

Common Reporting Standards (CRS) Frequently Asked Questions

For Momentum Retail (excluding Momentum Wealth International)

General CRS questions

1. What is the CRS?

“CRS” is the abbreviation for “Common Reporting Standards”. The Common Reporting Standards (“CRS”) is an Organisation of Economic Co-Operation and Development (“OECD”) initiative that encourages the exchange of information on a global scale between revenue authorities in order to ensure completeness of income reported by taxpayers who have investments outside their country of tax residence. The CRS is a spin-off from US Foreign Account Tax Compliance Act (“FATCA”) that requires tax reporting on US investors or entities controlled by US investors who hold financial accounts outside the US where non US participating jurisdictions have entered into agreements to do so.

2. Does the CRS replace FATCA?

No.

The CRS is a separate legal instrument. The due diligence procedures required for the CRS and FATCA are different in certain instances, but the manner in which the data will be reported to the Home Country Tax Authorities (HCTA) is the same.

3. When did the CRS come into effect?

The CRS was enacted by the OECD in June 2014.

Jurisdictions that agree to participate in the automatic exchange of information (AEOI) need to legislate the CRS into domestic law.

South Africa legislated the CRS Regulations on 1 March 2016.

Guernsey legislated the CRS Regulations on 1 January 2016.

4. Who is reportable under the CRS?

Any foreign persons who are tax resident in a reportable jurisdiction or reportable country and have financial accounts with financial institutions inside the reportable jurisdiction will be reportable.

5. What is a financial institution?

Financial institutions will fall into one of the following four categories – Depository Institutions (e.g. Banks); Custodial Institutions (e.g. STRATE, CREST, Euroclear, etc.), Investment Entities (e.g. Asset Managers, Collective Investment Schemes, Private Equity Funds, etc.) or Specified Insurers (e.g. Long-Term Insurers).

6. What are “Financial Assets”?

The term “Financial Asset” includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a

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futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract. The term “Financial Asset” does not include a non-debt, direct interest in real property.¹

7. Will financial institutions be required to enter into separate agreements with foreign revenue authorities?

No.

Unlike FATCA that requires financial institutions who are located in non-Intergovernmental (IGA) countries to enter into Foreign Financial Institution (“FFI”) Agreements with the Internal Revenue Service (“IRS”), the CRS does not require Reporting Financial Institutions (RFIs) to enter into separate agreements with participating jurisdictions.

The CRS requires RFIs to report information to their Home Country Tax Authorities (HCTAs) who in turn exchange information with other revenue authorities in participating jurisdictions.

8. Is there withholding under the CRS?

No.

The exchange of information under the CRS is voluntary per participating jurisdiction. This means that if a jurisdiction chooses not to participate, it will not be penalised financially. (US FATCA levies a 30% withholding on US sourced income of non-participating Financial Institutions and recalcitrant account holders.)

Where a jurisdiction agrees to exchange information, and such exchange is legislated, all RFIs within that jurisdiction will be obligated to provide information on reportable persons. Where a RFI refuses to provide the required information, then the HCTA may penalise that RFI in accordance with the relevant in-country penalties applicable.

9. How does the CRS work?

Jurisdictions wishing to participate in the automatic exchange of information may voluntarily sign the Multilateral Competent Authority Agreement (“MCAA”). The MCAA governs the manner in which information will be exchanged, similar to the FATCA IGA, but on a multilateral basis as opposed to bilateral. Where jurisdictions experience legal impediments with regards to the automatic exchange of information, then they will need to enter into bilateral agreements over and above the MCAA. These bilateral agreements may either be reciprocal or non-reciprocal.

Reciprocal is where both jurisdictions will exchange information.

Non-reciprocal is where only one jurisdiction will provide information, while the other will not.

10. Which jurisdictions currently participate in the CRS?

MMI Holdings has a presence in the following participating jurisdictions:

- Ghana;
- Gibraltar;
- Guernsey;
- India;
- Luxembourg;
- Mauritius;
- South Africa; and
- United Kingdom.

For an updated list of participating jurisdictions please see: <http://www.oecd.org/ctp/exchange-of-tax-information/MCAA-Signatories.pdf>

¹ CTPA/CFA/NOE2(2014)34/REV1/CONF point 7 page 31

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11. What is the “Wider Approach”?

The OECD have recognised that it may be expensive for RFIs to continually update their systems and processes each time a new participating jurisdiction is added to the list of signatories. For this reason HCTAs may implement the “wider approach” that requires RFIs to gather information on all foreign investors and not just for those investors whose jurisdictions appear on the MCAA signatory list.

RFIs may send all foreign investor information to their HCTA. The HCTA will however only exchange information with MCAA signatories.

12. Are Financial Institutions in Non-Participating jurisdictions reportable?

Only Investment Entities located in non-participating jurisdictions are reportable under the CRS. These investment entities must be reported as Passive Non-Financial entities (PNFEs) for which the controlling persons must also be reported.

Other than the above, the concept of Non-Participating Financial Institution (NPMFI) does not exist in the CRS regime.

13. What is the impact of the CRS on the MMI Group?

Affected financial institutions in the MMI Holdings group (MMI) are required to submit an annual report to their HCTA on all financial accounts held directly or indirectly by Foreign Persons that the HCTA will submit to the revenue authorities located in participating jurisdictions.

MMI has made a commitment to being compliant with the CRS in all countries in which we operate and we will be reviewing our affected existing customer base to confirm the CRS status of our clients and where necessary to contact our clients in order to obtain further information and documentation.

New account opening procedures for affected products must be changed to ensure that reportable persons are identified and reported.

14. What is a “Reportable Person”?

A reportable person is a foreign individual, a passive non-financial entity (PNFE) with foreign controlling persons, or an investment entity in a non-participating jurisdiction.

15. What is meant by “Foreign”?

A foreign person is any natural person or entity who has tax obligations to a foreign revenue authority besides the HCTA.

16. What is a PNFE?

A Passive Non-Financial Entity (PNFE) is a passive investment vehicle that earns more than 50% of its annual income in the form of passive income.

17. What is “Passive Income”?

Passive income would generally be considered to include the portion of gross income that consists of:

- a) Dividends;
- b) Interest;
- c) Income equivalent to interest;
- d) Rents and royalties, other than rents and royalties derived in the active conduct of a business conducted, at least in part, by employees of the NFE;
- e) Annuities;
- f) The excess of gains over losses from the sale or exchange of Financial Assets that gives rise to the passive income described previously;

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- g) The excess of gains over losses from transactions (including futures, forwards, options, and similar transactions) in any Financial Assets;
- h) The excess of foreign currency gains over foreign currency losses;
- i) Net income from swaps; or
- j) Amounts received under Cash Value Insurance Contracts.

Notwithstanding the foregoing, passive income will not include, in the case of a NFE that regularly acts as a dealer in Financial Assets, any income from any transaction entered into in the ordinary course of such dealer's business as such a dealer.²

18. What is a "Controlling Person"?

The term "Controlling Persons" means the natural person(s) who exercises control over the Entity. 'Control' over an Entity is generally exercised by the natural person(s) who ultimately has a controlling ownership interest in the Entity. A 'control ownership interest' depends on the ownership structure of the legal person and is usually identified on the basis of a threshold applying a risk-based approach (e.g., any person(s) owning more than a certain percentage of the legal person, such as 25%). Where no natural person(s) exercises control through ownership interests, the Controlling Person(s) of the Entity will be the natural person(s) who exercises control of the Entity through other means. Where no natural person(s) is identified as exercising control of the Entity, the Controlling Person(s) of the Entity will be the natural person(s) who holds the position of senior managing official.

In the case of a trust, the term "Controlling Persons" means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust. The settlor(s), the trustee(s), the protector(s) (if any), and the beneficiaries, must always be treated as Controlling Persons of a trust, regardless of whether or not any of them exercises control over the trust. In addition, any other natural person(s) exercising ultimate effective control over the trust (including through a chain of control or ownership) must also be treated as a Controlling Person of the trust. With a view to establishing the source of funds in the account(s) held by the trust, where the settlor(s) of a trust is an Entity, RFIs must also identify the Controlling Person(s) of the settlor(s) and report them as Controlling Person(s) of the trust. For beneficiaries of trusts that are designated by characteristics or by class, RFIs should obtain sufficient information concerning the beneficiaries to satisfy the RFI that it will be able to establish the identity of the beneficiaries at the time of the pay-out or when the beneficiaries intends to exercise vested rights. Therefore, that occasion will constitute a change in circumstances and will trigger the relevant procedures.

In the case of a legal arrangement other than a trust, the term "Controlling Persons" means persons in equivalent or similar positions as those that are Controlling Persons of a trust. Thus, taking into account the different forms and structures of legal arrangements, RFIs should identify and report persons in equivalent or similar positions, as those required to be identified and reported for trusts.

In relation to legal persons that are functionally similar to trusts (e.g., foundations), RFIs should identify Controlling Persons through similar customer due diligence procedures as those required for trusts, with a view to achieving appropriate levels of reporting.³

19. How to identify reportable persons

The following indicators may be used to identify reportable persons.

19.1 Individuals:

- a) Designation of account holder as a resident of a Foreign Jurisdiction;
- b) Current mailing or residence address (including a post office box) in a Foreign Jurisdiction;
- c) One or more telephone numbers in a Foreign Jurisdiction and no telephone number in-country;
- d) Standing instructions (other than with respect to a Depository Account) to transfer funds to an account maintained in a Foreign Jurisdiction;

² CTPA/CFA/NOE2(2014)34/REV1/CONF point 126 page 137

³ CTPA/CFA/NOE2(2014)34/REV1/CONF point 134 page 139

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- e) Currently effective power of attorney or signatory authority granted to a person with an address in a Foreign Jurisdiction; or
- f) A “hold mail” instruction or “in-care-of” address in a Foreign Jurisdiction if the RFI does not have any other address on file for the Account Holder.

19.2 Entities:

- a) Foreign place of incorporation or registration;
- b) Foreign address; or
- c) Foreign telephone number.

Entities that are not foreign may still be required to be reported. An entity that is a passive investment vehicle (Passive Non-Financial Entity (PNFE)) must identify its controlling owners or shareholders if any of these controlling persons are foreign persons.

20. Self-certification

MMI is required to collect additional information from clients who have been identified as reportable persons. The additional information includes:

- Certification of tax residency;
- Tax Identification Number (TIN); and
- Place of birth (this includes both City and Country of Birth)/inception.

The burden to prove the tax residency resides with the client, but the RFI must apply reasonability tests using Anti-Money Laundering/ Know Your Client (AML/KYC) information against the certifications provided. Self-certification must be performed on all new accounts after effective date. If the self-certification is not completed immediately upon account opening then the RFI has 90 days to obtain the self-certification.

21. What information must be reported to the HCTA?

Information to be exchanged for natural persons and reportable controlling persons of entities are:

- Name;
- Address;
- TIN;
- Date of Birth;
- Place of Birth (City and Country);
- Jurisdiction of tax residence;
- Account Number;
- Name of RFI;
- Identification number of the RFI;
- Account Balance: Where account balances are negative, these account balances must be reported as zero. The account balance should not be reduced by any liabilities or obligations incurred by the account holder.
- Dividends, Interest, Other income, and Gross Proceeds on the sale of Financial Assets.

Information to be exchanged for entities:

- Name;
- Address;
- TIN;
- Account Number;
- Name of RFI;
- Account Balance: Where account balances are negative, these account balances must be reported as zero. The account balance should not be reduced by any liabilities or obligations incurred by the account holder. Entire balance per controlling person of a Passive NFE must be reported.
- Dividends, Interest, Other income, and Gross Proceeds on the sale of Financial Assets.

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22. What happens if we find indicia for more than one jurisdiction?

If more than one jurisdiction's indicia are found in account holder data then the RFI must first request that the account holder certifies that the information is correct. This provides the account holder with an opportunity to correct any errors in their information. If the account holder is not contactable or confirms that information is correct, then the RFI must report the account holder as tax resident in each jurisdiction for which it found indicia.

For example, an account holder has a French residential address, an Italian telephone number and a Spanish TIN; then the RFI must report the account via the HCTA to France, Italy and Spain.

23. Must TINs be collected?

The reporting of TINs becomes mandatory 2 years after effective date.

South Africa – TINs are reportable by 31 May 2019

Guernsey – TINs are reportable by 30 June 2019

24. Are there any De Minimis thresholds under the CRS?

The only de minimis threshold available under the CRS is for pre-existing entity accounts of \$250,000 for accounts opened prior to the effective date.

25. What is an “Undocumented Account”?

The term “undocumented account” pertains to an individual, pre-existing account that only has a “hold mail” or “in-care-of” address.

If the RFI is unable to obtain any further indicia or documentary evidence from the account holder then the account must be reported as an undocumented account to the HCTA.

The HCTA will maintain a record of undocumented accounts reported by the RFI. If the number of undocumented accounts increases on an annual basis, then the RFI will be audited by the HCTA.

26. Are Dormant Accounts reportable under the CRS?

No, dormant accounts are excluded from CRS reporting.

27. Reporting Deadlines

27.1. South Africa

High Value pre-existing accounts and new accounts opened from 1 March 2016 are due to be reported to SARS by 31 May 2017.

Lower value pre-existing accounts, High Value pre-existing accounts and new accounts opened from 1 March 2017 are due to be reported to SARS by 31 May 2018.

27.2. Guernsey

High Value pre-existing accounts and new accounts opened from 1 January 2016 are due to be reported to the Guernsey Revenue Authorities by 30 June 2017.

Lower value pre-existing accounts, High Value pre-existing accounts and new accounts opened from 1 January 2016 are due to be reported to Guernsey Revenue Authorities by 30 June 2018.

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28. Changes in Definitions

28.1. Cash Value Insurance Contract

The definition no longer includes the \$50,000:

The term “Cash Value Insurance Contract” means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value.

The definition has been extended:

The term “Investment Entity” means any Entity:

a) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:

i. trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;

ii. individual and collective portfolio management; or

iii. otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; or

b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph A(6)(a).

An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph (a), or an Entity’s gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for purposes of subparagraph (b), if the Entity’s gross income attributable to the relevant activities equals or exceeds 50 per cent of the Entity’s gross income during the shorter of:

(i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or

(ii) the period during which the Entity has been in existence. The term “Investment Entity” does not include an Entity that is an Active NFE.

28.2. Related entity

*An Entity is a “Related Entity” of another Entity if either Entity controls the other Entity, or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50 per cent of the vote **and** value in an Entity. [Emphasis added] FATCA refers to vote **or** value. [Emphasis added]*

How the CRS Impacts Individual Clients

1. I am a U.K. Person, how does CRS affect me?

If you have tax obligations in a foreign jurisdiction, you will be required to provide MMI with additional information and documentation. You will need to provide a self-certification that confirms your tax residency, TIN and place of birth.

MMI is required to report your account information to the Revenue Authorities on an annual basis. The local revenue authorities will exchange the information with the revenue authorities in the participating foreign jurisdiction in which you have tax obligations.

For further information on how CRS may affect you, MMI recommends that you contact a professional tax advisor.

2. What happens if a joint account is held by a Foreign Person and a Local Resident Person?

A joint account that has a Foreign Person is treated as a foreign account and the entire account balance is attributable to each joint owner. For example, if your account has a balance of \$500,000 and you have a local and foreign person holding the account, then the foreign person is reportable with a balance of \$500,000.

3. I am a tax resident in the local jurisdiction and I have no connections to foreign jurisdictions whatsoever. I have an investment account with MMI, am I subject to the CRS?

No.

Only Foreign Persons are subject to being reported under the CRS.

4. I am a resident of the local jurisdiction. I use my child's address/post office box in the U.K. to buy things on-line. Am I subject to the CRS?

No.

You may be requested to provide a self-certification stating that you are not a Foreign Person.

5. I am a resident of the local jurisdiction. I have no connections to foreign jurisdictions, except that I spend two months a year in the Australia visiting my children. Am I subject to the CRS?

No.

You may be considered to be a foreign person if you spend 183 days or more in abroad during a calendar year. MMI advises you to consult a professional tax advisor to confirm your status.

6. I am a resident in a local jurisdiction, but I have lived abroad in the past, thereby obtaining a foreign passport, but I no longer live abroad. Am I subject to the CRS?

Being reportable depends on your tax residence.

Your financial account information **may** be exchanged with the participating foreign jurisdiction to ensure that your tax obligations have been met. Generally, persons with dual citizenship/residency will receive relief from double taxation based on the Double Taxation Agreements that may exist between countries. It is important that you provide MMI with a self-certification stating whether you have tax obligations in a participating jurisdiction.

MMI advises you to consult a professional tax advisor if you require any further tax advice.

7. Will my personal information be protected under the Protection of Personal Information Bill (POPI)?

Yes.

Information exchanged between revenue authorities must meet appropriate safeguards. Data must be encrypted. Information may only be used for tax purposes by authorised persons.

How the CRS Impacts Entity Clients

1. I am a foreign legal entity. How does the CRS affect me?

If you are tax resident in a foreign jurisdiction, you will be required to provide MMI with additional information and documentation. You will need to provide a self-certification that confirms your tax residency, TIN and place of incorporation.

MMI is required to report your account information to the Revenue Authorities on an annual basis. The local revenue authorities will exchange the information with the foreign revenue authorities in the participating jurisdiction in which you have tax obligations.

For further information on how CRS may affect you, MMI recommends that you contact a professional tax advisor.

2. An entity that is a local company that is 100% held by another local entity and other local persons only, has a financial account with MMI. Is it subject to the CRS?

No.

3. A shareholder or controlling person of an entity is a local tax resident, but also has foreign tax residency, and owns less than 10% of the legal entity that has an account with MMI. Is it subject to the CRS?

No.

Shareholders or controlling persons must hold 25% or more in vote and value and be tax resident in a reportable jurisdiction in order to be reportable for CRS purposes.

4. A shareholder or controlling person of an entity is a local tax resident, but also has foreign tax residency, and owns 100% of an entity that has an account with MMI. Is it subject to the CRS?

Yes.

Shareholders or controlling persons must hold 25% or more in vote and value in order to be reportable for CRS purposes. Additional information will be required.