# Amendments to the Common Reporting Standard

*What the addition of new due-diligence and reporting requirements in 2023 means for trustees*

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## Abstract

- The Common Reporting Standard (CRS) is a reciprocal, automatic exchange of information (AEOI) mechanism developed by the OECD at the request of the G20 and unveiled in 2014. The first AEOI occurred between the early adopters in 2017 with respect to 2016. The vast majority of jurisdictions have adopted the CRS, which is now the global AEOI standard. The legal structure of the CRS is set out in the text of the CRS and its Commentaries.
- The CRS and its Commentaries were amended in 2023 (the Amendments) to introduce new due-diligence and reporting requirements, and to create a separate reporting framework for crypto-assets. The Amendments are not yet effective but will come into force when incorporated into local law by CRS jurisdictions, which is not expected to occur before 2026.
- This article reviews the Amendments and the basic CRS rules under which financial account information is collected and transmitted by reporting financial institutions, such as banks and securities firms, as well as corporate service providers and trust companies.

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The Common Reporting Standard (CRS) is a reciprocal, automatic exchange of information (AEOI) mechanism developed by the OECD at the request of the G20 and unveiled in 2014. The first AEOI occurred between the early adopters in 2017 with respect to 2016. Some 114 jurisdictions were expected to exchange information under the CRS in 2023. Every major jurisdiction, except for the US, has adopted the CRS and is engaged in automatic exchange of financial account information.

The legal structure of the CRS is set out in the text of the CRS and its Commentaries.[1] To supplement the CRS, the OECD issued the *Implementation Handbook* (the Handbook),[2] which is intended as a guide for tax authorities, and the *Frequently Asked Questions* (FAQs),[3] neither of which are legally binding. Most jurisdictions adopted the CRS by becoming parties to the *Multilateral Competent Authority Agreement* (MCAA),[4] which is a framework agreement designed to implement the automatic standard on a multilateral basis and requires prior adoption of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters*, as amended (the Convention), and the adoption of local implementing legislation. The Convention and the CRS complement each other and are designed to work in parallel. First, the jurisdiction where the financial accounts are situated exchanges data under the CRS with the jurisdiction where the taxpayer is resident. Second, the receiving jurisdiction may request supporting or corroborating documents and information under the Convention or another instrument, such as a double taxation treaty.

## 2023 CRS AMENDMENTS

The CRS and its Commentaries were amended in 2023 (the Amendments)[5] to introduce new due-diligence and reporting requirements, and to create a separate reporting framework for crypto-assets.[6] The Amendments are not yet effective but will come into force when incorporated into local law by the CRS participating jurisdictions, which is not expected to occur before 2026.

Since the inception of reporting under the CRS, a number of issues have been encountered by reporting financial institutions. These include the inability to uniformly identify the role of the equity interest holder in professionally managed investment entities (PMIEs), the role of the protector in passive non-financial entities (NFEs) and the type of financial institution (FI) where the accounts are held, whether a custodial institution, depository institution or an investment entity. This has caused a good deal of confusion with the receiving tax authorities and has resulted in local tax inquires and investigations based on incomplete or misleading information. In particular, in the case of protectors who were reported, they have had to explain that they are only protectors and not beneficiaries, that they have no economic interest in the trust, that their role is only supervisory, etc. The OECD has sought to address some of these issues in the Amendments.

In general, the Amendments include the requirement to report:

- the type of financial account held;
- whether the account is a joint account;
- whether the account is a pre-existing account or a new account;
- the identification of the particular role of controlling persons in passive NFEs;
- the identification of the particular roles of equity interest holders in entities that are FIs; and
- whether a valid self-certification has been obtained for each accountholder.

In addition, the Amendments create a new non-reporting FI category for genuine non-profit entities and now treat certain capital contribution accounts as excluded accounts. The language of certain FAQs has been added to the CRS Commentaries.

The CRS has also been amended to cover electronic and digital currencies. Various terms have been redefined to include crypto-assets, including custodial institution, depository institution, investment entity and financial assets. Separately, new terms have been added, including specified electronic money product, central bank digital currency, fiat currency, crypto-asset, relevant crypto-asset, exchange transaction, etc. To deal with the emergence of crypto-assets, the OECD created a separate reporting framework for crypto-assets, known as the Crypto

**1** bit.ly/4859non
**2** bit.ly/3uhrt80
**3** bit.ly/3u8zEUf
**4** bit.ly/3ueO2dv
**5** bit.ly/47uzZiF
**6** See the glossary on page 28 for definitions of key terms used throughout this article.

Asset Reporting Framework,[7] which is not the subject of this article.

This article reviews the Amendments and the basic CRS rules under which financial account information is collected and transmitted by reporting FIs, such as banks and securities firms, as well corporate service providers and trust companies.

## DUE-DILIGENCE RULES

Reporting FIs[8] that are tax-resident in participating jurisdictions,[9] that is, jurisdictions that have adopted the CRS, have due-diligence obligations to identify reportable accounts[10] held by reportable persons,[11] that is, individuals or (subject to limited exceptions) entities that are tax-resident in reportable jurisdictions.[12]

Reporting FIs must identify the tax residence of individuals to determine whether they are resident in reportable jurisdictions and are reportable persons. In the case of dual residents, the CRS originally allowed the use of tie-breaker provisions in double taxation treaties to determine tax residence. However, in the Amendments, the Commentaries have been revised to require individuals to identify all tax residences in the self-certification form, prohibit the use of tie-breaker provisions and require the reporting FI to treat the account as a reportable account in each reportable jurisdiction.[13]

In the Amendments, the OECD placed significant emphasis on the reasonableness of self-certifications accepted by reporting FIs. In this connection, the OECD has taken aim at jurisdictions that offer citizenship by investment or residence by investment schemes that offer low tax rates with no requirements of a significant physical presence. The OECD views these schemes as CRS avoidance arrangements. Reporting FIs are required to scrutinise these schemes and, where they have doubts about the true tax residency of a taxpayer claiming residence in any such jurisdictions, may not rely on self-certifications. Reporting FIs should then make further inquiries, including whether the taxpayer:

- obtained residency through such schemes;
- holds residency in any other jurisdictions; and
- has spent more than 90 days in such other jurisdictions during the previous year.

Reporting FIs must also ascertain the jurisdictions in which the taxpayer has filed tax returns during the previous year.[14] In addition, the amendments provide that self-certifications may not be relied upon where they do not provide a tax identification number (TIN) in circumstances where it is clear from public sources, including information published by the OECD, that the jurisdiction in question issues TINs to all tax residents.[15]

In the case of entity accountholders, reporting FIs must apply the entity classification rules to determine whether the accounts are held by FIs, active NFEs or passive NFEs. In the latter case, it must be determined whether the passive NFEs have one or more 'controlling persons' that are reportable persons; that is, individuals that are tax-resident in reportable jurisdictions. An entity's residence for CRS purposes is determined by where it is tax resident.[16] Where an FI does not have a tax residence because it is fiscally transparent or resident in a jurisdiction that does not have income tax, it is considered to be resident for CRS purposes in the jurisdiction where it is incorporated, has its place of effective management or is subject to financial supervision.[17] Where an FI is resident in more than one jurisdiction, it will be subject to the reporting rules of the jurisdictions where it maintains its financial accounts.[18]

## FINANCIAL ASSETS

The definition of financial asset has far-reaching CRS entity classification and reporting consequences,[19] and affects the classification of custodial institutions and related custodial accounts, as well as depository institutions and related depository accounts, the classification of investment entities as PMIEs or NFEs, and the attendant CRS reporting obligations.

Under the Amendments, the definition of financial asset now includes crypto-assets but does not include commodities that are physical goods, such as gold, platinum and other precious metals.[20] As a result, institutions that exclusively offer custody services for non-financial assets may not qualify as custodial institutions, accounts that

7 bit.ly/47uzZiF
8 CRS, s.VIII, Defined Terms, A(1)
9 CRS, s.VIII, Defined Terms, D(5)
10 CRS, s.VIII, Defined Terms, D(1)
11 CRS, s.VIII, Defined Terms, D(2)
12 CRS, s.VIII, Defined Terms, D(4)
13 CRS, Commentaries, s.IV, para.4
14 CRS, Commentaries, s.VII, para.3(bis)
15 CRS, Commentaries, s.VII, para.4(bis)
16 CRS, Commentaries, s.VIII, para.4
17 CRS, Commentaries, s.VIII, para.4
18 CRS, Commentaries, s.VIII, para.5
19 CRS, s.VIII, subpara.A(7)
20 CRS, Commentaries, paras.23-24

exclusively hold such assets may not qualify as custodial accounts, and entities that exclusively hold such assets may not qualify as PMIEs or passive NFEs, and instead may be active NFEs.

## FINANCIAL INSTITUTIONS

There are four types of FI classifications under the CRS: custodial institutions, depository institutions, investment entities and specified insurance companies.[21] The large FIs, such as banks, brokers and life insurance companies, are easy to identify and classify. However, the investment entities, of which there are two kinds, require more analysis.

### Type A Entities

Type A Entities primarily invest,[22] manage or administer financial assets for customers, and are typically commercial trust companies and asset management companies. According to the definitional language, which requires deconstruction and analysis, a Type A Entity is one that primarily conducts as a business for or on behalf of a customer investing, administering or managing financial assets, money or relevant crypto-assets on behalf of other persons, except exchange transactions. In turn, 'primarily conducts' requires that the entity's gross income attributable to the relevant activities equals or exceeds 50 per cent of the entity's gross income.

#### *Commercial trust companies*

Commercial trust companies, which typically provide trust and company management services to the general public, are widely considered to be Type A Entities for the purposes of the CRS, provided that they meet the criteria. Commercial trust companies have 'customers', provide trustee services, are almost certainly encompassed by 'administering or managing' assets on behalf of other persons, and trust companies will be deemed to 'primarily conduct as a business' such services if a majority of the trust company's fee income is from trustee services related to trusts holding financial assets. However, if a majority of the fee income of the trust company is from trusts holding non-financial assets, then the trust company would likely not be a Type A Entity and would be an NFE. Commercial trust companies could also theoretically be treated as custodial institutions, but the type of income earned by custodial institutions, as defined by the CRS, is very different from the income earned by commercial trust companies.

#### *Private trust companies*

Private trust companies (PTCs), which provide services limited to a family group, would not necessarily qualify as Type A Entities. PTCs are not 'in business' in the same way as commercial trust companies, they do not usually have 'customers' except for members of a limited family group and they typically do not have income because they do not charge trustee fees for providing trust services. In some cases, trustee fees are paid directly by the family to a commercial trust company that manages the PTC under a service agreement, and not to the PTC. Under the FAQs, the indirect payment of fees can be treated as income attributed to the entity for the purposes of the 'gross income' test.[23] However, if no fees are paid to the PTC at all for trustee services, directly or indirectly, the PTC would not have any income and would not qualify either as a Type A Entity. Depending on the facts, PTCs would also likely fail to qualify as PMIEs because they generally do not satisfy either the 'gross income' test or the 'managed by' test and are therefore most often NFEs, either active or passive.

### Type B Entities

Type B Entities are commonly referred to in the CRS as PMIEs[24] and are typically an investment vehicle such as a trust, company, partnership, etc., the gross income of which is primarily attributable to investing, reinvesting or trading in financial assets or relevant crypto-assets, if the entity is managed by another entity that is a depository institution, a custodial institution, a specified insurance company or a Type A Entity.

PMIEs must meet a two-pronged 'gross income' and 'managed by' test. If the entity fails either test, then it would be treated as an NFE. First, the gross income test requires that the entity's income be 'primarily attributable' (more than 50 per cent) to investing in financial assets. Second, the investment entity must be managed by a custodial institution, depository institution, specified insurance company or a Type A Entity. The 'managed by' test requires that the managing entity manage the PMIE's assets with discretionary authority.[25]

**21** CRS, s.VIII, subpara.A(4)–A(8)
**22** CRS, s.VIII, subpara.A(6)(a)
**23** Handbook, s.VIII(A), para.9
**24** CRS, s.VIII, subpara.A(6)(b)
**25** CRS, Commentaries, s.VIII, para.17

***Trusts***

Trusts administered by commercial trust companies are typically PMIEs. They are not Type A Entities because they are not in 'business', do not have 'customers', do not 'administer or manage' financial assets for other persons and do not earn the type of income necessary to qualify as Type A Entities.

Trusts will be treated as PMIEs provided they meet the two-pronged gross income and managed-by test. The gross income test would be met if more than 50 per cent of the income of the trust is from financial assets. However, most trusts do not hold bank or brokerage accounts at trust level and hold accounts through underlying companies, and this reality is not addressed by the CRS. Nonetheless, since shares and partnership interests are financial assets, any income paid to the trust by their underlying investment entities will in any event be income from financial assets for the purposes of the gross income test. This would hold true even though the assets held by the underlying company are non-financial (real estate, yachts, aircraft, artwork, etc.). Assuming that the underlying company was funded by the trust with debt, any repayments of debt to the trust would evidently not be treated as income. The CRS does not directly address whether the satisfaction by an underlying company of the gross income test can be attributed to the trust.

The managed-by test would likely be met by the trust if the trustee is a commercial trust company. The provision of trust services is likely to be considered 'administering or managing' financial assets on behalf of other persons. In addition, the managed-by test would also be met if the trust holds financial assets at trust level that are managed with discretionary authority by a commercial trust company, a bank or a professional asset manager. However, reserved powers or directed trusts where the trustee has no discretionary investment powers may not satisfy the managed by test if the assets are not otherwise managed with discretionary authority by an FI, e.g., by a bank under a discretionary mandate. Equally, the CRS does not directly address whether the satisfaction by an underlying company of the managed by test can be attributed to the trust.

***Portfolio holding companies, partnerships and more***

Portfolio holding companies, partnerships and similar investment entities that hold financial assets would typically be PMIEs. They would not be Type A Entities because they are not in business, do not have customers, do not administer or manage financial assets for other persons and the type of income such companies earn would not be the type of income that Type A Entities must earn.

Such investment entities would be PMIEs if they meet the gross income test as well as the managed-by test. The gross income test would be met if 50 per cent or more of the overall income of the underlying company is derived from investing in financial assets, which would be the case for most companies holding portfolio investments. The managed-by test would be met if the assets of the company are managed by a bank, securities firm or professional asset manager (i.e., a Type A Entity) with discretionary authority over investments. However, the managed-by test may not be met if the entity is managed by a corporate director vehicle, as these vehicles usually do not qualify as FIs. However, local CRS legislation may differ.

## NON-FINANCIAL ENTITIES

If an entity is not an FI, then it will necessarily be an NFE. Any entity that is not an active NFE would be a passive NFE.[26] An entity's status as an FI or NFE must be made under the laws of the jurisdiction where the entity is resident and if the entity is not resident in a participating jurisdiction, the rules of the jurisdiction where the account is maintained apply, provided it is resident in a participating jurisdiction.[27] An entity's status as an active or passive NFE is also determined by the laws of jurisdiction where the NFE maintains accounts.[28]

### Active NFEs

There are several types of active NFEs under the CRS, including operating companies, holding companies, publicly listed companies, treasury centres, etc. Operating companies are active NFEs if they meet two criteria:[29]

- passive income must be less than 50 per cent of total gross income; and
- less than 50 per cent of the assets of the NFE must produce or be held for the production of passive income.

Under the Amendments, the Commentaries have expanded the second criterion to include assets that could

**26** CRS, s.VIII, subpara.(D)(8) and (D)(9)
**27** CRS, Commentaries, s.IV, para.2, OECD FAQs, ss.II-VII, para.17
**28** OECD FAQs, ss.II-VII, para.17
**29** CRS, s.VIII, subpara.D(9)(a)

potentially produce passive income, adopting the language of the FAQs. Passive income is not, per se, defined in the CRS and is left to local legislation,[30] albeit with a list of suggested items.

Holding companies[31] are active NFEs where 'substantially all' of their activities consist of holding 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 an FI, except that companies do not qualify for this status if they hold themselves out as investment funds. Treasury centre[32] companies are active NFEs if they primarily engage in financing and hedging transactions with related entities that are not FIs, provided that the group of related entities of any such related entities is primarily engaged in a business other than that of an FI.

The CRS has tie-breaker[33] language that excludes from the definition of investment entity an entity that is an active NFE because it meets the criteria for holding companies, treasury centre companies, start-up companies with no operating history, or companies in liquidation or reorganisation.

### Passive NFEs

As stated above, passive NFEs are defined in the negative as an entity that is not an active NFE. Typically, a passive NFE is an entity that derives more than 50 per cent of its income from financial assets but that does not meet the managed-by test because its assets are not managed with discretionary authority by another qualifying FI. In addition, PMIEs resident in non-participating jurisdictions, such as the US, are treated as passive NFEs,[34] with the result that FIs holding accounts for such PMIEs must 'look through' the passive NFE and report all controlling persons. This is an anti-abuse rule that is limited to PMIEs and does not extend to custodial institutions, depository institutions, specified insurance companies or Type A Entities resident in non-participating jurisdictions.

## PARTICIPATING JURISDICTIONS

Participating jurisdictions are defined as those jurisdictions that have adopted the CRS and with respect to which agreements are in place with counterparties to exchange the information specified under the CRS.[35] These jurisdictions appear on a published list. In order to become participating jurisdictions, jurisdictions must become a party to the Convention and the MCAA, adopt domestic legislation implementing the CRS, pass the Global Forum's initial vetting process, etc.

## NON-PARTICIPATING JURISDICTIONS

Although not expressly defined under the CRS, a non-participating jurisdiction is one where there is no agreement in place for the AEOI required under the CRS and which does not appear on a published list. As stated above, PMIEs resident in non-participating jurisdictions, such as trusts with US trustees, are subject to the CRS anti-abuse rule and treated as passive NFEs, with the result that the underlying PMIE investment vehicle must 'look through' the passive NFE and report all controlling persons. The US, as the world's richest and most powerful country, remains the only major jurisdiction that has not adopted the CRS and remains a non-participating jurisdiction.

There are two competing AEOI systems in the world, one for the US, the *Foreign Account Tax Compliance Act* (FATCA), introduced in 2010 and effective from 2014, and the CRS for the rest of the world, introduced by the OECD in 2014 and effective in 2016. The CRS was essentially copied from FATCA and functions in a fully reciprocal manner, unlike FATCA. The information exchanged by the US under the FATCA Model 1 Reciprocal Intergovernmental Agreements (IGAs) is far less than that required under the CRS.
For example, under these reciprocal IGAs, the outbound information exchange by the US is limited to certain types of US-source income paid on custodial accounts, such as dividends, interest and other US-source income paid to non-resident individuals or corporations. On depository accounts, interest of USD10 or more in bank deposit interest on depository accounts paid to individuals is reported. However, unlike with the CRS, the US does not report account balances, gross amounts of income, or look through legal arrangements and report foreign beneficial owners, etc.

The question arises as to how the world ended up with two competing AEOI systems. Some say the US outfoxed the OECD with FATCA, which is unlikely as FATCA came first and was focused on combating US tax evasion, and not on global tax transparency. Others say the OECD got ahead of its cavalry by launching the CRS without the US on board,

**30** CRS, Commentaries, s.VIII, para.125-126
**31** CRS, s.VIII, subpara.D(9)(d)
**32** CRS, s.VIII, subpara.D(9)(g)
**33** CRS, s.VIII, Defined Terms, A(6)(b)
**34** CRS, s.VIII, subpara.D(8)(ii)
**35** CRS, s.VIII, Defined Terms, D(5)

***'... it is not clear what the US has to gain from joining the CRS as it already receives all the required information under FATCA on US persons with foreign accounts'***

hoping the US would join the CRS subsequently. There is support for this view in the language of the Reciprocal Model 1 IGAs where the US commits to achieve equivalent levels of reciprocal AEOI. However, it is not clear what the US has to gain from joining the CRS as it already receives all the required information under FATCA on US persons with foreign accounts. The General Accountability Office (GAO) of the US issued a report in 2019 entitled *Foreign Asset Reporting*,[36] where it evaluated the utility of adopting the CRS. The report noted that whereas the CRS requires the identification of the tax residency of taxpayers, FATCA goes further and requires the identification of the citizenship and tax residency of taxpayers, and such conflict would require harmonisation. Nonetheless, assuming this conflict could be resolved, the report concluded that no additional benefit would result to the US Internal Revenue Service in terms of obtaining information on US accounts.

It is worth remembering that FATCA was introduced by the Obama administration in 2010 with little Republican support. The Democratic Party is more enthusiastic about FATCA expansion, or the adoption of the CRS, than the Republicans. Indeed, the Obama[37] and Biden[38] administrations introduced proposals in annual Budgets of their respective administrations that would expand reporting under FATCA and would provide information on account balances, gross amounts of income, gross proceeds, and report information on passive entities and their substantial foreign owners, etc. Under these proposals, the US would have provided to FATCA partner counterparties, in substance, the equivalent type of information that the FATCA counterparties are required to provide to the US, and equivalent to the type of information that is exchanged under the CRS. However, these proposals have not gained traction with the US Congress.

**36** *Foreign Asset Reporting*, US Government Accountability Office (GAO)-19-180
**37** See, e.g., US Treasury's *General Explanation (Greenbook) of the Administration's Budgets* for fiscal years 2015, 2016 and 2017
**38** See e.g., US Treasury's *General Explanation (Greenbook) of the Administration's Budgets* for fiscal years 2023 and 2024

## REPORTING UNDER THE CRS

### Who reports

Reporting obligations fall upon reporting FIs.[39] NFEs have no direct reporting obligations but must provide self-certifications and other documentation to reporting FIs where they hold accounts, such as depository institutions, custodial institutions, insurance companies and investment entities.

### Who is reported

Reporting FIs are obliged to report individual accountholders that are tax-resident in reportable jurisdictions, as well as accounts held by passive NFEs with one or more controlling persons that are tax-resident in reportable jurisdictions and, subject to certain exceptions, active NFEs tax-resident in reportable jurisdictions. In sum, subject to the below detailed analysis, the following individuals are reported:

- individual accountholders of custodial and depository institutions;
- equity interest holders of PMIEs; and
- controlling persons of passive NFEs.

With respect to investment entities that are PMIEs, the equity interest holders must be reported. Settlors are considered to hold equity interests and hence financial accounts in the trust. Mandatory or fixed-interest beneficiaries are also deemed to hold equity interests in trusts that are FIs, as well as discretionary beneficiaries, but these are only treated as equity interest holders for the year in which distributions were actually paid or made payable to them. In addition, any other natural person exercising ultimate effective control over the trust is considered to be an equity interest holder. Under the Amendments, the particular role of the equity interest holders must be reported, for example as settlor, beneficiary, shareholder or partners, etc. Where equity interests are held through a custodial institution, the custodial institution is responsible for reporting, not the investment entity.[40] Where the settlor, beneficiary or other

**39** CRS, s. VIII, subpara.A(1)
**40** CRS, Commentaries, sVIII, para.71

person is itself an entity, the PMIE trusts are required to 'look through' the entity and treat the controlling persons of the entity as equity interest holders in the trust.[41]

In connection with protectors of trusts that are treated as PMIEs, the OECD has taken the position (in the Handbook and the FAQs,[42] which are not legally binding) that reporting FIs should treat protectors as equity interest holders. This position is plainly inconsistent with the concept of 'equity interest' as defined in the CRS, which identifies individuals with an economic interest in the trust, while the role of a protector is supervisory in nature. However, the catch-all language in the definition of equity interest holder does treat as an equity interest holder 'any other natural person exercising ultimate effective control over the trust'. For such an important matter, it is rather surprising that the OECD did not simply amend the definition of equity interest in the Amendments, instead of leaving the question to the non-binding Handbook and FAQs. Nonetheless, a number of jurisdictions have amended their legislation to require the reporting of protectors as equity interest holders.

With respect to entities that are passive NFEs, reporting FIs must report the entity to its jurisdiction of tax residence and must 'look through' the entity and report the controlling persons if resident in reportable jurisdictions. In the case of active NFEs, the reporting FI must report the entity to its jurisdiction of tax residence but is not required to 'look through' the entity and report the controlling persons. The 'controlling persons' include the settlors, trustees, protectors, beneficiaries and any other natural person exercising ultimate effective control over the trust. Note that jurisdictions may allow FIs to align the reporting treatment of beneficiaries of trusts treated as controlling persons with the reporting treatment of beneficiaries of trusts that are FIs.[43] Subject to certain conditions, this permits discretionary beneficiaries to be treated as controlling persons only in years in which they receive a distribution from the trust. In the case of corporations and partnerships that are passive NFEs, the controlling persons are those that hold more than a specified percentage of the ownership of capital or profits interests in the entity. In most jurisdictions the percentage is 25 per cent, but a number of other jurisdictions use a 10 per cent threshold. Under the Amendments, the reporting FI must report the particular role of the controlling person in the passive NFE, such as settlor, beneficiary, protector, shareholder, partner, etc.

However, reporting FIs do not report accountholders that are FIs because FIs are excluded from the definition of reportable persons[44] and FIs do not report each other. In addition, reporting FIs are not required to report controlling persons of passive NFEs resident in the same jurisdiction as the reporting FI because such persons are not treated as reportable jurisdiction persons,[45] unless the jurisdiction has adopted the wider approach to reporting in local implementing legislation and includes the jurisdiction of the reporting FI as a reportable jurisdiction.[46] A reportable jurisdiction is defined as one in which there is a bilateral agreement in place to provide AEOI and one that appears on a published list.

### What is reported

The type of financial information reported depends on the type of financial account held by the reportable person, subject to the below detailed analysis, and includes individuals:

- with custodial and depository accounts, the total account balance or value, total gross amounts of income and gross proceeds (turnover) of the account;
- that are equity interest holders in PMIEs, the aggregate value of the equity interest and total amounts paid or credited to the equity interest holder; and
- that are controlling persons of passive NFEs, the total balance or value of the account held by the passive NFE and the gross payments made or credited to the account of the passive NFE.

With respect to individual accountholders that are reportable persons, reporting FIs must report the relevant details of the individual, including:

- whether the account is a joint account, including the number of joint accountholders;
- the type of account, i.e., whether the account is a custodial account;
- a depository account;

**41** Handbook, para.253
**42** CRS FAQs, Section D(6)
**43** CRS, Commentaries, para.134
**44** CRS, s.VIII, Defined Terms, D(2)(vi)
**45** CRS, s.VIII, subpara.D(4)
**46** CRS, Annex 5, para.5. See also the Handbook, para.269

- an account with an insurance company or investment entity; and
- whether a valid self-certification has been obtained, etc.

The financial activity to be reported, in the case of individual accounts held with depository institutions,[47] is the total account balance or value and the gross amount of interest paid or credited to the account. Where individual accounts are held with custodial institutions,[48] the activity to be reported is the total account balance or value and the gross amounts of interest, dividends and other income, and the total gross 'turnover' (gross proceeds) from the sale or redemption of financial assets.

In the case of trusts that are PMIEs, settlors are treated as equity interest holders and are reported as to the total value of the trust fund and the total value of any distributions made during the calendar year. Fixed-interest beneficiaries are treated as equity interest holders and reported as to the value of their interest in the trust fund and any distributions made during the calendar year, and discretionary beneficiaries are only treated as equity interest holders and reported as to any distributions actually made during the calendar year. The protector, according to the Handbook, is reported as to the total value of the trust fund, and the total value of distributions to the settlor.[49] The Amendments revised the Commentaries to provide that payments to third parties for the benefit of a beneficiary, loans with no interest or discounted rates of interest and loan write-offs should be treated as distributions to beneficiaries and reported,[50] adopting the language of the FAQs. In the case of companies, partnerships and investment funds, foundations, etc., any equity interests held by reportable persons must be reported by the FI as to the aggregate value of such equity interest and the total gross amounts paid or credited to the equity interest holder.

In the case of trusts, corporations and partnerships that are passive NFEs, the reporting FIs must report:

- the relevant details of the passive NFE;
- the relevant details of each reportable person; and
- whether a valid self-certification was obtained.

The financial activity to be reported with respect to each controlling person is the total balance or value of the account held by the passive NFE and the gross payments made or credited to the account of the passive NFE.[51]

**47** CRS, s.I, General Reporting Requirements, A(6)
**48** CRS, s.I, General Reporting Requirements, A(5)
**49** CRS Handbook, Table 7
**50** CRS, Commentaries, s.VIII, para.70
**51** CRS, Commentaries, para.13, pp.98–99

## GLOSSARY

*All terms are from CRS s.VIII, Defined Terms*

**Accountholder**
The person listed as the holder of a financial account by the FI that maintains the account. Persons (other than FIs) holding financial accounts for the benefit of other persons as agents, custodians, nominees, signatories, investment advisors or intermediaries are not treated as accountholders. The accountholder of a cash value contract or an annuity contract is the person entitled to access the cash value or change the beneficiary.

**Active NFE**
Means an entity that meets the certain criteria, including:

- an 'operating' company that receives less than 50 per cent of its income from financial assets and less than 50 per cent of its assets produce or are held for the production of passive income;
- corporations that are regularly traded on an established securities market;
- governmental entities, international organisations or central banks;
- corporations substantially all the activities of which consist in holding or providing financing services to subsidiaries that are engaged in business other than the business of an FI;
- corporations that primarily engage in financing transactions or hedging transactions for related entities that are not FIs.

**Annuity contract**
Means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals.

**Cash value insurance contract**
Means an insurance contract that has a cash value, defined as the greater of the amount the policy holder is entitled to receive upon surrender or termination, and the amount the policy holder can borrow under the contract.

**Central bank digital currency**
Means any digital fiat currency issued by a central bank.

**Controlling persons**
Means the natural persons who exercise control over an entity. In the case of trusts, 'controlling persons' include the settlors, trustees, protectors, beneficiaries and any natural person exercising ultimate effective control over the trust.

**Crypto-asset**
Means a digital representation of value that relies on a cryptographically secured distributed ledger or a similar technology to validate and secure transactions.

**Custodial account**
Means an account (other than an insurance contract or annuity contract) for the benefit of another person that holds one or more financial assets. A custodial account includes an arrangement to safekeep or administer the instrument enabling control over one or more financial assets issued in the form of a crypto-asset for the benefit of another person, to the extent that the entity has the ability to manage, trade or transfer to third parties the underlying financial assets on the person's behalf.

**Custodial institution**
Means any entity that holds, as a substantial portion of its business, financial assets for the account of others. The income attributable to holding financial assets and related financial services must equal or exceed 20 per cent of the entity's gross income. Income attributable to related financial services includes commissions and fees from holding, transferring and exchanging relevant crypto-assets held in custody.

**Depository account**
Means any commercial, checking, savings, time or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness or other similar instrument maintained by a depository institution. A depository account also includes:

- an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest therein;
- an account or notional account that represents all specified electronic money products held for the benefit of a customer; and
- an account that holds one or more central bank digital currencies for the benefit of a customer.

**Depository institution**
Means any entity that:

- accepts deposits in the ordinary course of a banking relationship; or
- holds specified electronic money products or central bank digital currencies for the benefit of customers.

An entity is also considered a depository institution if it holds specified electronic money products or central bank digital currencies for the benefit of customers.

**Entity**
Means a legal person or legal arrangement, such as a corporation, partnership, trust or foundation.

**Equity interest**
Means the interest held in Type B Entities, such as trusts, companies, partnerships or foundations. In the case of trusts, the settlors and beneficiaries, as well as natural persons exercising ultimate effective control over the trust, are considered to be equity interest holders. In the case of corporations or partnerships, the shareholders or partners are considered to be equity interest holders.

**Exchange transaction**
Means any:

- exchange between relevant crypto-assets and fiat currencies; and
- exchange between one or more forms of relevant crypto-assets.

**Fiat currency**
Means the official currency of a jurisdiction, issued by a jurisdiction or by a jurisdiction's designated central bank or monetary authority, as represented by physical banknotes, coins or money in different digital forms, including bank reserves and central bank digital currencies. The term also includes commercial bank money and electronic money products (including specified electronic money products).

**Financial account**
Means an account maintained by an FI and includes a depository account, custodial account, equity and debt interests in investment entities, and cash value insurance contracts and annuity contracts.

**Financial assets**
The term 'financial asset' includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), insurance contract or annuity contract, or any interest (including a futures or forward contract or option) in a security, relevant crypto-asset, partnership interest, commodity, swap, insurance or annuity contract. The term 'financial asset' does not include a non-debt, direct interest in real property.

**Financial institution**
Means a custodial institution, depository institution, an investment entity or a specified insurance company.

**Government verification service**
Means an electronic process made available by a reportable jurisdiction to a reporting financial institution for the purposes of ascertaining the identity and tax residence of an accountholder or controlling person.

**Insurance contract**
Means a contract (other than an annuity contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability or property risk.

**Investment entities, Type A**
Means entities that primarily invest, manage or administer financial assets, money (including central bank digital currencies) or relevant crypto-assets on behalf of other persons. These are typically trust companies and asset management companies.

**Investment entities, Type B**
Means an entity the gross income of which is primarily attributable to investing, reinvesting or trading in financial assets or relevant crypto-assets if the entity is managed by another entity that is a depository institution, a custodial institution, a specified insurance company or an investment entity described in A(6)(a). 'Primarily' means that the entity's gross income from the relevant activity must

be more than 50 per cent of the entity's gross income. These are also referred to as PMIE FIs, and include corporations, partnerships, trusts and foundations.

**Non-participating jurisdiction**
Means a jurisdiction with which there is no agreement in place and which does not appear on a published list.

**Non-reporting financial institution**
Means governmental entities, central banks, international organisations, certain types of retirement funds, exempt collective investment vehicles, and trusts where the trustee is a reporting FI and reports the required information.

**Participating jurisdiction**
Means a jurisdiction with which an agreement is in place pursuant to which it will provide the information specified in s.I of the CRS and which appears on a published list.

**Participating jurisdiction financial institution**
Means an FI that is tax-resident in a participating jurisdiction.

**Passive income**
Should be defined under local legislation and includes dividends, interest, rents and royalties other than those derived from an active business, annuities, income from relevant crypto-assets, excess of gains over losses from financial assets or relevant crypto-assets, excess of foreign currency gains over losses, net income from swaps, or amounts received under cash value insurance contracts.

**Passive NFE**
Means any entity that is not an active NFE or is an investment entity described in s.VIII, Defined Terms, A(6)(b) that is not a participating jurisdiction financial institution.

**Relevant crypto-asset**
Means any crypto-asset that is not a central bank digital currency, a specified electronic money product or any crypto-asset for which the reporting crypto-asset service provider has adequately determined that it cannot be used for payment or investment purposes.

**Reportable account**
Means an account held by a reportable person or by a passive NFE with one or more 'controlling persons' that is a reportable person.

**Reportable jurisdiction**
Means a jurisdiction with which an agreement is in place to provide the information specified in s.I of the CRS and which appears on a published list.

**Reportable person**
Means an individual or entity that is tax-resident in a reportable jurisdiction, other than:

(i) an entity the stock of which is regularly traded on one or more established securities markets;
(ii) any entity that is a related entity of an entity described in clause (i);
(iii) a government entity;
(iv) an international organisation;
(v) a central bank; or
(vi) an FI.

**Reportable jurisdiction person**
Means an individual or entity that is tax-resident in a reportable jurisdiction.

**Reporting financial institution**
Means any participating jurisdiction FI that is not a non-reporting FI.

**Specified electronic money product**
Means any product that is:

- a digital representation of a single fiat currency;
- issued on receipt of funds for the purpose of making payment transactions;
- represented by a claim on the issuer denominated in the same fiat currency;
- accepted in payment by a natural or legal person other than the issuer; and
- by virtue of regulatory requirements to which the issuer is subject, redeemable at any time and at par value for the same fiat currency upon request of the holder of the product.

The term does not include a product created for the sole purpose of facilitating the transfer of funds from a customer to another person pursuant to instructions of the customer.

**Specified insurance company**
Means any entity that is an insurance company that issues cash value insurance contracts or annuity contracts. ■