

Briefing document

Common Reporting Standard for UK Trusts

Introduction

The Common Reporting Standard was developed by the Organisation for Economic Development (OECD) to stop individuals and entities evading tax by hiding assets and income in foreign financial accounts. More than 100 jurisdictions including the UK are committed to rolling out CRS which requires the exchange of financial account information relating to residents of the participating jurisdictions. Details of participating jurisdictions can be found at <https://deloi.tt/2GKeEbO>

Information exchange under CRS commenced in 2017 for the majority of jurisdictions (including the UK) for information pertaining to the 2016 calendar year. Earlier years may have required information exchange under UK FATCA which required information exchange relating to the period from 1 July 2014 to 31 December 2015 between the UK Crown Dependencies (Isle of Man, Jersey and Guernsey) and certain Overseas Territories. Collectively, these jurisdictions are referred to as CDOT.

Under CRS in the UK relevant information must be reported to HMRC by 31 May following the end of each year and the exchange of information takes place by 30 September. Thus information in respect of the calendar year 2018 must be reported to HMRC by 31 May 2019 and will be exchanged by 30 September 2019.

Interaction with other reporting requirements

FATCA (Financial Account Tax Compliance Act) predated CRS and there are many similarities and overlaps between the two. However FATCA is principally concerned with extracting information relating to US persons whereas CRS has a much broader scope.

The UK also introduced its own version of FATCA ('UK FATCA') which applied to the pre-CRS period.

The rules for both information exchanges use the concept of Financial Institutions in considering what reporting is necessary, but the requirements for Reporting Financial Institutions for CRS and US FATCA purposes are different and CRS may apply to accounts that are exempt from FATCA reporting. Charities for example are exempt from reporting under FATCA but may be Reporting Financial Institutions for CRS.

Application to UK trusts

UK trusts are treated as entities by both US FATCA and CRS; new trusts will therefore need to consider their reporting status under CRS and whether any financial information in respect of account holders, for example settlors and beneficiaries, needs to be provided to HMRC. Existing UK trustees should already be aware of their reporting status. A trust is UK resident for FATCA and CRS purposes if one or more trustees are UK resident for tax purposes, unless the trust is resident for tax purposes in another jurisdiction with which the UK automatically exchanges financial information and the trust reports in that other jurisdiction.

A trust can be either a Financial Institution or a Non-Financial Entity. Where a trust is a Financial Institution it is most likely to be a managed Investment Entity but must meet two tests to be within this category of Financial Institution, that is, 1) its gross income must be primarily derived from investing, reinvesting or trading in financial assets and 2) it must be managed by a Financial Institution.

The test of being managed by a Financial Institution will be met where the trust or its activities are being professionally managed. A trust is professionally managed where the trustees have appointed a discretionary fund manager who is a Financial Institution to manage the trust's assets. In practice a trust with individual trustees which derives more than half of its income from an investment portfolio which is managed on a discretionary basis will be a Financial Institution and the trustees will need to consider their reporting requirements.

If the trust is not professionally managed in this way, and does not meet any of the other definitions of Financial Institution, it will be a Non-Financial Entity and the trustees should consider whether the trust is an Active or Passive Non-Financial Entity. This will be relevant as Passive Non-Financial Entities need to provide further information on controlling persons to other Financial Institutions, for example, when opening a bank account. Private family trusts that are not Financial Institutions will generally be Passive Non-Financial Entities. Non-Financial Entities are not required to file CRS returns. However, the Financial Institutions to whom information has been provided may in their turn be obliged to report this information.

Trusts which are managed by a Financial Institution acting as trustee will be Trustee Documented Trusts and the trustee who is a Financial Institution will be the Reporting Financial Institution for both CRS and FATCA. The information required will be determined by the trust's status as a Financial Institution or Non-Financial Entity.

There are some exceptions including the trustees of approved Share Incentive Plans and the executors of estates in administration.

Reporting requirements

CRS requires Reporting Financial Institutions to:

1. Review Financial Accounts held by their Account Holders;
2. Identify Reportable Accounts (accounts where the holders are resident in reportable jurisdictions) by applying due diligence rules (see below); and
3. Report relevant information.

An Account Holder is a person who has an equity or debt interest in the Financial Institution.

Settlers and beneficiaries of trusts are treated as Account Holders together with any person having overall effective control of the trust.

Beneficiaries of trusts are treated as Account Holders with an equity interest in the trust if they:

- Have the right to receive a mandatory distribution from the trust. This distribution can be received either directly or indirectly, for example through a nominee; or
- Receive a discretionary payment from the trust. Again this receipt can be received either directly or indirectly from the trust.

Under all of the agreements the following information is required from Financial Institutions in respect of any person identified as holding Reportable Accounts:

- Name
- Address
- Date and place of birth (subject to certain exceptions)
- Taxpayer Identification Number (TIN) or similar
- Jurisdiction to which the information is reportable
- The account number (or a functional equivalent in the absence of an account number)
- The name and identifying number of the Reporting Financial Institution
- The account balance or value as of the end of the calendar year or other appropriate period.
- The account balance will be the distributions made to discretionary beneficiaries; the value of all trust property and the distributions made to settlors and the value of all trust property and distributions made to beneficiaries entitled to income.

Information in respect of the calendar year 2018 must be reported by 31 May 2019, using the online HMRC system.

Due diligence procedures for new Account Holders

For new Account Holders since 1 January 2016 the trustees should carry out appropriate due diligence and obtain self-certification of their residence status from settlors and beneficiaries within 90 days of a new trust being created or a new beneficiary becoming entitled to a payment. These records must be kept for 6 years.

There is no prescribed format for the self-certification and the trustees should confirm this is reasonable based on the information they hold on file. The trustees should also ask for an updated certification if there is a change in circumstances such as a change in address.

Different rules applied for existing Account Holders at 31 December 2015.

Penalties for incorrect returns

Penalties can apply for late and incorrect returns. Penalties for late returns can be set at up to £300 and daily penalties can apply in the case of serious delays. For incorrect returns the penalties can be up to £3000 per return.

What should trustees do next?

Trustees of new trusts should review their status to establish if they are Financial Institutions or Non-Financial Entities.

If they are Financial Institutions they should implement due diligence procedures to identify and review the status of their settlors and beneficiaries and make the necessary reports to HMRC. The report covering the calendar year 2018 must be filed by 31 May 2019.

If they are Passive Non-Financial Entities they should maintain details of controlling persons as this may be required by other Financial Institutions connected to them.

Find out more...

This note reflects the law in force as at 1 March 2019. Please be aware that it does not cover all aspects of this subject. To find out more about any aspect of the above, please discuss with your usual Deloitte contact. If you do not have a usual contact, please contact Karen Griffin (kagriffin@deloitte.co.uk).

For further information visit our website at www.deloitte.co.uk.

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