

REPORTABLE JURISDICTIONS FOR THE PURPOSES OF THE AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION

Published by the Gibraltar Competent Authority under the provisions of section 29 (3) (a) and (b) of the International Co-operation (Improvement of International Tax Compliance) Regulations 2016

Updated: 20 October 2020

The deadline for submission is 31 July annually for all reporting options (also applies to USA FATCA); no new reportable jurisdictions for the current reporting year are added after 30 April each year

Due to the exceptional circumstances surrounding the global Covid-19 pandemic, the time limit for submission in 2020 was deferred to 30 September for all reporting options (including USA FATCA)

Click below to view a training video on the functionality of the aeo.egov.gi portal:

https://www.youtube.com/watch?v=oDbzeX9L_xU&feature=youtu.be

Common Reporting Standard

Jurisdiction	Year of first exchange
Antigua & Barbuda	2020
Argentina	2017
Australia	2018
Azerbaijan	2019
Barbados	2019
Bonaire, Sint Eustatius & Saba	2017
Brazil	2019
Canada	2018
Chile	2019
China	2019
Cook Islands	2020
Colombia	2017
Costa Rica***	2020
Curaçao***	2021
Faroe Islands	2017
Greenland**	2018
Guernsey*	2017
Hong Kong, China	2020

Iceland	2017
India	2017
Indonesia	2018
Isle of Man*	2020
Israel	2019
Japan	2018
Korea	2017
Malaysia	2020
Mauritius	2019
Mexico	2017
New Zealand	2018
Norway	2017
Pakistan	2020
Panama	2019
Russian Federation	2018
Saint Lucia***	2020
Saudi Arabia	2019
Seychelles	2017
Singapore	2019
South Africa	2017
Turkey	2021
Uruguay	2019

*Bilateral Agreement for the Exchange of Information relating to Tax Matters that includes provision for the automatic exchange of information in conjunction with a Common Reporting Standard Bilateral Competent Authority Agreement (BCAA).

Note: The OECD and Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters and the Common Reporting Standard Multilateral Competent Authority Agreement (MCAA) do not currently apply bilaterally among British Crown Dependencies and British Overseas Territories; hence, the need for the negotiation, conclusion, signing and entry into force of bilateral agreements in the case of CDOTs.

**Greenland announced that it was moving from first automatic exchange of financial account information in 2017 to first automatic exchange in 2018 after the deadline for submission by Gibraltar Financial Institutions. Information relating to Greenland-resident persons or entities submitted by Reporting Financial Institutions in 2017 was therefore withheld by the Gibraltar Competent Authority. The automatic exchange of financial account information with Greenland commenced in 2018 in respect of information relating to the year ending 31 December 2017.

***Costa Rica and Saint Lucia were non-reciprocal jurisdictions in 2018 and 2019 respectively. Following successful completion of data safeguards action plans, as approved by OECD Expert Panels, both jurisdictions commenced the reciprocal automatic exchange of financial account information with Gibraltar in 2020 in respect of information relating to the year ending 31 December 2019. Curaçao was a non-reciprocal jurisdiction since 2018. Following the successful completion of a data safeguards action plan, as approved by an OECD Expert Panel, the jurisdiction will commence the reciprocal automatic exchange of financial account information with Gibraltar in 2021 in respect of information relating to the year ending 31 December 2020.

Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation ('DAC 2')

Jurisdiction	Year of first exchange
Austria*	2017
Belgium	2017
Bulgaria**	2017
Croatia	2017
Cyprus	2017
Czechia	2017
Denmark	2017
Estonia	2017
Finland	2017
France, including Saint Barthélemy	2017
Germany	2017
Greece	2017
Hungary	2017
Ireland	2017
Italy	2017
Latvia	2017
Lithuania	2017
Luxembourg	2017
Malta	2017
Netherlands	2017
Poland	2017
Portugal	2017
Romania	2017
Slovakia	2017
Slovenia	2017
Spain	2017
Sweden	2017
United Kingdom	2017

*Austria commenced the automatic exchange of financial account information with European Union jurisdictions, including Gibraltar, in 2017, and with non-European Union jurisdictions in 2018.

**Financial account information destined for Bulgaria was withheld by the Gibraltar Competent Authority in 2019 following confirmation of a data safeguards breach at the National Revenue Agency.

Agreements between the EU and European third countries on the automatic exchange of financial account information to improve international tax compliance (Protocol to Council Directive 2003/48/EC with a view to implementing the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters)

Jurisdiction	Year of first exchange
Andorra	2018
Liechtenstein*	2017
Monaco	2018
San Marino	2017
Switzerland	2018

*Liechtenstein commenced the automatic exchange of financial account information with EU jurisdictions, including Gibraltar, in 2017 and with non-EU jurisdictions in 2018.

Temporarily non-reciprocal*

Jurisdiction	Year of first receipt of information
Aruba	2018
Belize	2018
Brunei Darussalam	2021
Dominica	2021
Ghana	2020
Lebanon	2020
Macao, China	2020
Nigeria	2020
Saint Vincent and the Grenadines	2019
Samoa	2019
Vanuatu	2021

*Gibraltar will receive financial account information from these jurisdictions but will not be required to reciprocate until such time as the OECD's Confidentiality and Data Safeguards jurisdictional assessments are successfully completed or a remedial action plan recommended by an OECD Expert Panel of Assessors is implemented and approved.

Permanently non-reciprocal*

Jurisdiction	Year of first receipt of information
Bahamas	2020
Bahrain	2021
Grenada	2021
Kuwait	2021

Marshall Islands	2019
Nauru	2019
Qatar	2021
Saint Kitts and Nevis	2019
United Arab Emirates	2021

*Gibraltar will receive financial account information from these jurisdictions but will not be required to reciprocate indefinitely, generally because the relevant partner jurisdiction does not operate a direct tax system and is therefore not requesting incoming data.

Reporting obligations

The first reporting year was the calendar year 2016 in relation to an account identified as a reportable account, for the purposes of the Common Reporting Standard, Directive 2014/107/EU, EU Agreements with European third countries or bilateral agreements, that was maintained by the reporting financial institution at any time during the calendar year in question in respect of reportable jurisdictions prescribed by the Competent Authority.

Returns should be submitted electronically to the Gibraltar Competent Authority via Her Majesty's Government of Gibraltar's AEOI portal www.aeoi.egov.gi on or before 31 July of the year following the calendar year to which the return relates.

Nil returns

A reporting financial institution that has no reportable accounts or that does not have any information to provide to the Competent Authority in respect of a reportable account need not provide a nil return to the Competent Authority (section 9 (5) of the International Co-operation (Improvement of International Tax Compliance) Regulations 2016). This applies equally to USA FATCA reporting (section 5 (4) of the International Co-operation (Improvement of International Tax Compliance) (United States) Regulations 2015).

Closed accounts and negative balances

Closed accounts and accounts with negative balances should be reported as having zero balances. Negative balances should not be offset against any other account balances.

Non-reciprocal jurisdictions

Data is not required to be submitted to the Gibraltar Competent Authority until such time as a particular jurisdiction becomes a Reciprocal Reportable Jurisdiction as per the published list.

Self-certification

The CRS Commentary on Section IX concerning Effective Implementation aims to ensure that strong anti-avoidance measures are in place to ensure that valid self-certifications, which form part of the account-opening documentation, are always obtained for New Accounts, as this allows the Reporting Financial Institution to determine its client's tax residence from the outset. In this respect, and in response to question no. 22. ('Timing of self-certification') in the OECD's CRS-related FAQs document, the OECD has provided the following guidance:

"Where a self-certification is obtained at account opening but validation of the self-certification cannot be completed because it is a 'day two' process undertaken by a back-office function, the self-certification should be validated within a period of 90 days. There are a limited number of instances where, due to the specificities of a business sector it is not possible to obtain a self-certification on 'day one' of the account opening process, for example where an insurance contract has been assigned from one person to another or in the case where an investor acquires shares in an investment trust on the secondary market. In such circumstances, the self-certification should be both obtained and validated as quickly as feasible, and in any case within a period of 90 days.

"Given that obtaining a self-certification for New Accounts is a critical aspect of ensuring that the CRS is effective, it is expected that jurisdictions have strong measures in place to ensure that valid self-certifications are always obtained for New Accounts (see examples in paragraph 18 of the Commentary on Section IX). In all cases, Reporting Financial Institutions shall ensure that they have obtained and validated the self-certification in time to be able to meet their due diligence and reporting obligations with respect to the reporting period during which the account was opened." (CRS Sections IV(A) and V(D)(2)).

If an Account Holder fails to respond within the period of 90 days, the Reporting Financial Institution should suspend the account until a valid self-certification is obtained. The Gibraltar Competent Authority considers a "valid" self-certification to be an original signed form.

Paragraph 6 of the Commentary on Section IX concerning Effective Implementation emphasises that to increase the reliability of self-certifications, jurisdictions are expected to impose penalties for signing, or otherwise positively affirming, a false self-certification.

Residence country codes

Complete information including all residence country codes that have been identified as applicable to the Reportable Person should be submitted in order to raise awareness of the possible need to resolve dual residence status or other issues relating to multiple reporting. The use of the domestic country code is also mandated for undocumented accounts, based on the hold-mail / care of address or other minimum indicia available. (Data element *Iia*. *ResCountryCode*, Common Reporting Standard, Second Edition, page 236).

Recalcitrant account holder

A recalcitrant account holder is defined as a financial account holder who fails to comply with reasonable requests to provide the self-certification information needed for reporting. Recalcitrant account holders may be reported on an individual, as opposed to a pooled, basis.

Controlling persons - definition

CRS Section VIII subparagraph D(6) sets out the definition of the term 'Controlling Persons'. This corresponds to the term 'beneficial owner' as described in Recommendation 10 and the Interpretative Note on Recommendation 10 of the Financial Action Task Force Recommendations as adopted in February 2012, and must be interpreted in a manner consistent with such Recommendations, with the aim of protecting the international financial system from misuse including with respect to tax crimes. (Commentary on CRS Section VIII, paragraph 132, p. 198).

For an Entity that is a legal person, the term 'Controlling Persons' means the natural person(s) that exercise(s) control over the Entity. "Control" over an Entity is generally exercised by the natural person(s) that ultimately has / have a controlling ownership interest in the Entity. A 'control ownership interest' depends on the ownership structure of the legal person and is usually identified on the basis of a threshold applying a risk-based approach e.g. any person(s) owning more than a certain percentage of the legal person, such as 25%. Where no natural person(s) exercises control through ownership interests, the Controlling Person(s) of the Entity will be the natural person(s) that exercises control of the Entity through other means. Where no natural person(s) is identified as exercising control of the Entity, the Controlling Person(s) of the Entity will be the natural person(s) that hold(s) the position of senior managing official. (Commentary on CRS Section VIII, paragraph 133, p. 198).

In the case of a trust, the term 'Controlling Persons' means the settlor(s), trustee(s), protector(s), if any, the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust. The settlor(s), trustee(s), protector(s), if any, and the beneficiary(ies) or class(es) of beneficiaries, must always be treated as the Controlling Persons of a trust, regardless of whether or not any of them exercise control over the trust. In addition, any other natural person(s) exercising ultimate effective control over the trust, including through a chain of control or ownership, must also be treated as a Controlling Person of the trust. With a view to establishing the source of funds in the account(s) held by the trust, where the settlor(s) of a trust is an Entity, Reporting Financial Institutions must also identify the Controlling Person(s) of the settlor(s) and report them as Controlling Person(s) of the trust. For beneficiary(ies) of trusts that are designated by characteristics or by class, Reporting Financial Institutions should obtain sufficient information concerning the beneficiary(ies) to satisfy the Reporting Financial Institution that it will be able to establish the identity of the beneficiary(ies) at the time of the pay-out or when the beneficiary(ies) intend(s) to exercise vested rights. Such an occasion will constitute a change in circumstances and will trigger the relevant procedures. The Gibraltar Competent

Authority's stance is not to allow Reporting Financial Institutions to align the scope of the beneficiary(ies) of a trust treated as Controlling Person(s) of the trust with the scope of the beneficiary(ies) of a trust treated as Reportable Persons of a trust that is a Financial Institution. (Commentary on CRS Section VIII, paragraph 134, pp. 198-9).

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. The same applies to a legal arrangement that is equivalent or similar to a trust, such as a foundation that is a Financial Institution. (Commentary on CRS Section VIII, paragraph 69, p. 178).

Under CRS Section VIII subparagraph C(4), 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 such as through a nominee, a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust. For these purposes, a beneficiary who may receive a discretionary distribution from the trust only will be treated as a beneficiary of a trust if such person receives a distribution in the calendar year or other appropriate reporting period (i.e. either the distribution has been paid or made payable). The same is applicable with respect to the treatment of a Reportable Person as a beneficiary of a legal arrangement that is equivalent or similar to a trust, or foundation. (Commentary on CRS Section VIII, paragraph 70, p. 178).

In the case of a legal arrangement other than a trust, the term 'Controlling Persons' means persons that are in equivalent or similar positions to those that are Controlling Persons of a trust. Thus, taking into account the different forms and structures of legal arrangements, Reporting Financial Institutions should identify and report persons in equivalent or similar positions to those required to be identified and reported for trusts. (Commentary on CRS Section VIII, paragraph 135, p. 199).

In relation to legal persons that are functionally similar to trusts e.g. foundations, Reporting Financial Institutions should identify Controlling Persons through similar customer due diligence procedures as those required for trusts, with a view to achieving appropriate levels of reporting. (Commentary on CRS Section VIII, paragraph 136, p. 199).

Controlling persons and residence

Where an Entity Account Holder is a Reportable Person and also a Passive NFE with one or more Controlling Persons that is / are Reportable Person(s), and both the Entity as well as any of such Controlling Persons are resident in the same Reportable Jurisdiction, the information with respect to the account should be reported as an account of an Entity that is a Passive NFE with a Controlling Person that is a Reportable Person, as well as an account of an Entity that is a Reportable Person i.e. as if the information were with respect to two accounts (CRS data elements 101 and 103).

Where none of such Controlling Persons are resident in the same Reportable Jurisdiction as the Entity, the information with respect to the account must nevertheless be reported as an account of an Entity that is a Reportable Person (Common Reporting Standard, Second Edition, pages 247 and 248).

Discretionary beneficiaries of a trust that is a Passive NFE

Both mandatory and discretionary beneficiaries are included within the definition of Controlling Persons. The Gibraltar Competent Authority's stance is not to allow Reporting Financial Institutions to align the scope of the beneficiaries of a trust that is a Passive NFE reported as Controlling Persons of the trust with the scope of the beneficiaries of a trust treated as Reportable Persons of a trust that is a Financial Institution. The Reporting Financial Institution should therefore report discretionary beneficiaries of a trust that is a Passive NFE irrespective of whether or not they receive distributions from a trust in any given year (CRS Implementation Handbook, Second Edition, paragraph 268, page 113).

Discretionary beneficiaries of a trust that is a Reporting Financial Institution

A discretionary beneficiary will only be treated as an Account Holder in the years in which he or she receives a distribution from the trust. The Reporting Financial Institution is therefore only required to report discretionary beneficiaries of a trust that is a Reporting Financial Institution in the years in which they receive a distribution from the trust (CRS Implementation Handbook, Second Edition, paragraph 253, page 108).

Balances held in client accounts

The inclusion in submissions of balances held in client accounts depends heavily on the application and interpretation of the CRS regulations, extending from whether the relevant trust and corporate services provider is a reporting Financial Institution to whether the relevant financial accounts being considered are in fact reportable accounts.

If there is sufficient certainty that these definitions are satisfied this will give rise to a reporting obligation under the CRS rules. In these circumstances, the CRS rules should apply to the entirety of the assets held by that reportable person, notwithstanding that an element or balance of these is temporarily held within a trust and corporate services provider's client accounts. Essentially, the existence or use of a client account cannot serve to shield the disclosure of financial accounts that are reportable in accordance with the CRS rules.

If, on the other hand, there is insufficient nexus to establish that the relevant definitions are met, no reporting obligation under the CRS rules should apply.

Wider approach

Under the 'wider approach' to the automatic exchange of financial account information adopted by Gibraltar (Annex 5 of the Common Reporting Standard), Reporting Financial Institutions are required to search for indicia indicating that the account holder is resident in a Foreign Jurisdiction i.e. they are required to collect information on the jurisdiction of residence for tax purposes of *all* non-resident customers, not restricted to residents of jurisdictions with which Gibraltar has an activated exchange of information relationship under the Common Reporting Standard, Council Directive 2014/107/EU, Agreements between the EU and European third countries on the automatic exchange of financial account information to improve international tax compliance, and bilateral agreements for the exchange of information in tax matters that include provisions for the automatic exchange of information.

The information collected under this wider approach is not required to be reported to the Competent Authority until such time as the OECD activates the relevant jurisdiction's automatic exchange relationship with Gibraltar and the jurisdiction is added to the Reportable Jurisdictions list published by the Competent Authority as prescribed in Regulation 29 (3) (a) and by 31 July each year commencing in the year prescribed in Regulation 29 (3) b).

<http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchange-relationships/#d.en.345426>

Transition from Intergovernmental Agreement (IGA) to Directive 2014/107/EU ('DAC 2') to relevant bilateral agreements signed between Gibraltar and the United Kingdom

The Competent Authorities of Gibraltar and the United Kingdom agreed that while there was an overlap in the period covered by the IGA and the DAC 2 there would be no need for duplicate reporting. Diligence carried out under the Intergovernmental Agreement (IGA), was therefore deemed to have been carried out for the purposes of the DAC 2.

The Competent Authorities therefore agreed on the following transitional arrangements:

- Exchange in respect of 2016 included the maximum of what had been required by the IGA or the DAC 2 in that year. Therefore, in addition to what had been required under the IGA, the accounts that needed to be reported in 2017 also included all pre-existing high-value accounts that had not been required to be reported under the IGA or reported under the alternative reporting regime in 2014 and 2015, and that were still open at the end of 2015; as well as any accounts identified in 2016 as reportable under the DAC 2 but not reportable under the IGA;
- Exchange in respect of 2017 onwards was in accordance with the DAC 2. The alternative reporting regime does not apply under the DAC 2, so any accounts for

2017 that would have been excluded under the alternative reporting regime but are included under the DAC 2 were 'more' and therefore needed to be reported.

From 1 January 2021, the automatic exchange of financial account information between Gibraltar and the United Kingdom will be effected under the provisions of the relevant bilateral agreements, as Directive 2014/107/EU (the 'DAC 2') will cease to be applicable following the United Kingdom and Gibraltar's definitive departure from the European Union.

LEGISLATION

CRS Regulations: International Co-operation (Improvement of International Tax Compliance) Regulations 2016

<https://www.gibraltarlaws.gov.gi/uploads/legislations/taxation-mutual-administrative-assistance/2016s253.pdf#viewer.action=download>

CRS primary legislation: Taxation (Mutual Administrative Assistance) Act 2014

<https://www.gibraltarlaws.gov.gi/uploads/legislations/taxation-mutual-administrative-assistance/2014-06o.pdf#viewer.action=download>

USA FATCA Regulations: International Co-operation (Improvement of International Tax Compliance) (United States) Regulations 2015

<https://www.gibraltarlaws.gov.gi/uploads/legislations/international-co-operation-tax-information/2015s134.pdf#viewer.action=download>

USA FATCA primary legislation: International Co-Operation (Tax Information) Act 2009

[https://www.gibraltarlaws.gov.gi/uploads/legislations/international-co-operation-tax-information/2009-50o\(03-02-20\).pdf#viewer.action=download](https://www.gibraltarlaws.gov.gi/uploads/legislations/international-co-operation-tax-information/2009-50o(03-02-20).pdf#viewer.action=download)

Overriding primary tax legislation: Income Tax Act 2010

[https://www.gibraltarlaws.gov.gi/uploads/legislations/income-tax/2010-21o\(07-05-20\).pdf#viewer.action=download](https://www.gibraltarlaws.gov.gi/uploads/legislations/income-tax/2010-21o(07-05-20).pdf#viewer.action=download)

OECD

CRS Commentary

The main body of guidance on implementation of the Common Reporting Standard can be found in the OECD publication, 'Standard for Automatic Exchange of Financial Account Information in Tax Matters', the second edition of which was published on 27 March 2017:

<http://www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-account-information-in-tax-matters-second-edition-9789264267992-en.htm>

Frequently Asked Questions

The OECD released a revised version of its 'CRS-related Frequently Asked Questions' in February 2019:

<http://www.oecd.org/tax/exchange-of-tax-information/CRS-related-FAQs.pdf>

CRS Implementation Handbook

The OECD published a second edition of its CRS Implementation Handbook, which provides a practical guide to implementing the CRS and includes a comparison between the CRS and FATCA, in April 2018:

<http://www.oecd.org/ctp/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-account-information-in-tax-matters.htm>

Schema and User Guide

The Schema in extensible mark-up language (XML) to be used by Gibraltar Financial Institutions when submitting the annual return of financial account information to the Gibraltar Competent Authority is available online on the OECD's Automatic Exchange of Information in Tax Matters portal, together with a User Guide:

<http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/schema-and-user-guide/>