17 July 2014

Brendan McKenna

Manager
International Engagement Unit
Corporate and International Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: BEPS@treasury.gov.au

Dear Brendan

OECD Common Reporting Standard

Thank you for the opportunity to comment on Treasury's Discussion Paper *Common Reporting Standard for the automatic exchange of tax information.*

COBA is the industry body for credit unions, mutual building societies and mutual banks. Collectively, the institutions we represent have $86 billion in assets and serve more than 4 million customers. The customer owned model is the proven alternative to the listed model, delivering competition, choice, and consistently market leading levels of customer satisfaction.

Our responses to a number of the questions presented in the Discussion Paper are set out below.

What other financial institutions should be considered Non-Reporting Financial Institutions under paragraph 3 (and therefore exempt from CRS reporting requirements in Australia?)

As COBA has previously noted, we believe it would be appropriate for entities provided with reporting exemptions or concessions under FATCA to receive similar treatment under the OECD CRS.

COBA notes that under the FATCA regulations and Australia-US FATCA Intergovernmental agreement (IGA), many of our members are eligible for two categories of concessional reporting or exemption:

- A non-registering local bank exemption;[1] and

[1] *Australia-US FATCA Intergovernmental Agreement,* April 2014, Annex II, pp.2-4.

- Concessional reporting as a financial institution with a local client base.[2]

We remain concerned that the CRS does not appear to accommodate the inclusion of these categories. This is particularly disappointing given we understand there is an overarching policy intention for each jurisdiction's list of Non-Reporting Financial Institutions to be consistent with the types of entities exempted from FATCA reporting.

We note that requiring "FATCA exempt" institutions to report under the OECD CRS effectively frustrates the purpose of the FATCA exemption.

How can the Government ensure that any Non-Reporting Financial Institutions continue to be a low risk for being used to evade tax?

There are currently a number of protections under the FATCA regulations and IGA which ensure that financial institutions making use of the reporting exemptions and concessions outlined above present a low risk of tax evasion.

To be eligible for either treatment, an institution must meet the following key safeguards:

- That the institution has no fixed place of business outside of Australia; and
- That the institution not solicit customers or account holders outside Australia.

In addition, categorisation as a non-registering local bank also requires that the institution's website does not permit the opening of a Financial Account.

Similar conditions could be placed on any similar concessions for low risk financial institutions under the OECD CRS.

How many financial institution accounts are estimated to have an indication that the account holder is a non-resident? How many are reportable accounts for FATCA purposes? What proportion of accounts is estimated to be non-resident accounts?

While we have not be able to collect detailed information from members regarding their non-resident accounts, we understand that for most members, non-resident accounts represent only a very small proportion of their business.

In particular, COBA notes the following:

- Institutions classified as "non-registering local banks" under FATCA have no accounts that are considered reportable accounts for FATCA purposes. Roughly one third of COBA members fall into this category.
- We understand that almost all COBA members are eligible for the "local client base" reporting concessions available under FATCA. To be eligible for this exemption, no more than two per cent of all accounts (by value) can be held by non-residents. We understand most COBA members would also fall below this threshold if number of accounts rather than value of accounts was used as the relevant metric.

---

[2] *Australia-US FATCA Intergovernmental Agreement,* April 2014, Annex II, p. 4.

This level of non-resident account holdings is not surprising given that COBA members do not solicit accounts from non-residents.

What existing processes can financial institutions rely on to determine whether an account holder is non-resident, and what additional processes would need to be established?

COBA notes, and supports the position in the discussion paper that:

> "For Pre-Existing Accounts, jurisdiction(s) of residence are used as a proxy for jurisdiction of residence for tax purposes, in recognition that it may be difficult and costly for Reporting Financial Institutions to collect this information."[3]

COBA understands that for new accounts, compliance with the OECD CRS would require financial institutions to "collect and report jurisdiction(s) of residence for tax purposes,"[4] and that part of this process would require institutions to make an assessment of the reasonableness of any information and/or self-certifications made by account holders.

Financial institutions will need to put in place updated account opening procedures to capture this additional information. It would be useful if, in detailing the OECD CRS obligations, the government could provide some "safe harbour" procedures which would be deemed as being "reasonable" for the purposes of collecting this data when dealing with the creation of new accounts. This would provide financial institutions with appropriate assurance that the procedures put in place to collect this information were consistent with and satisfied the OECD CRS obligations.

Some financial institutions may wish to establish self-certification processes prior to the commencement of the CRS to minimise the cost of revisiting accounts opened between now and the implementation date. Are there any barriers to financial institutions doing this and can the Government reduce those barriers?

COBA agrees that some members may see value in establishing self-certification processes ahead of the commencement of the CRS. To support financial institutions considering this option, the Government could provide clarity ahead of the OECD CRS taking effect, outlining the processes which a financial institution could put in place now which would be consistent with eventual obligations under the OECD CRS.

Should Australia's implementing legislation allow financial institutions to undertake due diligence for all non-residents when undertaking due diligence for Pre-Existing Accounts ('big bang approach'), rather than financial institutions undertaking due diligence for accounts for each jurisdiction when Australia enters into an information exchange agreement with that jurisdiction?

---

[3] Treasury, *Common Reporting Standard for the automatic exchange of tax information,* June 2014, p. 8.
[4] ibid.

COBA agrees that there would be value in providing financial institutions with this flexibility. We understand that the review of pre-existing accounts is likely to be one of the the more administratively burdensome aspects of compliance with the OECD CRS, and allowing institutions to review their accounts once for all non-residents could potentially deliver significant savings.

Could the AIIR provide an appropriate mechanism for all Reporting Financial Institutions (under the CRS) to report non-resident account information?

COBA sees AIIR as a useful channel to report account information under the CRS. All COBA members already complete AIIR reporting, and allowing institutions to combine their OECD CRS reporting obligations into this existing report would be expected to be more efficient than requiring the completion of a separate report.

If an enhanced AIIR is used for CRS reporting, should the AIIR be required to be lodged two times per year to enable the financial account information to be used for calendar and fiscal years? What are the costs and benefits of this approach?

Given that different jurisdictions have different reporting calendars, compliance with the OECD CRS may require reports to be compiled on both a calendar year and financial year basis.

Requiring financial institutions to produce both types of reports would be administratively burdensome, and rather than adopt this approach, COBA would prefer the lodgement of AIIR reports twice a year, with each report covering a six month period. We understand that the cost of twice yearly AIIR reporting in this manner would be very similar to annual reporting.

The Government could then use the six-monthly data provided by financial institutions to produce calendar year and financial year reports as required by other jurisdictions.

Do you consider that financial institutions' compliance with FATCA reporting requirements will assist them in meeting the CRS reporting requirements?

Given the similarities between the OECD CRS and FATCA reporting obligations, compliance with FATCA obligations under the IGA should reduce the incremental cost of complying with the OECD CRS. We would also note that the more closely the government is able to align the OECD CRS obligations with existing obligations under FATCA, the greater these incremental benefits are likely to be.

All of our members also have 'know your customer' and 'customer due diligence' obligations under the AML/CTF Act. Any new identity verification requirements should as far as possible be aligned and integrated with the AML/CTF obligations regulated by AUSTRAC.

COBA also notes that costs could be further reduced if the government was able to provide a single reporting framework for financial institutions to meet their obligations under both FATCA and the OECD CRS. As previously noted, COBA supports the use of AIIR as a reporting channel for the OECD CRS, and would support consideration being given to this being applied more broadly to accommodate reporting under the FATCA framework.

However, while we note that the existence of FATCA will generally reduce the incremental burden imposed by the OECD CRS, this will not be the case for COBA members making use of FATCA concessions, and the non-registering local bank exemption in particular. For these institutions the OECD reporting will represent a new and additional reporting obligation rather than representing an incremental change.

Do you have any other suggestions for reducing reporting obligations under the OECD CRS?

The government may be able to reduce the costs of collection imposed on financial institutions by collecting some of this information on their behalf. One possibility would be for ASIC to collect the details of the beneficial owners of a business or entity at the point of its registration, relieving financial institutions of the need to seek this information.

Centralising the data collection in this fashion is arguably more efficient as it only needs to be gathered once (by ASIC), rather than captured separately by each financial institution that the entity deals with. Collecting this information through a central regulator could also improve the accuracy of the data collected.

What are financial institutions estimates of implementation and compliance costs?

COBA has not been able to collect comprehensive data from members on the likely costs of compliance with the OECD CRS obligations. However, anecdotal feedback from one larger member has indicated that the upfront costs were likely to be around $50,000 while ongoing costs would be closer to $25,000 per annum. This assumes that financial institutions are given clear guidance on their obligations under the OECD CRS along with adequate time to implement required changes.

As previously noted, the more closely obligations under the OECD CRS can be aligned and integrated with existing FATCA and AML/CTF obligations, the lower these incremental costs are likely to be.

Is implementation of the CRS from the 2017 calendar year achievable? If not, when will your Financial Institution be able to implement the CRS?

COBA agrees that the proposal in the discussion paper to implement the OECD CRS reporting obligations from the 2017 calendar year should be manageable. However, given the significant regulatory reforms currently being progressed in the sector, along with the Financial System Inquiry which is currently underway, we do not believe that the Australian Government should look to implement the OECD CRS within a more aggressive timeframe by becoming part of the "early adopters" group.

We also note that implementation of the OECD CRS could present more significant challenges for small financial institutions which are exempt from FATCA reporting given their status as "non-registering local banks." Should the Government decide not to exempt these institutions from reporting under the OECD CRS, it may be appropriate to provide additional time for these institutions to transition to the new arrangements.

Please contact me on 02 8035 8448 or Micah Green on 02 8035 8447 to discuss this submission.

Yours sincerely

LUKE LAWLER
Senior Manager, Public Affairs