



# Automatic Exchange of Information (AEOI)

July 2016

## I. Common Reporting Standard (CRS)

### 1. General Summary

- 1.1. The Common Reporting Standard (hereafter “CRS”) is a regulation initiated by the Organisation for Economic Co-operation and Development (hereafter “OECD”), aiming at preventing tax evasion and leading to a global automatic exchange of information (hereafter “AEOI”) between CRS-participating jurisdictions. A CRS participating jurisdiction (or “CRS jurisdiction”, is a country that agreed to implement the CRS). The CRS has been implemented at European Union level through the Directive on Administrative Cooperation (Directive 2014/107/UE). Non-EU countries are involved also in the CRS and they are ruled by multilateral agreements. The CRS requires financial institutions to report financial accounts held, directly or indirectly, by account holders that are tax residents in a CRS jurisdiction.
- 1.2. The first reporting will occur in 2017 and will cover the year 2016.
- 1.3. In order to comply with this regulation, in January 2016, the Bank must request the following information to its Customers (Private and Corporate Customers):
  - a) **New Customers:** the Bank is required to obtain Customers tax residence(s) for tax purposes and their tax identification number(s). If Customer refuses to provide this information the Bank will not be able to open the Bank Account.
  - b) **Pre-existing Customers:** the Bank will review all its Customers and contact those that are subject to CRS in order to obtain a self-certification form in which they determine their residence for tax purposes and provide their tax identification number, including the controlling persons (beneficiaries of passive entities). Without a self-certification, the Bank is legally obliged to consider the account holder as a reportable person. As a consequence, undocumented account holder information will be reported to the relevant tax authorities.

## 2. Detailed summary

- 2.1. To satisfy the new single global standard for the automatic exchange of financial account information between tax authorities worldwide, countries must obtain information from their financial institutions and exchange that information automatically with partner countries annually. The new standard draws extensively on the OECD's work on AEOI. It incorporates progress made within the EU, as well as global AML standards, with the intergovernmental implementation of FATCA. A series of bilateral and multilateral agreements are to be put in place, along with legislation to establish a consistent set of rules and procedures across all partner countries.
- 2.2. It is foreseen that Luxembourg government will introduce new legislation in beginning of 2016 in order to establish a procedure and set of rules regarding the subject. Therefore, the text below is based on the OECD commentary and is subject to changes in accordance with the new legislation.
- 2.3. In order to capture all relevant taxpayers, CRS has been designed with a broad scope across four main areas, consistent with FATCA's intergovernmental approach:
  - **reportable income** includes all types of investment income (including interest, dividends, income from certain insurance contracts, annuities and similar), as well as account balances and sales proceeds from financial assets that give rise to such income
  - **financial institutions** required to report under the CRS include banks, custodians, brokers, certain collective investment vehicles, trusts and certain insurance companies
  - **reportable accounts** include accounts held by individuals and entities (which includes trusts and foundations), and the requirement to look through passive entities to provide information on reportable controlling persons (beneficial owners)
  - **robust due diligence procedures** to enable the identification of reportable accounts and obtain the accountholder identifying information that is required to be reported for such accounts.
- 2.4. **Reportable accounts** are financial accounts held by tax residents in relevant CRS reportable countries. A person is considered to have a tax residence in a country if he/she, under the laws of that country, is liable to tax due to domicile, residence, place of management, or any other similar criterion. A stated goal of the recently released CRS commentary is to help achieve consistency in the application of the standard.
- 2.5. For an account holder or controlling person that is a reportable person with respect to multiple participating countries, the entire account balance or value, as well as the entire amount of income or gross proceeds, shall be reported to each participating country.

- 2.6. The reporting of TINs (tax identification numbers) is another key component of CRS reporting. In order to obtain the TIN (if issued by the relevant country) and date of birth for pre-existing accounts, the financial institution would contact the account holder at least twice during the two calendar years that follow the year in which the account is identified as reportable. A reporting financial institution is allowed to do this by mail or other communications such as email, fax, telephone or self-certification.
- 2.7. Once an account is identified as reportable, it remains so for all subsequent years, even if the account has no balance or value or received no reportable payments – unless the account holder ceases to be a reportable person due to a change in circumstances, or if the account is closed. In order to identify reportable accounts, due diligence procedures must be followed by financial institutions required to report under CRS.
- 2.8. The below table provides a very good summary of reportable information:

**Reportable information:**

<b>About the owner/s</b>	<b>About the asset</b>	<b>Income/gains / movements</b>
Full name	Name of the financial institution and its identifying number	Gross interest received
Address	Type of asset (financial accounts/ products as well as interests in trusts/ holding entities)	Dividends received
Date of birth	Local account number / identifier	Gross capital sale proceeds received into account
Place of birth	End of the year balance for cash deposits	Any other income derived from financial assets
Tax identification number	Cash value for other assets	Amounts credited to the beneficial owners

### 3. Due diligence and KYC processes

- 3.1. To identify reportable accounts and obtain accurate, required information, financial institutions must follow a common standard with robust due diligence procedures. These procedures distinguish between individual accounts and entity accounts and between pre-existing and new accounts:

### 3.2. Pre-existing individual accounts

Financial institutions have to review pre-existing individual accounts without application of any de minimis threshold, though different procedures apply to higher value accounts and lower value accounts. For lower value accounts, a country may allow a financial institution to perform an indicia search or to rely on a permanent residence address test (based on documentary evidence). Self-certification (and/or documentary evidence) is needed in case of conflicting indicia. If no such certification can be found, reporting would be carried out to all reportable countries for which indicia have been found.

Enhanced due diligence procedures apply for higher value accounts, including a paper record search and a 'reason to know' test for the relationship manager enquiry. The relationship manager of a high value account is the officer or employee of the financial institution, with direct contact and primary responsibility for managing the account.

### 3.3. New individual accounts

The CRS proposes self-certification (and the confirmation of its reasonableness) without de minimis threshold for new accounts.

### 3.4. Pre-existing entity accounts

Financial institutions must determine:

- whether the entity itself is a reportable person, which can generally be verified on the basis of available information (AML/KYC procedures), or, if not available, through self-certification (active NFE)
- whether the entity is a passive NFE and, if so, must confirm the residency of controlling persons. Where possible, this should be achieved through available information, but this may require obtaining a self-certification from an account holder or controlling person of a passive NFE where applicable.

### 3.5. New entity accounts

Financial institutions must follow the same determination as for pre-existing accounts. However, as it is easier to obtain self-certifications for new accounts as part of account opening process, the US\$250,000 (or local currency equivalent) threshold will not apply, and the residency of controlling persons of passive NFEs must be determined on the basis of self-certifications.

- 3.6. Where the Account Holder is a Passive NFE or an Investment Entity located in a Non-Participating Jurisdiction managed by another Financial Institution, the bank will need to provide, as well, the information about each natural person(s) who exercise control over the Account Holder (individuals referred to as “Controlling Person(s)”). Regarding the Controlling Person(s) (Beneficial Owners) the bank may be legally obliged to report the following information: name, residence address, tax residence country, date and place of birth and TIN number.
- 3.7. The Account Holder might need to provide to the bank with any additional information, deemed necessary for AEOI purposes. Failure to do so may trigger a reporting of the account to the Luxembourg Tax Authorities. The Account Holder(s) have the right to access, upon request, and rectify the personal data that will be reported to the Luxembourg Tax Authorities. However a right to object the processing or reporting of the data is not available to the extent that the Account Holder is effectively qualified as a Reportable Person under the AEOI Law (Luxembourg Law of 18 December 2015).
- 3.8. In the event of a security breach related to Account Holder personal data, the Luxembourg Tax Authorities and/or the Bank are obliged to inform the Customer on such security breach.

For further information please visit the website of OECD [www.oecd.org](http://www.oecd.org) and in particular for the CRS subject: <http://www.oecd.org/g20/topics/taxation/automatic-exchange-of-financial-account-information.htm>

## **II. Foreign Account Tax Compliance Act (FATCA)**

### **1. General Summary**

- 1.1. The Foreign Account Tax Compliance Act (FATCA) is a United States federal law requiring United States persons (including those living outside the U.S.) to have yearly reported themselves and their non-U.S. financial accounts to the U.S. tax authorities. FATCA is intended to detect and prevent the evasion of US tax by US persons who hold money outside the US. FATCA requires foreign financial institutions (FFI's) to provide the Internal Revenue Service (IRS) with information on certain U.S. persons invested in accounts outside of the U.S. and for certain non-U.S. entities to provide information about any U.S. owners. On March 28th 2014, the representatives of the Governments of Luxembourg and the United States have entered into an intergovernmental agreement relating to the automatic exchange of data between the tax authorities of both countries.
- 1.2. The first reporting will occur in 2015 and will cover the year 2014.

- 1.3. FATCA regulations require all financial institutions to identify customers as a US person or certain non-US entities based on US indicia. Customers have the opportunity to attest they are not a U.S. person by providing a W-8BEN/W-8BEN-E form (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting Individuals/Entities).
- 1.4. In order to comply with the FATCA requirements financial institutions may be legally obliged to pass on some personal information about the customer such as name, residence address, tax residence country, date and place of birth, TIN number and other financial information with respect to the customer's financial accounts, to the Luxembourg tax authorities (Administration des Contributions Directes) and they may exchange this information with tax authorities of another jurisdiction or jurisdictions pursuant to intergovernmental agreements to exchange financial account information.

## 2. Detailed Summary

- 2.1. FATCA is aimed at foreign financial institutions and other financial intermediaries to prevent tax evasion by US citizens and residents through the use of overseas accounts. FATCA has an extensive influence on US-based companies including foreign companies, as all foreign financial institutions must comply with FATCA or be subject to withholding tax applicable to all relevant US-sourced payments.
- 2.2. FATCA requires all foreign financial institutions to report financial activities of US persons and certain non-US entities in which an US person has a controlling ownership interest to the US Internal Revenue Service and withholds funds in appropriate circumstances. However under intergovernmental agreement signed by the Governments of Luxembourg and the United States, all financial institutions domiciled in Luxembourg are allowed to report to Luxembourg's tax authorities instead of reporting directly to US Internal Revenue Services.
- 2.3. FATCA applies to "U.S. persons", both private individuals and some legal entities. According to FATCA a US person is:
  - U.S. citizen or resident individual;
  - A partnership or corporation organized in the United States or under the laws of the United States or any State thereof;
  - A trust if (i) a court within the United States would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust, and (ii) one or more U.S. persons have the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the United States.
- 2.4. Others affected by FATCA include any non U.S. person who shares a joint account with a U.S. person or otherwise allows a U.S. person to have signatory authority on the account.



- 2.5. In consideration of the aforesaid and unless contrary instruction received from the customer's part, the Bank will consider the customer as US person, and complete relevant reporting on the customer's financial activities conducted with the Bank.
- 2.6. For all reports, the information will respect:
- Each specified US person holding a US reportable account; and
  - Each specified US person being a controlling person of a passive Non-financial foreign entity (NFFE) holding a financial account.
- 2.7. FATCA requires financial institutions to:
- **Identify customers** for which one of the following US indicia are found:
    - a) The U.S. citizenship or U.S. residency. This includes having a green card allowing them to permanently reside in the United States as an immigrant; or
    - b) Place of birth in the U.S.; or
    - c) At least one address (mailing, residence, post office box or care-of) in the U.S.; or
    - d) A U.S. telephone number; or
    - e) Standing instructions from their account to an account in the U.S.; or
    - f) Power of attorney on their account granted to a person with a U.S. address (mailing, residence, post office box or care-of).
  - **Document customers** with U.S. indicia (points b-f). This means that customers have to sign a form imposed by the Internal Revenue Service ("IRS", the United States tax agency) to disprove their U.S. tax liability, the W-8BEN/W-8BEN-E form (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting Individuals/Entities; further details can be found at the website of the IRS - <http://www.irs.gov/pub/irs-pdf/iw8ben.pdf> and <http://www.irs.gov/pub/irs-pdf/fw8bene.pdf>). Additionally, a Certificate of Loss of Nationality of the United States must be provided if an individual no longer has U.S. citizenship (thus also when born in the United States).
  - **Report on:**
    - a) the identity of the U.S. persons
    - b) their accounts and account balances
    - c) the financial income on these accounts.

## 2.8. Reporting Timelines:

- The information to be obtained and exchanged with respect to **2014** is:
  - a) Name; Address; US TIN or date of birth (where applicable);
  - b) Account number;
  - c) Name and GIIN of the bank;
  - d) Account balance or value at year-end (or as of the date of closure if the account was closed in the course of the year.)
  
- The information to be obtained and exchanged with respect to **2015** is:
  - a) The same information as 2014;
  - b) **PLUS:**
    - For Custodial Accounts:
      - Total gross amount of interest;
      - Total gross amount of dividends;
      - Total gross amount of other income paid or credited to the account;
    - For Depository Accounts:
      - Total amount of gross interest paid or credited to the account in the calendar year or other appropriate reporting period;
    - For other Financial Accounts:
      - Total amount of gross amount paid or credited to the account including the aggregate amount of any redemption payments made to the account holder during the calendar year or other appropriate reporting period.
  
- The information to be obtained and exchanged with respect to **2016**:
  - a) The same information as 2015;
  - b) **PLUS:**
    - For Custodial Accounts:
      - Total gross proceeds from the sale or redemption of property paid or credited to the account.

### 3. Due diligence and KYC processes

3.1. To identify reportable accounts and obtain accurate, required information, financial institutions must follow robust due diligence procedures. These procedures distinguish between individual accounts and entity accounts and between pre-existing and new accounts:

3.2. Pre-existing individual accounts (opened before 30/06/2014)

Procedures differentiate between low value and high value accounts that exceed a de minimis threshold of usually 50.000 USD. For lower value accounts, financial institutions need to perform an electronic review of its client data base and search for US Person Indicia. Self-certification (and/or documentary evidence) is needed in case of detected indicia. Under circumstances, enhanced due diligence procedures apply for higher value accounts, including a paper record search and account manager knowledge.

3.3. New individual accounts (opened on or after 01/07/2014)

A self-certification is requested, additionally U.S. TIN and/or W-9BEN/W-9BEN-E form as appropriate, with a de minimis threshold of usually 50.000 USD for new accounts.

3.4. Pre-existing entity accounts (opened before 30/06/2014)

For pre-existing entity accounts that exceed a de minimis threshold of 250.000 USD (in some cases 1.000.000 USD) financial institutions must determine:

- whether the entity is a specified U.S. person
- whether a non-U.S. entity is a financial institution
- whether an account held by a non-financial foreign entity (NFFE) is a U.S. reportable account. Where possible, this should be achieved through available information, but this may require obtaining a self-certification from an account holder or controlling person of a passive NFFE where applicable.

3.5. New entity accounts (opened on or after 01/07/2014)

A self-certification is requested where the client is asked to inform its US person status and also the US person status of the account legal representatives and beneficial owner. Based on the self-certification the financial institution is able to verify if the client will be considered as a US person for reporting purposes. The financial institution must confirm the reasonableness of such self-certification based on the information provided by the client including any documentation collected pursuant to AML/KYC Procedures.