

Implementing the global standard on automatic exchange of information

An officials' issues paper

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CONTENTS

CHAPTER 1	Introduction	1
	The Common Reporting Standard	3
	The legal basis for exchange	4
	Data confidentiality and safeguards	5
	OECD documentation	5
	Consultation questions	6
	How to make a submission	6
CHAPTER 2	Key Common Reporting Standard due diligence and reporting obligations	7
	Who must conduct due diligence?	8
	Determining which financial accounts will be the subject of CRS due diligence and reporting	11
	Determining what non-resident jurisdictions are within the scope of CRS and reporting – the potential application of the “wider approach” to CRS	13
CHAPTER 3	Phasing of implementation	15
CHAPTER 4	Compliance framework	19
	Addressing significant non-compliance of tax authorities	19
	Implementing domestic legislation	20
CHAPTER 5	Other legislative issues or options	23
	Part A – Consultation questions and submissions on other legislative issues	23
	Part B – Background context to the consultation questions	26
	Appendix	33
	Glossary	37

CHAPTER 1

Introduction

- 1.1 In recent years, in addition to wider international efforts aimed at improving financial regulation and transparency, governments worldwide have demonstrated increasing determination to ensure that all taxpayers, from individuals to large multinationals, pay their fair share of tax. This is reflected in international initiatives such as the United States' *Foreign Account Tax Compliance Act* (or US FATCA) initiative, and the G20/OECD *Base Erosion and Profit Shifting* (or BEPS) initiative. Common themes amongst such initiatives are improving transparency frameworks, the imposition of new reporting obligations, and expectations of greater levels of cooperation between jurisdictions through exchange of information.
- 1.2 One particular issue in the international spotlight has been tax evasion arising from wealth held by individuals and entities in "offshore" financial accounts that goes unreported for tax purposes in the home jurisdiction. A global solution to this problem is needed to prevent these funds fleeing to non-complying jurisdictions. In response, G20 Leaders launched an initiative in September 2013 for the development and swift implementation of a global standard for the *Automatic Exchange of Financial Account Information in Tax Matters* (in short, Automatic Exchange of Information, or AEOI).
- 1.3 As a set of rules it is referred to as the AEOI standard. The AEOI Standard is based on the US FATCA Standard, although there are significant differences between AEOI and US FATCA. The AEOI Standard comprises four distinct elements. These are:
 - The Common Standard on Reporting, Due Diligence and Exchange of Information on Financial Account Information (in short, the Common Reporting Standard or CRS). See Part IIA of the AEOI Publication.
 - Model Competent Authority Agreements (or CAAs). See Part IIB of the AEOI Publication. Three separate models are provided, a multilateral model, a bilateral model, and a non-reciprocal model (for jurisdictions that will only provide, but have no interest in receiving, information, such as those with no tax system).
 - Commentaries to the CRS and CAA. See Part III of the AEOI Publication.
 - Technical solutions to be used for exchanging the information, including minimum standards in relation to the encryption and transmission of information, data confidentiality, data safeguards. Some of these technical solutions have been finalised, but others are still being developed.
- 1.4 Jurisdictions that implement the AEOI Standard (participating jurisdictions) receive information on the financial assets and income from those financial assets held by their tax residents in offshore accounts. The tax authorities of those jurisdictions can then use that information to verify that those residents have correctly reported their financial assets and income for tax purposes.

The G20 views implementation as important for all jurisdictions. However, their key targets for early implementation are developed countries and those jurisdictions that have or operate as an international finance centre. These jurisdictions are where offshore accounts will most likely be held.

- 1.5 The G20 called on the OECD to provide the necessary technical expertise for developing the AEOI Standard. This was finalised and published in 2014. Its published form (the AEOI Publication) can be accessed at <http://www.oecd.org/tax/automatic-exchange>. To ensure consistent global implementation, the G20 called on the *Global Forum on Transparency and Exchange of Information for Tax Purposes* (the Global Forum) with establishing monitoring and peer review processes.
- 1.6 To date, efforts to secure compliance by target jurisdictions have primarily been through dialogue and a voluntary commitment process. However, as for compliance with other international standards such as anti-money laundering and countering terrorist financing, it is important that a global approach is adopted. If any target jurisdiction is allowed to lag behind in implementation, the risk is that the tax evasion problem will simply relocate to that jurisdiction from other, complying jurisdictions. Accordingly, the G20 has imposed implementation deadlines on all target jurisdictions, to ensure that all move forward with implementation on a similar timeline.
- 1.7 To date, all G20 member countries, all OECD member countries, and all but three of the jurisdictions that have or operate as an international finance centre, have already entered into implementation commitments.
- 1.8 New Zealand made its initial commitment to implement AEOI on 7 May 2014 and subsequently decided that the first exchanges of information with other tax authorities would be completed by 30 September 2018, in line with our international commitment. To meet this exchange deadline, AEOI obligations are to apply in New Zealand from 1 July 2017.
- 1.9 This issues paper specifically concerns, and seeks submissions on, decisions that need to be made regarding New Zealand's implementation of the Common Reporting Standard, or CRS. The CRS sets out rules to be imposed on financial institutions¹ for:
 - the conduct of due diligence on their non-exempt accounts to identify *Reportable Accounts*² (broadly, covering certain accounts held or controlled³ by tax residents⁴ from reportable jurisdictions⁵) and *Undocumented Accounts*;⁶

¹ See Chapter 2 of this issues paper, which sets out those financial institutions that will have due diligence and reporting obligations.

² See Chapter 2 of this issues paper.

³ This applies to accounts held by passive NFEs. See the Glossary at the end of this issues paper.

⁴ As explained in detail in the Appendix, an account holder is sometimes treated as being resident for tax purposes in a jurisdiction based on indicia (of such residence) that is not "cured". Furthermore, for the purposes of CRS due diligence, an Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated.

⁵ See the Glossary at the end of this issues paper.

⁶ See the Glossary at the end of this issues paper.

- the collection of details of financial assets and income in relation to any reportable accounts that are identified; and
 - reporting the information on reportable accounts and undocumented accounts to the tax administration in the jurisdiction in which the financial institution is located (that is, for New Zealand financial institutions, to Inland Revenue). This information about Reportable accounts will then be exchanged with the relevant Reportable jurisdiction.⁷
- 1.10 Apart from the Commentaries to the CRS, the other elements of the AEOI Standard are concerned solely with exchange of information between jurisdictions, and are generally outside the scope of this issues paper.
- 1.11 The benefit to New Zealand from implementing AEOI lies in the information that it will receive from other participating jurisdictions about the financial assets and income of New Zealand residents in those jurisdictions. This information will be used to detect current tax evasion and deter future tax evasion. Perceptions of a fairer tax system can also generally be expected to enhance voluntary compliance domestically. However, AEOI implementation will impose compliance costs on financial institutions. Possible transitional measures and mitigation of compliance costs are therefore a critical part of our thinking, and we invite any suggestions in this regard.

The Common Reporting Standard

- 1.12 The CRS contains the following categories of rules that must be implemented domestically:
- *Due diligence:* Rules for the conduct of due diligence by financial institutions on their accounts to identify reportable accounts and undocumented accounts.
 - *Collection of information:* Rules for the collection of details of financial assets and income in relation to any reportable accounts that are identified.
 - *Reporting of information:* Rules for reporting information on reportable accounts and undocumented accounts to the tax administration in the jurisdiction in which the financial institution is located (that is, for New Zealand financial institutions, to Inland Revenue).
- 1.13 The CRS also includes important ancillary requirements. In particular:
- it imposes an obligation on financial institutions to look through certain passive entities⁸ and report on controlling persons⁹ who are from reportable jurisdictions;¹⁰ and

⁷ This is subject to the potential application of the “wider” approach, which is canvassed in this issues paper.

⁸ These are defined in the CRS as “Passive NFEs”. See the Glossary at the end of this issues paper.

⁹ See the Glossary at the end of this issues paper.

- it requires each implementing jurisdiction to introduce a domestic compliance regime.¹¹

The legal basis for exchange

- 1.14 Because of historical international and legal principles that otherwise impose barriers to countries assisting each other in enforcing their tax laws, forms of tax cooperation between jurisdictions such as exchange of information generally are typically conducted under tax treaties. Although bilateral tax treaties such as double tax agreements (or DTAs) and tax information exchange agreements (or TIEAs) can be used for this purpose, the joint OECD/Council of Europe *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (the Multilateral Convention) has emerged internationally as the preeminent international instrument for tax cooperation generally.¹² The Multilateral Convention has now been signed by over 100 jurisdictions. New Zealand signed the Multilateral Convention on 26 October 2012.
- 1.15 It is anticipated that the majority of AEOI exchanges will take place under Article 6 of the Multilateral Convention. (Note that AEOI exchanges under the Multilateral Convention will generally apply solely between two of the parties. That is, on a bilateral basis.) Article 6 refers to automatic exchange “in accordance with procedures which shall be determined by mutual agreement”. To give effect to this requirement for mutually agreed procedures, a Multilateral Competent Authority Agreement (or MCAA) has been developed internationally,¹³ based on the multilateral CAA provided in the AEOI Publication.
- 1.16 AEOI exchanges can potentially also be made under bilateral DTAs. The majority of New Zealand’s DTA partners are also signatories to the Multilateral Convention, so for New Zealand the question of whether AEOI exchanges should be made under any of our DTAs currently only applies in the case of 15 of our DTAs with jurisdictions that are not parties to the Multilateral Convention.¹⁴ However, resolving this question is not currently seen as a priority, especially as some of the 15 jurisdictions concerned may yet sign the Multilateral Convention.
- 1.17 New Zealand only has three bilateral TIEAs in force with jurisdictions that have not signed the Multilateral Convention. At present, TIEAs only provide for exchange of information on request, and automatic exchanges such as AEOI are not contemplated. However, in recognition of the fact that TIEAs do not authorise AEOI, the OECD has developed a mechanism for amending TIEAs to allow them to be extended to automatic exchanges. Again, New Zealand does not see amending our TIEAs as a current priority, as all of our TIEA partners may yet sign the Multilateral Convention.

¹⁰ See the Glossary at the end of this issues paper.

¹¹ This represents a key difference from FATCA. A withholding tax regime applies in the United States to promote FATCA compliance. No similar international measure exists for AEOI.

¹² See <http://www.oecd.org/ctp/exchange-of-tax-information/conventiononmutualadministrativeassistancein taxmatters.htm>

¹³ See <http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs>

¹⁴ We also have a 16th DTA, with the Hong Kong Special Administrative Region of the People’s Republic of China, but this does not provide for automatic exchange.

Data confidentiality and safeguards

- 1.18 AEOI will involve the reporting and exchange of sensitive personal and financial information. Understandably, taxpayers and other stakeholders are likely to be concerned about any potential risks to privacy from the reporting and exchange of their financial information, and in particular, that the information reported to Inland Revenue and exchanged with other jurisdictions is subject to high standards of confidentiality and data protection. Addressing these concerns is essential if support for the initiative is to be maintained.
- 1.19 Domestically, that will require a clear legislative framework to govern the collection and exchange of the relevant personal and financial information, including the limits on the permissible use of that information. Officials consider that the secrecy rules under which Inland Revenue currently operates (primarily set out at section 81 of the Tax Administration Act 1994) are adequate for this purpose.
- 1.20 Internationally, that will require a high degree of confidence in the data protection arrangements in place in other participating jurisdictions. To that end, the Global Forum will conduct peer reviews on data security and confidentiality arrangements (in addition to the general peer reviews referred to above). The results of these confidentiality reviews will be available to implementing jurisdictions to help inform their decisions as to which countries they can safely exchange information with. New Zealand can use these mechanisms to identify and (if necessary) restrict exchanges with jurisdictions that do not comply with the data security and confidentiality requirements.

OECD documentation

- 1.21 In addition to the AEOI Publication, other important documentation relating to CRS implementation includes the following:
- The OECD's Implementation Handbook published on 7 August 2015 (see <http://www.oecd.org/tax/automatic-exchange/>).
 - The Multilateral Convention (see <http://www.oecd.org/ctp/exchange-of-tax-information/conventiononmutualadministrativeassistanceintaxmatters.htm>).
 - The MCAA (see <http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/>).
- 1.22 It is important that this issues paper is read in conjunction with these documents, as they contain technical detail which cannot all be replicated in this paper. A Glossary is included at the end of this issues paper for general information. The CRS due diligence procedures referred to in this issues paper are also elaborated upon in the Appendix. Any inconsistencies between this issues paper on the one hand, and the CRS, its Commentaries, the Implementation Handbook, or any other OECD documentation on the other hand, are inadvertent. OECD documentation should be treated as authoritative.

Consultation questions

- 1.23 To ensure global consistency, the CRS rules will be applied by participating jurisdictions as designed by the OECD. (Indeed, the Global Forum will be conducting in-depth monitoring and peer reviews to ensure that jurisdictions implement the CRS correctly.) However the CRS and its Commentaries provide flexibility and require implementation decisions on certain points. This issues paper calls out these points in Chapter 5, and seeks your views. We are particularly interested in understanding how (or if) exercise of any of the available optionality would assist in reducing compliance costs.
- 1.24 Given that compliance costs of implementing by 1 July 2017 are likely to be high, officials have considered the possibility of transitional arrangements for financial institutions (within the confines of what is allowable under the CRS). Such matters are dealt with in Chapters 2 through 4.
- 1.25 Submissions on any other implementation issue are also welcome.

How to make a submission

- 1.26 Officials invite submissions on the suggested changes and points raised in this issues paper.

Submissions should be sent to policy.webmaster@ird.govt.nz with “Common Reporting Standard” in the subject line.

Submissions can also be sent to:

Common Reporting Standard
C/- Deputy Commissioner, Policy and Strategy
Inland Revenue Department
PO Box 2198
Wellington 6140

The closing date for submissions is **31 March 2016**.

- 1.27 Submissions should include a brief summary of major points and recommendations. They should also indicate whether it would be acceptable for Inland Revenue and Treasury officials to contact those making the submission to discuss the points raised, if required.
- 1.28 Submissions may be the subject of a request under the Official Information Act 1982, which may result in their release. The withholding of particular submissions, or parts thereof, on the grounds of privacy, or commercial sensitivity, or for any other reason, will be determined in accordance with that Act. Those making a submission who consider that there is any part of it that should properly be withheld under the Act should clearly indicate this.

CHAPTER 2

Key Common Reporting Standard due diligence and reporting obligations

2.1 The CRS generally sets out the rules for:

- *Due diligence:* The conduct of due diligence by reporting financial institutions on their non-exempt accounts to identify reportable accounts and undocumented accounts.¹⁵ (There are different due diligence rules for pre-existing and new accounts, and individual and entity accounts. These procedures are elaborated upon in the Appendix and these terms are set out in the Glossary to this issues paper);
- *Collection of information:* The collection by reporting financial institutions of details of financial assets and income in relation to any reportable accounts that they identify; and
- *Reporting of information:* Reporting information on reportable accounts and undocumented accounts to the tax administration in the participating jurisdiction in which the reporting financial institution is located (that is, for New Zealand reporting financial institutions, the Inland Revenue Department).

2.2 The CRS also includes important ancillary requirements, including:

- An obligation for reporting financial institutions to look through “passive NFEs” (this is a defined technical term in the CRS – see the Glossary at the end of this paper) and report relevant controlling persons from reportable jurisdictions; and
- Obligations on participating jurisdictions to have rules and administrative procedures in place to ensure effective implementation of, and compliance with, the CRS reporting and due diligence procedures.

2.3 Participating jurisdictions are required to translate the CRS into domestic law, and to put in place the necessary systems and processes for giving it effect. The Global Forum will conduct in-depth monitoring and peer review of participating jurisdictions to ensure that the CRS has been correctly implemented and that no shortcuts are taken that would weaken the global effectiveness of the CRS. A key element of this will be determining whether there has been effective implementation of, and compliance with, the CRS reporting and due diligence procedures.

2.4 However the CRS and its Commentaries provide flexibility, and provide participating jurisdictions with options in certain areas, and in respect of these areas participating jurisdictions need to decide which approach it will take.

¹⁵ The distinction between “Reporting” Financial Institutions and “Non-Reporting” Financial Institutions is outlined below.

- 2.5 This chapter of the issues paper highlights some key areas where New Zealand is required, or able, to make implementation decisions regarding various CRS due diligence and reporting obligations (including *who* will have such obligations, *what accounts* will be the subject of such obligations, and *what non-resident jurisdictions* are within the scope of CRS due diligence and reporting), and seeks feedback on the design choices to be made in these areas. (Other legislative issues or options relating to CRS due diligence and reporting obligations are set out in Chapters 4 and 5).

Who must conduct due diligence?

- 2.6 CRS obligations apply to a broad range of entities, beyond simply banks, to include other financial institutions such as *certain* brokers, custodians, collective investment vehicles, managed entities, and insurance companies. The specific definition of the term “financial institution” in the CRS includes any: “depository institution”, “custodial institution”, “investment entity”, or “specified insurance company”. These specific categories are further defined in the CRS and its Commentaries.
- 2.7 New Zealand is generally required to implement CRS obligations for any “participating jurisdiction financial institution”. For New Zealand this will include:
- Any financial institution resident in New Zealand (but excluding any of its branches located outside New Zealand); and
 - Any branch of a non-resident financial institution that is located in New Zealand.
- 2.8 The “residence” of a participating jurisdiction financial institution will be determined using domestic tax residence rules. However, for trusts, or financial institutions that do not have residence for tax purposes (for example, because they are treated as fiscally transparent, or located in a jurisdiction that does not have an income tax), the CRS Commentaries specify how a participating jurisdiction is to determine residence.
- 2.9 Only those participating jurisdiction financial institutions that are “reporting financial institutions” will (upon implementation in New Zealand) be required to carry out CRS due diligence on their non-exempt financial accounts to identify whether they have reportable accounts or undocumented accounts. The New Zealand reporting financial institution would need to report such accounts to Inland Revenue. In this issues paper, such financial institutions (that have CRS due diligence and reporting obligations) will be referred to as New Zealand reporting financial institutions. (Note that a New Zealand reporting financial institution may conduct due diligence on its accounts but not identify any reportable accounts or undocumented accounts).
- 2.10 The due diligence procedures that a participating jurisdiction must put in place for reporting financial institutions to use in determining whether a non-

exempt account they maintain is a reportable account (held or controlled¹⁶ by a reportable person) or an undocumented account, are set out in Sections II to VII of the CRS. A reportable person is a non-exempt natural person or entity¹⁷ that is tax-resident (including sometimes treated as resident based on indicia that is not “cured”) in a participating jurisdiction.¹⁸ A reportable person can also be a non-exempt entity (such as a partnership, limited liability partnership, or similar legal arrangement) that has no jurisdiction for tax purposes, in which case the CRS looks to the participating jurisdiction in which the place of effective management is situated. For CRS purposes, **these are persons resident in reportable jurisdictions.**

- 2.11 The CRS due diligence procedures that reporting financial institutions need to apply to identify such reportable accounts and undocumented accounts vary depending on whether the account is a pre-existing account or a new account and whether the account is held by an individual or an entity. In broad terms, a pre-existing account will be an account maintained by a reporting financial institution immediately before the date of implementation of the CRS (for example, 30 June 2017) and a new account will be an account opened on or after the date of implementation of the CRS (for example, 1 July 2017).
- 2.12 The different CRS due diligence procedures for pre-existing and new accounts are largely in recognition of the fact that it may be more difficult and costly for reporting financial institutions to collect information for pre-existing accounts than when opening a new account. The different procedures for individual and entity accounts also reflect the fact that a reportable person may hold an account directly or through an entity. There are also aggregation rules that apply where the account holder has multiple accounts with a reporting financial institution (including a related entity) in defined circumstances. These types of accounts and the due diligence procedures that apply to these types of accounts are set out in detail in the Appendix and Glossary.
- 2.13 Under the CRS, a participating jurisdiction financial institution (such as a New Zealand financial institution) will be a “reporting financial institution” if it does not fall within any of the categories of “non-reporting financial institution” set out in the CRS and its Commentaries.
- 2.14 The CRS sets out the following specific categories of non-reporting financial institution (that are not required to carry out due diligence procedures or report), together with the criteria for identifying them:
- a “governmental entity”, “international organisation”, or “central bank”,¹⁹
 - a “broad participation retirement fund”, “narrow participation retirement fund”, “pension fund” of a governmental entity,

¹⁶ This would apply where the reportable person is a controlling person of a passive NFE account holder.

¹⁷ For this purpose, the term “entity” is to be interpreted widely. For example, it includes trusts and hybrid entities.

¹⁸ There is also scope under the “wider approach” canvassed in this paper, for all non-resident jurisdictions to be treated as being reportable jurisdictions.

¹⁹ However, the CRS excludes payments derived from an obligation held in connection with a commercial financial activity of a type engaged in by a specified insurance company, custodial institution, or depository institution.

international organisation, or central bank, or a “qualified credit card issuer”;

- any other entity that presents a low risk of being used to evade tax, has substantially similar characteristics to the above-mentioned entities, **and** which is defined in domestic law as a non-reporting financial institution;²⁰
- an “exempt collective investment vehicle”; and
- a trust to the extent that the trustee of the trust is itself a reporting financial institution, and reports all required information in relation to the trust.

2.15 Each participating jurisdiction (including New Zealand) will need to identify the specific financial institutions in its jurisdiction that will qualify as non-reporting financial institutions. Those coming under the category set out in CRS Section VIII.B(1)(c) of “any other entity that presents a low risk of being used to evade tax” *and* that have “substantially similar characteristics” to the relevant types of entities that are mentioned in the CRS, may be defined in domestic law as non-reporting financial institutions *provided they meet the specific requirements of the CRS*, and their classification *does not frustrate the purposes of the CRS*. Therefore, the scope for New Zealand to define a financial institution as a New Zealand non-reporting financial institution (under this part of the definition of non-reporting financial institution) is *limited* and would need to be based on these narrow criteria being satisfied.

2.16 The Global Forum has advised that the decisions made in this regard will be subject to stringent international scrutiny to ensure that the aims of the CRS are not frustrated. The expectation is that New Zealand will be able to clearly document its reasons for exempting any particular financial institution as a New Zealand non-reporting financial institution under domestic law (and in terms of the specific requirements of the CRS).

2.17 Note that the range of New Zealand reporting financial institutions that will be required to carry out CRS due diligence and reporting will not necessarily be the same as those that are currently exempted under US FATCA. For example, Annex II to the New Zealand/US FATCA intergovernmental agreement (IGA) exempts New Zealand financial institutions with a local client base or which only have low value accounts. However, no similar exemptions apply under the CRS to treat these as non-reporting financial institutions for CRS purposes.²¹ Instead, the exemption of any entity as being a New Zealand non-reporting financial institution would need to be based on the narrow CRS criteria (referred to above) being satisfied.

²⁰ However, the CRS also provides that listing such entities under domestic law as non-reporting financial institution must not frustrate the purposes of the CRS: see CRS Section VIII.B(1)(c).

²¹ CRS Section VIII.B(1)(c), CRS Commentaries pp.166, and 170-173, and Implementation Handbook pp.38, 89, and 114-115.

Consultation question

2.18 We would appreciate your submissions regarding what entities would *satisfy the CRS criteria* (referred to in paragraph 2.15) for being New Zealand non-reporting financial institutions and, therefore, should be exempted from CRS due diligence and reporting obligations.

- Submissions on this point should confirm that the specific criteria set out in paragraph 2.15 and in CRS Section VIII.B.1(c) of the CRS have been met, or if not, then explain any substitute requirements relied on and how they are substantially similar.

Determining which financial accounts will be the subject of CRS due diligence and reporting

2.19 The CRS sets out rules for reporting financial institutions conducting due diligence on non-exempt (excluded accounts or accounts exempted by threshold)²² financial accounts that they maintain to identify reportable accounts and undocumented accounts.

2.20 In broad terms, the point of the CRS rules is for the reporting financial institution to conduct due diligence on their non-exempt financial accounts to identify reportable accounts that are held or controlled²³ by reportable persons, who are generally non-resident individuals or entities²⁴ that are tax resident²⁵ in participating jurisdictions that New Zealand has CRS obligations to exchange information with (reportable jurisdictions).²⁶

2.21 However, some financial accounts are not subject to CRS due diligence or reporting, provided specific requirements are satisfied.²⁷ These accounts are referred to as “excluded accounts”. Examples of excluded accounts include:

- certain retirement or pension accounts;
- certain non-retirement regulated tax-favoured accounts;
- a certain type of life insurance contract;
- an account held solely by an estate if certain requirements are satisfied;
- certain escrow accounts; and

²² The CRS generally does not contain threshold exemptions from due diligence and reporting (cf FATCA). However, as canvassed in this paper, there is scope for a participating jurisdiction to allow reporting financial institutions to exempt from review pre-existing entity accounts with a balance or value of less than US \$250,000 at the relevant date (set in implementing legislation).

²³ This applies to accounts held by passive NFEs. See the Glossary at the end of this issues paper.

²⁴ For this purpose, the term “entity” is to be interpreted widely. For example, it includes trusts and hybrid entities. See the Glossary at the end of this issues paper.

²⁵ As explained in detail in the Appendix, an account is sometimes treated as being resident for tax purposes in a jurisdiction based on indicia (of such residence) that is not “cured”. Furthermore, for the purposes of CRS due diligence, an entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated.

²⁶ However, this is subject to the application of the “wider approach” which is canvassed in this paper.

²⁷ CRS Section VIII.C.17 (Excluded Account).

- certain depository accounts that exist solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer.
- 2.22 The CRS also defines in CRS Section VIII.C.17 (g) an excluded account as including any other account that presents a low risk of being used to evade tax, has substantially similar characteristics to the other excluded accounts, and which is defined in domestic law as an excluded account, provided that the status of such account as an excluded account does not frustrate the purposes of the CRS.
- 2.23 Therefore, the scope for New Zealand to define a financial account as being an “excluded account” (under this part of the definition of excluded account) is limited and will need to be based on these narrow criteria being satisfied.
- 2.24 The Global Forum has advised that the decisions made in this regard will be subject to stringent international scrutiny to ensure that the aims of the CRS are not frustrated. The expectation is that New Zealand will be able to clearly document its reasons for treating any particular financial account as being an “excluded account” under domestic law (and in terms of the specific requirements of the CRS).
- 2.25 Note that the range of excluded accounts will not necessarily be the same as those that are currently excluded under US FATCA. Instead, treatment of any account as being an excluded account will be based on the account meeting the specific CRS criteria.

Consultation questions

- 2.26 We would appreciate your submissions regarding which financial accounts would *satisfy the CRS criteria* (referred to above) for being excluded accounts, and, therefore, should be exempted from CRS due diligence and reporting.
- Submissions on this point should confirm that the specific criteria set out in paragraph 2.15 and in CRS Section VIII.C.17(g) of the CRS have been met, or if not, then explain any substitute requirements relied on and how they are substantially similar.
- 2.27 The CRS Commentaries also specifically contemplate that a participating jurisdiction has the option, in this regard, of defining certain types of dormant accounts as being excluded accounts. The CRS provides, as an example of a low risk excluded account, any dormant account with an annual balance that does not exceed US \$1,000.²⁸
- Should New Zealand generally include a dormant account with a balance or value that does not exceed NZ \$1,000 in the definition of excluded account?

²⁸ See CRS Commentaries on Section VIII, page 190 (paragraph 103, example 6).

Determining what non-resident jurisdictions are within the scope of CRS and reporting – the potential application of the “wider approach” to CRS

- 2.28 A potential difficulty under the CRS is that the list of reportable jurisdictions (those with which CRS reciprocal exchange obligations have been established) will not remain static. It can be expected to change over time, for example, as additional jurisdictions commit to become participating jurisdictions under the CRS and enter into exchange arrangements with other participating jurisdictions. For New Zealand reporting financial institutions, any updates to the list of participating jurisdictions could result in increased compliance costs, for example, as a result of having to undertake CRS due diligence and reporting each time a jurisdiction becomes a reportable jurisdiction vis-à-vis New Zealand for CRS purposes.
- 2.29 In recognition of this, and with a view to minimising implementation and compliance costs, the CRS Commentaries and the Implementation Handbook recommend consideration of what is described as a “wider approach” to CRS due diligence and reporting as a legislative option, and further elaboration of how this might work is provided in Annex 5 to the CRS Publication. Under the wider approach a participating jurisdiction could decide to treat all foreign jurisdictions as being reportable jurisdictions, and all non-exempt non-residents (including controlling persons of passive NFEs) as being reportable persons.
- 2.30 If the wider approach is adopted in New Zealand, a New Zealand reporting financial institution would be able to carry out due diligence on **all** of its non-resident account holders (and controlling persons of passive NFEs) to determine if it has any reportable accounts and undocumented accounts. This will help ensure that such New Zealand reporting financial institutions would not need to re-undertake CRS due diligence procedures and reporting every time that the legislative list of participating jurisdictions changes.
- 2.31 This option appears to offer the greatest scope for compliance cost reduction, if permitted by domestic legislation.

Consultation question

- Should New Zealand adopt a “wider approach” to CRS due diligence and reporting, as stated in this paper?

CHAPTER 3

Phasing of implementation

- 3.1 The G20 views implementation of AEOI by jurisdictions on consistent timelines as critical to the success of the multilateral effort. As noted, if any relevant jurisdictions fail to meet the implementation timetable, the risk is that the tax evasion problem will simply relocate to that jurisdiction. Accordingly, the G20 has set a deadline for first exchanges of information by 30 September 2018 at the latest. This deadline applies to all OECD member countries, G20 member countries, and any other jurisdiction that has, or that operates as, an international finance centre.
- 3.2 Some countries (referred to as “early adopters”) are implementing even earlier, with first exchanges planned for 2017. However, the majority of countries are working towards 30 September 2018 as their ultimate deadline.
- 3.3 In preliminary consultation in 2014, we received a number of submissions from financial institutions that indicated a strong preference for New Zealand not to implement earlier than Australia.
- 3.4 The Government decided on 15 February 2016 that New Zealand will implement AEOI on a timeline that would allow Inland Revenue to start exchanging information with other tax authorities by September 2018, in line with our international obligations under AEOI. Due diligence and reporting requirements for financial institutions will begin to apply from 1 July 2017, rather than from 1 January 2018 as earlier indicated.
- 3.5 This timeline parallels that announced by Australia at the end of last year, and included in the *Tax Laws Amendment (Implementation of the Common Reporting Standard) Bill 2015*, introduced on 3 December 2015. We also understand that it is also consistent with the approach Canada is taking to implementation timing.
- 3.6 Officials have considered transitional arrangements for financial institutions to help reduce the compliance costs of implementing AEOI as a 1 July timeline within the constraints imposed by the CRS and with a view to international scrutiny and peer review. Officials are seeking public views on these potential transitional measures.
- 3.7 To that end, we are proposing phased implementation, with the following indicative timeline showing deadlines for major milestones:
- 1 July 2017
- New Zealand reporting financial institutions commence applying due diligence procedures in respect of all non-exempt new accounts. (In broad terms, “new” accounts will be accounts opened on or after 1 July 2017.)

Early or mid-2018²⁹

- New Zealand reporting financial institutions complete due diligence reviews of all non-exempt High Value Pre-Existing Individual Accounts.³⁰

Mid-2018

- Reporting financial institutions complete their reporting to Inland Revenue in respect of reportable accounts and undocumented accounts identified in respect of the due diligence carried out in the period.

30 September 2018

- Tax administrations complete the exchange³¹ of information in respect of information reported during 2018.

Early or mid-2019³²

- New Zealand reporting financial institutions complete due diligence reviews of all non-exempt *pre-existing entity accounts*.
- New Zealand reporting financial institutions complete due diligence reviews of all non-exempt *low value pre-existing individual accounts*.

Mid-2019

- New Zealand reporting financial institutions complete reporting to Inland Revenue in respect of reportable accounts and undocumented accounts identified in respect of the due diligence carried out in the period.

30 September 2019

- Tax administrations complete the exchange of information in respect of information reported during 2019.

3.8 A key point to note is that under this approach, the initial focus is solely on completing due diligence reviews of *high value pre-existing individual accounts* and *new accounts* (opened in the first period). That is, the deadline for completing due diligence reviews of *pre-existing entity accounts* is the same as that for completing due diligence reviews of *low-value pre-existing individual accounts*. The due diligence reviews of entity accounts is expected to be more complex than due diligence of individual accounts. (Please note that these procedures and terms are elaborated on in the Appendix and Glossary to this issues paper.)

²⁹ This is an indicative time-frame. The relevant dates for the timing of due diligence and reporting will be set out in the implementing legislation.

³⁰ The CRS sets threshold options for determining whether an account is a high value or lower value account. The threshold options are canvassed in Chapter 5 of this issues paper and the distinction between high value and lower value accounts is elaborated on in the Appendix.

³¹ This is subject to the potential application of the “wider” approach which is canvassed in Chapter 2 of this issues paper.

³² This will depend on the timing for due diligence and reporting to be set out in the implementing legislation.

- 3.9 A second key point under the above approach is that the deadline for completing due diligence of *high value pre-existing individual accounts* is itself likely to be deferred. Under the G20 indicative timing, these reviews would need to be completed by 31 December 2017. However, given that the first deadline for reporting the information is mid-2018, officials are exploring the option of allowing until mid-2018 for the completion of the due diligence reviews. We expect that this would reduce compliance costs.

Consultation question

- 3.10 We are also interested in other possible transitional arrangements for phasing in CRS obligations and welcome your views on options.
- Although the 1 July 2017 start date cannot be changed, we welcome submissions on possible transitional arrangements or options for phasing in reporting obligations that could be considered.

CHAPTER 4

Compliance framework

Addressing significant non-compliance of tax authorities

- 4.1 The Multilateral Convention and New Zealand's bilateral tax treaties contain strict provisions that require information exchanged to be kept confidential and limit the persons to whom the information can be disclosed and the purposes for which the information may be used. As noted, it is anticipated that AEOI exchanges will predominantly (if not exclusively) be carried out under the Multilateral Convention.
- 4.2 Importantly, a mechanism exists under the MCAA that enables participating jurisdictions to determine which Multilateral Convention signatories it will actually engage in AEOI exchanges with. In this regard, New Zealand proposes basing the majority of its decisions on which jurisdictions it will exchange information with on the outcomes of the reviews on confidentiality and data safeguards currently being undertaken by the Global Forum. (That is, if the Global Forum assesses a jurisdiction's confidentiality frameworks and data safeguards as satisfactory, in the absence of other factors New Zealand will include that jurisdiction as an exchange partner.)
- 4.3 The MCAA mechanism will also enable Inland Revenue to suspend the exchange of information with another participating jurisdiction's tax authority if it determines that there have been breaches in respect of matters such as:
- substantial non-compliance with the information confidentiality and data safeguard provisions;
 - a material failure to provide timely or adequate information; or
 - narrowing the scope of entities or accounts covered by the CRS to such an extent the purposes of the CRS are frustrated.
- 4.4 Similarly, another participating jurisdiction's tax authority would be able to suspend the exchange of information with Inland Revenue if it determined that there was significant non-compliance by New Zealand.

Consultation question

- We welcome any submissions on whether conducting AEOI exchanges under the Multilateral Convention in the manner outlined above raises any concerns.

Implementing domestic legislation

- 4.5 Under the CRS, a jurisdiction must have rules in place to ensure the effective implementation of, and compliance with, the reporting and due diligence procedures as set out in the CRS.³³
- 4.6 Such CRS domestic compliance rules include:
- anti-avoidance rules designed to prevent financial institutions, persons, or intermediaries, from adopting practices intended to circumvent the CRS reporting and due diligence procedures;
 - record keeping rules requiring reporting financial institutions to keep CRS related records of relevant due diligence and reporting steps undertaken, including any evidence relied upon for the performance of the procedures and adequate measures used to obtain those records; and
 - effective enforcement provisions to address non-compliance. A critical element of compliance, in this regard, will be ensuring that rules are in place requiring that self-certifications are always obtained where required by the CRS.³⁴
- 4.7 Legislation will therefore be required to ensure that reporting financial institutions undertake their CRS due diligence and reporting obligations.

Consultation questions

- 4.8 Submissions regarding how such compliance issues can best be addressed in legislation are invited. In particular, we would appreciate your views regarding:
- What anti-avoidance rules should apply to prevent New Zealand reporting financial institutions, persons, or intermediaries, from adopting practices intended to circumvent the CRS reporting and due diligence procedures?
 - If the main CRS compliance rules were incorporated into current Part 11B (Foreign account information-sharing agreements) of the Tax Administration Act 1994, is current section 22(2)(1c) of the Tax Administration Act 1994 sufficient to ensure CRS record keeping by relevant “persons”?³⁵
 - Should CRS related records be required to be retained for the current 7-year statutory period that relates to tax-related records?
 - What penalties and procedures (including timeframes and procedures for providing corrected information) should apply when a New Zealand reporting financial institution has not complied with its due diligence and reporting obligations?

³³ CRS Section IX.

³⁴ The CRS states, in this regard, that it is expected that jurisdictions have **strong measures** in place to ensure that valid self-certifications are **always** obtained for new accounts.

³⁵ Section 22(2)(1c) of the TAA, which currently relates to FATCA record keeping, requires every person to keep sufficient records regarding their compliance with Part 11B of the TAA.

- Should an account holder be required to keep the New Zealand reporting financial institution (that maintains the account) informed on a timely basis about material changes in circumstances regarding the account?
- What rules should be in place to ensure that self-certifications are always obtained in the circumstances where the CRS requires such certifications?
- What are the ways that the CRS requirements regarding due diligence and reporting compliance can be implemented in New Zealand in a way that minimises compliance costs for reporting financial institutions and account holders?

CHAPTER 5

Other legislative issues or options

Part A – Consultation questions and submissions on other legislative issues

- 5.1 In addition to the legislative issues previously covered in this paper, the CRS provides a number of options for participating jurisdictions to consider whether to incorporate into their domestic laws.³⁶ These options relate to CRS due diligence and reporting and can be placed into two categories:
- Where the participating jurisdiction has an option to decide on a particular point that will apply to all reporting financial institutions (for example, whether to require place of birth information³⁷ for reportable accounts); and
 - Where the participating jurisdiction has the option of permitting reporting financial institutions to adopt an alternative CRS due diligence procedure at the institution’s discretion (for example, whether a reporting financial institution should have the option being able to use third party service providers to fulfil their due diligence and reporting obligations). As a general rule, we intend to adopt the approach of allowing reporting financial institutions to adopt such “discretionary” options as a way of managing compliance costs.
- 5.2 Part A of this chapter outlines various consultation questions related to these options, which we would appreciate your submissions on. For more information on each of the questions, please refer to Part B of this chapter.

Consultation questions

Defining the CRS “reporting period”

- 5.3 Currently US FATCA reporting in New Zealand is based on an annual “tax year” reporting period, that is year ending 31 March. Should annual CRS reporting also be based on “tax year”, or some other reporting period basis (for example, “calendar year”, “fiscal year”, etc)?

Nil returns

- 5.4 Should New Zealand Reporting Financial institutions be able to file “nil returns” with Inland Revenue? (That is, when they have no reportable accounts or undocumented accounts to report for CRS purposes)?

³⁶ Some of these options come from the CRS itself, while others come from the CRS Commentaries.

³⁷ This is a type of “Reportable Account Information”, which is referred to in the Glossary.

Whether certain CRS terms need to be defined

- 5.5 Certain terms in the CRS are not defined (for example, “passive income”, “maintaining” a financial account, etc). Are there any CRS terms that need to be defined in domestic law?

Currency translation rules

- 5.6 To reduce compliance costs, should our domestic law allow New Zealand reporting financial institutions to simply choose to treat all dollar amounts in the CRS as being in New Zealand dollars?

Pre-existing accounts – Tax Identification Numbers (TINs) and date of birth

- 5.7 Should there be a requirement³⁸ under domestic law for New Zealand reporting financial institutions to obtain and report TINs and “date of birth” for pre-existing reportable accounts (beyond merely making reasonable efforts to obtain that information in the way referred to in the CRS)?

“Place of birth” of individuals

- 5.8 Should there be a legislative requirement for New Zealand reporting financial institutions to obtain and report “place of birth” information for reportable accounts of individuals where such information is available in the electronically searchable data that they maintain?

Reporting average monthly balances or values

- 5.9 Should reporting of average monthly balances or values of reportable accounts be a legislative requirement in New Zealand?

Certain trades facilitated by brokers

- 5.10 Are any legislative provisions required so that exchange traded New Zealand reporting financial institutions are able to comply with their due diligence and reporting obligations under CRS where trades are facilitated by brokers?

Service providers

- 5.11 Should New Zealand reporting financial institutions be able to use third party service providers to fulfil their due diligence and reporting obligations?

New Zealand resident controlling persons as “reportable persons”

- 5.12 Should New Zealand resident controlling persons of passive NFEs be treated as reportable persons for domestic CRS purposes?

Pre-existing entity accounts – using standard industry coding systems

- 5.13 Should New Zealand reporting financial institutions be able, with respect to pre-existing entity accounts, to use as documentary evidence for the purposes

³⁸ Any such requirement to obtain and report a TIN would be subject to CRS Section I.D.

of CRS due diligence, any classification in their records with respect to the account holder that was determined based on a standard industry coding system (provided that the conditions set out in the CRS Commentaries are met)?

Using the “residence address” test for lower value pre-existing individual accounts

- 5.14 Should New Zealand reporting financial institutions be able to use the “residence address” test (including the change in circumstance procedures) for lower value pre-existing individual accounts to identify the tax residence of the account holder (as an alternative to the “electronic records” test)?

“Related entity” definition and related managed investment funds

- 5.15 Should an expanded definition of “related entity” be introduced into domestic law for the purposes of CRS due diligence to include related managed investment funds?

Pre-existing entity accounts’ threshold

- 5.16 Should New Zealand reporting financial institutions have the option of excluding from due diligence procedures pre-existing entity accounts with an aggregate account balance or value of US \$250,000 or less as at the relevant CRS date?

Alternative due diligence procedures

- 5.17 Should New Zealand reporting financial institutions be able to apply the due diligence procedures for new accounts to pre-existing accounts, and to apply the due diligence procedures for high value pre-existing individual accounts to lower value pre-existing individual accounts?

New accounts opened by pre-existing customers

- 5.18 Should the CRS definition of “pre-existing account” be expanded to include an additional account opened by a pre-existing customer (in the circumstances set out in the CRS Commentaries)?

Group cash value insurance contracts or annuity contracts

- 5.19 Should New Zealand reporting financial institutions be able to treat a group cash value insurance contract or annuity contract that is issued to an employer and individual employees as a financial account that is not a reportable account until the date on which an amount is payable to an employee or certificate holder or beneficiary?

Custodial accounts – reporting of “gross proceeds”

- 5.20 Should there be a phased implementation of the reporting of “gross proceeds” of custodial reportable accounts?

Trust beneficiaries as controlling persons of passive NFEs

- 5.21 Should New Zealand reporting financial institutions be allowed to align the scope of the beneficiaries of a trust treated as controlling persons of the trust with the scope of the beneficiaries of a trust treated as reportable persons of a trust that is a financial institution?

Grandparenting rule for certain bearer shares for regulated collective investment vehicles

- 5.22 What are the dates that should be used in the grandparenting rule for certain bearer shares (set out in CRS VIII.B(9)) regarding the non-issuing of bearer shares and ensuring that such shares are redeemed or immobilised?

Part B – Background context to the consultation questions

Defining the CRS “reporting period”

- 5.23 The information that reporting financial institutions need to report annually under the CRS must be as of the end of the relevant calendar year, or other “appropriate reporting period”, depending on the meaning of that the term under each participating jurisdiction’s reporting rules (for example, alternatives include: tax year, fiscal year, etc).³⁹

Nil returns

- 5.24 The CRS leaves it optional whether a participating jurisdiction allows a reporting financial institution to file nil returns (when the financial institution has no reportable accounts or undocumented accounts to report for CRS purposes).⁴⁰

Whether certain CRS terms need to be defined

- 5.25 A number of CRS terms are not defined in the CRS and may need to be defined under our domestic law.⁴¹ Such terms include:

- debt interest;
- gross income;
- maintaining an account;
- passive income; and
- policyholder dividend.

³⁹ CRS Section 1.A(4)-(7), and CRS Commentaries pp.99-100.

⁴⁰ CRS Commentaries p.184.

⁴¹ Implementation Handbook pp.17-18 and 40-41.

Currency translation rules

- 5.26 The CRS states that all dollar amounts to be reported are in US dollars and shall be read to include equivalent amounts in other currencies, as determined by domestic law.⁴²
- 5.27 We are interested in your submissions regarding whether reporting financial institutions should be able to simply apply the dollar amounts specified in the CRS in New Zealand dollars (rather than US – as referred to in the CRS). This would reduce compliance costs, in the sense that reporting financial institutions would not need to undertake currency conversion procedures to determine the value of financial accounts in US.
- 5.28 For example, a pre-existing individual account will be a high value account⁴³ if its balance exceeds US \$1,000,000 as at the relevant date⁴⁴ or, if a reporting financial institution chooses to apply the threshold in New Zealand dollar terms (to the extent permitted by domestic law), if the account exceeds NZ \$1,000,000 as at that date.

Pre-existing accounts – TINs and date of birth

- 5.29 The CRS provides that with respect to each reportable account maintained by a reporting financial institution that is a pre-existing account, the TIN(s) and date of birth are not required to be reported⁴⁵ if such TIN(s) and date of birth are not in the records of the reporting financial institution, and are not otherwise required to be collected under domestic law. This is subject to the reporting financial institution making reasonable efforts to obtain such information by the end of the second year following the year in which such accounts are identified as reportable accounts.⁴⁶
- 5.30 Thus, TIN(s) and date of birth information would be required to be obtained and reported (beyond merely making such reasonable efforts to obtain such information) if, with respect to a pre-existing account, such information is required to be collected under domestic law.

“Place of birth” of individuals

- 5.31 The CRS provides that the place of birth of an individual is not required to be reported with respect to a reportable account unless the reporting financial institution is otherwise required to obtain and report it under domestic law and it is available in the electronically searchable data maintained by the reporting financial institution.⁴⁷
- 5.32 Thus, place of birth information would be required to be reported with respect to a reportable account if the reporting financial institution is required to obtain and report it under domestic law and it is available in the

⁴² CRS Section VII.C.4.

⁴³ High value accounts are explained in more detail in the Appendix.

⁴⁴ The “relevant date” will be defined in the domestic legislation implementing CRS.

⁴⁵ In contrast, TIN and date of birth information will generally be required to be reported for new reportable accounts, subject to CRS Section I.D.

⁴⁶ CRS Section I.C, and CRS Commentaries pp.102-104.

⁴⁷ CRS Section I.E, CRS Commentaries p.104.

electronically searchable data maintained by the reporting financial institution.

Reporting average monthly balances or values

- 5.33 The CRS provides that a reporting financial institution that maintains a reportable account must report the balance or value of the account as at the end of the calendar year (or other appropriate reporting period) or, if the account was closed during the reporting period, the reporting financial institution must report the fact that the account was closed.
- 5.34 However, the CRS Commentaries also provide scope for a participating jurisdiction to require the reporting of average balance or average value instead of the reporting of the account balance or value as at the end of the calendar year (or other reporting period).⁴⁸
- 5.35 This option is directed at those participating jurisdictions that already require reporting financial institutions to report the average balance or value for US FATCA purposes instead of the reporting of the account balance or value as at the end of the calendar year or other reporting period.
- 5.36 New Zealand does not require reporting financial institutions to report the average balance or value for US FATCA purposes. Therefore, we do not intend to require a similar reporting of average balance or value for CRS purposes.

Certain trades facilitated by brokers

- 5.37 Reporting financial institutions are obliged to carry out due diligence on their non-exempt accounts to identify and report reportable accounts and undocumented accounts. This extends to cover exchange traded funds that are reporting financial institutions and whose trades are facilitated by brokers. The CRS Commentaries acknowledge that this could pose difficulties where the broker may have due diligence information, but it is the reporting financial institution fund that has the CRS due diligence and reporting obligations. The Commentaries set out as an option that participating jurisdictions may address such a case, for example, by requiring the brokers to provide all the necessary information to the fund, so that it may fulfil its reporting obligations.⁴⁹

Service providers

- 5.38 The CRS provides that each participating jurisdiction may allow reporting financial institutions to use third-party service providers to fulfil their due diligence and reporting obligations. The reporting financial institution would remain responsible for fulfilling these requirements and the actions of the service provider would be imputed to the reporting financial institution.⁵⁰

⁴⁸ CRS Commentaries p.98, paragraph 11.

⁴⁹ This is mentioned on p.177 of the CRS Commentaries (paragraph 65).

⁵⁰ CRS Section II.D, and CRS Commentaries p.108.

New Zealand resident controlling persons as “reportable persons”

- 5.39 Although not required by the CRS, it states that some participating jurisdictions may want to extend their due diligence procedures to cover their own residents that are controlling persons of passive NFEs.⁵¹
- 5.40 This may be done by broadening the scope of the definition of the term “reportable person”. For example, this would (if implemented in New Zealand) require a New Zealand reporting financial institution that maintains an account held by a passive NFE to report to Inland Revenue any New Zealand controlling persons, in addition to other controlling persons from reportable jurisdictions of the passive NFE.⁵²

Pre-existing entity accounts – using standard industry coding systems

- 5.41 A participating jurisdiction may, with respect to pre-existing entity accounts, allow reporting financial institutions to use as documentary evidence for the purposes of CRS due diligence, any classification in their records with respect to the account holder that was determined based on a standard industry coding system (provided that certain conditions are met, as set out in the CRS Commentaries).⁵³

Using the “residence address” test for lower value pre-existing individual accounts

- 5.42 The CRS provides that a participating jurisdiction may give reporting financial institutions the option to use a residence address test for Lower value pre-existing individual accounts (as an alternative to the electronic records test) to identify the tax residence of the account holder, including using an “in care of” address or post office box for the same purposes, in certain special defined circumstances. A participating jurisdiction is also able to apply the “change in circumstances” procedures to the residence address test.⁵⁴ This is explained in detail in the Appendix.

“Related entity” definition and managed investment funds

- 5.43 This option relates to the ability of a participating jurisdiction to adopt an expanded definition of “related entity” to cover managed investment funds for the purposes of CRS due diligence.
- 5.44 “Related entities” are generally defined in the CRS as one entity that controls another entity, or two or more entities that are under common control.
- 5.45 As provided in the CRS Commentaries, most investment entity funds may not qualify as a related entity of another fund, and thus, will not be able to apply the rules for treating certain new accounts opened by pre-existing customers (referred to below) as being pre-existing accounts, or to apply the account aggregation rules to financial accounts maintained by related entities. (These types of accounts and procedures are expanded upon in the Appendix and Glossary).

⁵¹ CRS Section VIII.D(1),(6) and (8), CRS Annex 5 pp.285-286, and Implementation Handbook p.94.

⁵² The passive NFE itself would also be reportable if it is a reportable person.

⁵³ CRS Commentaries pp.203-204, and Implementation Handbook p.15.

⁵⁴ CRS Section III.B(1), CRS Commentaries pp.111-112, and Implementation Handbook pp.13 and 17.

- 5.46 However, the CRS provides that a participating jurisdiction may choose to adopt an expanded definition of “related entity” that also covers two managed investment entities that are under common management where such management fulfils the due diligence obligations of such entities.
- 5.47 If such an expanded definition of “related entity” is used, this will allow managed funds to benefit from the CRS due diligence procedures that leverage off the “related entity” test, such as the ability to treat certain new accounts opened by pre-existing customers (referred to below) as being pre-existing accounts, or to apply the account aggregation rules to financial accounts maintained by related entities.⁵⁵

Pre-existing entity accounts’ threshold

- 5.48 The CRS provides that a participating jurisdiction may give reporting financial institutions the option of excluding from due diligence and reporting a pre-existing entity account that they maintain has an aggregate balance or value of US \$250,000 or less at the relevant CRS date.⁵⁶
- 5.49 If, at the end of a subsequent reporting period, the aggregate account balance or value of the pre-existing entity account exceeds US \$250,000, then the reporting financial institution would need to apply the due diligence procedures to identify whether the account is a reportable account.
- 5.50 This threshold recognises compliance costs associated with reviewing pre-existing entity accounts.

Alternative due diligence procedures

- 5.51 Each participating jurisdiction may allow reporting financial institutions the option to apply the due diligence procedures for new accounts to pre-existing accounts in defined circumstances. This means, for example, if this option is allowed, a reporting financial institution would be able to elect to obtain a self-certification for all pre-existing individual accounts consistent with the due diligence procedures for new individual accounts, which are explained in the Appendix. Note however, that existing CRS rules otherwise applicable to pre-existing accounts would continue to apply.
- 5.52 A participating jurisdiction may also allow a reporting financial institution to apply the due diligence procedures for high value pre-existing individual accounts to lower value pre-existing individual accounts in defined circumstances.⁵⁷ These types of accounts are explained in detail in the Appendix.

⁵⁵ CRS Section VIII.E(4), CRS Commentaries p.183, and Implementation Handbook pp.16 and 94.

⁵⁶ CRS Section V.A, CRS Commentaries p.135, and Implementation Handbook p.14. The relevant date will be set out in implementing legislation.

⁵⁷ CRS Section II.E, CRS Commentaries pp.108-109, and Implementation Handbook p.95.

New accounts opened by pre-existing customers

- 5.53 For CRS purposes, a “financial account” is classified depending on the date of opening, and in terms of when the CRS is implemented in a participating jurisdiction. Thus, a financial account can be either a “pre-existing account” (broadly, an account opened prior to the implementation of CRS in New Zealand – an account open as of 30 June 2017 based on the indicative time-frame), or a “new account” (broadly, an account opened on or after the implementation of CRS in New Zealand 1 July 2017).
- 5.54 However, when implementing the CRS, the CRS provides that participating jurisdictions are free to modify the term “pre-existing account” in order to include certain new accounts of pre-existing customers in defined circumstances.⁵⁸
- 5.55 This would involve expanding the definition of “pre-existing account” to simplify the process when a reporting financial institution (or a related entity within the same participating jurisdiction) has a pre-existing customer and that customer opens a new account, whereby such account would be able to be treated as a pre-existing account in defined circumstances.

Group cash value insurance contracts or annuity contracts

- 5.56 With respect to a group cash value insurance contract or annuity contract that is issued to an employer and individual employees, a participating jurisdiction may allow a reporting financial institution to treat such a contract as a financial account that is not a reportable account until the date on which an amount is payable to an employee or certificate holder or beneficiary provided that certain conditions are met.⁵⁹

Custodial accounts – reporting of “gross proceeds”

- 5.57 Under the CRS, a participating jurisdiction may provide for the gradual introduction of reporting of “gross proceeds” of custodial reportable accounts to commence in a later reporting period.⁶⁰
- 5.58 This recognises that it may be more difficult for reporting financial institutions to implement procedures to obtain the total gross proceeds from the sale or redemption of property for reportable accounts that they maintain.

Trust beneficiaries as controlling persons of passive NFEs

- 5.59 With trusts that are passive NFEs, a participating jurisdiction may allow reporting financial institutions, that maintain financial accounts held by such trusts, to align the scope of the beneficiary(ies) of the trust treated as controlling person(s) of the trust, with the scope of the beneficiary(ies) of a trust treated as reportable persons of a trust that is a financial institution (that is, aligning with those beneficiaries that would have an “equity interest” in the trust if the trust was a financial institution).

⁵⁸ CRS Section VIII.C(9) and (10), and CRS Commentaries pp.181-182.

⁵⁹ CRS Section VII.B, CRS Commentaries p.153, and Implementation Handbook p.14.

⁶⁰ CRS Section I.A(5)(b), I.F and VIII.C.3, and CRS Commentaries pp.73, 100-101 and 105.

5.60 In such a case, if allowed, the New Zealand reporting financial institution would only need to report a discretionary beneficiary in a period in which the person receives a distribution from the trust, provided that the New Zealand reporting financial institution has in place appropriate safeguards and procedures to identify whether distribution have been made by its trust account holders in a given period.⁶¹

Grandparenting rule for certain bearer shares of collective investment vehicles

5.61 The CRS provides that a regulated collective investment vehicle (CIV) that has issued physical shares in bearer form will not fail to qualify as an exempt CIV provided that the CIV:⁶²

- has not issued and does not issue any physical shares in bearer form **after** the date provided by the participating jurisdiction;
- retires all such shares upon surrender;
- performs the due diligence procedures and reports (if required) with respect to such shares when presented for redemption or payment; and
- has in place policies and procedures to ensure the shares are redeemed or immobilised as soon as possible and in any event **prior** to the date provided by the participating jurisdiction.

⁶¹ CRS Section VIII.C(4) and VIII.D(6), CRS Commentaries pp.178 and 198-199, and Implementation Handbook p.17.

⁶² CRS Section VIII.B(9), CRS Commentaries pp.173-174, and Implementation Handbook p.16.

APPENDIX

Summary of CRS Due Diligence Procedures that New Zealand reporting financial institutions will need to carry out on non-exempt financial accounts that they maintain (based on the indicative implementation time-line)

New Zealand reporting financial institutions need to carry out CRS due diligence on their non-exempt accounts to identify whether the accounts are either reportable accounts or undocumented accounts.

These procedures vary depending on whether the account is a pre-existing account or a new account and whether the account is held by an individual or an entity. In broad terms, a pre-existing account will be an account opened immediately before the date of implementation of the CRS (30 June 2017) and a new account will be an account opened on or after the date of implementation of the CRS (1 July 2017). These procedures are summarised briefly below. (These procedures are subject to the resolution of a number of the consultation points set out in this paper – for example, the optional threshold exemption from due diligence for pre-existing entity accounts with a balance or value of US \$250,000 or less and should be read in this context).

Individual accounts

Pre-existing individual accounts (accounts maintained as of 30 June 2017)

A New Zealand reporting financial institution will need to carry out CRS due diligence on non-exempt pre-existing individual accounts that they maintain to determine whether those accounts are held by reportable persons, and, therefore, are reportable accounts (or whether the accounts are undocumented accounts).

There are two types of pre-existing individual accounts (lower value accounts and high value accounts) that are subject to different due diligence procedures. Lower value accounts are pre-existing individual accounts with an aggregate balance or value that does not exceed US \$1,000,000 at a date to be set out in implementing legislation. High value accounts are pre-existing individual accounts with an aggregate balance or value that exceeds US \$1,000,000 at dates to be set in implementing legislation.

In broad terms, these due diligence procedures will involve the New Zealand reporting financial institution applying various procedures to its financial accounts to search for defined indicia (for example, one such indicia is a current mailing or residence address in a reportable jurisdiction) that the account holder is tax resident in a reportable jurisdiction and is a reportable person. This indicia if found (including if there is a subsequent change of circumstances that results in any indicia being associated with the account) will lead to a presumption that the Individual is tax resident in each reportable jurisdiction for which an indicium is identified and is a reportable person with the account being a reportable account with respect to each reportable jurisdiction (unless this presumption is “cured” through a combination of self-certifications and documentary evidence, which applies in certain defined circumstances). These due diligence procedures are generally more extensive for high value accounts (as set out below) and such accounts are also subject to a special provision which applies to accounts that are assigned to a relationship manager.

Lower value accounts

For lower value accounts there is scope for a participating jurisdiction to allow reporting financial institutions to apply a residence address test (in certain defined circumstances) as one such type of indicia to determine whether an account holder is tax resident in a reportable jurisdiction and is a reportable person. For example, if this approach is permitted, the New Zealand reporting financial institution would be able to review its records for a current residence address for the individual account holder based on documentary evidence and treat the individual account holder as being a resident for tax purposes of the jurisdiction in which the address is located for the purposes of determining whether they are a reportable person.

If the reporting financial institution does not rely on a current residence address in this way, they will need to review electronically searchable data that they maintain for various indicia that the account holder is tax resident in a reportable jurisdiction and is a reportable person (for example, one such indicia is a current mailing or residence address in a reportable jurisdiction).

This indicia (if found) will lead to a presumption that the individual is tax resident in each reportable jurisdiction for which an indicium is identified and is a reportable person with the account being a reportable account with respect to each reportable jurisdiction (unless this presumption is “cured” through a combination of self-certifications and documentary evidence to the contrary, which applies in certain defined circumstances). The New Zealand reporting financial institution will need to report such reportable accounts.

If a “hold mail” instruction or “care of” address is discovered in the electronic search and no other defined indicia are identified for the account holder, the New Zealand reporting financial institution will need to apply various defined procedures to establish the account holder’s residence for tax purposes. If the New Zealand reporting financial institution is unable to do this they will need to report the account as an undocumented account.

High value accounts

For high value accounts the New Zealand reporting financial institution will need to review electronically searchable data that they maintain for various indicia that the account holder is tax resident in a reportable jurisdiction and is a reportable person (for example, one such indicia is a current mailing or residence address in a reportable jurisdiction). A paper-based search of further defined documents associated with the account is also required in certain circumstances.

This indicia (if found) will lead to a presumption that the individual is tax resident in each reportable jurisdiction for which an indicium is identified and is a reportable person with the account being a reportable account with respect to each reportable jurisdiction (unless this presumption is “cured” through a combination of self-certifications and documentary evidence to the contrary). The New Zealand reporting financial institution will need to report such reportable accounts.

If a “hold mail” instruction or “in care of” address is discovered in the electronic search and no other defined indicia are identified for the account holder, the New Zealand reporting financial institution will need to apply various defined procedures to establish the account holder’s residence for tax purposes. If the New Zealand reporting financial institution is unable to do this they will need to report the account as an undocumented account.

In addition to the electronic and paper record searches described above, the New Zealand reporting financial institution will also need to treat as a reportable account any high value account assigned to a relationship manager (including any financial accounts aggregated with that high value account) if the relationship manager has actual knowledge that the account holder is a reportable person.

New individual accounts (accounts opened on or after 1 July 2017)

A New Zealand reporting financial institution will also need to carry out CRS due diligence on non-exempt new individual accounts that they maintain to determine whether those accounts are held by reportable persons.

New individual accounts will require self-certification upon account being opened in the account holder’s jurisdiction of residence for tax purposes and confirmation by the New Zealand reporting financial institution of the reasonableness of this self-certification based on the information that they have obtained in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures. (A New Zealand reporting financial institution will also be required to obtain a further self-certification if there is a change in circumstances that causes them to know or have reason to know that the original self-certification is incorrect or unreliable.)

If the self-certification establishes that the account holder is resident for tax purposes in a reportable jurisdiction, the reporting financial institution will need to treat the account as a reportable account and report the account.

Entity accounts

Pre-existing entity accounts (accounts maintained as of 30 June 2017)

A New Zealand reporting financial institution will also need to carry out CRS due diligence on non-exempt pre-existing entity accounts that they maintain to determine whether those accounts are held by reportable persons and/or are held by passive NFEs that have one or more controlling persons that are reportable persons. If an account is identified as being held and/or having one or more controlling persons that are reportable persons (in this way) the account will be a reportable account and will need to be reported. (There is scope for a participating jurisdiction to exempt from this review/reporting pre-existing accounts that have a balance or value that does not exceed US \$250,000 at defined dates set out in legislation).

These procedures will generally involve the New Zealand reporting financial institution reviewing information that they already have (and sometimes obtaining self-certifications) to determine whether the account is a reportable account.

New entity accounts (accounts maintained as of 1 July 2017)

A New Zealand reporting financial institution will also need to carry out CRS due diligence on non-exempt new entity accounts that they maintain to determine whether those accounts are held by reportable persons and/or are held by passive NFEs that have one or more controlling persons that are reportable persons. If an account is identified as being held and/or having one or more controlling persons that are reportable persons (in this way) the account will be a reportable account.

These procedures will generally involve the New Zealand reporting financial institution obtaining a self-certification from the account holder (or controlling person, in the case of a passive NFE) of their tax residence, albeit that there is scope for the reporting financial institution to sometimes reasonably determine the status of the account based on information in their possession or that is publicly available in defined circumstances.

GLOSSARY

Compliance Reporting Standard terms

Account holder	The “person” (individual or entity) listed or identified as the holder of a financial account by the reporting financial institution that maintains the account. There is also a look-through rule that applies where a person (other than a financial institution) holds a financial account for another person as agent or nominee (or similar), where that other person is treated as the account holder.
AEOI	“Automatic Exchange of Information”: refers to the automatic exchange of information between tax authorities.
Aggregation rules	<p>For purposes of determining the aggregate balance or value of financial accounts held an individual or entity, a reporting financial institution is required to aggregate all financial accounts that it (or a related entity) maintains on that individual or entity, but only to the extent that its computerised systems link the financial accounts by reference to a common data element such as client number or TIN, that allows account balances or values to be aggregated.</p> <p>Special aggregation rules also apply to jointly held financial accounts, and to pre-existing individual high value accounts with relationship managers.</p>
AML/KYC	“Anti-Money Laundering / Know Your Client” procedures means the customer due diligence procedures of a reporting financial institution per the anti-money laundering or similar requirements. Information exchanged in the CRS often leverages off information obtained under such procedures.
Controlling person	<p>Usually refers to controlling persons of passive NFEs, being a natural person who exercises control over an entity that is a legal person (for example, company) or a legal arrangement (for example, trust). Where no natural person(s) is identified as exercising control, the controlling person(s) of the entity are the natural person(s) who hold the position of senior managing official.</p> <p>For a trust, this means: any settlor(s), trustee(s), protector(s), beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust. Such persons must always be treated as controlling persons of a trust, regardless of who exercises actual control over the trust.</p>
Commissioner	The Commissioner of Inland Revenue.
Competent authority	In the context of international tax treaties and AEOI, the Competent Authority is usually the head (or delegate) of the tax authority of the relevant contracting state. The Competent Authority in New Zealand is the Commissioner of Inland Revenue (or his or her delegate).
CRS	The <i>Common Standard on Reporting, Due Diligence and Exchange of Information on Financial Account Information</i> (in short, the Common Reporting Standard) that forms part of the global standard for <i>Automatic Exchange of Financial Account Information in Tax Matters</i> .
CRS Commentaries	OECD’s Commentaries on the CRS.

CRS schema	OECD's approved XML schema for CRS electronic exchange of information.
Custodial institution	Any entity that holds, as a substantial portion of its business (generally 20% or more of its annual gross income), financial assets of others.
Depository institution	Any entity that accepts deposits in the ordinary course of a banking or similar business.
Documentary evidence	<p>Documentary evidence for CRS includes:</p> <ul style="list-style-type: none"> • a certificate of residence issued by an authorised government body of the jurisdiction in which the payee claims to be a resident; • for individuals, any valid identification issued by an authorised government body that includes the individual's name and is typically used for identification purposes; • for entities, any official documentation issued by an authorised government body that includes the name of the entity and either the address of its principal office in the jurisdiction in which it claims to be a resident or the jurisdiction in which the entity was incorporated or organised; and • any audited financial statement, third-party credit report, bankruptcy filing, or securities regulator's report.
Due diligence	Processes and procedures required for reporting financial institutions to identify reportable accounts and undocumented accounts. This involves determining tax residence (generally based on indicia, account information, or self-certifications, depending on the type of account) of account holders and controlling persons (in the context of passive NFEs) and collecting reportable account information about reportable accounts.
Entity	Includes a "legal person" (for example, company,) or a "legal arrangement" (for example, trust). Does not include an individual.
Excluded accounts	Financial accounts that are not subject to due diligence or reporting under the CRS. Usually this is because the type of financial account presents a low risk of being used to evade tax and comes within a defined category of excluded account.
FATCA	Foreign Account Tax Compliance Act: United States law for global automatic exchange of information with the United States.
Financial account	An account maintained by a reporting financial institution and includes certain: depository accounts; custodial accounts; equity and debt interests; cash value insurance contracts; and annuity contracts.
Financial asset	Includes financial securities (for example, shares and other equity interests; notes, bonds, debentures, and other debt interests; partnership interests, commodities, swaps, insurance contracts, annuity contracts, or any other interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, insurance contract, or annuity contract. The term does not include a non-debt, direct interest in real property.
Financial institution (FI)	The definition includes: a "Depository Institution"; a "Custodial Institution"; an "Investment Entity"; or a "Specified Insurance Company". Apart from the more obvious entities, such as banks, this definition includes other financial institutions such as <i>certain</i> brokers, custodians, collective investment vehicles, managed entities, and insurance companies.

GIIN	The Global Intermediary Identification Number is the US FATCA registration and reporting number issued by the United States' Internal Revenue Service to foreign financial institutions.
IGA	An Inter-Governmental Agreement between a jurisdiction and the United States for US FATCA reporting purposes.
Implementation Handbook	<i>OECD Implementation Handbook.</i>
Indicia	Defined indications that an individual or entity may be tax resident in another jurisdiction (for example, physical or mailing address, phone numbers, standing instructions, etc relating to that jurisdiction).
Individual	A natural person.
Investment entity	Any entity that primarily conducts a business of specified investment activities for customers or is managed by a certain type of financial institution and derives income primarily from investing, reinvesting, or trading in financial assets (and is not a type of active NFE that is specifically excluded from the definition of investment entity).
MCAA	Multilateral Competent Authority Agreement.
Multilateral Convention	Multilateral Convention on Mutual Administrative Assistance in Tax Matters.
Natural person	A natural person (that is, an individual, as opposed to an entity).
New accounts	Includes new financial accounts opened on or after the date of implementation of the CRS.
NFE	A non-financial entity: generally covers any entity other than a financial institution. NFEs are classified as "active" or "passive". Passive NFEs (and any of their controlling persons who are reportable persons) are the only NFEs that are subject to CRS reporting.
Non-reporting financial institution	A financial institution that is not required to carry out due diligence on its financial accounts nor report for CRS purposes. This is usually because the type of financial institution presents a low risk of being used to evade tax and comes within a category of non-reporting financial institution.
OECD	Organisation for Economic Co-operation and Development.
Participating jurisdiction	A jurisdiction with which an agreement is in place with another jurisdiction by which they will exchange CRS information and which is identified in a published list.
Passive income	Passive income generally includes non-trading investment income in the form of: interest or equivalents, dividends, annuities, other financial arrangements' income, and rents and royalties. This term may be modified by domestic law.
Passive NFE	A NFE is generally treated as "passive" if, in the preceding reporting period, 50% or more of its gross income is passive income, or 50% or more of its financial assets held produce passive income. A passive NFE also includes certain investment entities that are not participating jurisdiction financial institutions. Note, certain entities (for example, registered charities) are treated as active NFEs irrespective of whether they derive predominantly passive income from passive assets.

Related entity	An entity is a “related entity” of another entity if either controls the other, or the entities are under common control. “Control” includes direct or indirect ownership of more than 50% of the voting and value in an entity. There is scope for participating jurisdictions to adopt an expanded definition of “related entity”.
Reportable account	Certain financial accounts held or controlled by non-resident persons that are resident in a reportable jurisdiction, including those held by a reportable person (individual or entity); and those held by a passive NFE with one or more controlling persons that is a reportable person.
Reportable account information	Information which reporting financial institutions are generally required to report with respect to each reportable account which comprises of personal data (for example, name, address, residence, TIN, etc) and financial data (for example, interest or dividend income and balances, values of certain insurance products, sales proceeds from financial assets, etc).
Reporting financial institution	Generally any Financial Institution that is not a non-reporting financial institution, and is therefore required to carry out due diligence on its non-exempt financial accounts and report under the CRS if it has any reportable accounts or undocumented accounts.
Reportable jurisdiction	<p>An overseas jurisdiction that has an agreement with New Zealand to exchange CRS information and is identified in a published list.</p> <p>There is also scope for a participating jurisdiction to treat any non-resident jurisdiction as being a “reportable jurisdiction”. This is known as the “wider approach” to CRS, which is one of the issues consulted upon in this issues paper.</p>
Reportable person	<p>Is a reportable jurisdiction person other than: a company the shares of which are regularly traded on an established securities market (including any related company); a governmental entity; an international organisation; a central bank; or a financial institution.</p> <p>There is also scope for a participating jurisdiction to treat a controlling person of a passive NFE account holder that is resident in that Jurisdiction as also being a “reportable person”, which is also one of the issues consulted upon in this issues paper.</p>
Reportable jurisdiction person	Generally an individual or entity that is resident in a reportable jurisdiction under the tax laws of such Jurisdiction, or an estate of a decedent that was resident of a reportable jurisdiction. An exception is an entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes which shall be treated as resident in the jurisdiction in which its place of effective management is situated.
Self-certification	A reporting financial institution requesting an account holder (and in certain circumstances a controlling person) to certify their identity and tax residency and obtaining such a certification.
Specified insurance company	Any entity that is an insurance company (or the holding company of one) that issues, or is obligated to make payments with respect to, a cash value insurance contract or an annuity contract.
TAA	Tax Administration Act 1994.
Tax residency	This is based on where an individual or entity is tax resident under the law of a jurisdiction.

TIN “Taxpayer Identification Number” (or functional equivalent in the absence of a TIN). A TIN is assigned and used by a jurisdiction to identify an individual or an entity.

Undocumented account Undocumented accounts generally arise when a reporting financial institution is unable to obtain information from an account holder regarding pre-existing accounts. This can result from inadequate procedures implemented by a reporting Financial Institution to obtain the necessary information, or from non-compliance by the account holder.