

## Common Reporting Standard: Progress report

We have been continuing conversations with HMRC on how the Automatic Exchange of Information regime, also known as the Common Reporting Standard (CRS), affects trusts and foundations.

If you're reading this you'll probably already know that this is an international tax transparency regime aimed at tracking money flows through financial institutions to those account holders tax resident in other jurisdictions. The purpose is to pass this information on to the relevant tax authorities. While it's aimed primarily at banks and financial management services, charitable trusts and foundations will be considered to be financial institutions if they rely on investments for 51% or more than of their income and where some or all of those investments are externally managed by a financial institution under a discretionary mandate.

Charities that fall within the scope of the regime will have to:

- Register with HMRC as a financial institution
- Carry out due diligence to establish their tax residency status of all grant-holders and any member of incorporated organisations who might have a debt or equity interest in the corporation (for example a board member who has made a loan to the organisation). For UK charities, being listed on a regulatory register will be sufficient evidence of UK tax status.
- Submit to HMRC by May 2017 reports on all payments made during calendar year 2016 to those individuals or organisations who are tax resident in jurisdictions outside the UK (including Channel Islands and Crown Dependencies). The information will include name, address, tax residence jurisdiction, tax identification number and, for organisations, classification of the sort of institution they are for the purposes of CRS.

Recently HMRC have provided two helpful clarifications.

**Incorporated organisations:** Any UK charity that is incorporated may still qualify as a financial institution if they meet the income and discretionary management tests, however they will not have to carry out due diligence or report on grant holders, and will only be required to do so for members of the company who have a debt or equity interest. It's difficult to imagine where that situation might arise for a charity, but perhaps it's conceivable that a board member could make a loan to an organisation. This clarification should reduce the bureaucratic burden for 'incorporated charities' which includes those incorporated by Royal Charter, Act of Parliament, and Charitable Incorporated Organisations.

**Unit Trusts are not regarded as being investments under 'discretionary management':** This means that trusts or foundations that have placed all of their investments in unit trusts will not be caught by CRS. The reason is that in such cases, HMRC regards the charity as essentially taking a share the profits of the unit trust rather than investing into the market directly.

This feels like welcome progress. However, ACF is still in conversation with HMRC about the process to be put in place to cover those occasions when exchange of information with a foreign jurisdiction could give rise to human rights concerns for the individuals concerned. We expect specific guidance soon. We're also seeking further clarification about what might or might not count as 'discretionary management'.

With the very first reporting year approaching its close, ACF is urgently working with HMRC, the Charity Regulators and other umbrella bodies to create an information sheet for charities as well as bespoke forms etc. to help charities affected carry out their due diligence.

HMRC are well aware of the closeness of the deadline and the delayed start, so charities should take comfort from that in their published online guidance [HMRC have stated](#):

***For the early years of AEOI reporting HMRC's approach to compliance by charities that are Financial Institutions will be a soft landing; we will not seek to apply penalties where charities have made efforts to carry out due diligence requirements and report accurately.***

We'll continue to keep you posted. In the meantime, you'll find the following links to published HMRC guidance helpful:

General introduction to CRS for charities:

<https://www.gov.uk/guidance/automatic-exchange-of-information-guidance-for-charities>

HMRC's internal manual for charities and CRS:

<https://www.gov.uk/hmrc-internal-manuals/international-exchange-of-information/ieim404700>

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