



## OECD publishes CRS-related Frequently Asked Questions

### The road continues

In December 2017, the OECD published new [CRS-related FAQs](#):

- FAQ 11 in Section I of CRS clarifies reporting obligations of reporting financial institutions in the process of being liquidated
- FAQ 22 and FAQ 26 in Sections II-VII address timing to obtain self-certifications and applicable ownership thresholds when determining the controlling persons of an entity in jurisdictions that have established a threshold below 25% for AML/KYC purposes respectively
- FAQ 10 and FAQ 11 in Section VIII (C) provide guidance on the treatment of accounts held for the purpose of condominium or housing cooperative and on the treatment of indirect distributions by a trust for CRS reporting purposes respectively

#### Summary of Updates

##### **FAQ 11 of Section I - Reporting Obligations of the Reporting Financial Institutions that are in the process of being liquidated**

As a general rule, a Financial Account is treated as a Reportable Account as of the date it is identified as such pursuant to the due diligence procedures and remains reportable until the date it ceases to be a Reportable Account. The FAQ clarifies that Reportable Accounts held by Reporting Financial Institutions that are in liquidation or winding-up remain subject to reporting under CRS until they are officially closed under local requirements governing liquidation or wind-up. The FAQ indicates jurisdictions can provide additional guidance taking into account domestic corporate and insolvency laws. Jurisdictions may allow reliance on third-party service providers to ensure compliance with these due diligence and reporting obligations.

##### **FAQ 22 of Sections II-VII – Timing of Self-Certifications**

Pursuant to CRS, Reporting Financial Institutions must collect self-certifications upon account opening. This FAQ provides further guidance by indicating that where a self-certification is obtained at account opening but validation cannot be completed because it is a 'day two' process undertaken by a back-office function, the self-certification must be validated within a period of 90 days.

In addition, the FAQ references a limited number of instances where it may not be possible to obtain a self-certification on 'day one' (such as insurance contracts that have been assigned from one person to another person, or acquisition of

shares in an investment trust on the secondary market). In these circumstances, the FAQ provides that the self-certification should be both obtained and validated as quickly as feasible, and in any case within a period of 90 days.

The FAQ further states that “obtaining a self-certification for New Accounts is a critical aspect of ensuring that the CRS is effective, it is expected that jurisdictions will have **strong measures** in place to ensure that valid self-certifications are always obtained for New Accounts.” What constitutes a “strong measure” in the above exceptional instances may vary from jurisdiction to jurisdiction and should be evaluated in light of the actual results of the measure. The crucial test for determining what measure can qualify as “strong measures” is whether the measures have a strong enough impact on Account Holders and/or Financial Institutions to effectively ensure that self-certifications are obtained. The closure or freezing of an account after the expiration of 90 days or the application of very elevated penalties on Financial Institutions and/or Account Holders may constitute “strong measures”.

Finally, the FAQ confirms that regardless of the guidance above, Reporting Financial Institutions must ensure that self-certifications are obtained and validated in time to be able to meet their due diligence and reporting requirements for the reporting period during which the account was opened.

#### **FAQ 26 of Sections II-VII – Determining Controlling Persons of an Entity**

The FAQ confirms that jurisdictions that have implemented FATF Recommendations providing an ownership threshold lower than 25% for the identification of controlling ownership interests for AML/KYC purposes may **not** allow Reporting Financial Institutions to apply the 25% threshold for CRS purposes. Therefore, Reporting Financial Institutions must use the threshold applicable under AML/KYC or similar requirements implemented by the domestic law.

#### **FAQ 10 of Section VIII (C) - Excluded Accounts – Treatment of accounts held for the purpose of condominium or housing cooperative**

This FAQ clarifies that jurisdictions may include as jurisdiction-specific low-risk Excluded Accounts Financial Accounts held by or on behalf of a group of owners or by the condominium company for the purpose of paying the expenses of the condominium or housing cooperative provided (i) it is regulated in domestic law as a specific account for covering the costs of a condominium or housing cooperative, (ii) the account or the amounts contributed and/or kept in the account are tax-favored, (iii) the amounts in the account may only be used to pay for the expenses of the condominium or housing cooperative, and (iv) no single owner can annually contribute an amount that exceeds USD 50,000. Where some of the above requirements (such as the Financial Account being tax-favored or contributions being limited to USD 50,000) are not met, substitute characteristics or restrictions that assure an equivalent level of low risk could be considered, taking into account domestic specificities. This may include features such as: (i) no more than 20% of the annual and total contributions due in the year being attributable to single person, (ii) the account being operated by an independent professional, (iii) the amounts of the contributions and the use of the money being decided by agreement of owners in accordance with the condominium’s or housing cooperative’s constituting documents or (iv) disallowing withdrawals from the account for purposes other than the expenses of the condominium or housing cooperative.

#### **FAQ 11 of Section VIII (C) - Indirect distributions by a trust**

According to CRS, a Reportable Person will be treated as a beneficiary of a trust “if such Reportable Person [...] may receive, directly or indirectly, a discretionary distribution from the trust”. This FAQ provides examples of indirect distributions by a trust subject to reporting under CRS. Specifically, the FAQ indicates that indirect distributions by a trust may arise when the trust makes payments to a third party for the benefit of another person. The FAQ provides some examples such as when a trust pays the tuition fees or repays the loan taken up by another person; when the trust grants a loan free of interest or at an interest rate at non-arm’s length conditions; or, when the trust writes-off a loan to its beneficiary.

The FAQ clarifies that in all these circumstances, the Reportable Person for CRS purposes will be the person that is the beneficiary of the trust receiving the indirect distribution (the debtor of the tuition fees or the recipient of the favorable loan conditions).

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