Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard Public Consultation Document

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UK Finance is the collective voice for the banking and finance industry.

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General Comments

We welcome the opportunity to respond to the Organisation for Economic Co-operation and Development's ('OECD') 'Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard Public Consultation Document' ('the Consultation Document').

Overall, UK Finance Members ('Members') welcome the measured approach the OECD has taken towards improving the operation of the Common Reporting Standard ('CRS') and modernising tax transparency regulations.

Members are most impacted by the proposed amendments to the CRS and so the majority of our comments are on this element of the Consultation. However, we have provided comments on the Crypto-Asset Reporting Framework ('CARF') where appropriate. In particular we would like to see more consideration of the overlap between CRS and CARF reporting and the impact on Financial Institutions who are already reporting under CRS and have invested considerable resources into building systems and training staff to be CRS compliant. We stress the vital importance of consistency between the application of CRS and CARF.

CRS Amendments

Members note that a number of the CRS amendments have been proposed by some participating jurisdictions some time ago. Our comments therefore focus on the practicalities of implementing these changes, balanced against their usefulness.

Members are strongly of the opinion that the OECD should consider the wider views of industry regarding the approach to implementation of these new requirements. It is important that the OECD sets an approach and timeframe that balances the desire to collect relevant information quickly, with the implementation time required by business, both 'traditional' financial services and fintech. Implementation of systems changes typically requires at least 18 months and often two years.

Crypto-Asset Reporting Framework

The CARF rules should be aligned with CRS as closely as possible. As existing Financial Institutions can also become Crypto Asset Service Providers, it is essential that existing CRS documentation for clients can be used for CARF otherwise customers will need to documented twice for no apparent good policy reason. More details on this are included in this submission. Where Financial Institutions treat Crypto Assets of customers as financial accounts under CRS, the CRS reporting rules should be applied by the CRS Financial Institution – not the CARF rules. Otherwise Financial Institutions would have to operate 2 regimes completely separately even though both regimes cover the same main area of concern – namely that assets and income are disclosed to the jurisdiction of tax residence of the (account) holder.

Members noted that the CARF follows DAC7 in that it requires financial institutions to refresh customer data every 3 years. We would ask for CARF to follow the CRS self-certification and change-in-circumstance standard which would make the 3 year rule obsolete as customers would be refreshing their information in real time. Furthermore the differences between definitions in CARF and CRS should be limited only to situations where there is clear policy reason.

Members involved in the merchant solution sector have specific comments regarding the proposal by the OECD to require all intermediaries facilitating the exchanges of Crypto-Assets to collect and report tax-relevant information on all Crypto-Asset transactions as disproportionate and potentially an impediment to innovation. We believe that the requirement to perform due diligence and, potentially, report under CARF should sit with those who have KYC and AML requirements and hold information on the Crypto-Asset holders under existing provisions.

The OECD proposal would effectively mean that a payment processor would be required to treat a retail client of a merchant as their own clients, which may create new significant contractual and data protection hurdles. Payment processors are currently not required to collect and report such information on fiat currency transactions within the current regulatory framework. This proposal also appears to go significantly beyond the FATF Travel Rule, which only covers Crypto-Asset transactions valued at $1,000 or more, and only applies to Virtual Asset Service Providers (VASPs) such as exchanges and wallet providers.

Members involved in this sector also have concerns that requiring all entities involved in a Crypto-Asset transaction ecosystem to collect the proposed data, could create a 'honeypot' for hackers and generate vulnerabilities and high risks for consumers' privacy and data protection.

Finally, we note that the Consultation Document is lengthy and wide-ranging. Many of the traditional banks are yet to offer relevant products and so the theoretical nature of the questions makes it difficult to make a full representation or understand how the market and products would operate. We therefore only offer responses to specific questions which are currently relevant to our Members.

Specific Questions

Crypto-Asset Reporting Framework

Crypto-Assets in scope

1. **Does the CARF cover the appropriate scope of Crypto-Assets? Do you see a need to either widen or restrict the scope of Crypto-Assets and, if so, why?**

It would be helpful to clarify in the CARF commentary that blockchain ledger records used entirely within a single banking/financial group for internal account records purposes that are not accessible by external parties would not be a “distributed ledger” and therefore not a Crypto Asset as defined under Section IV A 2. and therefore also not a Relevant Crypto Asset. Any store of value would be subject to CRS requirements and obligations.

Whilst we understand the preference to future proof, we are of the view that broadening the definition of a crypto asset to include reference to “similar technology” to that which uses cryptographically secured distributed ledger technology could create inconsistencies with what is interpreted as a “similar technology”, therefore undermining the stated policy objective and purpose of CARF when transposed into domestic law.

2. **Does the definition of Closed-Loop Crypto-Assets contain the correct criteria for identifying CryptoAssets that operate in a closed-loop environment?**

Financial Institutions may use block chain technology between each other to settle transactions and store data. Therefore we request that the following situation is treated as low risk as a type of “Closed -Loop Crypto-Asset”:

Block chain digital tokens used by Financial Institutions to enable anytime settlement between Financial Institutions where the tokens are linked to a fiat currency, the value can only be paid into accounts in Financial Institutions and the token holders are treated as financial accounts by a CRS Jurisdiction Financial Institution.

3. **Are you aware of existing types of Crypto-Assets, other than Closed-Loop Crypto Assets or Central Bank Digital Currencies that present a low risk from a tax compliance perspective and should therefore be excluded from the scope?**

No comment at this stage.

4. **An NFT is in scope of the FATF Recommendations as a virtual asset if it is to be used for payment or investment purposes in practice. Under the Crypto-Asset Reporting Framework, an NFT would need to represent value and be tradable or transferable to be a Crypto-Asset. On that basis it is expected that relevant NFTs would generally be covered under both the CARF (as a Crypto-Asset) and the FATF Recommendations (either as a virtual asset or a financial asset). Are you aware of any circumstances where this would not be the case, in particular, any NFTs that would be covered under the definition of Crypto-Assets and that would not be considered virtual assets or financial assets under the FATF Recommendations or vice versa?**

No comment at this stage.

Intermediaries in scope

1. **Do you see a need to either widen or restrict the scope of the intermediaries (i.e. Reporting CryptoAsset Service Providers)?**

We note that a broad definition of intermediaries could limit competition and therefore innovation. Specifically, those who supply technical services to enable exchanges between crypto-assets are remote to the underlying Crypto-Asset User. We note that regulations such as the Payments Services Directive 2 which excludes technical service providers from regulated reporting.

If the definition remains as proposed, it could represent an onerous reporting obligation that could act as a barrier to entry into the market for innovators.

2. **Are there any circumstances in which multiple (affiliated or unaffiliated) Reporting Crypto-Asset Service Providers could be considered to effectuate the same Relevant Transaction with respect to the same customer? If so, which types of intermediaries (e.g. the one with the closest relationship with the client) would be best placed to ensure reporting?**

We are of the view that the entity that has the direct relationship with the Crypto-Asset User to either acquire or dispose of the Crypto-Asset is the entity that should have the primary reporting obligation as they will be the entity best placed to provide either the acquisition or disposal data proposed in these amendments to the rules.

3. **Do the nexuses described in paragraph A of Section I of the CARF ensure a comprehensive coverage of all relevant Reporting Crypto-Asset Service Providers? If not, under what circumstances would relevant Reporting Crypto-Asset Service Providers not have a nexus in any jurisdiction? In your view, should this be a potential concern, and if so, what solutions could be considered to address it?**

No comment at this stage.

Reporting requirements

The CARF requires reporting with respect to Relevant Transactions in Crypto-Assets on the basis of their fair market value, determined and reported in a single Fiat Currency at the time of each Relevant Transaction.

1. **Do intermediaries maintain valuations on the equivalent Fiat Currency fair market values of CryptoAssets? Do you see challenges in reporting on the basis of such fair market value? If yes, what do you suggest to address them?**

Intermediaries – especially technical service providers who may have no role in the commencement or conclusion of the underlying transaction, do not maintain valuations on the equivalent Fiat Currency fair market value. There are several reasons for why this is the case, not least the fact that not all crypto asset transaction services are tied to a corresponding Fiat Currency fair market value. The challenge with reporting such is that all parties to a single underlying transaction would have to agree the Fiat Currency fair market value to ensure consistent reporting. This may not be achievable because the intermediary will in all probability not have a contractual relationship with all parties under which they can agree the Fiat Currency fair market value.

2. **Are there preferable alternative approaches to valuing Relevant Transactions in Crypto-Assets?**

No comment at this stage.

3. **Are there specific difficulties in applying the valuation rules for illiquid tokens, for example, NFTs or other tokens that may not be listed on a marketplace, to identify a fair market value? If so, please provide details of any preferable valuation methods that could be adopted within the CARF.**

Members noted that fair market value for NFTs fluctuate frequently within the day, and therefore technical service intermediaries do not possess the operational capabilities to monitor such for the purpose of identifying "fair market value".

4. **Regarding Reportable Retail Payment Transactions, what information would be available to Reporting Crypto-Asset Service Providers pursuant to applicable AML requirements (including the FATF travel rule, which foresees virtual asset service providers collecting information on originators and beneficiaries of transfers in virtual assets) with respect to the customers of merchants in particular where the customer does not have a relationship with a Reporting Crypto-Asset Service Provider, for whom it effectuates Reportable Retail Payment Transactions? Are there any specific challenges associated with collecting and reporting information with respect to Reportable Retail Payment Transactions? What measures could be considered to address such challenges? Would an exclusion of low-value transactions via a de minimis threshold help reducing compliance burdens? If so, what would be an appropriate amount and what measures could be adopted to avoid circumvention of such threshold by splitting a transaction into different transactions below the threshold?**

A de minimis threshold would be consistent with similar transaction monitoring and reporting legislation, most notably the exemption from strong customer authentication and transaction risk monitoring for payments below a prescribed amount under the Payment Services Directive 2 in Europe.

5. **Concerning the requirement to report transfers based on certain pre-defined transfer types (e.g. hardforks, airdrops due to other reasons, loans or staking), do Reporting Crypto-Asset Service Providers have the knowledge necessary to identify, and classify for reporting purposes, transfers effectuated according to such transfer types? Are there any other transfer types that typically occur and that are separately identified for customers or for other purposes?**

No comment at this stage.

6. **Concerning the proposal for reporting with respect to wallet addresses, are there any specific challenges for Reporting Crypto-Asset Service Providers associated with the proposed requirement to report wallet addresses that are the destination of transfers sent from a customer's wallet maintained by a Reporting Crypto-Asset Service Provider? Do Reporting Crypto-Asset Service Providers have, are they able to obtain, information to distinguish wallet addresses associated with other**

Reporting Crypto-Asset Service Providers from wallet addresses that are not associated with another Reporting Crypto-Asset Service Provider? The OECD is also considering to require, in addition, reporting with respect to wallet addresses that are the origins of transfers to a customer's wallet maintained by a Reporting Crypto-Asset Service Provider. Is this information available and would providing it materially increase compliance burdens for Reporting Crypto-Asset Service Providers? Are there alternative requirements (e.g. reporting of the public keys associated with Crypto-Asset Users instead of wallet addresses) that could be considered to more efficiently increase visibility over transactions carried out without the intervention of the Reporting Crypto-Asset Service Provider?

No comment at this stage.

7. **Information pursuant to the CARF is to be reported on an annual basis. What is the earliest date by which information on the preceding year could be reported by Reporting Crypto-Asset Service Providers?**

No comment at this stage.

Due diligence procedures

1. **The due diligence procedures of the CARF are in large part based on the CRS. Accordingly, the CARF requires Reporting Crypto-Asset Service Providers to determine whether their Entity Crypto-Asset Users are Active Entities (corresponding largely to the definition of Active NFE in the CRS) and, on that basis, identify the Controlling Persons of Entities other than Active Entities. Would it be preferable for Reporting Crypto-Asset Service Providers to instead document the Controlling Persons of all Entity Crypto-Asset Users, other than Excluded Persons? Are there other elements of the CRS due diligence procedures that should be included in the CARF to ensure that Reporting Financial Institutions that are also Reporting Crypto-Asset Service Providers can apply efficient and consistent due diligence procedures?**

No comment at this stage.

2. **An Entity Crypto-Asset User qualifies as an Active Entity if less than 50% of the Entity's gross income is passive income and less than 50% of the assets held by the Entity produce, or are held for the production of, passive income. The Commentary on the term "Active Entity" provides that passive income includes "income derived from Relevant Crypto-Assets". Are there any specific instances in which such income (e.g. income from mining, staking, forks or airdrops) should qualify as active income?**

No comment at this stage.

3. **The CARF removes the information collection and reporting obligations with respect to Crypto-Asset Users which are Excluded Persons. The OECD is still considering whether Reporting Crypto-Asset Service Providers should be included in the definition of Excluded Persons. Against this background, would Reporting Crypto-**

Asset Service Providers have the ability to obtain sufficient information on clients that are Reporting Crypto-Asset Service Providers to verify their status?

No comment at this stage.

4. **Section III.D enumerates effective implementation requirements in instances where a Reporting Crypto-Asset Service Provider cannot obtain a self-certification from a Crypto-Asset User or Controlling Person. Notably, these requirements specify that the Reporting Crypto-Asset Service Provider must refuse to effectuate any Relevant Transactions on behalf of the Crypto-Asset User until such selfcertification is obtained and its reasonableness is confirmed. Are there potential alternative effective implementation measures to those listed in Section III.D? If so, what are the alternative or additional effective implementation measures and which persons or Entities would be best-placed to enforce such measures?**

No comment at this stage.

Other elements of the proposal

1. **Comments are also welcomed on all other aspects of the Crypto-Asset Reporting Framework.**

It is likely that existing financial institutions may over time have products that could also fall under the CARF regime. As such more detailed commentary is required to set out the interaction between the CARF and CRS regimes.

The differences between definitions in CARF and CRS should be limited only to situations where there is clear policy reason. Having similar definitions that are slightly different will be confusing to clients and financial entities and tax authorities. We set out examples below:

a. Excluded Person definition (page 17 E 1.) treats listed and regularly traded entities as non-reportable entities. CRS restricts this non-reportable Active NFE type to being listed corporations. It would be useful to align the CARF and CRS rules for consistency and clarity.
b. CRS defines a Passive NFE as requiring reporting and documentation of their Controlling Persons. CARF does not seem to have a defined term equivalent to Passive NFE (page 13 B 2.) – it is an entity that is not a Excluded Person and is not an Active Entity.

   > "2. Determine Whether the Entity has one or more Controlling Persons who are Reportable Persons. With respect to an Entity Crypto-Asset User, other than an Excluded Person, the Reporting Crypto-Asset Service Provider must determine whether it has one or more Controlling Persons who are Reportable Persons, unless it determines that the Entity Crypto-Asset User is an Active Entity,
   > based on a self-certification from the Entity Crypto-Asset User."

   It would be essential to define the equivalent entity as "Passive Entity" and align with CRS definitions in order to be practicable.
c. CARF should enable a self-certification to be provided by the Account Holder to provide the entity type status of Crypto asset holders. It is a significant ask of CASPs to try and determine Entity types only using other information. CRS type reasonableness checks could be carried out by the CASP to review the self-certification. Ideally the CRS self-certification format would be used.

Overlap of CARF and CRS reporting

Banks and Custodians who offer custodial services to their clients holding crypto assets should treat these as financial assets (rather than cash) and include them in the CRS reporting for client's custody accounts (as envisaged in paragraph 9 of the Cons Don on page 57). To implement a different reporting regime under CARF for these assets would involve FIs not only in the expense of implementation of that regime but also require amendments to their existing reporting systems to exclude those assets from CRS gross proceeds reporting (as proposed in Consultation Document page 57 paragraph 10). This does not meet the CARF's objective of capturing crypto asset activity carried out by non-traditional intermediaries who do not participate in CRS reporting (Consultation Document page 4 paragraph 4). We would argue strongly that CARF reporting by CRS intermediaries should be restricted to activities where the crypto assets are not treated as financial assets subject to CRS reporting.

CRS intermediaries who facilitate purchases and sales of crypto assets by their clients and provide custody of those assets will report the value of the crypto assets as part of the account balance and sale proceeds of these assets as gross proceeds. There needs to be guidance as to how certain crypto asset events (e.g. forking) are to be treated from CRS reporting perspective as the tax treatment of such events may differ from country to country.

Transactions by clients where the CRS intermediary knows or has reason to know that the assets will leave the CRS reporting environment via a non-exchange transaction (e.g. a request by a client to transfer crypto assets held in a custody account to an external wallet associated with a non-reporting Crypto Asset Service Provider or a CRS Intermediary) should be reported under the CARF as, in this case, there is no overlap with CRS reporting. This would require modification of the definition of "Relevant Transaction" in Section IV C.1 c) and C.4 of the CARF.

Draft amendments to the Common Reporting Standard

Specified Electronic Money Products

1. **Taking into account that the definition of "Specified Electronic Money Product" aims to cover products that do not give rise to gain or loss by reference to the underlying fiat currency, would the proposed definition cover the correct e-money products and be practically implementable? Do you see a need to either widen or restrict the scope or amend the criteria? If so, why and in which manner?**

We broadly agree with the defined e-money accounts. A "digital representation of a single Fiat Currency" will likely cover many types of e-money products. Some Members' e-money products, for example, are "multi-currency accounts" in which many fiat currencies are held within one digital account. These types of variations should be considered in terms of widening the scope to ensure all e-money products are covered as the current definition suggests that a multi-currency account would not be covered as an electronic money product given that it is not "a digital representation of a single Fiat Currency".

It would be helpful to clarify if stablecoins are included as they are not a digital representation of a single fiat currency. It is a digital asset whose value is determined by reference to a pool or a basket of underlying assets, often more than one currency.

The Consultation Document provides that the issuer of the product must be subject to supervision (by virtue of regulatory requirements to which the issuer is subject). It would be helpful to have further clarity on the meaning of ‘supervision’ given the uneven regulatory landscape.

2. **What would in your view be the appropriate account balance threshold to exclude low-risk e-money products from the scope of the CRS and why? Are there any alternative criteria to define low-risk emoney products?**

To provide a meaningful response, it would be helpful to have certain further information:

- How is “low-risk” defined?
- What is the expected monitoring requirement if a threshold were to be implemented?
- Can account balance as at year end be relied upon? Does this approach provide comfort that the customer remains low-risk or is there a concern that funds may be moved before year end so that a threshold is not exceeded?

3. **Consistent with other provisions of the CRS, the de minimis thresholds for e-money would be subject to the account aggregation rules contained in paragraph C of Section VII of the CRS to avoid circumvention of CRS reporting by spreading amounts over multiple e-money products. Alternatively, a (significantly) lower threshold could be considered, that would not be subject to the account aggregation rules. Which of the two would be the most workable option and why?**

There are a number of views amongst Members regarding the utility of a threshold. If a threshold is to be implemented, there may be logic to aligning it with a credit card threshold which prevents the accounts being used as a store of money, otherwise should be aligned with treatment of deposit accounts. This could be a limit of USD 10,000, with the ability to reduce a balance below the limit quickly without triggering reporting.

Some Members note that, under the current implementation of CRS, they have been aggregating balances already. Assuming that an aggregated balance threshold is maintained for Specified E-Money Products, the following information would be useful:

- Which currency will the threshold be denominated in?
- Is there a specified FX rate to use to determine whether that threshold is hit where balances are held in a multi-currency account?
- If we have a multi-currency account, would it be appropriate to look at the balance across all currencies at 31 December to determine if the threshold had been reached?

Excluded Accounts

1. **Do you consider the above proposal to qualify certain capital contribution accounts as Excluded Accounts useful? Are the conditions sufficiently clear and practically implementable?**

Members commented that these exclusions seemed reasonable, there might be possibilities for countries to have different conditions depending on their local legislation. It would therefore be open to the implementing jurisdiction to decide whether the timeframe should be 12 months or longer. We would also request clarification in the Commentary that, once an account ceases to be covered by this provision, the FI is not required to close the account but instead is required to treat it as a potentially reportable account.

We suggest that the last sentence in paragraph 19 be modified as below, on the basis that the FI may not have the regulatory power to ensure that the refund must be made to a Depository Account in a CRS Participating Jurisdiction.

> *"On the contrary, if the company is not established, the contributions would be refunded to the subscriber(s)."*

2. **Are there any other types of accounts or financial instruments that present low tax compliance risks and that should be added to the Excluded Account definition?**

<u>Client monies temporarily held by executing brokers and placing agents</u>

Executing brokers or placing agents may hold client monies for a short period of time (no more than 7 days) due to failed trades or administrative processing of fund subscription/redemption. These temporary accounts present low tax compliance risk due to their nature, however they fall under the definition of a Custodial Account under the OECD CRS, which places due diligence and reporting obligations on the executing brokers and placing agents whilst the information being reported is not expected to be value adding for the purpose of targeting tax evasion.

Some jurisdictions (e.g. UK, Singapore) have listed these accounts as Excluded Accounts under local CRS, it would be helpful if OECD can add this to the Excluded Account definition so consistent treatment can be applied across jurisdictions.

Treatment of non-profit Entities under the Active / Passive NFE distinction

1. **While most Active NFEs are not treated as Investment Entities even if they meet the Investment Entity definition, this carve-out does not apply to Entities that are Active NFEs by virtue of being a non-profit Entity as defined in subparagraph D(9)(h) of Section VIII. Representatives from the philanthropy sector have highlighted that this can lead to highly undesirable outcomes, requiring genuine public benefit foundations to apply due diligence procedures in respect of all beneficiaries of grant payments and report on grant payments to non-resident beneficiaries, such as for instance disadvantaged students receiving scholarships. At the same time, concerns have been expressed by governments that simply extending the carve out from the Investment Entity definition to all non-profit Entities described in Subparagraph D(9)(h) of Section VIII could give rise to situations where Investment Entities would circumvent their reporting obligations under the CRS by improperly claiming the status of non-profit Entities. Are there other measures or criteria that could be envisaged to ensure that genuine non-profit Entities are effectively excluded from reporting obligations as an Investment Entity in a manner that would not give rise to potential circumvention?**

Members have seen non-profit entities fall within the Investment Entity category due to the way they earn funds to support their endeavours. Members agree it is reasonable that if carrying on a commercial investment activity is not the core intention of their business but rather a means to an end to support a verified non-profit or charitable venture then they should also be excluded from the definition of a Financial Institution.

Members stress that the standard to be relied upon when identifying such account holders during due diligence should be made clear. For instance, this could be confirmation that the charity is registered as such in its home jurisdiction. Members also noted that some jurisdictions, such as the UK, maintain a list of registered charities.

Reliance on AML/KYC Procedures for determining Controlling Persons

1. **Are there still instances where Financial Institutions do not apply AML/KYC Procedures that are consistent with 2012 FATF Recommendation for the purpose of determining Controlling Persons of Entity Account Holders?**

Members appreciate that disclosure of the type of Controlling Persons would be useful to tax authorities. However, Members stressed that this will require systems changes which will take a significant amount of time. Members also noted that there are some jurisdictions where domestic requirements exceed FATF.

Members with business customer bases comprised largely of smaller businesses also noted that their customers are less familiar with the terminology surrounding Controlling Persons and that there is a risk of confusion and potentially the incorrect selection of Controlling Person types.

More detailed guidance on implementation of FATF rules should be included in the CRS rules – in particular referring to the complex trust structure examples in the CRS handbook and how to identify Controlling Persons. Members stressed that there should be no retrospective application of FATF requirements for entities which were not previously required to apply these rules.

Without such more detailed CRS guidance on applying FATF rules, query how tax authorities would be able to be satisfied that such entities are able to reliably implement FATF rules to carry out CRS reporting accurately.

Collection of TIN for Preexisting Accounts

1. **The inclusion of the TIN of Reportable Persons (if issued by the jurisdiction of residence) significantly increases the reliability and utility of the CRS information for tax administrations. Although not included in the current proposal, the OECD is still exploring feasible measures to ensure the collection and reporting of TINs with respect to Pre-Existing Accounts. What approaches could Financial Institutions take to collect TIN information in respect of Pre-Existing Accounts, while mitigating potential burdens for Reporting Financial Institutions?**

Members stressed the importance of parity of approach between the CRS Amendments and the original implementation of CRS. Members suggested that CRS could apply the same principle as FATCA requiring annual outreach to clients who have not provided a TIN, however that to have to do this in perpetuity would not be proportionate. Some Members commented that they would not be supportive of closing or freezing accounts of customers who are unable to provide a TIN, or applying a financial penalty to the account where such information remains absent after a specified period of time. However, where Participating Jurisdictions may look to introduce such measures, members are unanimous in agreeing that clear legislation, rather than guidance, is required in order to facilitate this. Finally, collecting information such as a missing TIN is often incredibly challenging through no fault of the Financial Institution as account holders become more

concerned over the risk of fraud and providing information they do not consider necessary. Any proactive and vocal steps which can be taken by Participating Jurisdictions to increase awareness, beyond a static online page providing generic information, would be greatly appreciated.
Members operating in the e-money space suggested the use of pre-existing consumer and business data already on file to confirm tax residency and TIN. If anything is missing, the Financial Institution would collect the additional data on a self-certification when a pre-existing client uses one of the Financial Institution’s services for the first time after implementation date of the new regulation.

Members noted that it is not clear how a Specified E-Money Product would handle customers who have not provided the required self-certification information. Under the current CRS guidance for pre-existing accounts the TIN is reportable to the extent that it is already held in records maintained by the reporting institution and if not available then reasonable efforts must be made to obtain the TIN. What is considered a reasonable effort to obtain missing TIN information for a customer? Is this still the same standard currently provided for under IEIM402320 of the HMRC guidance?

The strengthening of self-certification rules should be clarified. Some Members operating in the e-money space currently do not use any physical forms for self-certification but ask the customer to provide the required information (name, address, residency, TIN etc.) when the customer onboards. This is all done on screen and the information provided is validated and retained so these Members believe that this collection method should be sufficient.

Members noted that the Commentary should make clear that it is not necessary to solicit indefinitely where a customer does not have a TIN. It would also not be reasonable to require the closure of an account without a TIN if there is a valid reason for not having a TIN. Furthermore, Members note that provision needs to be made for individuals or entities who do not have a TIN, such as Accidental Americans. Therefore there must be a means for someone to give an explanation of why they do not have a TIN. One option that could be consider is the provision of missing TIN explanation codes.

Dual-resident Account Holders

1. **The proposed changes to the Commentary foresee that Account Holders that are resident for tax purposes in two or more jurisdictions under the domestic laws of such jurisdictions declare all jurisdictions of residence in the self-certification and that Reporting Financial Institution must treat the account as a Reportable Account in respect of each jurisdiction. The OECD is still considering whether an exception to this rule should apply where the Account Holder provides the Reporting Financial Institution with government-issued documentation to resolve cases of dual residence under applicable tax treaties. Are there instances where Reporting Financial Institutions have received such documentation and, if so, in what form (e.g. a letter issued by one or more competent authorities)?**

Members are concerned that because on-boarding of their customers is not performed by tax experts it is necessary to have clear guidance (which can be included in instructions to new customers) indicating what the clients are required to include in their self-certifications. Unless the client specifically disclosed that they are relying on a tie breaker provision of a treaty (so they are subject to tax in only one of the treaty jurisdictions) normal CRS due diligence rules should apply. We would seek an acknowledgement that where dual tax-resident account holders have previously confirmed a single tax residence by virtue of Treaty tiebreaker rules, there is no requirement for

Reporting FIs to identify and revisit these clients. The Commentary should also note that a Reporting Financial Institution should not be required to investigate entities which state a tax residence which differs from their jurisdiction of incorporation, and that this change does not create a requirement to revisit previous self-certifications.

Integrating CBI/RBI guidance within the CRS

1. **Are there any additional and/or alternative questions, other than those already in the CBI/RBI guidance, that would be useful to include in the Commentary to the CRS, for purposes of requiring Financial Institutions to determine the jurisdiction(s) of residence of a CBI/RBI holder?**

Members queried how they should go about determining whether a customer is a CBI/RBI and what would constitute a reason to know that a self cert is unreliable in these cases. As with tie breaker cases there needs to be clear guidance which can be followed by non-tax professionals. The questions suggested in the CBI/RBI guidance are too technical to assist a non-tax specialist in determining the reasonableness of the self cert.

Members provided the following comments on existing questions in the CBI/RBI guidance.

- “Have you spent more than 90 days in any other jurisdiction(s) during the previous year?”
    - Suggest to update “90 days” to “183 days” to align with the threshold that is usually adopted by jurisdictions that include a physical presence criterion under their tax residency definition.

<u>Members provided suggestions for additional questions</u>

- Suggest to add a question for the date the individual moved to the high risk RBI/CBI jurisdiction, to assist FIs with the assessment of the responses to the questions listed in the CBI/RBI guidance.

<u>Other comments on CBI/RBI guidance</u>

- Where the answer to any of the questions is yes and the jurisdiction provided has not been declared as a Jurisdiction of Tax Residence, can the OECD provide guidance or examples of what would be considered sufficient to resolve such conflict? Given the questions cover a broader scope than the tax residency rules or indicia, we’d propose for FIs to obtain a reasonable explanation for each such conflict and assess it in conjunction with other information collected under KYC, since it may not be practical for an FI to request for documentation proving the individual is not a tax resident in a jurisdiction.
- Where an individual is born in a potentially high risk RBI/CBI jurisdiction, the risk of the individual applying for RBI/CBI in such jurisdiction for tax evasion is low. Suggest to add guidance that the FI will not be required to ask the additional RBI/CBI-related questions in such scenario.
- Suggest to include all OECD identified potentially high risk RBI/CBI schemes in the same table/section, to minimise the chance of oversight (e.g. in the current OECD RBI/CBI guidance, the Panama high risk schemes are located in a different table further down the page).

Transitional Measures

1. **Are the proposed transitional measures in Section X appropriate for Reporting Financial Institutions to update their processes and systems to comply with the proposed amendments to the CRS?**

Members noted that no implementation date has been confirmed as of yet so there is not enough information to be able to confirm if the implementation schedule is reasonable. However as CRS will be new to many of the institutions touched by the changes, we would ask that a similar timeframe for implementation as the original CRS regulations is provided to allow processes and systems to adequately comply with the amendments from the proposed implementation date.

Members note that systems changes typically require a minimum of 18 months, and often at least two years, to implement. This is not only due to the complexity of adapting and testing multiple IT systems which most Financial Institutions have in place, but also because of the scale of the change presented. Furthermore, securing the necessary budget and most importantly mobilising and retaining a qualified team in an environment of ever competing priorities remains a challenge.

Finally, Members noted their preference for using full calendar years to establish the length of transitional periods.

Other comments

1. **Are there any other measures that could be taken to ensure the seamless integration of the CRS with the Crypto-Asset Reporting Framework?**

Members noted that the CARF follows DAC7 in that it requires financial institutions to refresh customer data every 3 years. We would ask for CARF to follow the CRS self-certification and change-in-circumstance standard which would make the 3 year rule obsolete as customers would be refreshing their information in real time.

2. **Comments are also welcomed on all other aspects of amendments to the CRS.**

<u>Implementation timescale</u>

Members noted that the implementation of CRS rules to cover e-money products should be done with parity to the rules already implemented for Financial Institutions offering products included under the original scope of CRS. For example, the triggering thresholds and review timeframe for pre-existing account due diligence should be applied to e-money customers as per existing rules (over $250k, two years after implementation).

<u>Reporting whether the account is a Preexisting Account or a New Account and whether a valid self-certification has been obtained</u>

Members noted that reporting of whether a valid self-certification is held is included in the amendments. They note that following a change in circumstances, a new account may not receive a new tax self-certification from the account holder. Therefore a new account not having a valid self-cert is not necessarily an indication that the Financial Institution has not met its CRS requirements. They ask that this is made clear in the Commentary. A New Account flagged with a valid self-certification may still have missing TIN(s) due to:

- valid self-certification obtained at account opening but failed reasonableness test and Account Holder failed to provide new documentation, as a result the FI derived tax residency(ies) based on information on file; or
- the jurisdiction of tax residence issues TINs but a valid reason for no TIN is provided on the self-certification

While our Members recognise that it may be helpful for the receiving jurisdictions to know if the reported tax residence was confirmed in a self-cert (rather than based on indicia) this fact would normally be indicated by the presence of a TIN relating to that tax jurisdiction. Further if there are multiple tax residences reported because of a change of circumstance, would the schema make it clear which ones were based on a self cert and which were not?

The inclusion of the requirement to report whether an account is a new or pre-existing account is not likely to be useful to the Receiving Jurisdiction. Conversely for the Reporting Jurisdiction this is only one aspect to consider in assessing if its Reporting FIs have complied with their due diligence obligations. In our view there are many circumstances where a new account is properly reported without a valid self-certification, for example the application of the residence address test in respect of a new account for a pre-existing individual account holder. Our Members feel that this aspect would be better dealt with as part of the Reporting Jurisdiction's compliance checks on its Reporting FIs rather than as part of the reporting. For large institutions if this data was not captured at the time of the pre-existing account remediation (particularly if the wider approach was not adopted) the inclusion of this as a data element for reporting is likely to involve a significant manual effort.

Furthermore, this data point is not currently collected. This would likely require a large technology change, and in many cases manual intervention to identify whether a valid self-certification has been provided leading to this being a significant change. Whilst this is already a challenge that should not be underestimated, the proposed changes will make the self-certificate requirements even more complex for entity account holders, many of whom as small and medium sized businesses find the self-certificate process daunting and do not have dedicated in house tax specialists or external advisors held on retainer to allow prompt advice to be provided to help them complete such requests. This is especially true in the current climate following the recent pandemic as business finances are stretched thin and they battle the pressures of increasing inflation and low consumer discretionary spend.

The recent measure for Guernsey Financial Institutions to report the validity of self-certificates to the Guernsey Tax Authority highlighted that clear and consistent guidance between countries is needed regarding when a self-certificate is considered valid, specifically in respect of where a TIN is absent, as well as a realistic implementation timetable with sufficient lead time. Following the initial publication of these requirements by the Guernsey Tax Authority, multiple changes to the timetable and frequency of reporting were announced piecemeal. Whilst these changes beneficially provided Financial Institutions with more time and a reduced frequency of reporting, if the end state requirements had been those originally communicated different design approaches would have been adopted at the outset greatly increasing the efficiency of the activity.

<u>Reporting of joint accounts</u>

Members acknowledge that identification of joint accounts may assist receiving jurisdictions in assessing the account balance information against the joint account holder's tax returns. However if the joint account holders are resident in different tax jurisdictions the sharing of personal data of both account holder with the two jurisdictions is problematic under data protection laws. If this data point is included it is likely to require technology changes to automate collection of this data point and there will need to be sufficient lead time to achieve this.

Reporting of type of Controlling Person

Reporting the type of Controlling Person would require Reporting FIs to introduce technology changes (as this is not a mandatory field currently). However we can see that it could be of assistance to Receiving Jurisdictions particularly in the case of trusts and trust like structures where certain controlling persons have no economic interest in the financial account. There may also be instances where the Reporting FI has not determined a valid Controlling Person type (e.g. where a a new controlling person is added to an existing account but a Financial Institution does not know their role within the Passive NFE. If the AML/KYC review is not concluded before a client is exited, a Financial Institution may be not have a role type for the Controlling Person. The CRS Commentary should refer to more complex ownership structures of some Passive NFEs as certain Passive NFE corporations may have shareholders that are trusts or partnerships and therefore such entities would have Controlling Partners that would be classified as Trustees, Settlors and the like. The CRS commentary should highlight to Tax Authorities that the Controlling Persons types will be much more varied than those just based upon the Passive NFE entity legal structure and that these would not indicate clear errors.

Reporting of derivatives referencing Crypto-Assets

At present it may be difficult to identify these products, as there is no industry service that comprehensively and systematically collates such a list. We would suggest that the authorities consider maintaining a list or indicating a standard of reasonableness for identifying such products.

OECD FAQ #5 'Definition of Active NFE – stock regularly traded on an established securities market'

We suggest adding a clarification to cater for Real Estate Investment Trusts (REITs). REITs may be in different forms (e.g. corporation, trust), a REIT that is in the form of a trust would not fundamentally present increased CRS risk compared to a REIT that is a corporation as long as they are governed by listing rules.

If you have any questions relating to this response, please contact Mark Schofield (mark.schofield@ukfinance.org.uk)

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