the CRS. The Commentary also describes the confirmation a tax administration or other governmental authority would need to obtain before treating an Entity as a Qualified Non-Profit Entity.

Broadening of the scope of Depository Institution (Commentary to Depository Institution definition)

21. The Commentary on the term Depository Institution has been amended to expand the scope to include entities that are merely licensed to engage in certain banking activities but are not actually so engaged.

Notions of customer and business in the context of Investment Entities (Commentary to Investment Entity definition)

22. With respect to Investment Entities pursuant to subparagraph a of the definition, doubts have arisen as to the interpretation of the term “customer”, as well as the condition that the activities listed in subparagraph must be conducted “as a business”. This question is in particular relevant with respect to funds.

23. The scope of the definition is clarified via the terms “customer” and “business”, by explicitly confirming in Commentary that investors of funds can be considered “customers” and the funds themselves can be considered to conduct activities “as a business”. This is consistent with the interpretation of the definition of Financial Institution in the FATF Recommendations, on which subparagraph (a) is based.

Reporting in respect of dual-resident account-holders (paragraphs 4 and 7 to the Commentary on Section IV and VI, respectively)

24. The Commentary to the CRS acknowledges that an Entity or individual Account Holder may be resident for tax purposes in two or more jurisdictions. The Commentary also specifies that, in the context of the self-certification process, such dual-residents may rely on the tie-breaker rules contained in applicable tax conventions to determine their residence for tax purposes.

25. This may result in prematurely treating the Account Holder as tax resident in a single jurisdiction for the purposes of the CRS, leading to the CRS information with respect to the Account Holder not being reported to the other jurisdiction(s).

26. The Commentary is therefore revised in order to ensure that, in tiebreaker scenarios, all jurisdictions of tax residence should be self-certified by the Account Holder and the Account Holder should be treated as tax resident in all identified jurisdictions. The Commentary further clarifies that reliance on tiebreaker rules to determine the jurisdiction of residence for self-certification purposes is no longer permitted on a prospective basis, once the changes to the CRS have taken effect.

Reflecting Government Verification Services within the CRS due diligence procedures

27. At present, the CRS due diligence procedures are based on AML/KYC documentation, self-certifications and other account-related information collected by Reporting Financial Institutions. At the same time, technology is evolving in a direction that can potentially drastically simplify the documentation of taxpayers in a highly-reliable manner. Specifically, so-called Government Verification Services (GVS) may allow a third-party information provider, such as a Reporting Financial Institution, to obtain a direct confirmation in the form of an IT-token or other unique identifier from the tax administration of the jurisdiction of residence of the taxpayer in relation to their identity and tax residency.

28. Reporting Financial Institutions will be allowed to rely on a GVS procedure to document an Account Holder or Controlling Person in the CRS due diligence procedures, with the aim of making the CRS future-proof for future IT-developments. In this respect, the confirmation of an Account Holder's or Controlling Person's identity and tax residence via a GVS or similar IT-driven process is recognised as a functional equivalent to a TIN.

Look-through requirements in respect of Controlling Persons of publicly traded Entities (paragraphs 21 and 19 to the Commentary on Section V and VI, respectively)

29. The CRS due diligence procedures in respect of both Pre-existing and New Entity Accounts require Reporting Financial Institutions to look-through Passive NFEs to determine their Controlling Persons. In doing so, Reporting Financial Institutions may rely on information collected and maintained pursuant to AML/KYC Procedures. In this respect, the interpretative note to FATF Recommendation 10 (customer due diligence) provides that financial institutions are not required to request information on the beneficial owner(s) of publicly traded companies if such company is already otherwise subject to disclosure requirements ensuring adequate transparency of beneficial ownership information. This exclusion is now included in the CRS, in order to maintain alignment with the FATF Recommendations and in light of the limited utility of such information for tax risk assessment purposes.

Integrating CBI/RBI guidance within the CRS (paragraph 3bis to Commentary on Section VII)

30. In October 2018, the OECD released explanatory guidance for Reporting Financial Institutions aimed at addressing the misuse of certain citizenship and residence by investment (CBI/RBI) schemes, allowing foreign individuals to obtain citizenship or temporary or permanent residence rights on the basis of local investments or against a flat fee, to circumvent the CRS.

31. The explanatory guidance reiterates that a Reporting Financial Institution may not rely on a self-certification or Documentary Evidence where it knows or has reason to know, that it is incorrect or unreliable. In making this determination, Reporting Financial Institutions should take into account the information published by the OECD on potentially high-risk CBI/RBI schemes. The guidance also includes a number of additional questions that Reporting Financial Institutions may raise to determine the appropriate jurisdiction(s) of CRS reporting. The explanatory guidance is now included in the Commentary.

Incorporating FAQs

32. Since the CRS was adopted in 2014, the OECD has been regularly asked to provide guidance on the interpretation of the CRS. This has been typically done through the development of frequently-asked questions (FAQs) that are published on the OECD website. In order to reflect the substantive guidance given through the FAQs in the CRS itself, language has been added to the Commentary in several places. FAQs not explicitly incorporated into the Commentary still remain valuable guidance for interpreting the CRS.



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