

## **Frequently Asked Questions (FAQ) on Automatic Exchange of Financial Information in Tax Matters (AEOI) and Common Reporting Standard (CRS)**

### **1. What is Automatic Exchange of Information (AEOI)?**

AEOI is a term used to describe a range of agreements tax authorities across the world have entered into to exchange data automatically. It allows for the exchange of information regarding non-resident taxpayers with the tax authorities in the taxpayers' country of residence. Participating jurisdictions that implement AEOI send and receive pre-agreed information automatically each year. AEOI enables tax authorities to identify non-compliant taxpayers, and aims to improve the deterrence and detection of cross border tax evasion by giving tax authorities access to information relating to offshore accounts, assets and income held by their residents. It is intended to further strengthen international efforts to increase transparency and cooperation by tax authorities. Some of the main initiatives that Ireland is involved in are described below, and include the exchange of financial account information under FATCA and CRS, as well as the exchange of income and property ownership information under DAC1.

Further information on AEOI can be found at <http://www.mof.gov.bn/index.php/tax-treaties/automatic-exchange-of-information-aeoi>.

### **2. What is CRS?**

Common Reporting Standard (CRS) is a standard released by Organization of Economic Cooperation and Development (OECD) in which all participating jurisdictions will exchange bank and other financial account information automatically among them. The information is collected by financial institutions in each jurisdiction. As of today, under CRS it will be exchanged with over 115 participating jurisdictions.

### **3. Which financial institutions are covered by CRS?**

CRS includes a broad range of financial institutions such as:

- Depository Institutions;
- Custodial Institutions;
- Investment Entities; and
- Insurance Companies offering investment products with a cash value.

This includes banks, investment funds and similar vehicles that hold investments on behalf of individuals or entities.

These financial institutions are required to report to their own authorities financial account information with regard to persons or entities who are non-resident and for which the institution holds an account. That information is then exchanged with the jurisdiction of tax residence of the account holder.

#### **4. What types of financial accounts are covered?**

The definition of financial account for CRS is very broadly drafted to include a wide range of accounts and products. It includes:

- Depository accounts;
- Custodial accounts ;
- Equity or debt interests in an Investment Entity;
- Cash Value Insurance Contracts; and
- Annuity Contracts.

#### **5. What financial account information will Ministry of Finance receive from other jurisdictions under CRS?**

The participating jurisdictions will send the following information to Revenue with respect to accounts held by Brunei Darussalam tax resident persons and entities:

1. Name, address, Tax Identification Number (TIN) and account number of each account holder that is a tax resident of Brunei Darussalam,
2. Name and identifying number of the financial institution,
3. The gross amount of interest paid on a deposit account,
4. The gross amount of dividends paid or credited to the account,
5. The gross amount of income including interest or dividends paid into the account,
6. The gross proceeds from the sale or redemption of financial assets held on account,
7. The account balance or value at the reporting date, and
8. Where a reportable account has been closed during the period, the closure date of the account.

#### **6. Are trusts covered by CRS?**

Yes, accounts held by trusts are reportable under CRS. The settlor, trustees and beneficiaries (also known as controlling persons) of a trust are required to be identified and reported.

#### **7. Does CRS reporting only relate to new accounts?**

No, CRS cover both pre-existing accounts and new accounts. In the case of Brunei Darussalam, pre-existing accounts are accounts that were open before 01 January 2017 while new accounts are accounts that were open on and after 01 January 2017.

#### **8. How will Financial Institutions reporting under CRS identify account holders who are tax resident in other jurisdictions?**

Financial institutions are obliged to implement due diligence procedures to identify customers who are resident in another jurisdiction. Customers opening new accounts will be requested to declare their place of tax residence and to give their Tax Identification Number from that place of residence. Institutions are required to review the credibility of these declarations against other information provided to them under the Know Your Customer (KYC) obligations for anti-money laundering purposes.

For **pre-existing accounts** the institutions will be required to examine their records for indicators of a foreign residence. Such indicators might include:

- An address, or place of incorporation in the case of a company, located in a foreign jurisdiction;
- One or more telephone numbers in a foreign jurisdiction;
- A post office box or other mailing address in a foreign jurisdiction;
- Standing instructions to transfer funds to an account in a foreign jurisdiction;
- Power of attorney or signatory authority with a person with an address in a foreign jurisdiction;
- A foreign place of birth.

#### **9. Do CRS include credit unions?**

For CRS purposes, credit unions will be required to report details of account holders who are non-resident for tax purposes.

#### **10. How many other jurisdictions have signed up to CRS?**

This number continues to increase as more jurisdictions commit to exchanging data automatically. Currently, more than 100 jurisdictions have made commitments to implement CRS.

#### **11. Which jurisdictions are undertaking financial account information exchanges in 2017?**

Jurisdictions that start to undertake financial account information exchanges in 2017 are as follows:-

Anguilla, Argentina, Belgium, Bermuda, British Virgin Islands, Bulgaria, Cayman Islands, Colombia, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Montserrat, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Turks and Caicos Islands, and United Kingdom.

#### **12. Which jurisdictions are undertaking financial account information exchanges in 2018?**

Jurisdictions that have committed to exchange data under CRS by 2018 is increasing all the time. The jurisdictions that are currently committed are as follows;

Andorra, Antigua y Barbuda, Aruba, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belize, Brazil, Brunei Darussalam, Canada, Chile, China, Cook Islands, Costa Rica, Curaçao, Dominica, Ghana, Greenland, Grenada, Hong Kong (China), Indonesia, Japan, Kuwait, Lebanon, Marshall Islands, Macao (China), Malaysia, Mauritius, Monaco, Nauru, New Zealand, Niue, Pakistan, Panama, Qatar, Russia Federation, Saint Kitts and Nevis, Samoa, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Sint Marteen, Switzerland, Trinidad and Tobago, Turkey, United Arab Emirates, Uruguay and Vanuatu.

### **13. Does AEOI just relate to individuals?**

The information to be exchanged under CRS relates to all account holders including individuals and entities including companies, corporate bodies etc. Ministry of Finance as the tax authority in Brunei Darussalam will receive those account holders mentioned above and transmit it with its treaty partners.

For certain entities, financial institutions must also report information relating to the controlling persons or beneficial owners of the entity. This means that financial institutions must "look through" certain entity types and report the details of the individuals that own or control those entities even though the account is not in their name. This includes trusts, some holding companies, entities with passive income, and various other legal arrangements.

### **14. What are the timelines involved?**

For Brunei Darussalam, the first information exchanges under CRS will start in 2018. This data exchanges will relate to 2017 accounts. Ministry of Finance will also start receiving data from its treaty partners in 2018.

Financial institutions in Brunei Darussalam are required to register with Ministry of Finance before 31<sup>st</sup> May every year before it can transmit the financial account information to Ministry of Finance. After registration, Financial Institutions are required to transmit financial account information for the previous calendar year or reporting period every year via domestic transmission system before 30 June every year. The domestic transmission system is currently under development, Ministry of Finance will inform all financial institutions once the system is ready. The information received by Ministry of Finance will then be validated and then transmitted to the Brunei Darussalam's treaty partners before 30 September every year.

### **15. Can Ministry of Finance obtain further information other than that provided under AEOI?**

Yes, Ministry of Finance has an increasing network of Avoidance of Double Taxation Agreements (ADTA) and Tax Information Exchange Agreements (TIEA). Brunei Darussalam has also recently signed Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC). These agreements allow for the Exchange of Information on Request where Ministry of Finance can request further information relating to specific Brunei Darussalam tax residents whether individuals and entities.

### **16. How will Ministry of Finance use this information?**

The information received from other jurisdictions will be matched to the existing taxpayer profile on System of Tax and Revenue Services (STARS) using the Tax Reference Number supplied and the address. Revenue Division will use the information for the purpose of the administration of the tax law.

### **17. When does the Income Tax Act (Amendment)(No 3) Order, 2017 and the Income Tax (International Tax Compliance Agreements) (Common Reporting Standard) Regulations, 2017 become effective?**

The effective date is on 29th June 2017.

**18. When is the implementation timelines for the CRS?**

Brunei Darussalam is committed to implement CRS according to the international agreed standard. Therefore, the implementation timelines which are in line with the international agreed standard are as follows:

<b>Reference</b>	<b>Timeline</b>
Pre-existing Accounts	as of 31 <sup>st</sup> December 2016
New Account	Opened on or after 1 <sup>st</sup> January 2017
Review of Pre-existing High Value Individual Account must be completed by	31 <sup>st</sup> December 2017
Review of Pre-existing Lower Value Individual Account must be completed by	31 <sup>st</sup> December 2018
Review of Pre-existing Entity Accounts must be completed by	31 <sup>st</sup> December 2018
Reporting to Revenue Division, Ministry of Finance (Revenue Division)	30 June 2018 and 30 June of subsequent years

**19. Accounts opened and closed between 1 January 2017 and 29 June 2017 (Prior 6-month Period”).**

**a. As the CRS came into effect on 29 June 2017, how much time do the Financial Institutions have to document the clients that opened accounts between 1 January and 29 June 2017?**

The reporting financial institutions are required to report to Revenue Division, Ministry of Finance by 30 Jun 2018. Therefore, Financial institutions have up to 29 Jun 2018 to document the clients.

**b. What is the position of accounts which have been opened as at 31 December 2016 or during the Prior 6-month Period but subsequently closed prior to 29 June 2017?**

The reporting financial institutions are required to report the financial information including those account that are closed during the reporting period.

**c. What is the position of accounts which have been closed prior to 31 December 2016?**

As mentioned above, the reporting financial institutions are required to report the financial information including those account that are closed during the reporting period.

**d. What is the treatment for accounts opened during the Prior 6-month Period but self-certification forms cannot be obtained during clients and/or publicly available information or information held on file cannot be relied upon to establish the reportable status of the entity clients?**

The reporting financial institutions are expected to either obtain (i) a new and valid self-certification or (ii) a reasonable explanation and documentation, as appropriate, supporting the reasonableness of the self-certification.

**20. Review of Pre-existing High Value Individual accounts, Lower Value Individual Accounts and Entity Accounts.**

**BAB request for clarification on what is the next step to be taken if FI is unable to obtain the necessary information required to complete the review after the expiration of the review period/timeline given for the following:**

- **Review of pre-existing High Value Individual Account by 31 December 2017;**
- **Review of pre-existing Lower Value Individual Account by 31 December 2018;**
- **Review of pre-existing Entity Accounts by 31 December 2018;**

It is a legal requirement for the reporting financial institutions to review the pre-existing High Value Individual accounts, Lower Value Individual Accounts and Entity Accounts with the given timeline and report to Revenue Division, Ministry of Finance by 30 June 2018.

**21. How will the Financial Institutions (FIs) report the CRS information to the Revenue Division?**

The FIs will report CRS information in accordance with OECD's CRS XML Schema. The OECD's CRS XML Schema is available at <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/schema-and-user-guide/#d.en.345315>

The IT system and the final template to be used to transmit the information to Revenue Division is currently under development. Revenue Division will inform the FIs once it is completed.

**22. Reportable Currency - guidance whether reporting can be performed in the original currency of the relevant accounts.**

Where accounts are denominated in a currency other than the US dollar, the US dollar threshold amounts described in the CRS must be converted to the currency that the accounts are denominated in, using a published spot rate determined as of the last day of the calendar year preceding the year in which the determination is done.

### **23.the definition of 'Residents'**

According to Regulation 6 of the CRS Regulations, the meaning of "residence for tax purpose is

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- (a) if the person is an individual, the jurisdiction in which the person is resident under the tax laws of the jurisdiction; and
- (b) if the person is an entity –
  - (i) the jurisdiction in which the person is resident under the tax laws of the jurisdictions; or
  - (ii) where the person is not resident in any jurisdiction under the tax laws of any jurisdiction, the jurisdiction in which the person has its effective management.

In case of Brunei Darussalam, meaning of "resident" according to the Section 2 of the Income Tax Act (Chapter 35) is –

- (a) in relation to an individual means a person who, in the year preceding the year of assessment, resides in Brunei Darussalam except for such temporary absence therefrom as to the Collector may consider reasonable and not inconsistent with a claim by such person to be resident in Brunei Darussalam, and includes a person who is physically present or who exercises an employment (other than as director of a company) in Brunei Darussalam for 183 days or more during the year preceding the year of assessment;
- (b) in relation to a company or a body of persons, means a company or a body of persons the control and management of whose business is exercised in Brunei Darussalam.

For more information about the definition of different jurisdictions of residence on tax resident, you can visit OECD AEOI portal at <http://www.oecd.org/tax/automatic-exchange/crsimplementation-and-assistance/tax-residency/#d.en.347760>

### **24.Where a sole proprietor is a Permanent Resident of Brunei (Red/Purple IC) but is a citizen of another OECD member country, what is the treatment for this?**

Under CRS, a sole proprietorship is treated as an individual. The reporting financial institutions are required to identify whether the account holder is a Reportable Jurisdiction Person. According to paragraph D2, Section VIII of the Schedule of CRS Regulations, the term "Reportable Jurisdiction Person" means an individual or Entity that is resident in a Reportable Jurisdiction under the tax laws of such jurisdiction, or an estate of decedent that was a resident of a Reportable Jurisdiction. For this purpose, an Entity such as partnership, limited liability partnership or similar legal arrangement that has no residence for tax purpose shall be treated as resident in the jurisdiction in which its place of effective management is situated.

As mentioned in paragraph 5 above, an individual would generally be a tax resident of Brunei Darussalam if the individual is physically present or exercises an employment in Brunei

Darussalam for 183 days or more during the year preceding the year of assessment. Therefore, in the case of sole proprietor is a Permanent Resident of Brunei (Red/Purple IC) but is a citizen of another OECD member country, if he/she physically present or exercises an employment in Brunei Darussalam for 183 days, he/she will not be reportable for CRS as he/she is considered to be tax resident under Brunei Darussalam.

**25. Would partners of a partnership firm who are Permanent Resident of Brunei and citizens of another OECD member country be treated as reportable entity under CRS?**

The reporting financial institutions are required to identify whether the account holder is a Passive Non-Financial Entity. If the Entity Account Holder is a Passive Non-Financial Entity then the Financial Institution must look-through the Entity to identify its Controlling Persons. If the Controlling Persons are Reportable Persons then information in relation to the Financial Accounts must be reported, including details of Account Holder and each reportable Controlling Person.

In the case of a partnership and similar arrangements, Controlling Person means, consistent with 'beneficial owner' as described in the FATF.

**26. In cases where account holders are holding a joint account, what are the treatment for such cases? Example: Customer A & Customer B in a joint account; Customer A has \$500K in his own account and Customer A and Customer B have a joint account with \$1million.**

With respect to a jointly held account, each joint holder is treated as an account holder for purposes of determining whether the account is a reportable account. Thus, an account is a reportable account if any of the account holders is a reportable person or a passive nonfinancial entity ("passive NFE") with one or more controlling persons who are reportable persons. When more than one reportable person is a joint holder, each reportable person is treated as an account holder and is attributed the entire balance of the jointly held account. Each joint holder or each controlling person of the passive NFE should provide his/her own self-certification.

**27. To re-confirm review of high and low value Individual account is purely for individuals only? In other words, it will not include sole proprietorship?**

A sole proprietor is treated as an individual under CRS. Therefore, sole proprietor is included.

**28. Kindly advise what is required to be submitted by 30 June 2018.**

Information that is required to submit by 30 June 2018 are stated in Section I (General Reporting Requirements) of the Schedule of CRS Regulations.

**29. Is there any sample of self-certification form to assist the FIs in the implementation of CRS?**

Yes, there is a set of sample of self certification drafted by the Business and Industry Advisory Committee to the OECD (BIAC) which are as follows:

- (i) **Individual tax residency self-certification form** available at [http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/CRS\\_INDIVIDUAL\\_Self-Cert\\_Form.pdf](http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/CRS_INDIVIDUAL_Self-Cert_Form.pdf)
- (ii) **Entity tax residency self-certification form** available at [http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/CRS\\_ENTITIES\\_Self-Cert\\_Form.pdf](http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/CRS_ENTITIES_Self-Cert_Form.pdf)
- (iii) **Controlling Person tax residency self-certification form** available at [http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/CRS\\_CONTROLLING\\_PERSONS\\_Self-Cert\\_form.pdf](http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/CRS_CONTROLLING_PERSONS_Self-Cert_form.pdf)

For further inquiries or clarification, you may contact the following officers:

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\*Please note that Revenue Division will inform the FIs from time to time where there are updates to the implementation of AEOI and CRS via email or visit our website at <http://www.mof.gov.bn/index.php/divisions/revenue> (under tax treaties > Automatic Exchange of Information).

\*For more general information on the AEOI implementation, Please visit OECD Website on CRS related FAQs at <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/CRS-related-FAQs.pdf>.