

**MEMO# 27892**

February 13, 2014

# **OECD Releases Common Reporting Standard (CRS) For Automatic Exchange of Information (AEOI) Regarding Financial Accounts**

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TO: ICI GLOBAL DAILY  
ICI GLOBAL STEERING COMMITTEE No. 2-14  
ICI GLOBAL MEMBERS No. 3-14  
ICI GLOBAL TAX COMMITTEE No. 2-14  
TAX MEMBERS No. 2-14  
INTERNATIONAL MEMBERS No. 3-14  
INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 3-14  
TRANSFER AGENT ADVISORY COMMITTEE No. 8-14  
BROKER/DEALER ADVISORY COMMITTEE No. 7-14  
TAAC FATCA TASK FORCE No. 3-14 RE: OECD RELEASES COMMON REPORTING STANDARD (CRS) FOR AUTOMATIC EXCHANGE OF INFORMATION (AEOI) REGARDING FINANCIAL ACCOUNTS

The Organisation for Economic Co-operation and Development (OECD) today released a new standard for the automatic exchange of information (AEOI) regarding financial accounts. [\[1\]](#) The standard was approved by the OECD's Committee on Fiscal Affairs in January and will be presented at the meeting of the G20 Finance Ministers and Central Bank Governors on 22-23 February.

An OECD working party of government officials developed the standard in consultation with a Business Advisory Group that was formed by the Business and Industry Advisory Committee to the OECD (BIAC) and is chaired by ICI Global. The standard includes both a Model Competent Authority Agreement (CAA) and a Common Standard on Reporting and Due Diligence for Financial Account Information (the Common Reporting Standard or CRS). A separate Commentary on the CRS is being prepared by the OECD with input from the Business Advisory Group.

# Background

The CRS is based upon the first intergovernmental agreement (IGA), which was developed by the United States and five countries (France, Germany, Italy, Spain, and the United Kingdom) [\[2\]](#) to ease implementation of the US Foreign Account Tax Compliance Act (FATCA). [\[3\]](#) Under FATCA, non-US financial institutions with US investments effectively are required to provide directly to the US Internal Revenue Service (IRS) specific financial information about their customers who are either US citizens or residents or that are controlled by US citizens or residents. Detailed customer-identification procedures also must be followed.

Under this first version of the IGA (known as the Model 1 IGA), a non-US financial institution reports information about its US customers to its local tax authority, rather than to the IRS, using a common reporting format. This information then is provided by the local tax authority to the US. If the IGA is reciprocal, the IRS provides the other country with information about its tax residents. [\[4\]](#)

The CRS development process has benefited from the strong political support received from the G8 and G20. Among the over 40 countries that have joined the effort are several that are members of neither the OECD nor the G20.

## The Model CAA

The Model CAA is based upon the reciprocal version of the Model 1 IGA. As such, it is drafted as a reciprocal agreement between two governments; under the CAA, governments will exchange financial information on a reciprocal basis that is received from their local financial institutions about the other country's tax residents. The CAA includes, among other things, a definitions section, describes the types of information to be exchanged, the time and manner of exchange, and confidentiality and data safeguards.

## The CRS

The CRS contains the customer identification/due diligence procedures that financial institutions must follow to identify their nonresident customers and the accompanying reporting requirements. These requirements are based upon the FATCA regulations, the Model 1 IGA, and the guidance being developed to implement the Model 1 IGA.

The CRS' general reporting and due diligence requirements are provided in Sections I and II, respectively. Like under FATCA, a financial institution must report information about the account holder, the account, the account balance or value, and the income and sales proceeds attributable to the account; unlike FATCA, there are no thresholds below which reporting is not required. Reporting and account balance determinations are based upon the calendar year and the last day of the calendar year (or another appropriate reporting period), respectively. Financial institutions may use service providers to fulfill their reporting and due diligence requirements, as contemplated by domestic law; these obligations, however, remain the responsibility of the financial institution.

The reporting requirements apply generally only to reportable accounts, which are accounts of persons who are tax resident in a country with which the financial institution's "home"

country has entered into a CAA (i.e., reportable persons in reportable jurisdictions). Any account holder with multiple tax residences (or indicia of multiple tax residences) will be reported to each potential/actual country of tax residence that is part of the reporting jurisdiction's CAA network. The term reportable person excludes a corporation the stock of which is regularly traded on one or more established securities markets, governmental entities, financial institutions, and certain other specified organizations.

## **Individual Accounts**

Different due diligence requirements are imposed on financial institutions, in Sections III and IV, for the preexisting and new accounts of their individual account holders. All individual accounts, regardless of value, are subject to the due diligence requirements. The requirements for preexisting accounts are less rigorous for lower value accounts (defined generally as accounts with a 31 December balance of US\$1 million or less) than they are for high value accounts.

For lower value accounts, the current residence address in the financial institution's records may be relied upon for determining tax residence (under the so-called "B(1) procedure") if the address is based upon documentary evidence (a defined term). If the financial institution does not have a current residence address that is based upon documentary evidence, an electronic search for residence indicia is required. Reasonable efforts generally are required to obtain a taxpayer identification number (TIN) and date of birth for all preexisting accounts by the end of the second calendar following the year in which an account is identified as a reportable account.

For high value accounts, enhanced review procedures must be followed. These procedures include an electronic record search, a paper record search (if, subject to certain exceptions, not all of the required fields are included in electronically searchable databases), and a relationship manager inquiry for actual knowledge.

For all new individual accounts, a financial institution must receive a tax residence certificate during the account opening process. Specific rules are provided for ascertaining the reasonableness of the certification and for any change in circumstances that causes the financial institution to know, or have reason to know, that the original self-certification is incorrect or unreliable.

Jurisdictions are permitted to allow: (1) the due diligence procedures for new accounts to be applied to preexisting accounts and (2) the due diligence procedures for high value accounts to be applied to lower value accounts.

## **Entity Accounts**

The due diligence rules for entity accounts, in Sections V and VI, likewise provide somewhat less rigorous rules for preexisting accounts than for new accounts. These rules, like those for individual accounts, are based upon FATCA's requirements.

For preexisting entity accounts, importantly, the due diligence procedures need not be applied to an account with a balance or value that does not exceed US\$250,000 as of 31 December of any year. The only preexisting entity accounts that are treated as reportable accounts are those held by entities that are reportable persons or by passive non-financial entities (passive NFEs) with one or more controlling persons who are reportable persons. Section V also provides detailed rules for determining whether an account is held by an

entity that is a reportable person or by an entity is a passive NFE with one or more controlling persons.

Under the new entity account procedures, a self-certification must be provided that allows the financial institution to determine the account holder's residence(s) for tax purposes. The financial institution must be able to confirm the reasonableness of the self-certification based upon information obtained by the financial institution in connection with the account opening process. For purposes of determining whether an account holder is a passive NFE, the financial institution must rely on a self-certification unless it has information in its possession or that is publicly available upon which it reasonably can determine that the account holder is an active NFE or (with one exception) a financial institution.

### **Special Due Diligence Rules**

Special due diligence rules are provided by Section VII. One rule prohibits reliance on a self-certification or on documentary evidence that the financial institution knows or has reason to know is incorrect or unreliable. Separate account aggregation rules are provided for individual and entity accounts. One special rule for individual accounts requires aggregation (for high value account purposes) of accounts that a relationship manager knows or has reason to know are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person.

### **Definitions**

Detailed definitions are provided by Section VIII for the following broad categories: reporting financial institutions, non-reporting financial institutions, financial accounts, reportable accounts, and miscellaneous. Each of these broad categories contains several definitions relating to specific types of institutions, accounts, or related financial items.

### **Implementation**

Countries are required by Section IX to have effective rules in place to implement the CRS. No implementation deadlines, however, are provided by the CRS; these deadlines will be agreed to by the governments entering into CAAs.

Several governments have reached out recently to their financial institutions seeking comments on the following possible timeline:

- any account that is open on 31 December 2015 would be an account subject to the customer identification (due diligence) rules for existing accounts;
- any account that is opened on or after 1 January 2016 would be an account subject to enhanced customer identification (due diligence) rules for new accounts;
- the rigorous customer identification (due diligence) procedures for preexisting high value accounts (i.e., those with account balances exceeding the equivalent of US\$1 million) would be required to be completed by 31 December 2016;
- the first exchange of information for new accounts and preexisting high value accounts would take place by September 2017; and
- the first exchange of information for preexisting lower value accounts would take place in 2018.

No decisions have been made by governments, however, regarding implementation deadlines.

# Implementation Process

The CRS is only one step in the implementation process. For this new framework to be implemented in a cost-effective manner:

- the OECD must develop detailed guidance, known as Commentary, explaining how governments and financial institutions are to apply the CRS;
- governments must adopt the CRS consistently (rather than make what might be perceived as minor deviations);
- governments must modify domestic laws (such as data privacy rules) and provide administrative guidance so that financial institutions lawfully can collect and report the required information; and
- financial institutions must create new compliance protocols, or modify the FATCA systems and procedures developed already, to accommodate the much broader reach of AEOL.

## TRACE

The CRS does not incorporate the OECD's Treaty Relief And Compliance Enhancement (TRACE) [5] standard; this related initiative, supported strongly by ICI and ICI Global, [6] will facilitate investors' recovery of withheld taxes and reduce governments' administrative costs. To maximize the cost-effectiveness of AEOL implementation, governments also should implement TRACE.

Keith Lawson  
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### endnotes

[1]  
<http://www.oecd.org/ctp/exchange-of-tax-information/Automatic-Exchange-Financial-Account-Information-Common-Reporting-Standard.pdf>

[2] See, e.g., Institute [Memorandum](#) # 26344, dated July 26, 2012.

[3] See Institute [Memorandum](#) # 24186, dated March 17, 2010.

[4] Under the second version of the IGA (known as the Model 2 IGA), financial institutions report directly to the IRS; their local tax authorities do not receive tax information from the IRS. See, e.g., Institute [Memorandum](#) # 26694, dated November 16, 2012.

[5]  
[http://www.oecd.org/ctp/exchange-of-tax-information/TRACE\\_Implementation\\_Package\\_Web site.pdf](http://www.oecd.org/ctp/exchange-of-tax-information/TRACE_Implementation_Package_Web site.pdf).

[6] See, e.g., Institute [Memorandum](#) # 27379, dated July 16, 2013.

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