

## **Automatic Exchange of Financial Account Information Information for financial institutions**

From 1 July 2017, New Zealand financial institutions will (unless exempted) need to review their accounts and collect and report information to Inland Revenue on accounts held or (in certain circumstances) controlled by non-residents. Where necessary, Inland Revenue will then share that information with other tax jurisdictions in specific countries. The objective is to help eradicate tax evasion.

A key consideration in implementing the initiative will be in achieving a consistent standard for how the information exchange is conducted between jurisdictions. To address this, the OECD has published its Standard for Automatic Exchange of Financial Account Information in Tax Matters.

The Common Reporting Standard (CRS) which forms part of the Standard outlines the reporting and due diligence requirements for conducting the automatic exchange of information.

The CRS is of particular importance to financial institutions and this fact sheet provides information on proposed measures to be included in draft legislation based on public feedback to its public consultation document, *Implementing the global standard on automatic exchange of information*, released in February 2016.

### **Draft legislation**

The draft legislation is based on the options released for public consultation and the feedback received. Generally the legislation aims to:

- allow reporting financial institutions to take advantage of options set out in the CRS and commentary; and
- not require reporting financial institutions to collect further information than is required under the CRS (with the exception of the ‘wider approach’ to due diligence, which will be mandatory).

This approach should help to minimise the compliance costs for reporting financial institutions in implementing the CRS.

### **Policy recommendations**

This document summarises the key policy recommendations for draft legislation in the following areas:

1. The reporting period
2. The “wider approach”

3. Timeframe for review of pre-existing individual and entity accounts
4. Excluded reporting entities and accounts
5. Reportable jurisdictions
6. Enforcement and compliance
7. Alignment with anti-money laundering legislation and FATCA
8. Key dates for financial institutions AEOI reporting

These proposals will be set out in a Bill to be introduced in August.

### **Important**

As the Common Reporting Standard is still to become New Zealand law, the details in this fact sheet are subject to change through the parliamentary process and should be read in that context.

## **1. The reporting period**

It is proposed that financial institutions will report financial information for eligible accounts to Inland Revenue on a tax year basis as follows:

- The first reporting period in New Zealand is the part year 1 July 2017 to 31 March 2018.
- Subsequent AEOI reporting periods will cover full tax years from 1 April to 31 March.
- Reporting New Zealand financial institutions will be required to report to Inland Revenue by 30 June after the end of the tax year.
- Reporting on a tax year basis aligns with the annual Foreign Account Tax Compliance Act (FATCA) reporting date, and allows reporting financial institutions three months to prepare data for the reporting deadline to Inland Revenue of 30 June each year.

## **2. The “wider approach”**

The CRS procedures are designed to ensure that residents of reportable jurisdictions are identified and subject to reporting. (For New Zealand, reportable jurisdictions are broadly those that New Zealand has agreed to exchange information with under this initiative.) However, the list of reportable jurisdictions will change over time, as additional jurisdictions join the initiative. Strictly, this would require reporting financial institutions to monitor the list on an on-going basis and to update their due diligence and reporting procedures each time the list changes. Importantly, changes to the list could also result in reporting financial institutions being required to repeat due diligence in respect of some or all of their accounts. As a compliance cost reduction measure, the CRS therefore includes an option for jurisdictions to adopt a “wider approach”, either solely in respect of due diligence or in respect of both due diligence and reporting.

### *Due diligence*

Under the wider approach to due diligence, reporting financial institutions would identify **all** non-resident account holders (and controlling persons of passive non-financial entities), rather than just those of reportable jurisdictions. It is proposed that this approach be adopted, and that it be mandatory for all reporting financial institutions.

### *Reporting*

Under the wider approach to reporting financial institutions report any non-resident account holder or controlling person identified as being **non-resident**, irrespective of whether those persons are from reportable jurisdictions. Inland Revenue would then filter the reported data and exchange the “reportable jurisdiction” information with the relevant jurisdictions. It is proposed that this approach be adopted, but that it be optional for reporting financial institutions. (That is, financial institutions that wish to filter the data themselves could do so.)

## **3. Timeframe for review of pre-existing individual and entity accounts**

### *Pre-existing high value individual accounts*

It is proposed that all high value pre-existing individual accounts will need to be reviewed in the first reporting period (i.e. 1 July 2017 to 31 March 2018). However, reporting financial institutions will in effect have a 3 month grace period as they may continue conducting due diligence up until 30 June 2018 (the deadline date for reporting).

However, if a reporting financial institution identifies a reportable account during the 3 month grace period of 1 April 2018 to 30 June 2018, it will need to report this account by 30 June 2018 for the first reporting period ending 31 March 2018.

### *Pre-existing entity accounts and lower value individual accounts*

The proposed approach is that all pre-existing entity accounts and lower value individual accounts will need to be reviewed by the end of the second reporting period (31 March 2019). However, reporting financial institutions will in effect have a 3 month grace period as they may continue conducting due diligence up until 30 June 2019 (the deadline date for reporting).

However, if a reportable account is identified during the 3 month grace period of 1 April 2019 to 30 June 2019, it will need to be reported by 30 June 2019 for the reporting period ending 31 March 2019.

#### **4. Excluded reporting entities and accounts**

It is proposed that Inland Revenue will determine which entities and accounts will be excluded from CRS due diligence and reporting obligations.

Inland Revenue will invite submissions on excluded entities and accounts before the end of 2016. Submissions will be considered in terms of the specific requirements set out in the CRS. The initial list of excluded entities and accounts will be determined by early to mid-2017.

#### **5. Reportable jurisdictions**

It is proposed to list New Zealand's reportable jurisdictions by Order in Council. The Commissioner of Inland Revenue will have the ability to temporarily remove a jurisdiction from the list at short notice if necessary.

The first step in this process is that Inland Revenue will consider each jurisdiction signed up to AEOI to determine whether they should be reportable. Inland Revenue will then call for submissions, likely by the end of 2016. The Order in Council will be made by early to mid-2017.

#### **6. Enforcement and compliance**

##### *Transition period*

It is proposed that there will be a transitional period applying until 31 March 2019, during which reporting financial institutions will generally be able to rely on a 'reasonable endeavours' defence to any non-compliance with their CRS obligations – similar to the FATCA two-year 'good faith' transition period precedent. However, this will be subject to the reporting financial institution rectifying any identified errors within a reasonable period of time.

##### *Penalties*

It is proposed that penalties for non-compliance with CRS obligations will generally be civil in nature (as opposed to criminal for FATCA), apart from knowledge-based offences. Given the importance of effective rules for ensuring compliance, strong sanctions are proposed for serious failure to comply.

It is proposed that penalties for non-compliance will be extended beyond reporting financial institutions to cover account holders, controlling persons and intermediaries in defined circumstances. This reflects the fact that such persons have the information (or have customer relationships with the persons that have the information) that reporting financial institutions will need to obtain in order to comply with their CRS due diligence and reporting obligations. These proposed obligations will also assist in ensuring that reporting financial institutions always obtain requisite self-certifications for new accounts, which is a key OECD requirement (as elaborated on below). The proposal is that this extension will also apply for FATCA purposes.

### *Grace period for self-certifications*

The OECD has highlighted its expectation that jurisdictions implementing CRS will have robust legal, administrative, and operational frameworks in place to ensure that financial institutions always obtain required self-certifications for new accounts.

However, the OECD has provided some guidance about how such a process is expected to work in practice.

The OECD has stated that a reporting financial institution should generally obtain self-certifications as part of a “day one” account opening process where this is practical in the circumstances.

However, such a financial institution can be allowed a period of up to 90 days to obtain a self-certification where there are practical difficulties in obtaining a self-certification as part of a “day one” process. Inland Revenue intends to follow this approach.

There will be reporting requirements in respect of undocumented pre-existing accounts. Reporting financial institutions will also be required to keep a record of the instances where it has failed to obtain a required self-certification.

## **7. Alignment with anti-money laundering legislation and FATCA**

The CRS due diligence procedures leverage off anti-money laundering procedures in a number of areas. The CRS also contains a number of terms and types of procedures that align with FATCA. This means that there will be some alignment between CRS due diligence procedures and anti-money laundering/FATCA due diligence procedures.

However, to manage any divergence, it is proposed that the CRS will drive the obligations that reporting financial institutions will have for CRS purposes (for example, “controlling persons” with new accounts are more widely defined in the CRS).

As the CRS is a global standard, New Zealand’s compliance with the CRS will be subject to rigorous international scrutiny and peer review by the OECD’s Global Forum.

## 8. Key dates for financial institutions AEOI reporting

<b>Dates</b>	<b>Actions</b>
August 2016	The legislation will be introduced into Parliament (as part of the Taxation (Business Tax, Exchange of Information and Remedial Matters) Bill.
Late 2016	Inland Revenue will call for submissions on reportable jurisdictions and excluded entities and accounts.
March 2017	The Bill is expected to receive Royal assent.
Early to mid-2017	Initial list of reportable jurisdictions, participating jurisdictions, and excluded entities and accounts.
1 July 2017	Reporting financial institutions commence due diligence procedures.
1 April 2018 to 30 June 2018	Reporting financial institutions submit their AEOI reporting to Inland Revenue for the tax year ending 31 March 2018.
30 September 2018	Final date for Inland Revenue to exchange information with other reportable jurisdictions for the reporting period ending 31 March 2018.

### Further information

Further information on the requirements for AEOI and its global implementation can be found on the [OECD's automatic exchange portal](#).