BRUNEI DARUSSALAM
COMMON REPORTING STANDARD (CRS)
AUTOMATIC EXCHANGE OF INFORMATION (AEOI)
COMPLIANCE GUIDELINES

CONTENT

1.   OBJECTIVE

1.1   The objectives of this guideline, with a view in Brunei Darussalam context, are as follows:
- Support compliance by Brunei Darussalam Financial Institution (BDFI) with their Common Reporting Standard (CRS) obligations.
- Explain the approach expected by Revenue Division's expectation from reporting BDFI in order to demonstrate their compliance with CRS.

2.   BACKGROUND

2.1   What is CRS?

2.1.1   The CRS is an internationally agreed standard for Automatic Exchange of Financial Account Information in Tax Matters (AEOI) developed by the Organisation for Economic Co-operation and Development (OECD) to provide a framework for obtaining financial account information from FI and exchange that information automatically with other jurisdictions on an annual basis, with purpose *inter alia*, in enhancing tax transparency and deterring tax evasion by taxpayers through the use of offshore bank accounts.

2.1.2   The CRS requires that reporting FI carry out due diligence to identify accounts which are held by foreign tax residents from 1 January to 31 December annually and gather the account holders' information (and accounts) to be reported to the Competent Authority for AEOI in the subsequent year no later than the date stated under respective jurisdiction's domestic legislation.

2.1.3   The success of the CRS implementation relies on the quality and completeness of the due diligence checks on the tax residency of account holders and the accuracy of the account information.

2.1.4   The CRS is accompanied by a Commentary (the CRS Commentary), which supplements these due diligences and reporting obligations. OECD has also produced guidance about the practical application of these obligations, which includes a CRS Implementation Handbook and guidance set out in answers to "Frequently Asked Questions". All relevant references can be found on the Ministry of Finance and Economy (MOFE)'s and OECD's website.

2.2   CRS Implementation

2.2.1   Brunei Darussalam has made international commitment to implement CRS starting 2018 (financial year 2017). Through this commitment, Brunei

Darussalam has incorporated the CRS and the CRS Commentary into its legislation which are enforced on 29 June 2017:

- Income Tax Act (Amendment) (No. 3) Order, 2017
- Income Tax (International Tax Compliance Agreements) (Common Reporting Standard) Regulations, 2017
- Income Tax (International Tax Compliance Agreements) (Common Reporting Standard) Regulations, 2019

2.2.2   Brunei Darussalam has adopted the "wider approach" which requires reporting BDFI to establish the tax residency status of all their account holders and, where the account holder is a Passive Non-Financial Entity (NFE), i.e., a passive entity that does not meet the definition of a FI, the controlling persons of the Passive NFE in accordance with the due diligence requirements as set out in the CRS regulations.

2.2.3   Under the Income Tax (International Tax Compliance Agreements) (Common Reporting Standards) Regulations, 2017 a reporting BDFI is required to:

- Register for CRS with Revenue Division annually by 31st May;
- Perform due diligence on all Financial Accounts that it maintains; and
- Report all reportable accounts that it maintains or file a Nil Return (if it does not maintain any reportable accounts) to Revenue Division as the authorized representative of the Competent Authority annually by 30th June.

2.2.4   To determine whether BDFI is a reporting FI, please refer to section 3.

2.2.5   RD expects reporting BDFI to put in place a robust compliance approach as well as internal policies, procedures and systems that will ensure their effective compliance with the CRS in Brunei Darussalam.

2.2.6   To ensure compliance, Revenue Division will conduct reviews on reporting BDFI for its CRS implementation. The review will be guided by the legislation stated in paragraph 2.2.1 as well as the CRS framework guidance produced by OECD mentioned in paragraph 2.1.4.

2.2.7   Revenue Division adopt outcome based approach when it review the reporting BDFI compliance in reporting its CRS obligation.

2.2.8   Revenue Division will be assured if all reporting FIs have implement or put in place the hallmark or the desired outcome in each of the element in Section 4 to be reviewed by Revenue Division in its compliance review.

3.   ASCERTAINING THE FINANCIAL INSTITUTION POPULATION

3.1   BDFI need to determine whether the BDFI is a reporting FI or not as required under the CRS.

3.2   To support this, Revenue Division has issued a CRS entity classification self-review toolkit that can be used by BDFI to determine their CRS entity classification. The toolkit is accessible on the MOFE's website at https://www.mofe.gov.bn/Divisions/Automatic-Exchange-of-Information.aspx.

3.3   Revenue Division will also issue notices and reminders occasionally in social medias such as MOFE's website, Facebook, Instagram and the One Common Portal to raise awareness of the CRS obligations.

4.   CRS COMPLIANCE REVIEW PROCESS AND IMPLEMENTATION

4.1   To ensure that reporting BDFI comply with their CRS obligations in Brunei Darussalam, Revenue Division adopts the following risk-based approach when implementing a CRS compliance review process:

4.1.1   Risk Identification

Revenue Division takes a "bottom-up" step to identify reporting BDFI that pose a higher risk of non-compliance. The following table shows a non-exhaustive list of risk factors that will be considered to assess the risk of non-compliance by reporting BDFI:

Category	Risk Factors (Non-exhaustive)
Business profile and activities	• Industry and sector within the industry • Type and complexity of business • Size of business • Client profile • Geographical presence • Whether the FI is part of a larger domestic/multinational group • Resources allocated for CRS compliance

Track record in fulfilling CRS obligations	• Timeliness of reporting • Completeness and qualifying of reporting
Track record in other areas of regulatory compliance	• Compliance with tax reporting
Feedback received from CRS partners	• Data quality and completeness • Timeliness of data verification and correction

Revenue Division may take further assessment by reviewing past trends of certain CRS data that reporting BDFI has reported. These trends may include for e.g., number of undocumented accounts reported, significant changes in the volume of CRS records reported over time, absence of information on TINs and Date of Birth in the accounts reported and statistic reports from OECD and CRS partners on unmatched accounts.

4.1.2   Risk Analysis and Engaging Identified Reporting BDFI

Once the reporting BDFI have been identified, Revenue Division would prioritise them by analysing the compliance level or magnitude of the risk based on their probability and impact. For e.g. if existence of undocumented accounts reported by reporting BDFI has been identified, Revenue Division will then analyse the likelihood whether such risk may prevail across the industry of the reporting BDFI or more prevalent in a certain sector within the industry and the consequence of the risk of undocumented accounts to the integrity of CRS, vis-à-vis the other possible risk.

Revenue Division would then initiate communications with identified reporting BDFI through their authorised personnel for CRS AEOI matters, to perform a root-cause analysis by determining the underlying factors leading to possible non-compliance. For e.g. the root cause for reporting undocumented accounts could be due to misunderstanding the definition of undocumented accounts in the CRS or historical business policy changes made by the reporting BDFI.

For a high probability risk of non-compliance CRS, identified reporting BDFI will be requested to complete a CRS Compliance Review Questionnaire within a reasonable timeframe to determine the detail areas of incompliance. Alternatively, the reporting BDFI may also be subjected to on-site review where by Revenue Division would visit the premises and conduct face-to-face interviews with the authorized personnel to review CRS processes and

documentation based on the result from the questionnaire. Preceding any on-site visit, Revenue Division would coordinate with the identified reporting BDFI on a reasonable and mutually agreeable timeline for preparation for the on-site visit.

Revenue Division, MOFE will be assured if BDFIs manage to get the desired outcome pointed in each of the elements in the questionnaire as follows:

A.   CRS Governance and Implementation

ELEMENT	HALLMARK / DESIRED OUTCOME

CRS Project Organisation	• FIs take appropriate steps to ensure they are organised in a manner to successfully implement and maintain their CRS obligations.
	
	• Project organisation of the FI evolves over time and takes into account:
	  o lessons learned by that FI, including changes to business operations (e.g., new products and services, changes in jurisdiction);
	  o industry guidance;
	  o legislative and regulatory guidance; and
	  o other tax administration-specific published and unpublished guidance.
	
	• FIs have a risk management framework incorporating CRS compliance risks arising from changes in business activities or operating processes.
	
	• The FI has processes to identify, evaluate and manage CRS risks to ensure that these are addressed in a timely manner.

Roles responsibilities and accountability	• The FI has clear delineations of its functions as they pertain to CRS.

ELEMENT	HALLMARK / DESIRED OUTCOME
	• FIs have the same understanding of any CRS functions produced by their external service providers. • The FI has a documented assessment of its applicable functions, a description of such functions, identified parties responsible for the functions and where the responsible personnel reside. • FIs have a defined guidance intake process to monitor changes and supplemental information released pertaining to the CRS. • CRS developments are assessed regularly to determine if there are direct or indirect impacts to the FI's operations or specific markets, and such developments are communicated to the appropriate local and global stakeholders on a timely basis.
Documentation and record-keeping	FIs prepare and keep documentation of their business operations, due diligence processes and reporting procedures that are related to the CRS and ensure that such documentation is accessible to the tax administration and kept in a secure environment.
CRS Governance and Implementation – Key sector-specific issues to be considered regarding external service providers	Roles, responsibilities and accountability' and 'Documentation' • The FI has clear delineations of its functions as they pertain to CRS. • FIs have the same understanding of any CRS functions produced by their external service providers. • The FI has a documented assessment of its applicable functions, a description of such functions, identified parties

ELEMENT	HALLMARK / DESIRED OUTCOME
	responsible for the functions and where the responsible personnel reside. • FIs prepare and keep documentation of their business operations, due diligence processes and reporting procedures that are related to the CRS and ensure that such documentation is accessible to the tax administration and kept in a secure environment.

B. Ensuring FIs have fulfilled Due Diligence Obligations

ELEMENT	HALLMARK / DESIRED OUTCOME
Accounts are identified and monitored	General • FIs have systems and processes to identify which due diligence procedures should be applied to a particular account. Excluded accounts • FIs should be able to demonstrate that the only accounts that they have excluded from due diligence and reporting are those that meet the definitions and/or requirements of Excluded Accounts as set out in domestic law. Change of circumstances • The FI has processes in place to monitor and identify each change of circumstances and to follow up with the necessary due diligence processes.
Compliance with rules on pre-existing individual accounts	a. Residence address test – Lower value accounts (i) FIs should have sufficient processes in place to ensure that they only apply the residence address test to Pre- existing Individual Accounts

ELEMENT	HALLMARK / DESIRED OUTCOME
	where there is a current address for the Account Holder, and that address is based on acceptable Documentary Evidence.
	(ii) FIs should demonstrate that they have identified all systems where account details are maintained, and all forms in which account holder address is captured, insufficient detail to ensure that Reportable Jurisdictions can be identified.
	b. Electronic Record search The Electronic Record Search was carried out in all circumstances.
	c. Paper record search (i) The FI should have processes in place to identify where it DOES, and where it does NOT hold all required indicia in an electronically searchable format for pre-existing High Value Accounts.
	(ii) The FI should also have processes in place to ensure that a Paper Record Search is undertaken for those High Value Accounts where the FI does NOT hold all the required information in an electronic format. This includes a search of the master file and, to the extent that this information is not contained in the current master file, any other specified documents.
	d. Undocumented accounts CRS only: The FI has adequate processes to correctly identify and report any undocumented accounts. Where accounts are undocumented, the FI has systems and

ELEMENT	HALLMARK / DESIRED OUTCOME
	rules to ensure that they continue to fulfil ongoing obligations in respect of these accounts, including the domestic reporting of information on such accounts.
Compliance with rules on new individual accounts	a. Obtaining and validating self certifications The FI has processes in place for obtaining and validating self-certifications in the case of all New Individual Accounts, unless an exception explicitly foreseen in CRS or FATCA applies. b. RBI/CBI Schemes The FI has systems in place that can take into account all relevant information available to determine whether it has reason to know that a self-certification or Documentary Evidence is incorrect or unreliable.
Compliance with rules on pre-existing entity accounts	General • The FI is able to correctly determine whether the Entity and/or its Controlling Persons are Reportable Persons. • The FI has processes in place to seek self-certifications from the Account Holder or Controlling Persons to identify whether the Controlling Persons are Reportable Persons. Reliance on AML/KYC procedures • Where FIs rely on information collected and maintained pursuant to AML/KYC procedures, the FI should be able to demonstrate that those AML/KYC procedures were carried out correctly.
Compliance with rules on new entity accounts	The FI has processes in place for obtaining and validating self-certifications in the case of all New Entity Accounts, unless an exception applies or it can be determined based on

ELEMENT	HALLMARK / DESIRED OUTCOME
	information in the possession of the Financial Institution or that is publically available that the Entity is not a Reportable Person.

C. Reporting Systems and Procedures

ELEMENT	HALLMARK / DESIRED OUTCOME
Reporting systems	FIs have systems and procedures in place to ensure the required information is being collected, processed, and stored in an appropriate manner.
Data extraction and report/return preparation	FIs extract complete and accurate CRS data and prepare reports/returns in accordance with the updated CRS XML schemas as adopted by the tax administration.
Submission of reports/returns	The FI ensures that the CRS report/return is reviewed and submitted to the tax administration in a timely manner.
Managing amendments, cancellations and error notifications of report/return	The FI ensures that corrected data and submission errors are addressed, and resubmissions are completed in a timely manner.

D. Statistics of Reportable Accounts

The objective of this statistic is to determine whether there are any discrepancies in the number and type of accounts reported. This include matching the statistic obtained with the report submitted by the FIS.

A.	Number of new individual accounts		Number of self-certifications obtained		Number of accounts with TIN reported		Number of accounts with DOB reported	
B.	Number of preexisting individual accounts		Number of self-certifications obtained		Number of accounts		Number of accounts	

					with TIN reported		with DOB reported	
C.	Number of new entity accounts		Number of self-certifications obtained		Number of accounts with TIN reported		Number of passive non-financial entities	
D	Number of preexisting entity accounts		Number of self-certifications obtained		Number of accounts with TIN reported		Number of passive non-financial entities	
	Total number of accounts reported							

4.1.3 Risk Treatment

After analysing the underlying risks and its factors, Revenue Divison would design the appropriate risk treatment on a case-by-case basis. Using the same example in paragraph 4.1.2 above, there are different root-causes leading to non-compliance. For the confusion of definition of undocumented accounts, RD may consider using a broad-based solution such as education or outreach programs to address the risk. On the latter root-cause, Revenue Divison would apply different risk treatment to address the same risk relating to the reporting of undocumented accounts.

Revenue Divison may issue recommendations for the reporting BDFI to address the gaps in its CRS compliance. Revenue Divison would also work with the reporting BDFI to set clear plans to mitigate risks or remedy deficiencies within a specified timeline. The reporting BDFI are expected to consider implementing the recommendations and undertake timely corrective actions.

4.1.4 Monitoring

To monitor progress of the recommendations implementation, Revenue Divison may follow up with the reporting BDFI and request for further explanations and/or documentation. Revenue Divison would provide the information necessary to support and assist reporting BDFI in being voluntarily compliant with CRS. In cases where Revenue Divison remains dissatisfied with reporting BDFI's efforts to correct its measures in complying with CRS, Revenue Divison will not hesitate to take deterrent measures such as issuing

warnings and imposing penalties on errant reporting BDFI that choose to be non-compliant.

5.   CONCLUSION

5.1   Reporting BDFI are strongly recommended to use this guidance to assess their level to CRS compliance and address any gaps in their implementation of CRS in Brunei Darussalam. Revenue Divison encourages voluntary compliance from the reporting BDFI to effectively implement the CRS requirements. In doing so, Revenue Divison will provide the information necessary to support and assist reporting BDFI with the CRS obligations. Revenue Divison would also encourage for reporting BDFI to voluntarily surface any issues encountered when implementing CRS compliance so to resolve the issues and effectively implement CRS obligations for both.

6.   CONTACT INFORMATION

7.1   For enquiries and feedback on this guidance, kindly submit via email to international.revenue@mofe.gov.bn or contact via telephone at +673 2383925.