Further Guidance on Performing Obligations under "The Common Reporting Standard and the Due Diligence Procedures for Financial Account Information"

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To ensure the effectiveness of implementation of the Automatic Exchange of Information (AEOI) mechanism, Reporting Financial Institutions (RFIs) are required to fulfill the reporting and due diligence obligations. Pursuant to Law no.5/2017 "Legal Regime for the Exchange of Tax Information" (hereafter referred as the "EOI Law") amended by Law no.1/2022 and Law no.21/2019, and reference to the advice and information published by the Organization of Economic Cooperation and Development (OECD), the content below intends to further elaborate the requirements of Common Reporting Standard (CRS). Reporting Financial Institutions (RFIs) should take into consideration in practice to comply with the CRS requirements.

While performing the due diligence obligations, Financial Institutions (FIs) are obliged to make reference to the Commentaries[1] to the CRS (hereafter referred as the "Commentary"), CRS Implementation Handbook and CRS-related Frequently Asked Questions published by the OECD, as well as refer to the materials published by the OECD on the Automatic Exchange Portal[2].

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[1] Available at the "Common Reporting Standard and Due Diligence Procedures for Financial Account Information" Second Edition published by the OECD.

[2] https://web-archive.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/index.htm

A. General

A.1 What are the main types of Financial Accounts under CRS? Any examples?

(Added in April 2025)

There are 4 main types of Financial Accounts under CRS, including "Depository Account", "Custodial Account", "Equity Interest" and "Cash Value Insurance Contract and Annuity Contract". Relevant explanations and examples are set out below:

(1) **"Depository Account"** includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. A Depository Account also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon, for example, saving accounts, time deposit accounts etc.

(2) **"Custodial Account"** means an account (other than an Insurance Contract or Annuity Contract) that holds one or more Financial Assets for the benefit of another person, such as accounts that provide securities or bonds trading services and hold Financial Assets for others.

(3) **"Equity Interest"** means, in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership. In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive directly or indirectly a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust. Examples are interests in pension funds and trusts, etc.

(4) **"Cash Value Insurance Contract and Annuity Contract"**, where:

"Cash Value Insurance Contract" means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value and is issued and managed by a Financial Institution, for example, saving insurance. A contract (other than an Annuity Contract) under which the Financial Institution agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk, such as insurance contract that is solely consumable and without cash value, is not a Cash Value Insurance Contract.

"Annuity Contract" means a contract under which the Financial Institution agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. "Annuity Contract" also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction in which the

contract was issued, and under which the Financial Institution agrees to make payments for a term of years, such as annuity contract for retirement purpose.

Notes on Opening an Account

A.2 Is self-certification compulsory for New Accounts?

In general, an RFI with which a customer may open an account, regardless of Individual Account or Entity Account, must obtain a self-certification on an account-by-account basis.

However, an RFI may rely upon the self-certification furnished by a customer for another account if both accounts are treated as a single account. Nevertheless, an RFI may not rely on a self-certification and Documentary Evidence if the RFI knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.

For New Entity Account, unless an RFI may first reasonably determine based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person, a self-certification of the New Entity Account must be obtained.

The collection of a self-certification is part of the due diligence procedures for New Accounts. However, any Financial Account of an Account Holder, regardless of the date such Financial Account was opened, is also considered to be Preexisting Account[3] provided that all four prerequisites set forth in subparagraph C(9) of Article VIII of the "The Common Reporting Standard and the Due Diligence Procedures for Financial Account Information" (hereinafter referred to as "Instructions") are met. As a result, the due diligence procedures for such accounts may be performed with accordance to the requirements for Preexisting Accounts.

A.3 How to determine the validity and reasonableness of Self-certification?

(Modified in April 2025)

A self-certification is valid only if it is signed (or otherwise positively affirmed) by the Account Holder, the person with authority to sign for the Account Holder (in the case of Entity Account) or the Controlling Person, it is dated at the latest at the date of receipt, and it contains the information of the Account Holder or Controlling Person as required. The form or manner of a self-certification does not affect its validity. Nevertheless, the self-certification must abide by the requirements stated in paragraphs 7 through 16 of the Commentary (p.128-131) on Section IV for it to remain valid.

[3] For determining a "single Financial Account" among Preexisting Accounts, refer to subparagraph (b)(ii) on page 182 of The Commentary on "Common Reporting Standard and Due Diligence Procedures for Financial Account Information" Second Edition published by the OECD.

Once the RFI has obtained a self-certification, it must confirm the reasonableness of the self-certification, based on the information obtained in connection with the opening of the account, including any documentation obtained pursuant to AML/KYC procedures. In determining the reasonableness of the self-certification, information on the self-certification should be considered to confirm its reasonableness, such as the Account Holder's residence(s) for tax purposes, the type of Entity, TIN or the reason for no TIN is available, etc.

For example, an Account Holder certified as the tax resident of a certain jurisdiction on the self-certification without providing the corresponding TIN. However, the information included on the Automatic Exchange Portal [4] indicates that the Reportable Jurisdiction issues TINs to all tax residents. The self-certification is incorrect or unreliable due to the conflicting information, and, as a consequence, it fails the reasonableness test.

A self-certification remains valid unless the RFI knows, or has reason to know, that the original self-certification is incorrect or unreliable. This might be the case either at the time a New Account is opened by an existing customer, or as a result of a change of circumstances of the Account Holder. Where the original self-certification becomes incorrect or unreliable, the RFI cannot rely on the original self-certification and must obtain a new and valid self-certification or a reasonable explanation and documentation.

A.4 Under what circumstances should Financial Institutions not rely on self-certification and documentary evidence? *(Modified in April 2025)*

In general, an RFI has reason to know that a self-certification or Documentary Evidence is unreliable or incorrect and should not rely on such documents if:

- its knowledge of relevant facts or statements contained in the self-certification or other documentation, including the knowledge of the relevant relationship managers, if any, is such that a reasonably prudent person in the position of the RFI would question the claim being made; or
- there is information in the documentation or in the RFI's account files that conflicts with the customer's claim regarding its status.

A.4.1 Examples of standards of knowledge applicable to Self-certifications

An RFI has reason to know that a **Self-certification** provided by a customer is unreliable or incorrect if:

- the self-certification is incomplete with respect to any item on the self-certification that is relevant to the claims made by the customer;
- the self-certification contains any information that is inconsistent with the customer's claim; or
- the RFI has other account information that is inconsistent with the customer's claim.

[4] Available at https://web-archive.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/index.htm

A.4.2 Examples of standards of knowledge applicable to Documentary Evidence
(Modified in April 2025)

An RFI has reason to know that the **Documentary Evidence** provided by a customer is unreliable or incorrect if:

(1) An RFI may not rely on Documentary Evidence provided by a customer if the Documentary Evidence does not reasonably establish the identity of the person presenting the Documentary Evidence. For example, Documentary Evidence is not reliable if it is provided in person by a customer and the photograph or signature on the Documentary Evidence does not match the appearance or signature of the person presenting the document.

(2) An RFI may not rely on Documentary Evidence if:

- the Documentary Evidence contains information that is inconsistent with the customer's claim as to its status;
- the RFI has other account information that is inconsistent with the customer's status; or
- the Documentary Evidence lacks information necessary to establish the customer's status.

A.5 To determine the residence(s) for tax purposes of the Account Holder, should Financial Institutions rely solely on the US W8 forms and not obtain self-certifications? *(Added in April 2025)*

No, a pure W-8 form is not sufficient for CRS purposes because such form is primarily used to identify the non-US tax resident status of the declarant and does not reflect the status of the Account Holder with dual or multiple tax residence(s), which may lead to incorrect determination of whether the Account Holder is a reportable person under CRS.

B. Due Diligence Procedures

Individual Accounts

B.1 For a Preexisting Individual Account Holder without self-certification, should the RFI determine the tax residency solely by his/her nationality or place of birth?
(Added in April 2025)

No, nationality and place of birth are not the six indicia for determining tax residency as stipulated in subparagraph A(2) of Article III of the "Instruction".

Entity Accounts

B.2 For entities registered in jurisdictions that do not issue TIN for tax purposes (e.g. British Virgin Islands, Cayman Islands), do these entities have the related tax residency? *(Added in April 2025)*

Yes, an Entity's residence for tax purposes may be determined by the place of incorporation or organization, or place of effective management, instead of whether TIN has been issued or not to such Entity.

B.3 For an Entity Account Holder that self-certifying as a "Financial Institution", and registered itself as FATCA Foreign Financial Institution with the Internal Revenue Service (IRS), should RFI solely rely on the FATCA FFI list to determine the Entity status? *(Added in April 2025)*

No, RFIs should not solely rely on the FATCA FFI list to support a Self-certification received from an Entity claiming to be a Financial Institution. FATCA registration of an Entity does not necessarily indicate that it is a Financial Institution for CRS purpose. RFIs should establish the reasonableness of the Self-certification based on the information obtained in connection with the account opening, including any documentation collected pursuant to AML/KYC procedures.

B.4 For a Pre-existing Entity Account Holder that self-certifying as an "Active NFE" or a "Financial Institution", what should the RFI do if the RFI has reason to know that the Account Holder is not eligible to be the Entity type as claimed?
(Added in April 2025)

If the RFI has reason to know that the Pre-existing Account Holder is not eligible to be the Entity type as claimed and fails to obtain a new self-certification or other new documentation, it should treat the Entity as a Passive NFE.

B.5 With respect to the "Investment Entity" as described in subparagraph A(6)(b) of Commentary on Section VIII, one of the criteria is that 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). When is an Entity considered to be "managed by"? *(Added in April 2025)*

An Entity is "managed by" another Entity if the managing entity has discretionary authority to manage the other entity's assets (in whole or part) by performing, either directly or through another service provider, one of the following businesses:

- 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;
- individual and collective portfolio management; or
- otherwise investing, administering, or managing Financial Assets or money on behalf of other persons.

Please refer to the Commentary on Section VIII, paragraph 17 (p.162) for more details.

B.6 How to identify the Controlling Persons with respect to an Entity that is a legal person? *(Added in April 2025)*

CRS includes a requirement to look through passive entities to identify reportable Controlling Persons. In principle, the term "Controlling Persons" must be interpreted in a manner consistent with the Financial Action Task Force Recommendations 10

and 25. With respect to an Entity that is a legal person, "Controlling Persons" means the natural persons who exercise control over an Entity, generally natural person(s) with a controlling ownership interest in the Entity.

For Entity that is a legal person, "Controlling Persons" can be determined based on an established threshold, i.e. any natural person owning directly or indirectly not less than 25% of the shares or voting rights of an Entity. Where no natural person(s) that exerts control through ownership interests can be identified, the Controlling Person of the Entity is 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 of the Entity will be the natural person(s) who holds the position of senior managing official. The above are not alternative options, but are cascading measures, with each to be used when the previous measure has been applied and no Controlling Person has been identified. All the Controlling Persons identified in any of the above measure, who are Reportable Persons, should be reported.

Change in Circumstances

B.7 What does "Change in circumstances" (CIC) mean? *(Added in April 2025)*

In general, "Change in circumstances" (CIC) includes:

- any change that results in the addition of information relevant to a person's status or otherwise conflicts with such person's status.
- any change or addition of information to the Account Holder's account (including the addition, substitution, or other change of an Account Holder) or any change or addition of information to any account associated with such account (applying the account aggregation rules) if such change or addition of information affects the status of the Account Holder.

As such, CIC includes any change to the account itself (whether reportable or not), instead of only the changes that affect the tax residency status of the Account Holder. Examples of triggering events for CIC include but are not limited to the following:

For Entity Accounts

(1) Change of address to another jurisdiction.
(2) The year-end aggregate account balance or value of a Preexisting Entity Account exceed MOP2,000,000[5].
(3) Change of business activities or sources of income (e.g. Active NFE becomes Passive NFE).
(4) Change of management structure (e.g. change of shareholder / shares owned) of a Passive NFE.

[5] A Preexisting Entity Account that did not exceed MOP2,000,000 as of 31 December 2017 but the aggregate account balance or value of which exceeds MOP2,000,000 as of the last day of any subsequent calendar year, must be reviewed. For a Preexisting Pension Fund Entity Account, where the aggregate account balance or value of such account did not exceed MOP2,000,000 as of 31 December 2021 but the aggregate account balance or value exceeds MOP2,000,000 as of the last day of any subsequent calendar year, such account is also subject to review.

For Individual Accounts

(1) One or more indicia being associated with the Account Holder are newly discovered.
(2) Lower Value Accounts become High Value Accounts (> MOP 8 million[6]).

B.8 What is the RFI required to do where there is a change in circumstances that causes the RFI to know or have reason to know that the original self-certification or other documentation associated with the account is incorrect or unreliable?
(Added in April 2025)

When the RFI cannot rely on the original self-certification due to the change in circumstances, the status of an account must be re-determined within 90 calendar days by obtaining either:

- a valid self-certification that establishes the residence(s) for tax purposes of the Account Holder, or
- a reasonable explanation and documentation (as appropriate) supporting the validity of the original self-certification.

If the RFI cannot obtain a confirmation of the validity of the original self-certification or a valid self-certification during such 90-day period, the RFI must apply appropriate procedures to re-determine the status of Account as a result of the CIC.

Example:

There is information indicates that an Account Holder's tax residency does not match with that claimed on his/her original self-certification, resulting in the original self-certification being incorrect or unreliable. The RFI applied procedures to re-determine the status of the account but was unable to obtain a valid self-certification or confirm the validity of the original self-certification within 90 days of CIC. Since the CIC is with respect to the tax residency, the RFI must treat the Account Holder as resident of the jurisdiction in which the Account Holder claimed to be resident in the original self-certification and the jurisdiction in which the Account Holder may be resident as a result of the CIC.

Undocumented Accounts

B.9 Under what circumstances, will the account be reported as "undocumented accounts"? *(Added in April 2025)*

An "undocumented account" generally arises when an RFI is unable to obtain information from an Account Holder in respect of a Preexisting Individual Account.
For Lower Value Accounts, where residence address test is not applied, electronic

[6] Subsequent to 31 December 2017, if the aggregate account balance or value of a Preexisting Individual Account exceeds MOP8,000,000 as of the last day of the calendar year, such account becomes a High Value Account and the enhanced review procedures must be completed. For a Preexisting Pension Fund Individual Account, where the aggregate account balance or value of such account did not exceed MOP8,000,000 as of 31 December 2021 but the aggregate account balance or value exceeds MOP8,000,000 as of the last day of any subsequent calendar year, such account is also subject to the enhanced review.

record search should be carried out for the six indicia. Where the only indicia found is a "hold mail" instruction or "in-care-of" address in a foreign jurisdiction and no other address is found, then special procedures apply (the undocumented account procedures). In the order most appropriate, the RFI must: complete a paper record search; or obtain a self-certification or Documentary Evidence from the Account Holder. If neither of these procedures successfully establishes the Account Holder's residence for tax purposes, then the RFI must report the account as an undocumented account until such account ceases to be undocumented.

If a "hold mail" instruction or "in-care-of" address in a foreign jurisdiction is discovered in the enhanced review of High Value Accounts (including electronic record search, paper record search and relationship manager inquiry for actual knowledge), and no other address and none of the other indicia are identified, then, the RFI should obtain from such Account Holder a self-certification or Documentary Evidence to establish the tax residence(s) of the Account Holder. If the RFI cannot obtain such self-certification or Documentary Evidence, it must report the account as an undocumented account until such account ceases to be undocumented.

Please refer to the subparagraphs A(5) and B(5)(c) of Article III of the "Instructions" for more details.

Excluded Accounts

B.10 According to subparagraph C(17)(g) of Article VIII of the "Instructions", Dormant Accounts are excluded from the obligations set forth therein. If an RFI classifies dormant accounts in a manner not consistent with the "Instructions", and those accounts have not been excluded from the due diligence procedures, should those accounts still be reported as Dormant Accounts? *(Added in April 2025)*

According to subparagraph C(17)(g) of Article VIII of the "Instructions", an account (other than an Annuity Contract), with an annual balance that does not exceed MOP8,000, is a "dormant account" if:

- the Account Holder has not initiated a transaction with regard to the account or any other account held by the Account Holder with the RFI in the past three years;
- the Account Holder has not communicated with the RFI that maintains such account regarding the account or any other account held by the Account Holder with the RFI in the past six years; and
- in the case of a Cash Value Insurance Contract, the RFI has not communicated with the Account Holder that holds such account regarding the account or any other account held by the Account Holder with the RFI in the past six years.

Accounts that meet all of the above criteria can be defined as a Dormant Account will not be required to complete the due diligence and reporting obligations during the dormancy period. On the contrast, accounts that cannot meet all of the above criteria cannot be defined as dormant under CRS and should perform the due diligence procedures and report as appropriate (should not indicate that the account is dormant for reporting purpose).

B.11 What are the criteria to exclude a Depository Account due to overpayment of credit cards? *(Added in April 2025)*

An RFI that accepts deposits when a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility, may not report the Depository Account that qualifies as an Excluded Account if it satisfies the following requirements:

- the account exists solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer; and
- beginning on or before 01/07/2017, the RFI implements policies and procedures either to prevent a customer from making an overpayment in excess of MOP400,000, or to ensure that any customer overpayment in excess of MOP400,000 is refunded to the customer within 60 days. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

C. Reporting Obligations

C.1 If the RFI possesses more than one address with respect to an Account Holder, which address of the Account Holder should be reported? *(Added in April 2025)*

The address to be reported with respect to an account is the address recorded by the RFI for the Account Holder, pursuant to the due diligence procedures.

For individual, the address to be reported is the current residence address of the individual. For pre-existing Individual Account Holder, unless the RFI does not have the current residence address of the Account Holder in its records, where it would report the mailing address it has on file.

For entity, the address to be reported is the address on the official documentation that has been used by the RFI in the due diligence procedures to identify the residency of the Entity. Commonly this will be the address of the entity's principal office in the jurisdiction in which it claims to be resident or the jurisdiction in which the Entity was incorporated or organized. The address of the Entity's principal office is generally the place in which its place of effective management is situated. A post office box, or an address used solely for mailing purposes is not the address of the Entity's principal office unless such address is the only address used by the Entity and appears as the Entity's registered address in the Entity's organizational documents. Further, an address that is provided subject to instructions to hold all mail to that address is not the address of the Entity's principal office.

C.2 Should all currencies be converted to MOP for reporting? *(Added in April 2025)*

No, for the purposes of the exchange of information, the information exchanged will

identify the currency in which each relevant amount is denominated. For a single foreign currency account, the information should be reported in the denominated currency of the foreign currency account. For a multi-currency account, the account balances or values should be converted into MOP and aggregated to be reported as the total balance of a single account.

C.3 What code(s) is/are used to report the payments with respect to a Depository Account? *(Added in April 2025)*

Code CRS502 should be used to report the aggregate gross amount of interest paid or credited to the Depository Account during the reporting year.

C.4 What code(s) is/are used to report the payments with respect to a Custodial Account? *(Added in April 2025)*

It depends on the nature of payment with respect to a Custodial Account.

Code CRS501 should be used to report the aggregate gross amount of dividends paid or credited to the account during the reporting year;

Code CRS502 should be used to report the aggregate gross amount of interest paid or credited to the account during the reporting year;

Code CRS503 should be used to report the gross proceeds from the sale or redemption of financial assets paid or credited to the account during the reporting year with respect to which the RFI acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder and;

Code CRS504 should be used to report the aggregate gross amount of all other income generated with respect to the assets held in the account paid or credited to the account during the reporting year.

C.5 May code CRS504 be used to identify all the payment types reported with respect to a Cash Value Insurance Contract, an Annuity Contract, an Equity Interest and a debt interest? *(Added in April 2025)*

Yes, code CRS504 may be used to identify all the payment types that are reported with respect to a Cash Value Insurance Contract, an Annuity Contract, an Equity Interest and a debt interest, including where such payments are dividends, interest, gross proceeds or redemption payments. CRS does not require the use of a specific code (i.e. CRS501, CRS502 or CRS503) to identify each payment type that is reported with respect to such accounts.

C.6 With respect to an Entity that is a legal person, how should a Controlling Person with multiple roles be reported? *(Added in April 2025)*

Where a Controlling Person has multiple roles in an Entity, only the first role identified in the cascading measures (please refer to B.6 for more details) should be reported for such Controlling Person. For example, a Controlling Person is both a

shareholder and a senior managing official, only the shareholder role (ownership) should be reported as the Controlling Person type.

C.7 If a reportable account is closed during the year, should it still be reported? If yes, what information should be reported? *(Added in April 2025)*

Where a financial account is closed during the year, it is still required to report the information by the year following, and should be reported as a closed account with zero account balance and the gross payments made or credited until the date of account closure.

C.8 What remediate action should be taken if reported information was found to be incomplete/incorrect? *(Added in April 2025)*

RFIs should make corrections where errors are identified. In addition to correcting submitted information, the RFI should have appropriate procedures in place to investigate and address the root causes of errors to prevent similar occurrences in future reporting, and the corrected information can be submitted to Financial Services Bureau (DSF) at any time. RFIs should ensure that the information submitted are complete and accurate.

D. Documentation and record-keeping

D.1 For documentation and record-keeping, what are the specific requirements with respect to retention period, content and form of records?

Any evidence relied upon and any records of the steps undertaken by FIs during the information collection procedures shall be retained to support the determination of an Account Holder's status for a period of five years beginning from the end of the year in which the RFIs must report the information required.

Documentary Evidence retained by an RFI does not have to be the original and may be a certified copy, a photocopy or, at least, a notation of the type of documentation reviewed, the date the documentation was reviewed, and the document's identification number (if any).

Records can be retained as originals or photocopies and can exist in paper or electronic format. Records that are retained electronically should be in an electronically readable format. FIs using electronic business systems should ensure that sufficient detail is captured and retrievable. Records obtained or created in connection with a reporting obligation, such as self-certifications and Documentary Evidence, must be available to assess the validity of the reporting system. All retained records must be clearly labeled and stored in a secure environment and all records must be made available on request to DSF for verification of proper identification of Reportable Account.

Records of the steps undertaken for the performance of reporting and due diligence procedures should be kept for compliance verification. For example, regarding reasonable efforts to obtain a Tax Identification Number (TIN) with respect to Preexisting Accounts, where a procedural manual describing appropriate "reasonable efforts" is in place and there is also evidence (records such as backup files, date of handling and responsible personnel) as to how those policies and procedures are followed, such evidence can be regarded as a record of the steps undertaken.

If an FI contracts out its record-keeping and reporting obligations to a third-party service provider – the compliance obligations remain on the FI. The FI is responsible to provide the required information to DSF in an electronically readable format on request.

E. Avoidance of CRS circumvention

E.1 What are the measures to prevent circumvention of CRS? *(Modified in April 2025)*

Law no. 5/2017 "Legal Regime for the Exchange of Tax Information" has been amended to address the circumvention of the reporting requirements and the due diligence procedures. Where any FIs, their agents and staff, or any other persons engages in a transaction or arrangement where the intention, or one of the intentions, is to circumvent an obligation under the "Instructions", the circumventing transactions or arrangements are considered null and void for the purpose of information exchange and Instructions' implementation and do not hinder the implementation of the "Instructions".

In addition, DSF has information available on website about the channels and ways to report circumvention[7]. Any person, who discovers any circumvention or assisting in circumvention as mentioned above, may report to DSF either anonymously or in real-name.

E.2 What are the behaviours that are attempted to circumvent the CRS? *(Modified in April 2025)*

Examples of attempting to circumvent the CRS include but are not limited to the followings:

Example 1 - Shift Maintenance of an Account

An RFI advises a customer to maintain an account with a Related Entity in a non-Participating Jurisdiction that enables the RFI to avoid reporting while offering to provide services and retain customer relations as if the account was maintained by the RFI itself. In such a case, the RFI should be considered to maintain the account and have the resulting reporting and due diligence requirements.

[7] Available at: https://www.dsf.gov.mo/download/AEOI/reportCircumvention/report_circumvention_v1_en.pdf

Example 2 - Year-end amounts

FIs, individuals, entities or intermediaries manipulate year-end amounts, such as deliberately withdrawing most or all of the assets before the end of the year; make use of the time gap during "day-two" process to transfer in and out of large amounts of assets within the short period of time, to avoid reporting or being reported upon.

Example 3 - Park Money with Qualified Credit Card Issuers

Individuals or entities park balances from other Reportable Accounts with qualified credit card issuers for a short period at the end of the year to avoid reporting.

Example 4 - Electronic records and computerised systems

An RFI deliberately does not create any electronic records (such that an electronic record search would not yield any results) or maintains computerised systems artificially dissociated (to avoid the account aggregation rules).

E.3 Are there any circumvention plans or programmes that Financial Institutions need to be aware of when performing due diligence? *(Modified in April 2025)*

Concurrently, circumvention schemes that brought under attention include: potentially high-risk citizenship/residence by investment schemes, misuse and abuse of the classification of Active Non-Financial Entities, and CRS avoidance scheme on "Zero Cash Value Insurance Policies "or "Irrevocable Insurance Policies", etc. Financial Institutions should be aware of the associated risks when performing due diligence.

E.3.1 Potentially high-risk Citizenship / Residence by Investment (CBI/RBI) schemes

While potentially high-risk citizenship and residence by investment (CBI/RBI) schemes[8] allow individuals to obtain citizenship or residence rights through local investments or against a flat fee for perfectly legitimate reasons, they can also be potentially misused to hide their assets offshore by escaping reporting under CRS, in particular, identity cards and other documentation obtained through CBI/RBI schemes can potentially be misused or abused.

Schemes that are potentially high risk for circumvention purposes are those that give a taxpayer access to a low personal income tax rate on offshore financial assets and do not require a significant physical presence in the jurisdiction offering the CBI/RBI scheme. An individual's jurisdiction(s) of tax residence is misrepresented by claiming to be resident for tax purposes only in CBI/RBI jurisdiction. In this way, individuals could avoid/reduce substantially income tax on their offshore financial assets in the CBI/RBI jurisdiction and would not have to leave their original jurisdiction of residence and relocating to the CBI/RBI jurisdiction. This may endanger the proper operation of the CRS due diligence procedures and lead to inaccurate or incomplete reporting under the CRS.

[8]Available at: https://web-archive.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/residence-citizenship-by-investment/index.htmship-by-investment/

OECD has published a list of potential high-risk CBI/RBI schemes that can be misused to misrepresent an individual's jurisdiction(s) of tax residence and undermine the effective implementation of the CRS due diligence procedures. In order to prevent such situation from happening, RFIs should take into account the OECD's recommended actions when performing their CRS due diligence procedures to determine the tax residency(ies) of an Account Holder or Controlling Person.

Example

A person possess citizenship of two or more jurisdictions, for example the person lives in jurisdiction X and obtains another residence in jurisdiction Y under CBI/RBI schemes, therefore such person does not lose citizenship of the jurisdiction X. This may allow such a person to self-certify solely as a tax resident of the jurisdiction Y and provide credible documentation to that effect. As a result, the reportable information is incorrect and not exchanged with Jurisdiction X of which the Account Holder is tax resident. If the RFI has reason to know that the Account Holder is a tax resident of other jurisdiction(s) and fails to obtain a new self-certification or other new documentation from the Account Holder, the RFI should treat the account as a Reportable Account with respect to each Reportable Jurisdiction, i.e. the Account Holder should be reported as tax residents of both Jurisdictions X and Y.

E.3.2 Misuse and abuse of the classification of Active Non-Financial Entities (Active NFE)

It is reported that misclassification and abuse of the Active NFE categorization are exploited to avoid the identification and reporting of information on Controlling Persons. By way of example, with regard to "Active NFEs by reason of income and assets" (Subparagraph D(9) of Article VIII of the "Instructions"), the provision requires that both the "income test" (less than 50% of the gross income is passive income) and the "assets test" (less than 50% of the assets held are assets that produce or are held for the production of passive income) should be met to qualify as an Active NFE. Hence, both abovementioned criteria should be fulfilled for correct classification.

E.3.3 CRS avoidance scheme on "Zero Cash Value Insurance Policies "or "Irrevocable Insurance Policies"

It is reported that Insurance Companies providing CRS avoidance schemes using "Zero Cash Value Insurance Policies" or "Irrevocable Insurance Policies" intended to ensure that a nil value is reported. Meanwhile the insurers facilitate their policyholders to gain access to the value of the policy's assets via third-party loans. This would be a misinterpretation of the term "Cash Value" under the AEOI Standard as, according to definition of "Cash Value" (Subparagraph C(8) of Article VIII of the "Instructions"), it is the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract. Therefore, the amount that can be borrowed in relation to the contract should be treated as the "Cash Value" and reported accordingly.

Information for further clarification of irrevocable insurance policies being in scope of CRS can be found at the CRS-related Frequently Asked Questions (FAQ) which updated by OECD in May 2024. The answer to Question 12 of Part C of Section VIII[9] states that persons renouncing the right to access the Cash Value and the right to change the beneficiaries are to be considered Account Holders of the Cash Value Insurance Contract in all instances, unless they have finally, fully and irrevocably renounced such rights. The notion reveals that Irrevocable Insurance Policies are considered Cash Value Insurance Contracts.

To comply with the foregoing, FIs have to take into account the requirements referred to above to ensure the proper adoption of the definitions of "Cash Value Insurance Contract" and "Cash Value" while complying with their CRS obligations.

F. Enforcement and Sanctions

F.1 What are the major additions to the penalties for violation of the automatic exchange of financial account information in the "EOI Law"?

(Modified in April 2025)

With the aim to tackle the non-compliance with the automatic exchange of financial account information, penalties for the following violations are introduced in the Amendment by Law no.1/2022 to Law no. 5/2017 – Legal Regime for the Exchange of Tax Information:

- Circumvention or violation of the "Instructions";
- Failure of financial institutions to obtain self-certification or relevant documents from clients for proving that they are foreign residents for tax purposes upon new financial accounts opening;
- Failure to keep records of the evidence and steps undertaken during the information collection procedures for a specified period.

The newly introduced penalties basically follow the administrative penalty system of the original law. According to the specific circumstances and severity of the violation, a fine ranging from MOP6,000 to MOP60,000 will be imposed on the offenders. Likewise, depending on the nature of the relevant administrative violation and its severity, a fine ranging from MOP4,000 to MOP40,000 will be imposed for the administrative violations for non-complying with the "Instructions".

Non-compliance with the "Instructions" (Paragraph 2 of Article 14 of Amendment to Law no. 5/2017 - Legal Regime for the Exchange of Tax Information) may constitute the administrative violations referred to in Paragraph 1 of the same article at the same time. Thus, a clarifying provision that when the same fact constitutes simultaneously non-compliance with the "Instructions" and other administrative violations, the offenders will only be imposed with the severer penalty is added.

[9] Available at: https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/tax-transparency-and-international-co-operation/crs-related-faqs.pdf/_jcr_content/renditions/original./crs-related-faqs.pdf

Moreover, concerning the specified period during which the same administrative violation being re-committed is considered "recidivism", another determinant "*less than five years since the date of the last administrative violation*" is added to the originally specified period "*within a period of two years after the day when the administrative decision to impose sanctions has become unappealable*" for clarifying the definition of "recidivism".

G. Miscellaneous

G.1 How to determine the residency of a trust that is a Financial Institution?

(Added in April 2025)

In general, a Financial Institution is resident in a Participating Jurisdiction if it is a resident for tax purposes in the jurisdiction, it is subject to the jurisdiction of such Participating Jurisdiction and it is, thus, a Participating Jurisdiction Financial Institution. In the case of a trust that is a Financial Institution (irrespective of whether it is resident for tax purposes in a Participating Jurisdiction), the trust is considered to be subject to the jurisdiction of a Participating Jurisdiction if one or more of its trustees are tax resident in such Participating Jurisdiction except if the trust reports all the information required to be reported (pursuant to the CRS with respect to Reportable Accounts maintained by the trust) to another Participating Jurisdiction because it is resident for tax purposes in such other Participating Jurisdiction.

Please refer to the Commentary on Section VIII, paragraph 4 (p.158-159) for more details.

G.2 How to fulfil the CRS obligations with respect to Trustee-Documented Trust (TDT)?

The Commentary on CRS provides for a trust that is an FI (e.g. because it is an Investment Entity) is a Non-RFI, to the extent that the trustee of the trust is an RFI and reports all information required with respect to all Reportable Accounts of the trust.

Please note that the result for RFIs to use a service provider to fulfill the reporting and due diligence obligations is different from this category. The reporting and due diligence obligations fulfilled by service providers remain the responsibility of the RFI, while the responsibility of those fulfilled by the trustee of a TDT is transferred by the trust to its trustee. This category does not modify, however, the time and manner of the reporting and due diligence obligations which remain the same as if they still were the responsibility of the trust. For example, the trustee must not report the information with respect to a Reportable Account of the TDT as if it were a Reportable Account of the trustee. The trustee must report such information as the TDT would have reported (e.g. to the same jurisdiction) and identify the TDT with respect to which it fulfills the reporting and due diligence obligations. This category of Non-RFI may also apply to a legal arrangement that is equivalent or similar to a trust, such as a fideicomiso.

G.3 How to determine the residency of a fiscally transparent Financial Institution (other than a trust)? *(Added in April 2025)*

Where a Financial Institution (other than a trust) does not have a residence for tax purposes (because it is fiscally transparent, or it is located in a jurisdiction that does not have an income tax), it is considered to be subject to the jurisdiction of a Participating Jurisdiction and it is, thus, a Participating Jurisdiction Financial Institution if:

- it is incorporated under the laws of the Participating Jurisdiction;
- it has its place of management (including effective management) in the Participating Jurisdiction; or
- it is subject to financial supervision in the Participating Jurisdiction.

Please refer to the Commentary on Section VIII, paragraph 4 (p.158-159) for more details.

G.4 Where a Financial Institution (other than a trust) is resident in two or more Participating Jurisdictions, with which jurisdiction must it carry out the reporting and due diligence obligations? *(Added in April 2025)*

Where a Financial Institution (other than a trust) is resident in two or more Participating Jurisdictions, such Financial Institution will be subject to the reporting and due diligence obligations of the Participating Jurisdiction in which it maintains the Financial Account(s).

For instance, X, a Financial Institution (other than a trust) is resident in Macao and another Participating Jurisdiction. X does not maintain any Financial Accounts in Macao. The reporting and due diligence obligations should be carried out in another Participating Jurisdiction where its Financial Accounts are maintained.

Please refer to the Commentary on Section VIII, paragraph 5 (p.159) for more details.