# Common Reporting Standard:
# Your questions answered

## Briefing event

## Tuesday 21 February, 2-4pm at ACF

ACF held a briefing event for trusts and foundations to find out more about their obligations under the Common Reporting Standard; an international regime designed to combat off-shore tax evasion. Following the event, we have compiled some of the questions raised at the event and the answers given. Presenters included HMRC's Policy Adviser Elly Crockford and Head of Public and Regulatory Law at Bates Wells Braithwaite Melanie Carter. The questions have been categorised under the following headings:

1. *Understanding the rationale*
2. *Understanding obligations*
3. *Understanding human rights*
4. *Understanding the boundaries*

## 1. Understanding the rationale

**UK financial institutions are already tightly regulated. Why do we need CRS?**

This is a global regime which applies in many countries without the level of regulation that we have in the UK. In order to facilitate the flow of information to combat tax evasion, CRS aims to bring all countries up to the same standard.

**We already fill in forms for FATCA. Do we have to do anything additional to comply with CRS and other similar regimes?**

FATCA is a separate US regime from which charities are exempted. To help identify them, charities may be asked to complete forms for FATCA as account holders. Charities are not exempt from CRS and therefore charities must consider whether they have any reporting obligations within the regime. Except for FATCA, other tax-transparency regimes, such as the Crown Dependencies and Overseas Territories agreements, are now rolled into CRS. Find out more here.

**Why aren't charities exempt from CRS too?**

In drawing up the CRS, the G20 and OECD signatories highlighted cases globally where charities have been used to hide wealth, or to hide the beneficiary of wealth, and so it was decided that charities should also be included in the regime. Nonetheless the incidence of such misuse is low in the UK because of our strict regulatory regime for charities. By including charities in the regime, meaning they cannot be used as vehicles to avoid CRS, it is hoped that the reputation of charities is protected.

**Will implementation of CRS be reviewed?**

Internationally CRS implementation is monitored through the Global Forum; find out more about its role here. Within the UK, HMRC has a charities working group of which ACF is a member. This group helped contribute to the HMRC guidance and, now that CRS is up and running, will continue to meet regularly to monitor the impact of the regime on charities. To inform our ongoing engagement with HMRC, we would be grateful if members could let ACF know their experience of the regime and working with HMRC.

**What happens when the information is passed on?**

The tax authorities in other jurisdictions will compare the information provided with the information they already hold and look for discrepancies, just as HMRC will do with the information they receive from other jurisdictions.

**What will the reported information be used for?**

The purpose of collecting the information is to combat tax evasion. HMRC will only share the information with the tax jurisdiction(s) in which an individual or entity is tax resident, and it can only be used for matters relating to tax evasion or other purposes set out in international treaties.

**Which other countries have already implemented CRS for foundations and how are they implementing it?**

The Common Reporting Standard is being implemented by 101 countries in two rounds; the first group in 2017 and the second in 2018. There are countries outside the regime, the largest of which is the USA, which is maintaining FATCA. A full list of participating jurisdictions can be found here. There are also 'non-reciprocal' participants, such as Cayman Islands, British Virgin Islands, Anguilla, Bermuda, Turks and Caicos Islands. This means that the UK can receive data from them, but HMRC will not send data to them. There will be more among the 2018 adopting jurisdictions.

## 2. Understanding obligations

**What counts as 'discretionary management'?**

HMRC's guidance includes some examples of discretionary management, but it can be a tricky area to navigate. For example, even if trustees have quite specific investment strategies HMRC will still consider them as conferring discretionary management to investment managers if ultimately it is the investment manager who chooses what to invest in.

Unit trusts are dealt with in a specific way. HMRC does not regard unit trusts as being under the discretionary management of an investment manager. Although it may seem that a financial institution is regulating the unit trust, HMRC views foundations as taking a share the profits of the unit trust rather than investing into the market directly.

**What proportion of our assets has to be under discretionary management to be caught by CRS?**

If more than 50% of your income derives from investments, the proportion of funds under discretionary management is not relevant; they only need to be managed in whole *or in part* by an external manager and your charity may be caught by CRS. See some examples here.

**When choosing our investments, we do not consider the difference between unit trusts and segregated funds. Why does HMRC differentiate between them?**

The regime and its definitions come from international definitions which do not always match local regulatory practice. To achieve consistency however HMRC have looked at the issue and consider that the definition of discretionary management does *not* apply to the specific way that unit trusts are managed in the UK, even although investors will not consider this as part of their decision to purchase them or not.

**Is rental income classed as investment income?**

Direct interests in real property are not financial assets, and so rental income does not fall under the definition of income from investments. Only if the financial institution has invested in property via another entity, meaning the interest from property is indirect, will it class as investing in financial assets and therefore be a form of income from investment. On a similar note, cash is not a financial asset, nor is income from trading subsidiaries. Read more about income from financial assets here.

**Are we required to file nil returns?**

If you have established that you are a financial institution, carried out due diligence on your account holders, and identified that there are no reportable accounts, you do not have to register with HMRC as a financial institution or submit nil returns. However you should ensure that you keep on top of any changes year to year as your organisation's circumstances may change and may have reporting requirements in the future.

**What does the 'reasonableness test' mean in relation to CRS?**

The reasonableness test is part of the due diligence process, where charities assess the self-certification of tax residence they have received and decide whether there is any reason to doubt the information. For example, if you make a grant to a homeless individual who states that they are a UK resident, and you have no reason to doubt that they are UK tax resident, you can assume the verbal self-certification is reasonable. You can also reasonably rely on publicly available information to determine the tax residency status of certain organisations – e.g. UK charities that appear on a public register, or UK government entities. However, even when you are certain that your account holders are UK tax resident, you need to be able to demonstrate that you have evidence on which to base reasonable belief. Read more about the reasonableness test here.

**How do corporate trustees report on their financial institutions?**

A corporate trustee may be dealing with a trustee-documented trust. For the purposes of CRS, a trustee-documented trust is a non-reporting financial institution. In such a case, if the trustee is the financial institution, it may carry out due diligence and reporting obligations on behalf of the trust. Read more about trustee-documented trusts here.

**Can a third party do our reporting?**

A third party service provider, for example a lawyer or accountant, may apply to report on behalf a financial institution. The third party service provider would have to register your foundation's details and enter reportable information, but the foundation (as the financial institution) and trustees remain legally responsible for reporting. Find out more about the reporting format here.

**Our foundation meets the criteria but only makes grants to UK charities – are we affected?**

If you fall under the definition of a financial institution, you will have to carry out due diligence on all grant holders or debt or equity interest holders, depending on your legal form. However, charities registered with a UK regulator are presumed to be UK tax resident, and therefore you will not have to report on them. Exempted charities, such as universities, will still have to self-certify if they do not appear on the regulator's register.

## 3. Understanding human rights

*HMRC has specific guidance on charities and the protection of human rights, including the forms to apply for redaction of information. Find the guidance here.*

**What happens if, having gathered information about account holders who are tax resident in another jurisdiction, I believe that the exchange of information could pose a risk to their human rights because of the situation in their country?**

Alert HMRC to any changes as soon as you are aware of the issue. The exchanges don't take place until September so whenever you are alerted to a change in the situation, let HMRC know as soon as possible.

**What will HMRC do if we agree that the exchange of information may pose a risk to my grant-holders' human rights?**

If you make grants to an area where you think there might be human rights concerns, alert HMRC as soon as possible using the form HMRC provide in the relevant guidance, providing as much information as you can to substantiate your concerns. HMRC will work closely with Foreign and Commonwealth Office desk officers to make a decision, and where there is a risk to human rights, information relating to that particular account holder will be redacted (i.e. entirely removed from the exchange with no evidence that it existed – apply here.) Speak to HMRC to share your concerns at the earliest opportunity. Also bear in mind that there is a period between when the information is

submitted in May to when it's exchanged in September, as well as the opportunity to appeal any decision, so there is time for your concerns to be dealt with. HMRC have confirmed that they will not exchange information while the decision-making process, and any appeal against decision, is underway.

## 4. Understanding the boundaries

**What if we use an intermediary to make grants to other countries rather than do so directly ourselves?**

In most cases this is permissible where the purpose is not simply to avoid CRS duties or tax obligations. But depending on the circumstances it could give rise to concerns that such structures were being used for tax avoidance. At the moment, HMRC states that if using intermediaries is normal practice, it has no reason to see this as avoidance. But if the motivation is purely to avoid CRS, there will be compliance issues. Find out more about general compliance with CRS here and specific guidance for charities here.

**Is there no de minimis limit?**

When CRS was drawn up, setting a de minimis limit was considered. However it was ruled out as it creates an opportunity for avoidance, and ultimately increases the administrative burden of CRS.

**Making organisations declare whether they are active or passive non-financial entities seems very complex and many non-expert grant-holders are likely to misunderstand their classifications. What will HMRC do if the information is not of good quality?**

Over time, HMRC believes that the general public will become more familiar with the classifications as they come into contact with bank forms and other financial institutions asking for self-certification. ACF's materials include a template self-certification form which breaks down the definitions with a view to simplifying the process for those filling in the forms. See our materials here.

**'Grant' is a general term for many ways in which foundations give money to others. Are any other forms of financial transactions affected?**

Depending on your legal structure, you will be reporting on settlors, beneficiaries, or anyone else with control over the trust or a debt or equity interest in the charity. Lenders will therefore be caught. The other relevant part of the test for charities is whether the recipient of a grant could be classed as a beneficiary of mandatory or discretionary payments from the proceeds of the trust. In this case, recipients of prizes, awards, etc. would be beneficiaries of unincorporated trusts. Transactions such as a fee paid for a service under contract do not count as equity interest payments for CRS purposes. If there are any doubts, check with HMRC. If you feel there are grey areas in your work where something called a grant may be better understood as contracts, contact HMRC. Find out more about debt and equity interest holders for an unincorporated association and a company.

**What happens after Brexit?**

There is still a great deal of uncertainty surrounding Brexit, but it is expected that the directive implementing CRS will become part of UK law. While it is an EU directive which implements CRS in UK law, it is not an EU initiative; it is a global regime of which the UK will still be a signatory.

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**Useful links**

HMRC guidance for charities

HMRC guidance on the protection of human rights

HMRC general guidance on the Common Reporting Standard

OECD information on the Common Reporting Standard

Contact the HMRC exchange of information team

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