

CRS FAQs

Registration/Nil Reporting/Filing Summary

1. Since CRS Nil reporting is not required by the AEOI Regulations, is an RFI with no reportable accounts required to complete a registration in the AEOI Portal even if it will not submit a Nil submission? Or can an RFI with no reportable accounts take no action (and therefore not register in the AEOI Portal).

An RFI with no reportable accounts is not required to register on the AEOI portal. Section 4 of the Automatic Exchange of Account Information Act, 2016 provides that a Reporting Financial Institution shall apply to the Competent Authority to be registered and the procedures and requirements for registration are prescribed by Regulations. Reg. 5(1) of the Regulations provides that pursuant to section 4 of the Act, a Reporting FI may apply to be registered with the Competent Authority, if the Reporting Financial Institution maintains one or more Reportable Accounts. Reg. 5(2) further provides that where a Reporting FI has registered with the Competent Authority but no longer maintains any Reportable Accounts, the Reporting FI shall apply to de-register as a Reporting FI within 90 days of the end of the calendar year. The revised Guidance Notes issued August 3, 2018, state at paragraph D on p. 23 that "Bahamas Reporting Financial Institutions are not required to file nil returns with the Bahamas Competent Authority."

2. The portal guidance notes says that: "Once all CRS Report have been submitted each Financial Institution is required to confirm that their reporting is complete by submitting a CRS Filing Summary". If a Financial Institution has no CRS Reports to submit, is it still required to submit a filing summary?

If a Financial Institution has no CRS reports to submit, it is not required to register therefore will not have to submit a filing summary.

3. In terms of CRS registration and reporting, specifically, a local company which was struck off in January 2018 and a few others that were terminated in 2017. These entities have no reportable accounts. Would these entities be required to register in order to file a nil return?

These entities would not be required to register as they had no reportable accounts.

4. **IBCS** Do IBCs need to register for CRS reporting?

Any IBC that meets the definition of a Reporting Financial Institution as outlined in Section VIII of the Automatic Exchange of Account Information Act, 2016, and that has reportable accounts must register for CRS reporting.

5. **Change in financial service provider** If a reportable company has been dissolved, liquidated, or transferred to another financial services provider before financial year end of 31 December 2017, would the reporting obligation be that of the new provider?

If a reportable company were dissolved or liquidated before 1 July 2017 there would be no review or reporting obligations related to it. If the company were dissolved or liquidated after 30 June 2017,

*the RFI/service provider **at the time of the dissolution/liquidation** has an obligation to report by 31 August, 2018. If the reportable company were transferred to another financial services provider before financial year end 31 December 2017 then the new provider would have the reporting obligation.*

6. **Corporate Service Providers** Where a licensed institution is Not classified as a Reporting FI (or Non-Financial Entity) but provides directorship and/or Registered Office Registered Agent (RORA) services for a reportable company - which is ultimately responsible for reporting of the company? The service provider (licensed institution) or Reporting FI (Custodial Bank) where Custody of the company's assets are held?

Where a company is engaged in the business of company management as defined under the International Business Companies Act, Chapter 309, they have no reporting obligation. This would lie with the Reporting FI where the company's assets are held.

7. **NFEs** What are the reporting obligations of NFE (Active and Passive)?

NFEs themselves have no reporting obligations however Reporting Financial Institutions have an obligation to perform due diligence on Passive NFEs and determine whether one or more Controlling Persons of the Passive NFE are reportable persons and report accordingly.

8. **Bulk Registration** The manual registration requires us to submit a letter. For the bulk process, do we provide you the applicable letters with the spreadsheets? Will the Competent Authority will accept a letter with a list of RFIs provided that the signatories are the same.

Applications for bulk registration should consist of an authorization letter along with a list of RFIs to be registered and the spreadsheets received from the Competent Authority.

Due Diligence

9. What should be done if a Client refuses to complete the CRS Self- Certification Individual Form

If after performing due diligence per Sections II through VII of the Automatic Exchange of Account Information Act, 2016, a Reporting Financial Institution is unable to identify the client's jurisdiction of residence, the account should be reported to the Competent Authority as an undocumented account.

10. What should be done if a client refuses to provide a TIN for the jurisdictions of residence. How are these individuals to be reported?

If a client refuses to provide a TIN for their jurisdictions of residence, all other required information should be reported, leaving TIN blank. Note that for those jurisdictions that require a TIN this may trigger an error. The TIN rules and expected format by jurisdiction can be found here: <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/>

11. Who is reportable as at **July 3, 2017** - ALL High Value Individual Account as at Dec 2017? Including Pre-existing and New Individual accounts?

Section III paragraph 3 of the revised CRS-AEOI Bahamas Guidance Notes states that High Value Individual Accounts must be reviewed by 31 December, 2017 and reported in 2018. This includes Pre-existing and New Individual Accounts.

12. **For Reporting Financial Institutions applying the threshold exemption, Preexisting Entity Accounts with a balance or value not exceeding \$250,000 at 30 June 2017 do not need to be reviewed, identified or reported until the account balance exceeds \$250,000 at 31 December of a subsequent calendar year.** Do we apply the rule for reporting that if a Preexisting Entity account balance is 250 at Dec 31st 2017 only.....Or is it reportable if at some point the balance was 250 during the reporting period...Do we use an account balance report to determine if the account is reportable to determine if the balance exceeded 250 at any period?

Per Section II of the Common Reporting Standard the balance or value of an account is determined as of the last day of the calendar year or other appropriate reporting period.

13. **Is there a threshold exemption for the review, identification or reporting of New Entity Accounts, Preexisting Individual Accounts or New Individuals Accounts?**

There is no threshold exemption for the review, identification or reporting of New Entity Accounts, Preexisting Individual Accounts or New Individuals Accounts.

14. **There is no threshold for New Entity Accounts opened between July 30 2017 and Dec 2017 - -** When are these to be reported? Are these accounts to report in July 2019?

New Entity Accounts are to be reported by August 31, 2018.

15. **Preexisting Individual Accounts** - these are opened prior to June 30 2017 - When are these accounts to be reported?

Section III paragraph 4 of the revised CRS-AEOI Bahamas Guidance Notes states that the review of Lower Value Accounts, which are by implication Individual Accounts, must be completed by December 2018 and any accounts identified should be reported to the Competent Authority by 31 July, 2019. If the review is completed by December 2017 then reporting should be done by August 31, 2018.

16. **New Individuals Accounts - Opened between July 30 2017 and Dec 2017 - No threshold** – Are these are reportable July 31st 2018?

New Individuals Accounts, those opened between July 1, 2017 and December 2017 are reportable in 2018 reporting i.e. by August 31, 2018.

Information Reporting

17. **Entity Number** With a very small number of exceptions none of these trusts or companies have GIINS or other identification numbers and for FATCA are sponsored entities. How should this be dealt with for CRS?

For CRS reporting when an entity does not have an Identification Number issued by a tax administration, a US GIIN, a company registration number, an internal identification number or a Global Entity Identification Number may be used. Where no such option is available, the field may be left blank. Note that as of 1st January, 2017, all Sponsored Entities are required to have their own GIINs as they can no longer use the GIIN of their Sponsoring Entity. See IRS guidance at: <https://www.irs.gov/businesses/corporations/frequently-asked-questions-faqs-fatca-compliance-legal#SponsoringQ1>

18. **Multiple Residencies** According to the guidance we understand that separate report should be made in respect of each reportable jurisdiction. (p.24 of the guidance). Could you please clarify whether we should include only one jurisdiction (matching to Receiving Country code) or all tax residencies of account holder in each separate XML file per Reportable Jurisdiction?

All tax residencies of account holders should be included in the XML file for each Reportable Jurisdiction. This can only be done in the XML file. The manual input form only allows input of one tax residence.

19. **Tie Breaking Clause** In the case where a trust has joint trustees in different countries, should each country report or if confirmation is received that one has reported, would that be sufficient to not report in The Bahamas?

The CRS Commentary provides that “the trust is considered to be subject to the jurisdiction of a Participating Jurisdiction if one or more of its trustees are 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.”). In such cases where the information is reportable in more than one jurisdiction the FI should at all times be able to establish that all the information required to be reported in relation to CRS has been reported to another participating jurisdiction’s tax authority.

20. **Value Date for reporting** In the Portal under the filing For Entities as it relates to the Account Balance – the value is at what date?

Per Section I A(4) of the Schedule to the Automatic Exchange of Account Information Act, 2016, the balance to be reported is the value of the account at the end of the relevant calendar year or other appropriate reporting period. Calendar year end should be used unless there is a reasonable basis for using another reporting period. This may arise where valuations are done at a point other than calendar year end.

21. **Payment Type** It appears the Payment Type Mandatory? What value is included in this field? What is the criteria for these fields – is it payments over a certain amount to be reported?

Section 1 Subsection A5-7 of the Automatic Exchange of Account Information Act, 2016 outlines the payments to be reported. They include the total gross amount of interest, dividends, other income and proceeds of sale or redemption of financial assets credited to the account during the calendar year or other reporting period.

22. **Treatment of Liabilities** What balance should be reported in a scenario where a client may also have certain debts/liabilities outstanding at the financial institution e.g. if an account has \$100K in assets but also has \$30K in debt (a loan or an overdraft, for example) should the financial institution report the gross balance (\$100K in this example) or the net balance (\$70K in this example)?

Per CRS Commentary guidance at pages 98 to 99 at paragraph 12 it is stated: "The balance or value of the account is not to be reduced by any liabilities or obligations incurred by an account holder with respect to the account or any of the assets held in the account". The gross balance should therefore be reported.

23. **Indirect Distributions** Is there is a requirement for Bahamas Trusts which are FIs to report beneficiaries who have been given loans below market rate interest by the Trustee and beneficiaries occupying /renting real estate owned by the trust at a below market rate? These would be considered indirect distributions and reporting is required. The OECD provides the following guidance with respect to indirect distributions in its CRS-related FAQs:

Pursuant to Section VIII(C)(4) of the Standard, a Reportable Person will be treated as a beneficiary of a trust "if such Reportable Person [...] may receive, directly or indirectly, a discretionary distribution from the trust". Indirect distributions by a trust may arise when the trust makes payments to a third party for the benefit of another person. For example, instances where a trust pays the tuition fees or repays a loan taken up by another person are to be considered indirect distributions by the trust. Indirect distributions also include cases where the trust grants a loan free of interest or at an interest rate lower than the market interest rate or at other non-arm's length conditions. In addition, the write-off of a loan granted by a trust to its beneficiary constitutes an indirect distribution in the year the loan is written-off. In all of the above cases the Reportable Person will be person that is the beneficiary of the trust receiving the indirect distribution (i.e. in the above examples, the debtor of the tuition fees or the recipient of the favorable loan conditions).