

***Standard for Automatic Exchange of Financial Account  
Information in Tax Matters (The Common Reporting  
Standard (CRS))***

**FAQ's**

*These Frequently Asked Questions (FAQ's) are designed to provide information in relation to the implementation of the Standard for Automatic Exchange of Financial Account Information in Tax Matters (The Common Reporting Standard) in Ireland. While every effort is made to ensure that the information given in this guide is accurate, it is not a legal document. Responsibility cannot be accepted for any liability incurred or loss suffered as a consequence of relying on any matter published herein.*

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**Q1 The CRS provides jurisdictions with a number of implementation options. What implementation options have Ireland chosen and where can I find an explanation of these options?**

**A1** Ireland will be implementing the options listed in the table below and further information detailing the options is contained in Appendix 1 of this document.

|   |            |
|---|------------|
| 1. Alternative approach to calculating account balances   | <b>No</b>  |
| 2. Use of reporting period other than calendar year   | <b>No</b>  |
| 3. Phasing in the requirements to report gross proceeds   | <b>No</b>  |
| 4. Requirement to file nil returns  | <b>Yes</b> |
| 5. Allowing third party service providers to fulfil obligations for FIs                                 | <b>Yes</b> |
| 6. Allowing due diligence procedures for New Accounts to be used for Pre-existing Accounts              | <b>Yes</b> |
| 7. Allowing the due diligence procedures for High-Value Accounts to be used for Low-Value Accounts      | <b>Yes</b> |
| 8. Residence address test for Lower Value Accounts  | <b>Yes</b> |
| 9. Threshold of \$250,000 for Pre-existing Entity Accounts  | <b>Yes</b> |
| 10. Simplified due diligence rules for Group Cash Value Insurance Contracts and Group Annuity Contracts | <b>Yes</b> |
| 11. Allowing greater use of existing standardised industry coding systems for the due diligence process | <b>Yes</b> |
| 12. Permitting a single currency translation rule   | <b>Yes</b> |
| 13. Expanding definition of Pre-existing Account when pre-existing customers open a new account         | <b>Yes</b> |
| 14. Expanded Related Entity definition  | <b>Yes</b> |
| 15. Grandfathering rule for bearer shares issued by Exempt Collective Investment Vehicle                | <b>Yes</b> |

**Q2 CRS requires Financial Institutions (FIs) to obtain and report the Tax Identification Number (TIN) of non-resident account holders. Can financial institutions request these details from all account holders, including account holders from jurisdictions that are currently not signed up to CRS?**

**A2** Section 891F of the Taxes Consolidation Act provides for “the collection and reporting of certain information in respect of financial accounts held by any person who is regarded by virtue of the laws of a jurisdiction other than the State as resident in that jurisdiction for the purposes of tax”.

Consequently, the office of The Data Protection Commissioner has confirmed to Revenue that Financial Institutions (FIs) may adopt the “wider approach” for CRS. This will allow institutions to collect data relating to the country of residence and the Tax Identification Number (TIN) from all non-resident customers, not only residents of jurisdictions with which Ireland has an exchange of information agreement.

In order to allow for this approach, the Data Protection Commissioner has also stipulated that

- The wider approach can be undertaken for a set 2-3 year period pending the resolution of the final CRS list of participating jurisdictions
- FIs can send data for all non-resident customers to the Revenue Commissioners, who will determine whether the country of origin is a participating jurisdiction and if so exchange data with them. Revenue will delete any data for non-participating jurisdictions
- FI's must provide 'Customers Information Notices', that fully explain the collection requirements under CRS
- FI's must update their Privacy / data protection notices to incorporate CRS
- Revenue will audit / review the process as part of their CRS compliance program
- The arrangement can be terminated by Notice of the Revenue Commissioners in such circumstances where any data processing could be a breach of the Data Protection Acts or any other relevant legislation
- Any person who makes a Subject Access Request to the FI, will be informed of the processing done under CRS by the FI.

## Appendix 1

### Explanatory note to main CRS options

There are areas where the Standard provides options for jurisdictions to implement as suited to their circumstances. For effective implementation of the Standard in domestic law, jurisdictions will need to decide whether to allow for the optional approaches. The main options are set out below.

### Reporting Requirements (Section I to the CRS)

**1. Alternative approach to calculating account balances.** A jurisdiction that already requires Financial Institutions to report the average balance or value of the account may provide for the reporting of average balance or value instead of the reporting of the account balance or value as of the end of the calendar year or other reporting period. This option is likely only desirable to a jurisdiction that has provided for the reporting of average balance or value in its FATCA IGA. The EU Directive does not provide for the reporting of average balance or value. (*Commentary on Section I, paragraph 11*)

**2. Use of other reporting period.** A jurisdiction that already requires Financial Institutions to report information based on a designated reporting period other than the calendar year may provide for the reporting based on such reporting period. This option is likely only desirable to a jurisdiction that includes (or will include) a reporting period other than a calendar year in its FATCA implementing legislation. The EU Directive allows a jurisdiction to designate a reporting period other than a calendar year. (*Section I, subparagraphs A(4) through (7); Commentary on section I, paragraph 15*)

**3. Phasing in the requirement to report gross proceeds.** A jurisdiction may provide for the reporting of gross proceeds to begin in a later year. If this option is provided a Reporting Financial Institution would report all the information required with respect to a Reportable Account. This will allow Reporting Financial Institutions additional time to implement systems and procedures to capture gross proceeds for the sale or redemption of Financial Assets. This option is contained in the FATCA IGAs, with reporting required beginning in 2016 and thus Financial Institutions may not need additional time for reporting of gross proceeds for the CRS. The MCAA and the EU Directive do not provide this option. (*Section I, paragraph F; Commentary on Section I, paragraph 35*)

**4. Filing of nil returns.** A jurisdiction may require the filing of a nil return by a Reporting Financial Institution to indicate that it did not maintain any Reportable Accounts during the calendar year or other reporting period.

### Due Diligence (Section II-VII of the CRS)

**5. Allowing third party service providers to fulfil the obligations on behalf of the financial institutions** A jurisdiction may allow Reporting Financial Institutions to use service providers to fulfil the Reporting Financial Institution's reporting and due diligence obligations. The Reporting Financial Institution remains responsible for fulfilling these requirements and the accounts of the service provider are imputed to the Reporting Financial Institution. This option is available for FATCA. The EU Directive includes this option. (*Section II, paragraph D; Commentary on Section II, paragraph 6-7*)

**6. Allowing the due diligence procedures for New Accounts to be used for Preexisting Accounts.** A jurisdiction may allow a Financial Institution to apply the due diligence procedures for New Accounts to Preexisting Accounts. This means, for example, a Financial Institution may elect to obtain a self-certification for all Preexisting accounts held by individuals consistent with the due diligence procedures for New Individual Accounts. If a jurisdiction allows a Financial Institution to apply the due diligence procedures for New Accounts to Preexisting Accounts, a jurisdiction may allow a Reporting Financial Institution to make an election to apply such exclusion with respect to (1) all Preexisting Accounts; or (2) with respect to any clearly identified group of such accounts (such as by line of business or location where the account is maintained).

This option may also be applied under FATCA and the EU Directive. (*Section II, paragraph E; Commentary on Section IV, paragraph 8*)

**7. Allowing the due diligence procedures for High Value Accounts to be used for Lower Value Accounts.** A jurisdiction may allow a Financial Institution to apply the due diligence procedures for High Value Accounts to Lower Value Accounts. A Financial Institution may wish to make such election because otherwise they must apply the due diligence procedure for Lower Value Accounts and then at the end of a subsequent calendar year when the account balance of value exceeds \$1 million, apply the due diligence procedures for High Value Accounts. This option may also be applied under FATCA and the EU Directive. (*Section II, paragraph E; Commentary on Section II, paragraph 8*)

**8. Residence address test for Lower Value Accounts.** A jurisdiction may allow Financial Institutions to determine an Account Holder's residence based on the residence address provided by the account holder so long as the address is current and based on Documentary Evidence. The residence address test may apply to Preexisting Lower Value Accounts (less than \$1 million) held by Individual Account Holders. This test is an alternative to the electronic indicia search for establishing residence and if the residence address test cannot be applied, because, for example, the only address on file is an "in-care-of" address, the Financial Institution must perform the electronic indicia search. The residence address test option is not available for FATCA. The EU Directive includes the residence address test. (*Section III, subparagraph B(1); Commentary on Section III, subparagraph 7-13*)

**9. Optional Exclusion from Due Diligence for Preexisting Entity Accounts of less than \$250,000.** A jurisdiction may allow Financial Institutions to exclude from its due diligence procedures pre-existing Entity Accounts with an aggregate account balance or value of \$250,000 or less as of a specified date. If, at the end of a subsequent calendar year, the aggregate account balance or value exceeds \$250,000, the Financial Institution must apply the due diligence procedures to identify whether the account is a Reportable Account. If this option is not adopted, a Financial Institution must apply the due diligence procedures to all Preexisting Entity Accounts. A similar exception exists for FATCA, however, FATCA allows the review to be delayed until the aggregate account balance or value exceeds \$1 million. (*Section V, paragraph A; Commentary on Section V, subparagraph 2-4*)

**10. Alternative documentation procedure for certain employer-sponsored group insurance contracts or annuity contracts.** With respect to a group cash value insurance contract or annuity contract that is issued to an employer or individual employees, a jurisdiction may allow a Reporting Financial Institution to treat such contract as a Financial Account that is not a Reportable Account until the date on which an amount is payable to an employee/certificate holder or beneficiary provided that certain conditions are met. These conditions are: (1) the group cash value insurance contract or group annuity contract is issued to an employer and covers twenty-five or more employees/certificate holders; (2) The employees/certificate holders are entitled to receive any contract value related to their interest and to name beneficiaries for the benefit payable upon the employee's death; and (3) the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed \$1 million. This provision is provided because the Financial Institution does not have a direct

relationship with the employee/certificate holder at inception of the contract and thus may not be able to obtain documentation regarding their residence. This option is not contained in the FATCA IGA but may be available through adopting the due diligence procedures of the US FATCA regulations. The EU Directive includes this option. (*See Section VII, paragraph B; Commentary on Section VII, paragraph 13*)

**11. Allowing financial institutions to make greater use of existing standardised industry coding systems for the due diligence process.** A jurisdiction may define documentary evidence to include any classification in the Reporting Financial Institution's records based on a standard industry coding system provided that certain conditions are met. With respect to a pre-existing entity account, when a Financial Institution is applying its due diligence procedures and accordingly required to maintain a record of documentary evidence, this option would permit the Financial Institution to rely on the standard industry code contained in its records. This option is not contained in the FATCA IGAs, but similar requirements may be adopted for FATCA by using the definition of documentary evidence in the US FATCA regulations. This option is contained in the EU Directive. (*Commentary on Section VIII, paragraph 154*)

**12. Currency translation.** All amounts in the Standard are stated in US dollars and the Standard provides for the use of equivalent amounts in other currencies as provided by domestic law. For example, a lower value account is an account with an aggregate account balance or value of less than \$1 million. The Standard permits jurisdictions to include amounts that are equivalent (or approximately equivalent) in their currency to the US dollars amounts as part of their domestic legislation. Further, a jurisdiction may allow a Financial Institution to apply the US dollar amount or the equivalent amounts. This allows a multinational Financial Institution to apply the amounts in the same currency in all jurisdictions in which they operate.

Both these options are available for FATCA. The EU Directive allows for this option. (*Section VII, subparagraph C(4); Commentary on Section VII, paragraph 20-21*)

### **Definitions (Section VIII of the CRS)**

**13. Expanded definition of Preexisting Account.** A jurisdiction may, by modifying the definition of Preexisting Account, allow a Financial Institution to treat certain new accounts held by preexisting customers as a Preexisting Account for due diligence purposes. A customer is treated as pre-existing if it holds a Financial Account with the Reporting Financial Institution or a Related Entity. Thus, if a preexisting customer opens a new account, the Financial Institution may rely on the due diligence procedures it (or its Related Entity) applied to the customer's Preexisting Account to determine whether the account is a Reportable Account. A requirement for applying this rule is that the Reporting Financial Institution must be permitted to satisfy its AML/KYC procedures for such account by relying on the AML/KYC performed for the Preexisting Account and the opening of the account does not require new, additional, or amended customer information. This option is not contained in the FATCA IGAs, but similar requirements may be adopted for FATCA by using the definition of pre-existing account in the US FATCA regulations. The EU Directive includes this option. (*Commentary on Section VIII, paragraph 82*)

**14. Expanded definition of Related Entity.** Related Entities are generally defined as one entity that controls another entity or two or more entities that are under common control. Control is defined to include direct or indirect ownership of more than 50 percent of the vote and value in an Entity. As provided in the Commentary, most funds will likely not qualify as a Related Entity of another fund, and thus will not be able to apply the rules described above for treating certain New Accounts as Preexisting Accounts or apply the account aggregation rules to Financial Accounts maintained by Related Entities. A jurisdiction may modify the definition of Related Entity so that a fund will qualify as a Related Entity of another fund by providing that control includes, with respect to Investment Entities described in subparagraph (A)(6)(b), two entities under common management, and such management fulfils the due diligence obligations of such Investment Entities. A similar approach can

be achieved under FATCA by applying the Sponsoring Regime. The EU Directive also provides this modification. (*Commentary on Section VIII, paragraph 82*)

**15. Grandfathering rule for bearer shares issued by Exempt Collective Investment Vehicle.**

With respect to an Exempt Collective Investment Vehicle, a jurisdiction may provide a grandfathering rule if the jurisdiction previously allowed collective investment vehicles to issue bearer shares. The Standard provides that a collective investment vehicle that has issued physical shares in bearer form will not fail to qualify as an Exempt Collective Investment Vehicle provide that: (1) it has not issued and does not issue any physical shares in bearer form after the date provided by the jurisdiction; (2) it retires all such shares upon surrender; (3) it performs the due diligence procedures and reports with respect to such shares when presented for redemption or payment; and (4) it has in place policies and procedures to ensure the shares are redeemed or immobilized as soon as possible and in any event prior to the date provided by the jurisdiction. FATCA contains this option and includes 31 December 2012 as the date after which bearer shares can no longer be issued and 1 January 2017 as the date to ensure redemption or immobilization. The EU Directive contains this option and includes 31 December 2015 as the date after which bearer shares can no longer be issued and 1 January 2018 as the date to ensure redemption or immobilization. (*Section VIII, subparagraph B(9)*).