Australian Government

Common Reporting Standard for the automatic exchange of tax information

Discussion Paper
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REQUEST FOR FEEDBACK AND COMMENTS

The Common Reporting Standard for the automatic exchange of tax information (CRS) was endorsed by G20 Finance Ministers and Central Bank Governors at their meeting on 22 and 23 February 2014. The Government is yet to make final decisions on its implementation in Australia and this discussion paper seeks stakeholder views on:

- timing;
- financial institutions' potential implementation and compliance costs; and
- suggestions on how to minimise the implementation and compliance costs.

The discussion paper should be read in conjunction with the OECD's Standard for automatic exchange of financial account information: Common Reporting Standard (CRS).

All information (including name and address details) contained in submissions will be made available to the public on the Treasury website, unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment. Any future request made under the *Freedom of Information Act 1982* (Commonwealth) for a submission marked 'confidential' to be made available will be determined in accordance with that Act.

Submissions should include the name of your organisation (or your name if the submission is made as an individual) and contact details for the submission, including an email address and contact telephone number where available. While submissions may be lodged electronically or by post, electronic lodgement is strongly preferred. For accessibility reasons, please email responses in a Word or RTF format. An additional PDF version may also be submitted.

Closing date for submissions: 16 July 2014.

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1. INTRODUCTION

Globalisation and technological advances have made it easier for taxpayers to hold investments in financial institutions outside of their country of residence. The ability to exchange taxpayer information between jurisdictions' tax authorities is critical to combating tax evasion at the international level.

The Common Reporting Standard for the automatic exchange of information (CRS) provides a common international standard for:

- the collection of financial account information by financial institutions in participating jurisdictions on account holders who are residents in another jurisdiction;
- the reporting of that information to the jurisdictions' tax authority; and
- the exchange of that information with the respective tax authorities of the non-residents.

The CRS includes a requirement for financial institutions to look through certain entities and report on the relevant Controlling Persons.

To minimise business and tax administrations' implementation and compliance costs the CRS draws on the US' Foreign Account Tax Compliance Act (FATCA) intergovernmental agreement (IGA) regime for due diligence procedures and reporting.

The implementation of the CRS does not automatically result in information exchange between all countries. A jurisdiction wishing to automatically exchange tax information will still need to enter into an agreement with Australia.

To protect the confidentiality of Australians' information, Australia does not enter into an agreement to automatically exchange information with another country unless the country has the legal framework and administrative capacity to ensure confidentiality. This would not change under the CRS. The ATO would also able to suspend the exchange of information with another jurisdiction's tax authority if it determines that there is or has been significant non-compliance with the CRS by that jurisdiction's tax authority.

The benefit to the Australian Taxation Office (ATO) of implementing the CRS lies in the information it receives from other jurisdictions. As such, its effectiveness is dependent on the number of jurisdictions implementing it, and the way in which it is implemented. Over 60 jurisdictions have committed to implement it, including Switzerland, Singapore, Liechtenstein and the Cayman Islands.

Implementation of the CRS would require Reporting Financial Institutions in Australia to undertake due diligence procedures to identify non-residents and report their financial account information to the ATO. The ATO will use this information to ensure that the non-residents are complying with their Australian tax obligations, and automatically send the information to the respective tax authority of the non-resident each year.

Similarly, Reporting Financial Institutions in other jurisdictions will provide financial information on non-residents in those jurisdictions to their local tax authority. For Australians that are identified by financial institutions outside of Australia this will mean that financial information will be provided to the local tax authority and then the ATO.

The ATO will undertake identity matching with the information it receives and use a risk-based approach to income match selected cases against individual and business tax returns. If there are discrepancies then the ATO can clarify the information with the specific taxpayer, and any undeclared income can result in taxable income adjustments and penalties and interest.

The CRS, if fully implemented by participating jurisdictions, will improve reciprocal tax information sharing arrangements between Australia and other countries and help ensure Australian residents comply with their tax obligations. A common agreed global standard for automatic exchange of information might prevent the proliferation of inconsistent arrangements. The CRS, however, imposes potentially significant compliance burdens on financial institutions in Australia.

The CRS was endorsed by G20 Finance Ministers and Central Bank Governors at their meeting on 22 and 23 February 2014. The technical details, which comprise a commentary to ensure a consistent application and operation of the CRS and technical solutions on the IT aspects, are currently being finalised by the OECD for presentation to G20 Finance Ministers and Central Bank Governors at their September 2014 meeting. G20 Finance Ministers and Central Bank Governors have committed to work with all relevant parties, including financial institutions, to detail an implementation plan at their September meeting.

2. COMMON REPORTING STANDARD REQUIREMENTS

2.1 WHO WILL NEED TO REPORT UNDER THE CRS? (CRS SECTION VIII A AND B)

The CRS will require financial institutions in Australia to collect and report information to the ATO, unless they are explicitly exempt.

The CRS broadly defines a financial institution as:

- a depository institution;
- a custodial institution;
- an investment entity; or
- an insurance company that issues or makes payments to investment-linked life insurance or annuity contracts.

Financial institutions therefore include not only banks and other deposit-taking institutions, but also custodial institutions, some brokers, exchange traded funds, most collective investment entities and certain insurance companies.

Financial institutions subject to the CRS are referred to as Reporting Financial Institutions and exempt financial institutions are referred to as Non-Reporting Financial Institutions. Non-Reporting Financial Institutions are considered to be a low risk for use by non-residents to evade their tax obligations.

The most significant Non-Reporting Financial Institutions are:

1. governmental entities, international organisations or central banks;
2. broad or narrow participation retirement funds, or Qualified Credit Card Issuers; and
3. any other entities that present a low risk of being used to evade tax, have substantially similar characteristics to any of the entities described in paragraphs 1 and 2, **and** are defined in Australia's implementing legislation for the CRS as a Non-Reporting Financial Institutions, provided that the status as a Non-Reporting Financial Institution does not frustrate the purposes of the CRS.

The range of financial institutions required to report under the CRS is greater than under FATCA. For example, under Annex II to the Australia-US FATCA IGA, Australian financial institutions with a local client base or only low value accounts, are exempt from FATCA's due diligence and reporting rules. They are not specifically exempt under the CRS.

Each country will be required to identify any other entities that are exempt from reporting. Similar to FATCA, it is expected that Australia would exempt retail and industry superannuation funds (under paragraph 2 above) and self-managed retirement funds (under paragraph 3 above) from CRS reporting requirements.

Consultation Questions

Are there any entities in Australia to which the application of the CRS definition of financial institution is unclear?

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

For financial institutions with international operations, what are the expected implications if they are exempt from CRS reporting requirements in Australia but remain subject to CRS reporting in other countries? Would exemption in Australia reduce or increase implementation and compliance costs?

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

2.2 What accounts will need to be reported? (CRS Section I)

Reporting Financial Institutions will be required to collect and report to the ATO financial account information for accounts and insurance policies that they identify as being owned or controlled by a non-resident (unless the accounts or policies are explicitly exempt). These accounts are known as 'Reportable Accounts'.

Reportable Accounts may be held by non-resident individuals or entities, including companies, trusts and foundations.

The due diligence procedures require financial institutions to look through certain entities (passive non-financial entities (NFEs))[1] to report on accounts that have a Controlling Person who is a non-resident. This requirement to look through passive NFEs is intended to limit opportunities for taxpayers to circumvent reporting by using interposed legal entities or arrangements.

- The Controlling Persons are the natural persons who exercise control over an entity. The term 'Controlling Persons' corresponds to the 'beneficial owners' as described in the Financial Action Task Force Recommendations (Recommendation 10).

Some financial accounts are not subject to reporting, provided specific requirements are satisfied, as they are also considered a low risk for evading tax (CRS Section VIII C 17). These accounts are Excluded Accounts. The most significant Excluded Accounts are:

- superannuation and other retirement accounts;
- non-superannuation tax favoured accounts (for example First Home Saver Accounts);

1 For further information refer to CRS Sections VIII D 7, 8 and 9.

- life insurance contracts with a coverage period that will end before the insured individual attains age 90;
- accounts held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate; and
- accounts that present a low risk of being used to evade tax, have substantially similar characteristics to any of the accounts described in CRS Section VIII C 17 a) to f), **and** are defined in domestic law as an Excluded Account, provided that the status of that account as an Excluded Account does not frustrate the purposes of the CRS.

Consultation Questions

What accounts should be considered an Excluded Account and could satisfy the requirements that they present a low risk of being used to evade tax and have substantially similar characteristics to any of the accounts described in CRS Section VIII C 17 a) to f)?

For financial institutions with international operations, what are the expected implications if an account is an Excluded Account in Australia, but other countries do not consider that account to be an Excluded Account? Would exclusion in Australia reduce or increase implementation and compliance costs?

How should the Government monitor Excluded Accounts to ensure they continue to have a low risk of being used to evade tax?

2.3 How to determine if an account holder is a non-resident (CRS Sections II to VII)

Reporting Financial Institutions are required to undertake due diligence procedures to identify financial accounts that have a non-resident account holder in a Reportable Jurisdiction. A 'Reportable Jurisdiction' is a jurisdiction with which Australia has an agreement in place that enables automatic exchange of information.

To minimise implementation and compliance costs for Reporting Financial Institutions by enabling them to undertake the due diligence procedures for all non-residents at one time, the Government is considering allowing the extension of due diligence procedures to cover all non-residents ('big bang approach'). This approach could minimise implementation and compliance costs for financial institutions because they would not need to perform additional due diligence each time Australia enters into a new automatic information exchange agreement.

The due diligence requirements vary depending on whether the account is held by an individual or an entity, and whether the account is a Pre-Existing or a New Account.

- This recognises that it may be more difficult and costly for financial institutions to collect information from existing account holders than it is to request such information from new account holders when an account is opened.
- The date to distinguish between Pre-Existing and New Accounts will be determined by the Government, taking into account the views raised in submissions on this Discussion Paper.

Pre-Existing Individual Accounts

For Pre-Existing Individual Accounts, the requirements distinguish between Higher and Lower Value Accounts. Unlike FATCA, there is no minimum threshold for account balances. Although the CRS uses US dollar thresholds to distinguish between high and low value accounts, it is proposed that fixed Australian dollar thresholds be adopted in Australia.

Lower Value Accounts: for account balances less than A$1,000,000 the residence of the account holder would be determined using either a current residence address test based on documentary evidence or alternatively an indicia search of electronic records. If the indicia search of electronic records is undertaken and no indicia arise, financial institutions will not be required to report the account to the ATO. An account that has indicia present will be a Reportable Account, unless financial institutions elect to apply additional 'curing' procedures. The curing procedure generally involves reviewing or obtaining a self-certification and/or documentary evidence from the account holder.

Higher Value Accounts: for account balances greater than A$1,000,000 enhanced due diligence procedures apply, including a paper record search and an actual knowledge test by the relationship manager.

New Individual Accounts

New Individual Accounts require self-certification of the account holder's jurisdiction of residence ***for tax purposes*** and confirmation by the Reporting Financial Institution of the reasonableness of this self-certification.

A Reporting Financial Institution is considered to have confirmed the 'reasonableness' of a self-certification if, upon receipt of the self-certification and review of the information obtained in connection with the opening of the account (including any documentation collected pursuant to Australia's Anti-Money Laundering (AML) and its associated Customer Due Diligence (CDD) requirements), it does not know or have reason to know that the self-certification is incorrect or unreliable.

Pre-Existing Entity Accounts

For Pre-Existing Entity Accounts, Reporting Financial Institutions are required to determine:

- whether the entity itself is a Reportable Person, which can generally be done on the basis of available information (such as AML and CDD requirements) and if not, a self-certification; and

- whether the entity is a passive NFE and, if so, whether it has any Controlling Persons that are non-residents. For a number of account holders the active/passive assessment should be straight forward and can be made on the basis of available information, for others this may require self-certification. Pre-Existing Entity Accounts below A$250,000 are not subject to review.

New Entity Accounts

New Entity Accounts require the same assessments as Pre-Existing Accounts. However, as it is easier to obtain self-certifications for New Accounts, the A$250,000 threshold does not apply.

Consultation Questions

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?

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

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?

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 information exchange agreement with that jurisdiction?

2.4 What account information will need to be reported? (CRS Section I)

Reporting Financial Institutions are to report the following information with respect to each Reportable Account:

1. for accounts held by an individual: their name, address, jurisdiction(s) of residence, Taxpayer Identification Number(s) (TIN(s)) and date and place of birth of the individual;

2. for accounts held by an entity: its name, address, jurisdiction(s) of residence and TIN(s);

3. for accounts held by an entity that is a passive NFE, and is identified as having one or more non-resident Controlling Persons:

   (a) the name, address, jurisdiction(s) of residence and TIN(s) of the entity; and

   (b) the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth of each non-resident Controlling Person;

4. the account number (or functional equivalent in the absence of an account number);

5. the name and identifying number (if any) of the Reporting Financial Institution; and

6. the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account.

The following information is also to be reported:

7. for a Custodial Account:

   (a) the total gross amount of interest paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period;

   (b) the total gross amount of dividends paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period;

   (c) the total gross amount of other income generated with respect to the assets held in the account paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and

   (d) the total gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder.

8. for a Depository Account: the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period.

9. for any other account, such as equity or debt interests in certain Investment Entities and investment-linked insurance or annuity contracts: the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period, with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

The CRS recognises that some of the above information will not always be readily available to financial institutions or easily obtainable from existing account holders, and provides certain exceptions to these information requirements.

- For example, for existing account holders, the TIN and date of birth are not required to be reported if they are not in the records of the financial institution or are not required to be collected under the financial institution's domestic law. However, financial institutions would be required to employ reasonable efforts to obtain that data within a certain period of time.

Financial institutions in Australia will not be required to report a place of birth.

The TIN requirements refer to the TIN issued by the account holder's jurisdiction of residence for tax purposes, and not the TIN issued by the jurisdiction where the account is held. The CRS recognises that for Australia an individual cannot be required to report their Australian Tax File Number (TFN).

For a New Account, Reporting Financial Institutions are required to collect and report jurisdiction(s) of residence **for tax purposes**. 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. CURRENT REPORTING REQUIREMENTS

Financial institutions are currently subject to similar reporting requirements to the CRS which might assist in minimising Reporting Financial Institutions' reporting requirements from the CRS. These reporting requirements include the Annual Investment Income Report (AIIR), AML/Counter Terrorism Financing (CTF) regime, and FATCA.

3.1 ANNUAL INVESTMENT INCOME REPORT

Australian investment bodies are required to provide the ATO Commissioner with an AIIR, which includes details on:

- the identity of the investor (for example name, date of birth, entity type, TFN and address);
- the types of investment income paid to the investor (for example interest, dividends, unit trust distributions, fund payments and capital gains); and
- tax withheld on income (for example TFN and non-resident withholding tax) and tax credits available.

The AIIR is the primary ATO approved form for reporting Australian sourced investment income paid to Australian and non-resident investors. Industry currently reports to the ATO in the AIIR a large amount of the investor information required by the CRS. There are administrative penalties for not lodging, not using the approved form, and late lodgement of the AIIR. For large taxpayers, there are strict liability administrative penalties of up to $4,250. Penalties and offences also exist for making a false and misleading statement.

The ATO uses the data from the AIIR to prefill Australian income tax returns, monitor tax compliance, and to report non-resident information to partner countries' tax authorities, pursuant to information-sharing arrangements under Australia's bilateral tax treaties.

Who needs to lodge AIIRs?

Investment bodies required to lodge an AIIR include approved deposit-taking institutions (for example, banks, building societies and credit unions), widely held investment entities such as publicly listed companies, unit trusts, and managed funds and their intermediaries (including custodians, nominees, solicitors and share registries). A number of bare trusts also lodge an AIIR.

While most financial institutions that will be required to report under the CRS are already reporting through the AIIR, more institutions will need to report under the CRS. New reporters would include insurance companies that offer investment-linked insurance or annuity contracts and a broader range of professionally managed trusts and collective investment vehicles.

In addition, Reporting Financial Institutions will be required to report on all financial account holders. This would extend to reporting the non-resident Controlling Persons of certain entities (passive NFEs).

Publicly listed companies that currently lodge an AIIR and are not Reporting Financial Institutions under the CRS, for example mining and industrial companies, would not be subject to the additional reporting.

Frequency of lodgement

The AIIR is required to be lodged after the end of Australia's financial year and the CRS information is required to be reported after the end of a calendar year or other appropriate reporting period. If Australia provides CRS financial account reports to another jurisdiction's tax authorities using Australia's financial year as the reporting period, the tax authorities might request further information from the ATO to ascertain the calendar year of that financial account information and the ATO might request it from the respective financial institution. Bi-annual reporting of CRS information could assist the ATO and business in providing account reports corresponding to partner jurisdictions' relevant fiscal years, reducing the need for requests for further information.

Information reported

Differences between the AIIR and the CRS would necessitate changes to the AIIR, if the AIIR is used as the mechanism to report CRS information. The additional information that would need to be collected is:

- the account balance or value at the end of the reporting period or, if the account was closed during the year, reporting of the account closure;
- the value of and income from certain annuities and insurance contracts;
- details of 'Controlling Persons' of certain entities (passive NFEs); and
- amounts received on sales or redemptions of financial assets, including debt and equity interests, held in financial institutions.

Consultation Questions

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

Are there any alternative reporting mechanisms that could result in lower costs for business while still delivering the information required under the CRS?

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?

Are the existing administrative penalties attached to the AIIR appropriate for the collection of information under the CRS?

3.2 Australia's Anti Money Laundering/Counter Terrorism Financing regime

Australia's AML/CTF regime seeks to minimise the risk that Australia's financial system will be used for money laundering, terrorism and other criminal activity financing.

A key part of the AML/CTF regime is CDD. CDD requires financial institutions to collect and verify information about a customer's identity. Identification and verification procedures are risk based and will vary according to the risks posed by the customer. At a minimum, it includes:

- for individuals, collection of their full name, residential address and date of birth and verification of the full name and residential address and/or date of birth;
- for companies, collection and verification of company information; and
- for trusts, collection of trust information, such as the name of the trust, names and addresses of trustees and beneficiaries.

From 1 June 2014, additional CDD requirements came into effect in Australia. They require financial institutions to:

- identify and verify beneficial ownership information;
- collect and verify the names of settlors of certain trusts that are customers; and
- undertake reasonable measures to update documents, data or information collected in relation to customer due diligence and identification of beneficial owners.

It is expected that Reporting Financial Institutions would be able to use their CDD practices to assist in complying with the CRS' due diligence procedures. Further, the CRS due diligence procedures allow Reporting Financial Institutions to rely on information or documentary evidence collected pursuant to AML/Know Your Customer (KYC) (or AML/CDD) procedures. For example, for Pre-Existing Entity Accounts, Reporting Financial Institutions are required to determine whether the entity itself is a reportable person, which can generally be done on the basis of AML/KYC procedures.

Consultation Questions

To what extent do you consider that the AML/CTF requirements, including the additional CDD requirements that came into effect on 1 June 2014, will meet the CRS requirements?

To what extent can existing AML processes be easily adapted to collect any additional information required under the CRS?

3.3 Foreign Account Tax Compliance Act

On 28 April 2014, the Australian and US Governments signed an IGA to implement FATCA. The IGA enables the Australian financial industry to meet US reporting obligations with respect to US investments in compliance with Australian law, while mitigating the compliance burden of identifying reportable US persons. Financial institutions that fail to

comply with their IGA reporting obligations will be exposed to a 30 per cent US withholding tax on their US source income.

Under the IGA's due diligence requirements Australian financial institutions are required to identify US persons and report their accounts to the ATO, using the US Internal Revenue Service's (IRS) FATCA XML Schema format. The ATO is first required to supply information on financial accounts held by US persons to the IRS by September 2015 for the 2014 calendar year.

The CRS due diligence requirements are modelled on those of the IGA, such as the requirement to obtain a self-certification for a new individual account that allows a financial institution to determine the account holder's residence(s) for tax purposes. However, the IGA requirements differ from the CRS in a number of ways including:

- an account balance review threshold of US$50,000 for accounts held by individuals;
- no 'residence address test' for pre-existing accounts held by individuals; and
- the transitional requirement to report payments made to all financial institutions that are not compliant with the FATCA system (whereas the CRS requires the identification of any controlling persons of financial institutions that are investment entities if the financial institutions are established in a jurisdiction that does not participate in CRS reporting).

In implementing FATCA, Reporting Financial Institutions have established systems to identify reportable US persons and they will report the financial account information for these persons to the ATO using the IRS FATCA XML Schema format. If an enhanced AIIR is used for CRS reporting purposes, as outlined above, the ATO will take on responsibility for identifying which information needs to be provided to each country and translating this information into the formats required for exchange.

The possibility of including FATCA reporting as part of CRS reporting will be explored further with the US Government.

Consultation Questions

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

4. IMPLEMENTATION PROCESSES AND TIMING

4.1 LEGISLATIVE CHANGES

Legislation will be required to ensure that financial institutions report information consistent with the CRS and undertake its due diligence procedures. The CRS outlines that to ensure its effective implementation jurisdictions are expected to have certain rules and administrative procedures, including (CRS Section IX):

1. rules to prevent Financial Institutions, persons or intermediaries from adopting practices intended to circumvent the reporting and due diligence procedures;

2. rules requiring Reporting Financial Institutions to keep records of the steps undertaken and any evidence relied upon for the performance of the procedures and adequate measures to obtain those records;

3. administrative procedures to verify Reporting Financial Institutions compliance with the reporting and due diligence procedures and to follow up with a Reporting Financial Institution when undocumented accounts are reported;

4. administrative procedures to ensure that the entities and accounts defined in domestic law as Non-Reporting Financial Institutions and Excluded Accounts continue to have a low risk of being used to evade tax; and

5. effective enforcement provisions to address non-compliance.

If the AIIR is used to report the account information required by the CRS, regulatory changes will be required to extend it to financial institutions that are not currently required to lodge it and to include the additional information required under the CRS.

Legal basis for automatic exchange

Australia's bilateral tax treaties and ratification of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters provide the legal basis for the automatic exchange of information between Australia and other countries. The bilateral tax treaties and the Multilateral Convention 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.

Australia's tax authority (the ATO) and another jurisdiction's tax authority can enter into a Competent Authority (that is tax authority) Agreement (CAA) under the bilateral tax treaties and the Multilateral Convention. The CAA sets out operational requirements such as the content, manner and timing of automatic information exchanges between members. To conclude a CAA with another jurisdiction's tax authority, the ATO needs to have confidence in the secrecy and privacy requirements of the partner tax authority. The CRS includes the text of a model CAA which will be used as the basis for entering into CAAs with Australia's prospective CRS partner jurisdictions.

4.2 SIGNIFICANT NON-COMPLIANCE WITH THE CRS BY TAX AUTHORITIES

Under the CAA, the ATO is able to suspend the exchange of information with another jurisdiction's tax authority if it determines that there is or has been significant

non-compliance with the CRS by that jurisdiction's tax authority. Significant non-compliance can include:

- non-compliance with the confidentiality and data safeguard provisions;
- a failure to provide timely or adequate information; or
- narrowing the scope of entities or accounts covered by the CRS to such an extent that it frustrates the purposes of the CRS.

Similarly, another jurisdiction's tax authority would be able to suspend the exchange of information with the ATO if it determines that there is or has been significant non-compliance.

Consultation Questions

Are there any other legislative changes required to give effect to the CRS and provide financial institutions with the ability to comply with the law (e.g. changes to privacy laws)?

Are legislative changes necessary to enable willing financial institutions to prepare for CRS due diligence earlier than the CRS's effective implementation in Australia? What are the changes?

4.3 ATO SYSTEM CHANGES TO IMPLEMENT THE CRS (CRS SECTION 9.3)

The ATO's process for receiving and exchanging the information with partner tax authorities will be as follows:

1. financial institutions lodge CRS data with the ATO (potentially through the AIIR);
2. the ATO processes and stores the CRS data;
3. the ATO extracts, aggregates, encrypts and transmits the CRS Reportable Account data to its partner tax authorities in a CRS schema compliant XML file;
4. partner tax authorities decrypt, process, store and use received CRS Reportable Account data;
5. partner tax authorities transmit reciprocal CRS Reportable Account data to the ATO in a CRS schema compliant XML file; and
6. the ATO decrypts, processes, stores and uses the received CRS Reportable Account data.

The ATO already administers similar automatic exchange of information (bulk data) programs with Australia's tax treaty partners. The bulk data the ATO automatically sends to other jurisdictions' tax authorities on an annual basis is generally sourced from the AIIR.

The CRS is expected to increase the number of reporting institutions required to report to the ATO and the number and complexity of automatic exchanges of non-resident investment income information with partner tax authorities.

The ATO will need to design, build and change IT systems to support processing, storage, encryption/decryption, usage and exchange of CRS data with over 100 partner tax authorities. The ATO anticipates that it would take around 18 months to undertake the necessary changes. This work would commence once the timeframe for implementation is finalised.

4.4 Reporting Financial Institutions' implementation processes

To implement the CRS, Reporting Financial Institutions will be required to:

- build or adapt their information systems to retain information for identifying, classifying and interrogating customer accounts to comply with CRS due diligence and reporting requirements;
- ensure due diligence information required under the CRS is recorded and linked to client account information;
- implement new procedures for the on-boarding of New Accounts;
- undertake due diligence on Pre-Existing Individual and Entity Accounts; and
- make changes to systems so that information is provided to the ATO (for example updating their AIIR reporting software).

The due diligence for Pre-Existing Individual and Entity Accounts would not be required to be undertaken by Reporting Financial Institutions prior to the commencement of the CRS in Australia.

4.5 The CRS Early Adopters Group

A number of countries have committed to an implementation timeframe for the CRS. The CRS Early Adopters Group includes over 40 jurisdictions that have committed to the early adoption of the CRS according to a common timetable, commencing from the 2016 calendar year. Details of the implementation schedule for the Early Adopters Group are set out below:

- Pre-Existing Accounts would be those that are open on 31 December 2015 and New Accounts would be those opened from 1 January 2016. Hence, New Account opening procedures to record tax residence will need to be in place from 1 January 2016.
- The due diligence procedures for identifying High-Value Pre-Existing Individual Accounts will be required to be completed by 31 December 2016, while the due diligence for Low-Value Pre-Existing Individual Accounts and for Entity Accounts will be required to be completed by 31 December 2017.
- The first exchange of information in relation to New Accounts and Pre-Existing Individual High Value Accounts will take place by the end of September 2017.
- Information about Pre-Existing Individual Low Value Accounts and Entity Accounts will either first be exchanged by the end of September 2017 or September 2018 depending on when financial institutions identify them as reportable accounts.

4.6 AUSTRALIA'S IMPLEMENTATION OF THE CRS

Based on previous consultations that Treasury has undertaken with some of Australia's finance industry peak bodies, it is understood that financial institutions would require about 18 months from the enactment of legislation to when they are required to implement new procedures for the on-boarding of New Accounts. If legislation is enacted by mid-2015, an indicative timetable for Australia could be implementation from the 2017 calendar year, and involve the following details:

- Pre-Existing Accounts would be those that are open on 31 December 2016 and New Accounts would be those opened from 1 January 2017. Hence, New Account opening procedures to record tax residence would need to be in place from 1 January 2017.
- The due diligence procedures for identifying high-value Pre-Existing Individual Accounts will be required to be completed by 31 December 2017, while the due diligence for low-value Pre-Existing Individual Accounts and for Entity Accounts would be required to be completed by 31 December 2018.
- The first exchange of information in relation to New Accounts and Pre-Existing Individual High Value Accounts would take place by the end of September 2018.
- Information about Pre-Existing Individual Low Value Accounts and Entity Accounts will either first be exchanged by the end of September 2018 or September 2019 depending on when financial institutions identify them as reportable accounts.

Consistent with standard practice, it is expected that the ATO would adopt a reasonable approach to enforcement provided that Reporting Financial Institutions use best endeavours.

Consultation Questions

Is this indicative timetable for Australia's implementation of the CRS achievable? If not, when will your Financial Institution be able to implement the CRS?

Are there any particular types of information to be reported under the CRS that would require a relatively longer period for financial institutions to implement? For example, are there concerns about implementing procedures to obtain the total gross proceeds from the sale or redemption of property?

5. IMPLEMENTATION AND COMPLIANCE COSTS

The Government is committed to reducing regulatory burdens as a critical step towards improving Australia's productivity. The CRS draws on the intergovernmental approach to implementing FATCA, however, differs in some aspects, primarily due to the multilateral nature of the CRS. The Treasury prepared a Regulation Impact Statement (RIS) for the implementation of FATCA in Australia. The expected start-up and ongoing compliance costs for financial institutions to implement FATCA outlined in that RIS will form the basis for estimating the compliance costs of the CRS. The costs are being calculated to ensure that any increase in regulatory costs is offset as part of the Government's regulatory reduction target.

To assist in this process, we are seeking detailed information on the costs of complying with the CRS, over and above the costs already incurred by business under existing reporting/regulatory requirements (such as for AML, FATCA and the AIIR).

We are also seeking information on whether there are any specific elements of the CRS that impose relatively high costs on business, and whether these costs can be reduced. A suggested breakdown of cost components is provided below.

5.1 IMPLEMENTATION COMPLIANCE COSTS

Item name	Item description
Professional legal services	Businesses confirming their CRS reporting obligations. Other possible legal advice costs could include: • developing internal legal guidelines for the application of CRS in the financial institution; and • legal advice about privacy concerns.
Business systems design and development	Building an information system capacity to retain information for identifying, classifying and interrogating customer accounts to comply with due diligence and reporting requirements. Implement new procedures for the on-boarding of New Accounts. Financial institutions will be required to identify and classify accounts into various categories depending on the account balance. Details of reportable accounts must be reported annually to the ATO.
Development of staff training and education	Ensuring staff are able to understand the business' obligations. Importantly, client facing staff will need to be trained to explain why customers may have to provide additional disclosures.
Internal compliance assurance	Developing internal governance procedures to minimise the financial institutions exposure to sanctions for non-compliance with reporting requirements.
Management of global conglomerates	Many large financial institutions operate globally and undertake activities covering different industry sectors e.g. insurance, banking and funds management. This item covers the central management and support functions provided from financial institutions' Australian offices.

Item name	Item description
Conversion costs	Building a new solution to provide the CRS data to the ATO (for example adapting a financial institutions' AIIR to provide CRS data). It is the costs which businesses will incur in either adapting existing solutions or starting new solutions in a variety of areas, such as account opening procedures, infrastructure and documentation.
Other costs	Project governance and administration costs, including executive involvement costs.

5.2 RECURRING COMPLIANCE COSTS

Item name	Item description
Operation of business systems	Operation of the business systems. The costs relate to: • classification of new customer accounts; • consideration and classification of existing customer accounts; • reviewing and monitoring customer accounts; • record keeping and retrieval of information; and • system maintenance and updates.
Compiling and reporting data to the ATO	Compiling information and providing reports to the ATO.
Staff training and customer education	• delivery and updates of training models for staff; and • providing information to customers about the CRS and the impact on their accounts.
Engagement with ATO	Liaising with the ATO and seeking advice and guidance as necessary.
Managing customer consent issues	Obtaining consent from customers to release their data to the ATO (and any privacy concerns which may arise).
Compliance assurance	Ongoing internal processes to reduce the compliance risk to the business.
Professional legal services	Obtaining ongoing legal advice on the legal obligations for compliance.

Consultation Questions

Given the approach to implementing the CRS outlined in this paper (using the AIIR), what are financial institutions' estimates of implementation and compliance costs using the categories outlined in the implementation costs and recurring costs tables, and any other suggested cost categories?

- What are the economic costs from implementing the CRS?
- Will different parts of the finance industry have larger implementation and compliance costs than others? If so, why, and to what extent?

- For low risk financial institutions that are exempt from FATCA, what are their estimated implementation and compliance costs if they are not exempted from the CRS?

- Are there particular elements of financial institutions' businesses that raise more significant implementation and compliance cost concerns than others?

To what extent will financial institutions' compliance costs be passed on to consumers? How else might consumers be affected?

Are there are other ways to implement the CRS, and to what extent would they reduce implementation and compliance costs?

Are there other regulatory requirements on financial institutions outside the CRS that could be reduced to offset the CRS implementation and compliance costs?