



OECD Releases Second Edition of the AEOI Standard and a new version of CRS FAQs

The road continues

On April 6, 2017 the OECD published a new version of their [CRS-related Frequently Asked Questions](#) and the second edition of the [Standard for Automatic Exchange of Financial Account Information in Tax Matters \("AEOI Standard"\)](#).

The AEOI Standard expands on the CRS XML Schema User Guide and includes additional guidance on handling corrections and cancellations within the CRS XML Schema.

The CRS-related FAQs have been updated to add the following questions:

- **Section I: General Reporting Requirements**

- FAQ 10 Qualification of usufruct for CRS purposes

Both the owner and the usufructuary can be considered joint account holders or controlling persons of a trust for CRS purposes.

- **Sections II – VII: Due Diligence Requirements**

- FAQ 5 Identification of Controlling Persons of Passive NFEs with Financial Institutions in the chain of legal ownership

The status of intermediate Entities in the ownership chain is irrelevant for purposes of determining the Controlling Persons of a Passive NFE. The FAQ confirms that the CRS does not allow a Reporting Financial Institution to not determine/report a Controlling Person on the basis that there is a Reporting Financial Institution in the ownership chain between the Passive NFE and the Controlling Person.

- FAQ 6 AML/KYC Procedures and due diligence for CRS purposes

Where there is an amendment to the applicable AML/KYC Procedures such as a jurisdiction introducing new AML/KYC requirements, any additional information collected by a Reporting Financial Institution must be used to determine whether there has been a change of circumstances in relation to the identity and/or reportable status of the Account Holders and/or Controlling Persons. If the additional information is inconsistent with the claims made in the self-certification, the Financial Institution will have a reason to know that the self-certification is unreliable or incorrect.

FAQ 23 Look-through requirement for widely-held collective investment vehicles and pension funds in the form of trusts in non-participating jurisdictions

It is clarified that Reporting Financial Institutions do not need to go beyond the information collected and maintained pursuant to domestic AML/KYC Procedures which are as a minimum consistent with Recommendations 10 and 25 of the FATF Recommendations (as adopted in February 2012) for the purposes of determining the controlling persons for new entity accounts held by widely-held collective investment vehicles and pension funds in the form of trusts.

FAQ 24 Application of New Account procedures to Preexisting Accounts – relationship manager inquiry

In cases where a Reporting Financial Institution is allowed to and has applied the due diligence procedures for new accounts to preexisting accounts and has obtained a self-certification under the new account due diligence procedures, the relationship manager inquiry required in Section III is not applicable. However, if a relationship manager is assigned to the account and has knowledge of relevant facts or statements contained in the self-certification that a reasonable prudent person would question the claim being made, the Reporting Financial Institution may have a reason to know that a self-certification is unreliable or incorrect.

FAQ 25 Confirming the validity of self-certifications

It is considered a reason to doubt the validity of the self-certification when such self-certification indicates that the account holder has no residence for tax purposes but there is other documentation on file that contains an address for the account holder. In this situation the Financial Institution must obtain a reasonable explanation and documentation, as appropriate, that supports the reasonableness of the self-certification. If these are not obtained, the Financial Institution may not rely on the self-certification and must obtain a new, valid self-certification from the Account Holder.

The FAQ additionally provides that financial institutions may want to inform their account holders that, as part of compliance review procedures, jurisdictions may monitor and review account holders that have not indicated a tax residence as part of their self-certification.

• **Section VII: Definitions – A. Reporting Financial Institutions**

FAQ 4 Reliance on Model 1 FATCA IGA definition of Investment Entity for purposes of CRS

Jurisdictions cannot rely on the definition of Investment Entity used in the Model 1 FATCA IGA for the purposes of implementing CRS as it is less prescriptive than the definition of Investment Entity under Section VIII(A)(6), however the definitions of the Model 1 FATCA IGA and the CRS can be read consistently.

FAQ 8 E-money providers – qualification as Depository Institution

No special rules apply to electronic money providers, these must determine whether they are a Financial Institution depending on their facts and circumstances.

• **Section VII: Definitions – C. Financial Account**

FAQ 7 - Excluded Accounts - low-value electronic money accounts

Jurisdictions may not include in their domestic law electronic money accounts as low-risk Excluded Accounts for the mere fact that they are electronic money accounts.

Provided that electronic money accounts are regulated and meet the requirements of Section VIII(C)(17)(g) they may be defined as an Excluded Account by the implementing jurisdiction. As an example of a low-risk Excluded Account in the context of financial inclusion, Example 5 states that a Depository Account subject to financial regulation (i) that provides defined and limited services, so as to increase financial inclusion, (ii) on which monthly deposits cannot exceed USD 1,250 and (iii) for which Financial Institutions have been allowed to apply simplified AML/KYC procedures consistent with the FATF Recommendations may be a low-risk Excluded Account.

FAQ 8 – Determination of Equity Interest in the case of a widely-held CIV that is a Reporting Financial Institution

Registered unit holders of collective investment vehicles that are organized in the form of a trust having the characteristics of publicly offered collective investment vehicles can be treated as account holders when they hold equity interests in these collective investment vehicles unless they are not financial institutions and they are holding the equity interest for the benefit or account of another person. Custodial institutions that are registered unit holders will be for reporting the equity interests in the collective investment vehicle that they maintain for the account holders in the custodial account.

FAQ 9 - Investment Entity – definition of Financial Account

According to Section VIII(C)(1)(b), an Equity or Debt Interest in a Financial Institution other than those described in Section VIII(C)(1)(a) is considered a Financial Account only if the class of interests was established with a purpose of avoiding reporting under the CRS. This rule also applies to Debt or Equity Interests held in an Entity that is an Investment Entity solely because it is an investment advisor or an investment manager if the class of such interests was established with a purpose of avoiding reporting under CRS.

- **Section VII: Definitions – D. Reportable Account**

FAQ 5 - Definition of Active NFE – stock regularly traded on an established securities market

The term “stock” is limited to shares in a corporation. Accordingly, only a corporation can qualify as an Active NFE on the basis of the fact that its stock is regularly traded on an established securities market.

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