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The OECD Standard for Automatic Exchange of Tax Information

Following the example of the US and their FATCA regulations, the OECD, with the strong support of the G20 countries, developed the Standard for Automatic Exchange of Financial Account Information. The standard includes, amongst other legal documents, the Common Reporting Standard (“CRS”) which sets out the due diligence rules that financial institutions have to follow to identify accounts that shall be reported.

Accounts that are reported

An account has to be reported if the account holder - whether an individual or an entity - is tax resident in a jurisdiction with which the country, where the financial institution is located, has agreed to exchange information based on the OECD standard (a so-called “reporting jurisdiction”). In case the account holder is an entity that qualifies as “passive non-financial entity”, the account is to be reported if any controlling person of that entity is tax resident in a reportable jurisdiction.

Certain categories of accounts are, however, excluded from reporting such as retirement and pension accounts, accounts held by estates, escrow accounts and other low-risk accounts excluded under local implementation rules.

Self-certification of tax residence

Financial institutions have to obtain a self-certification, confirming the country (or countries) of tax residence and TIN of the account holder, as well as from controlling persons of passive non-financial entities. Such self-certification is compulsory for all accounts that are opened after the standard entered into force.

For accounts opened before the entry into force of the standard, a self-certification has to be obtained only from entity account holders as well as for individuals accounts where the client file contains so-called “indicia”, that is, information relating to different reportable jurisdictions (e.g. mailing address in reporting jurisdiction A and phone number of reporting jurisdiction B). Absent such self-certification, the account will be reported to all jurisdictions where indicia exist.

Self-certifications have also to be gathered and/or renewed during the life-time of the account if there is a change of circumstances, for example when a new mailing address, outside the current country of tax residence, is provided to the financial institution.

Information that is reported

Once the financial institution has determined that an account needs to be reported, it will transmit annually to its local tax authorities the following data: name of account holder; address; jurisdiction of tax residence; TIN; date and place of birth (for individuals); account number and name of the financial institution keeping the account; the year-end value of the account; the gross amounts credited to the account split amongst: dividends, interest, other types of income and sale/redemption proceeds; and the currency used for reporting purposes.

Financial institutions transfer this data to their local tax authorities which, in turn, forward it to the relevant reporting jurisdictions’ tax authorities. Account holders are normally informed where they are reported before the first transmission takes place.

Additional information

This booklet contains an explanation of most of the key terms used in the Bank’s forms that are used to document the CRS status of account holders.

Further information, including a list of jurisdictions that have committed to adapt the standard, can be found on the following webpage:

<http://www.oecd.org/tax/exchange-of-tax-information>

Disclaimer

This document is for general information purpose only. The content is provided to give a high-level information and does not claim to be exhaustive. It should not be interpreted as advice or guidance in respect of the obligations of account holders under the OECD standard. Moreover, information contained herein is likely to change in the future.

Glossary of Frequently Used Terms

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| <p>Active Non-Financial Entity (Active NFE)</p> | <p>The term Active NFE is an entity where:</p> <ul style="list-style-type: none"> a) operating entity: less than 50% of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income (e.g. certain dividends, interest, rents and royalties not derived in the active conduct of a trade or business) and less than 50% of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income (calculated as a weighted average of the percentage of passive assets measured quarterly); b) listed company: the stock of the NFE is regularly traded on an established securities market or the NFE is an affiliated company of such listed entity; c) the NFE is a governmental entity, an international organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing; d) the NFE is a holding company owning (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution; e) start-up company: the NFE has been organised less than 24 months ago, is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution; f) entity in liquidation: the NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution; g) group treasury center: the NFE primarily engages in financing and hedging transactions exclusively with, or for, related group entities that are not Financial Institutions, provided that the group is primarily engaged in a business other than that of a Financial Institution; or h) non-for-profit organisation: the NFE meets all of the following requirements: <ul style="list-style-type: none"> i) it is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare; ii) it is exempt from income tax in its jurisdiction of residence; iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets; iv) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and v) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organisation, or escheat to the government of the NFE's jurisdiction of residence or any political subdivision. |
| <p>Common Reporting Standard (CRS)</p> | <p>The standard set of rules developed by the OECD on which the automatic exchange of financial account information is based.</p> |
| <p>Controlling Person</p> | <p>Controlling Persons" are the natural persons who exercise control over an entity. Generally, these will be the individual who ultimately have a (direct or indirect) controlling ownership interest in the Entity (e.g. shareholder of a company or partner of a partnership).</p> <p>In the case of a trust, the term Controlling Person includes all the following individuals: the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, or any other natural person(s) exercising ultimate effective control over the trust (including through a chain of control or ownership). The settlor(s), the trustee(s), the protector(s) (if any), and the beneficiary(ies) or class(es) of beneficiaries, must always be treated as Controlling Persons of a trust, regardless of whether or not any of them exercises control over the activities of the trust.</p> <p>In the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions.</p> |
| <p>Custodial Institution</p> | <p>Means any Entity that holds, as a substantial portion of its business, financial assets for the account of others.</p> |
| <p>Depository Institution</p> | <p>Means any Entity that accepts deposits in the ordinary course of a banking or similar business.</p> |

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| Documentary Evidence | The term "Documentary Evidence" includes – for an individual - any of the following: a) a certificate of residence issued by an authorised government body of the jurisdiction in which the payee claims to be a resident; b) with respect to an individual, any valid identification issued by an authorised government body that includes the individual's name and is typically used for identification purposes. |
| Entity | The term "Entity" means a legal person or a legal arrangement, such as a corporation, organisation, partnership, trust or foundation. |
| Financial Institution (FI) | The term "Financial Institution" means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company. |
| Investment Entity | The term "Investment Entity" means any Entity: a) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer: i) trading in money market instruments, foreign exchange, interest rate and index instruments, transferable securities or commodity futures; ii) individual and collective portfolio management; or iii) otherwise investing, administering, or managing financial assets or money on behalf of other persons; or b) the gross income of which is primarily attributable to investing, reinvesting, or trading in financial assets, if the Entity is managed by another Financial Institution. The term "Investment Entity" does not include an Entity that is an Active NFE. |
| Non-Financial Entity (NFE) | Means any Entity that is not a Financial Institution. |
| Passive Non-Financial Entity (Passive NFE) | Means: (i) an NFE that is not an Active NFE; or (ii) an Investment Entity incorporated or established in a country which is not a Participating Jurisdiction and which are therefore deemed to be Passive NFEs. |
| Reportable Jurisdiction | A Reportable Jurisdiction is another jurisdiction with which an obligation to provide financial account information is in place, pursuant to the requirements set out in the Common Reporting Standard. Each government will publish a list of the jurisdictions for which it has agreed to exchange information and which qualify therefore as Reporting Jurisdiction. |
| Reportable Person | A Reportable Person is an individual or entity that is tax resident in a Reportable Jurisdiction under the laws of that jurisdiction. |
| Reporting Financial Institution | Means a Financial Institution that is subject to the reporting requirements under the Common Reporting Standard or an equivalent legislation. |
| Self-Certification | A certification (that can be part of the account opening documentation) that provides the account holder's status and any other information that may be reasonably requested by the Financial Institution to fulfil its reporting and due diligence obligations, such as whether the account holder is resident for tax purposes in a Reportable Jurisdiction. |
| Specified Insurance Company | The term "Specified Insurance Company" means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, cash value insurance contracts or annuity contracts. |
| Tax Identification Number (TIN) | Is a unique combination of letters or numbers, however described, assigned by a jurisdiction to an individual or an entity and used to identify the individual or entity for purposes of administering the tax laws of such jurisdiction. |
| Tax Residence | For an individual, the tax residence corresponds to the jurisdiction where he/she is subject to unlimited tax liability; usually (except for rare exceptions) where the individual has his/her permanent home. Countries where a limited tax liability exist (e.g. tax liability limited to the sole ownership of real estate) are not considered as a Tax Residence under the Common Reporting Standard. Entities are usually resident in their jurisdiction of incorporation or organisation. However, entities that are fiscally transparent (e.g. some partnerships) are considered to be tax resident in the jurisdiction where their effective management is located. Trusts are deemed resident in the jurisdiction(s) where the trustee(s) is (are) resident, unless the trust itself is subject to taxation. |