



Income Tax Office
HM Government of Gibraltar

AEOI: CRS & FATCA

REPORTABLE JURISDICTIONS & EXPLANATORY NOTES



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Disclaimer:

These explanatory notes have been issued as an aid to the International Co-operation (Improvement of International Tax Compliance) Regulations 2016 as well as the International Co-operation (Improvement of International Tax Compliance) (United States) Regulations 2015. They do not constitute legal advice and are not, and are not intended to be, a substitute for independent specialist advice or analysis of the applicable legislation.

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1. Introduction & General Information

This information is 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

The deadline for submission for both CRS and FATCA reporting is **31 July** annually.

No new CRS reportable jurisdictions for the current reporting year are added after **30 April** in each calendar year.

An instructional training video on the functionality of HM Government of Gibraltar's aeoi.egov.gi portal is available at the following link:

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

2. Reportable Jurisdictions

2.1 Common Reporting Standard

Convention on Mutual Administrative Assistance in Tax Matters
(MAAC) - Multilateral Competent Authority Agreement (MCAA)

Jurisdiction	Year of first exchange
Albania	2022
Antigua & Barbuda	2020
Argentina	2017
Australia	2018
Azerbaijan	2019
Barbados	2019

Bonaire, Sint Eustatius & Saba	2017
Brazil	2019
Canada	2018
Chile	2019
China	2019
Colombia	2017
Cook Islands	2020
Costa Rica***	2020
Curaçao***	2021
Ecuador	2022
Faroe Islands	2017
Ghana***	2023
Greenland**	2018
Grenada***	2021
Guernsey*	2017
Hong Kong, China	2020
Iceland	2017
India	2017
Indonesia	2018
Isle of Man*	2020
Israel	2019
Jamaica	2023
Japan	2018
Kazakhstan	2022
Korea	2017
Malaysia	2020
Mauritius	2019
Mexico	2017
New Zealand	2018
Nigeria***	2022
Norway	2017
Pakistan	2020
Panama	2019

Peru	2021
Russian Federation****	2018
Saint Lucia***	2020
Saudi Arabia	2019
Seychelles	2017
Singapore	2019
South Africa	2017
Türkiye	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). 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.*

****Albania, Costa Rica, Curaçao, Ghana, Grenada, Nigeria and Saint Lucia were previously non-reciprocal jurisdictions. Following successful completion of Confidentiality and Data Safeguards Action Plans, as approved by OECD Expert Panels, these jurisdictions now automatically exchange financial account information with Gibraltar on a reciprocal basis. Costa Rica moved to reciprocal exchanges in 2020 but reverted to non-reciprocity in 2022, as directed by the OECD Co-ordinating Body following a tax data breach resulting from a cyber-attack. Gibraltar will therefore withhold data destined for Costa Rica until the OECD completes its investigation and gives the all-clear to resume reciprocal exchanges.*

***** CRS data exchanges with the Russian Federation have been suspended until further notice. For the avoidance of doubt, this includes the suspension of domestic reporting in Gibraltar.*

2.2 Council Directive 2014/107/EU ('DAC 2') up to 31 December 2020
CRS MCAA and bilateral agreements from 1 January 2021

Jurisdiction	Year of first exchange
Austria*	2017
Belgium	2017
Bulgaria**	2017
Croatia	2017
Cyprus	2017
Czechia	2017
Denmark	2017
Estonia	2017
Finland	2017
France	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 Bulgarian National Revenue Agency. Following the transition from European Council Directive 2014/107/EU (the 'DAC 2') to the OECD CRS MCAA with effect from 1 January 2021, the Gibraltar Competent Authority is withholding data reported by Gibraltar FIs destined for Bulgaria and Romania until such time as an OECD Expert Panel approves the successful completion of a Confidentiality and Data Safeguards Action Plan by each of these jurisdictions (this was not required by the European Union under the DAC 2).*

2.3 CRS MCAA from 1 January 2021

Agreements between the EU and European third countries to improve international tax compliance

Protocol to Council Directive 2003/48/EC up to 31 December 2020

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 at the time, in 2017 and with non-EU jurisdictions in 2018.*

2.4 Temporarily non-reciprocal

Jurisdiction	Year of first receipt of information
Aruba	2018
Belize	2018

Brunei Darussalam	2021
Dominica	2021
Lebanon	2020
Macao, China	2020
Maldives	2024
New Caledonia	2021
Qatar	2021
Saint Vincent and the Grenadines	2019
Samoa	2019
Vanuatu	2021

Gibraltar receives financial account information from these jurisdictions but is not 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.

2.5 Permanently non-reciprocal

Jurisdiction	Year of first receipt of information
The Bahamas	2020
Bahrain	2021
Kuwait	2021
Marshall Islands	2019
Nauru	2019
Saint Kitts and Nevis	2019
United Arab Emirates	2021

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

2.6 Non-Intended Exchange Partners

Jurisdiction	Year of first receipt of information
Niue	-

Oman	-
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These jurisdictions have not included Gibraltar in their CRS MCAA section 7(1)(f) notification of Intended Exchange Partners to the OECD Co-ordinating Body (Gibraltar did include them). No exchanges will therefore take place.

3 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 must be submitted electronically to the Gibraltar Competent Authority via HM 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.

4 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 as per section 9 (5) of the International Co-operation (Improvement of International Tax Compliance) Regulations 2016.

This applies equally to USA FATCA reporting under section 5 (4) of the International Co-operation (Improvement of International Tax Compliance) (United States) Regulations 2015.

5 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.

6 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 included in section 2.

7 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."

Please refer to 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.

8 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 *Ila. ResCountryCode*, Common Reporting Standard, Second Edition, page 236).

9 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.

10 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. Up until the 2022 reporting cycle, the Gibraltar Competent Authority's stance was 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).

The Gibraltar Competent Authority amended its stance in order to align as from 1 September 2022 following completion of the 2022 reporting cycle. This means that Reporting Financial Institutions would only need to report discretionary beneficiaries in the year that these beneficiaries receive a distribution from the trust. Reporting Financial Institutions will now have the option to adopt this approach for each reporting cycle. This does not mean that the due diligence requirements are reduced. The obligation of obtaining sufficient information to establish the identity of beneficiaries must be maintained. Where a Reporting Financial Institution elects this option, they must also ensure that there are adequate controls in place to identify when a distribution is made as well as due notifications to be made. Please refer to section 18 on the Administrative Compliance Framework for further details.

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).

11 Controlling persons - 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).

12 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 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 would therefore only be required to report discretionary beneficiaries of a trust that is a Passive NFE if they receive distributions from a trust in any given year (CRS Implementation Handbook, Second Edition, paragraph 268, page 113).

13 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).

14 Treatment of trusts in the Common Reporting Standard

The OECD's approach to the reporting of multi-level ownership structures, including trusts and corporate entities, is that these should be treated separately in terms of classification. This includes a determination of their due diligence and reporting obligations. Therefore, each trust or corporate entity, as the case may be, should be classified under the CRS in accordance with the defined parameters. Those classified as Reporting Financial Institutions would be obliged to comply with due diligence and reporting obligations.

Under the CRS, an underlying trust that is a Reporting Financial Institutions is required to apply due diligence rules to determine the identity and residence of its Account Holders (or Equity Interest Holders).

Where the discretionary beneficiary is a corporate entity, the trust will identify the Controlling Persons of the corporate entity, and treat them (rather than the corporate entity) as the Account Holders of the trust.

Therefore, in a multi-level ownership structure, the underlying trust will have to look through all of the layers of the entities (regardless of their classification) to identify the relevant Controlling Persons and determine the relevant reporting obligations under the CRS.

Where the Reporting Financial Institutions is not a trust, e.g. when it is a Depository Institution or a Custodian Institution, and where in such cases the corporate entities holding the Financial Accounts are, in fact, Financial Institutions, these will not be reportable as Financial Institutions are not Reportable Persons under the CRS.

If there are multiple layers of entities in the holding structure and they are all Reporting Financial Institutions, the reporting would need to be considered at the 'highest level' in the structure.

For further information, a detailed explanation of the treatment of trusts from the perspective of the OECD is set out in pages 104 to 124 of the CRS Implementation Handbook. This is available from the following link:

<https://www.oecd.org/tax/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-information-in-tax-matters.pdf>

The above should be read in conjunction with the CRS Commentary on Section VIII concerning Defined Terms contained in the 'Standard for Automatic Exchange of

Financial Account Information in Tax Matters', Second Edition (pages 158 to 206):
This is available from the following link:

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

15 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.

16 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 list referred to in section 2 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). A list of activated relationships for CRS information as published by the OECD is available using the following link:

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

17 Peer input feedback from CRS-partner jurisdictions

A critical part of the CRS is the matching of data by competent authorities for the dissemination to corresponding tax officials that use that data to drive compliance activities in their jurisdictions through various activities, including general, specific and enhanced reviews, forensic and derivative purposes and criminal investigations.

The competent authority of the receiving jurisdiction carries out a verification of the data received against their tax databases, aiming to establish that the account holders being reported to them reflects an actual taxpayer on which they can pursue any relevant compliance activity within their jurisdiction.

The data transmitted by Gibraltar to partner jurisdictions conforms to the OECD Schema and to the requirements of the OECD's Common Transmission System (CTS) in order to allow exchanges to be made. HM Government of Gibraltar's AEOI portal does not permit any file that does not conform to the relevant Schema and rejects files if the format and composition is not in accordance with these predefined rules. Transmission of data by Gibraltar is notified as a successful status message transmitted by the partner jurisdiction and received by Gibraltar under the CTS.

The detail of the submissions and the accuracy of the data content is not verified by this process. The only independent check of this occurs on receipt and upon matching by the receiving jurisdiction.

It is for this reason that it is important to ensure the accuracy and correctness of the data content of submissions made and forms part of the Administrative Compliance Framework undertaken by the Gibraltar Competent Authority.

As part of Gibraltar's assessment of the effective implementation of the OECD's AEOI Standard, the Competent Authority has received peer input feedback from partner jurisdictions on the data submitted by financial institutions locally and transmitted under the CRS.

The most common areas of concern observed by partner jurisdictions are summarised below consisting of:

- reported addresses outside of the corresponding jurisdiction to which the data is sent;
- dates of birth not provided;

- TINs not corresponding to valid ones of the corresponding jurisdiction to which the data is sent;
- no TINs included; and
- personal identification details not provided;

18 Administrative Compliance Framework

As part of this ongoing framework, the Competent Authority in Gibraltar will address key critical areas for the successful implementation of the AEOI Standard locally. These include:

- governance for the CRS process in the organisation;
- role of relationship managers and is there sufficient knowledge and awareness on due diligence requirements;
- technology and processes including how the reports are prepared, checked and validated;
- classification of reportable accounts and itself for CRS purposes; and
- training, adequacy and awareness of all staff involved in the AEOI process.

The Competent Authority in Gibraltar will also carry out verification procedures on the self-certification process including validation of data set out in reports as well as the rationale for the omission of such data.

In relation to the Controlling Persons of a trust and in order to ensure the correct implementation of the AEOI Standard in Gibraltar regarding the application of this election, the Competent Authority in Gibraltar shall:

- seek to establish that Reporting Financial Institutions electing this approach include in their underlying terms and conditions, a mandatory obligation under which the trust must notify the Reporting Financial Institution in relation to any distributions received by its beneficiaries;
- seek evidence demonstrating that Reporting Financial Institutions issue reminders to such trusts ahead of each reporting cycle notwithstanding the inclusion of the mandatory obligation referred to above and included in the underlying terms and conditions; and
- check to ensure that Reporting Financial Institutions provide written notification to the Competent Authority in Gibraltar, ahead of each reporting cycle, as to their election under this approach. The written notification should be sent as an

email attachment to competentauthority@gibraltar.gov.gi by not later than 31 October.

19 OECD Disclosure Facility – key risks

As part of the ongoing efforts to maintain the integrity of the CRS the OECD launched a Disclosure Facility which allows the reporting of schemes designed to circumvent the CRS. The Gibraltar Competent Authority Gibraltar has summarised some of the key risks identified under this facility:

1. Residence by Investment / Citizenship by Investment (CBI/RBI)

The OECD has published a list of over 25 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.

The OECD's AEOI Group has concluded that this issue may pose a systemic risk to all participating jurisdictions on their effective implementation of the AEOI Standard.

The Gibraltar Competent Authority informs local financial Institutions that they should take into account the OECD's results of its high-risk analysis of CBI/RBI schemes when performing their CRS due diligence obligations. An example is the process to be considered upon opening a financial account for a new account holder.

Additional information is available from the following link:

<https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/residence-citizenship-by-investment/>

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

Several reports were received on the misclassification and abuse of the Active NFE categorisation, 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" (Paragraph 125 of the CRS Commentary on Section VIII), the Standard 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, but in practice Financial Institutions may not apply both.

The OECD's AEOI Group has concluded that this issue may pose a systemic risk to all participating jurisdictions on their effective implementation of the AEOI Standard.

The Gibraltar Competent Authority informs local financial institutions to apply both criteria referred to above in order to ensure the correct classification as an Active NFE.

3. CRS avoidance schemes involving “zero-cash-value insurance policies” or “irrevocable insurance policies”

Several reports were received regarding 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 policyholders gaining 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. According to the definition contained in subparagraph C(8) of the CRS, the cash value of a policy 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); or (ii) the amount that 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.

The OECD's AEOI Group has concluded that this issue may pose a systemic risk to all participating jurisdictions on their effective implementation of the AEOI Standard.

The Gibraltar Competent Authority requests local financial institutions to take into account the requirements referred to above to ensure that CRS reporting obligations are not circumvented through the misuse of the definition of cash value under such insurance policies.

20 Transition from Intergovernmental Agreement (IGA)

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.

With effect from 1 January 2021, the automatic exchange of financial account information between Gibraltar and the United Kingdom is effected under the provisions of a Double Taxation Agreement, coupled with a bilateral Competent Authority Agreement, in view of the fact that Directive 2014/107/EU (the 'DAC 2') ceased to be applicable following the United Kingdom and Gibraltar's definitive departure from the European Union on 31 December 2020.

21 LEGISLATION

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

[https://www.gibraltarlaws.gov.gi/uploads/legislations/taxation-mutual-administrative-assistance/2016s253/2016s253\(10-07-20\).pdf#viewer.action=download](https://www.gibraltarlaws.gov.gi/uploads/legislations/taxation-mutual-administrative-assistance/2016s253/2016s253(10-07-20).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/2015s134/2015s134\(01-06-21\).pdf#viewer.action=download](https://www.gibraltarlaws.gov.gi/uploads/legislations/international-co-operation-tax-information/2015s134/2015s134(01-06-21).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)

22 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 and is available through the following link:

<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>

- CRS Frequently-Asked Questions

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

- CRS Implementation Handbook

The OECD's CRS Implementation Handbook provides a practical guide to implementing the CRS and includes a comparison between the CRS and FATCA. This is available through the following link:

<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 on the following link:

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

- Manual on the Implementation of Exchange of Information Provisions for Tax Purposes

<https://www.oecd.org/tax/exchange-of-tax-information/36647823.pdf>

- CRS participating jurisdictions

<http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/crs-by-jurisdiction/#d.en.345489>

23 Foreign Account Tax Compliance Act (FATCA)

- IRS codes to populate TIN field in cases of 'no TIN'

In certain limited circumstances, a reporting Model 1 Foreign Financial Institution may not have obtained and therefore not reported the United States taxpayer identification number (TIN) of a specified US person. In its efforts to better understand the issues that Foreign Financial Institutions face in obtaining a US TIN, the Internal Revenue Service (IRS) has developed a series of codes that may be used by a reporting Model 1 Foreign Financial Institution as a temporary 'stop-gap' to populate the TIN field.

In 2021 the United States Competent Authority advised the Gibraltar Competent Authority that *"the use of these codes is not mandatory and does not mean that a Foreign Financial Institution will not be at risk of being found significantly non-compliant due to a failure to report each required US TIN"*. The IRS further advised that they will *"take into account the facts and circumstances leading to the absence of a US TIN, such as the reasons why the TIN could not be obtained and whether the Foreign Financial Institution has adequate procedures in place to obtain TINs, for example, whether the Foreign Financial Institution is contacting account holders annually to request any missing TINs"*.

The United States Competent Authority advised the Gibraltar Competent Authority that the TIN field codes and related scenarios for FATCA reporting purposes are as follows:

- '22222222' - pre-existing individual account with the only US indicia being a US place of birth;
- '33333333' - new individual account that has indicia of a US place of birth and either:
 - (a) has a change in circumstances causing the self-certification originally obtained at account opening to be incorrect or unreliable but a new self-certification has not been obtained, or

- (b) was below the threshold for documenting and reporting the account at the time of account opening and subsequently exceeded the threshold but a self-certification has not been obtained;
- '444444444' - pre-existing individual and entity account that has US indicia other than a US place of birth and either:
 - (a) has a change in circumstances, causing the self-certification or other documentation originally obtained to be incorrect or unreliable but a new self-certification or other documentation has not been obtained, or
 - (b) was below the threshold for documenting and reporting the account at the time of account opening and subsequently exceeded the threshold but a self-certification or other documentation has not been obtained;
- '555555555' - new individual and entity account that has a US indicia other than a US place of birth and either:
 - (a) has a change in circumstances causing the self-certification or other documentation originally obtained to be incorrect or unreliable but a new self-certification or other documentation has not been obtained, or
 - (b) was below the threshold for documenting and reporting the account at the time of account opening and subsequently exceeded the threshold but a self-certification or other documentation has not been obtained;
- '666666666' - pre-existing entity account with account balance exceeding \$1,000,000 held by a passive NFFE with respect to which no self-certifications have not been obtained and no US indicia have been identified in relation to its controlling persons; and
- '777777777' - pre-existing "dormant accounts"¹ where no TIN is available and the account has been dormant or inactive but remains above the reporting threshold. *The US defines "dormant account" in US Treasury Regulations §1.1471-4(d)(6)(ii).*

¹ Gibraltar defines a dormant account as an account where:

- (a) the account holder has not initiated a transaction with regard to the account or any other account held by the account holder with the reporting financial institution in the previous three years;
- (b) the account holder has not communicated with the reporting financial institution regarding the account or any other account held by the account holder with the reporting financial institution in the previous six years;
- (c) the account is treated as a dormant account under the reporting financial institutions normal operating procedures; and
- (d) in the case of a cash value insurance contract, the reporting financial institution has not communicated with the account holder regarding the account or any other account held by the account holder with the reporting financial institution in the previous six years.

The IRS advised that its system will still generate an error notification to indicate that the entry is invalid when one of the above codes is used. Additionally, entering nine 'A's or '0's no longer suppresses the error notification, commencing with 2020 calendar-year data. The error notification provides 120 days to correct the issues, consistent with Paragraph 4.2.2 'Administrative or Other Minor Errors' of the bilateral Competent Authority Arrangement signed between the Gibraltar and United States Competent Authorities, during which period the scenarios can be discussed and identified.

The IRS invited Gibraltar to provide feedback on any other situations that FFIs identify as presenting difficulties in obtaining the required US TINs from their account holders and provided the following further guidance on 19 April 2021:

"You must include the TIN element for both Account Holder and Substantial Owner. If both are US individuals/entities, you should include the US TIN for both. If only one is a US individual/entity, then you will not receive an error message as long as you include a validly-formatted US TIN in the TIN element for the US individual/entity and the foreign TIN (with the 'TIN Issued by' element populated with the issuing country code) for the foreign individual/entity. If there is no foreign TIN available for the foreign individual/entity, you may include your country code in the 'TIN Issued by' element and the characters 'NA' (to indicate 'Not Available') in the TIN element as per the following example:

```
<ftc:AccountHolder>
  <ftc:Individual>
    <sfa:ResCountryCode>CA</sfa:ResCountryCode>
    <sfa:TIN issuedBy="LI">NA</sfa:TIN>
    <sfa:Name>

<ftc:SubstantialOwner>
  <ftc:Individual>
    <sfa:TIN issuedBy="US">123456789</sfa:TIN>
```

If you omit the TIN element entirely for either the Account Holder or Substantial Owner, or insert blank spaces in the TIN element, you will receive a 'TIN Not Populated' error, regardless of whether the other TIN field is populated with a US TIN."

- Further guidance on IRS 'no-TIN' code error messages

On 24 August 2022, the Gibraltar Competent Authority released the following further guidance on the codes provided by the IRS that may be used to populate TIN fields in cases of 'no TINs' for FATCA-reporting purposes. This guidance continues to be valid until notified otherwise by the IRS, upon which the Gibraltar Competent Authority will communicate any such changes to all registered users and financial institutions.

Notwithstanding the above and the usage of these IRS-supplied 'no-TIN' codes, some Gibraltar FIs may have received a message from the IRS notifying them that their FATCA submission has been rejected. These submissions are rejected on the basis that the FIs had not supplied a valid TIN by including one of these codes.

The Gibraltar Competent Authority reached out to the IRS on the use of these TIN codes and the corresponding error messages that are generated as a result. The IRS have confirmed that they will continue to issue error messages on reports using these codes, advising the relevant financial institutions that an appropriate TIN should be supplied within 120 days. The IRS have advised that, in order to reduce the administrative burden on Financial Institutions, 'placeholder codes' were created to assist reporting financial institutions in documenting and explaining their attempts to fulfil FATCA reporting requirements. Financial Institutions should therefore avail themselves of the extra time provided to take appropriate steps to ensure that adequate documentation of all steps taken to attempt to obtain a TIN has been recorded. The IRS's placeholder codes do not remove the obligation to report a TIN.

In the circumstances, in the event that FIs are unable to obtain a TIN for the purposes of a FATCA report, sufficient evidence demonstrating that the TIN has been unobtainable after all necessary due diligence procedures required have been carried out is essential. It may be necessary to supply such records to the IRS to enable them to assess and evaluate whether there has been significant non-compliance which would be inconsistent with the terms of the Intergovernmental Agreement and Competent Authority Agreement entered into between Gibraltar and the United States.

The IRS will not automatically conclude that the absence of a TIN or the use of one of their 'no-TIN' codes will lead to a determination of significant non-compliance. Rather, the IRS will take account of the facts and circumstances leading to the absence of a TIN, such as the reasons why it could not be obtained, whether the financial institution has adequate procedures in place to obtain TINs and the efforts made to obtain them.

It is therefore imperative that financial institutions continue to follow the applicable due diligence procedures in order to obtain TINs for those account holders for which the TIN is missing or document the inability to do so carefully and methodically.

Failure to comply with these requirements resulting in a determination by the IRS of significant non-compliance under the Intergovernmental Agreement and Competent Authority Agreement signed between Gibraltar and the United States may result in penalties being imposed by the Gibraltar Competent Authority in accordance with the International Co-operation (Improvement of International Tax Compliance) (United States) Regulations 2015.

- IRS International Compliance Management Model (ICMM) FAQs

<https://www.irs.gov/businesses/corporations/irs-fatca-report-notifications-frequently-asked-questions>

- FATCA frequently-asked questions – general

<https://www.irs.gov/businesses/corporations/frequently-asked-questions-faqs-fatca-compliance-legal#reporting>

- Competent Authority Arrangement between the competent authorities of Gibraltar and the United States

https://www.gibraltar.gov.gi/new/sites/default/files/HMGoG_Documents/GI_USA_FATCA_CAA_SIGNED_17_AND_28_SEP_2015_0.pdf

24 CRS: reporting corrections of historical errors

Financial institutions correcting historical data filed through HM Government of Gibraltar’s previous AEOI portal will need to submit the corrections as new data files instead of correction files. Please note that it is not possible to submit this data as a correction file since the original data file is not available in the current platform. It is important that the files comply with the most up-to-date schema used for CRS reporting. If not, they will fail validation upon uploading to the portal.

THIS ONLY APPLIES TO CORRECTIONS OF CRS DATA THAT ARE APPLICABLE TO REPORTING PERIODS ENDED 31 DECEMBER 2018 AND EARLIER.

The OECD’s XML Schema contains a warning field defined as follows:

Element	Attribute	Size	Input Type	Requirement
Warning		1 to 4'000 characters	stf.StringMin1Max4000_Type	Optional

This data element is a free text field allowing input of specific cautionary instructions about use of the CRS message content, for example terms of the Instrument or Convention under which the data is exchanged. If the reported data is for a period other than for a full reporting year this information can be given here as narrative e.g. “ten month period”.

The Gibraltar Competent Authority confirms that this should be used to provide a notification to the receiving jurisdiction that the file is a correction. The following standard text should be used:

*“IMPORTANT NOTICE: Please note that due to technical limitations arising from the implementation of a new AEOI platform in Gibraltar, the historical correction of data files previously exchanged needs to be sent as a new data file. This data file therefore corrects and supersedes that previously reported under the following:
[insert DocRefID]*

[insertDocRefID]
[insert more rows as necessary...]"

25 CRS: deletion of historical files

Financial institutions seeking to delete historical data files will need to provide the Competent Authority with a list of those DocRefIDs that are to be deleted. The Gibraltar Competent Authority will contact affected partner jurisdictions directly in order to notify of the deletions required. Please note that it is not possible to submit this data as a deletion file since the original data file is not available in the current platform.

THIS ONLY APPLIES TO CORRECTIONS OF CRS DATA THAT ARE APPLICABLE TO REPORTING PERIODS ENDED 31 DECEMBER 2018 AND EARLIER.

26 Help & Support

The user support channel for AEOI is a dedicated Zendesk support centre enabling access to the AEOI Knowledge Base and support for users in relation to enrolment, XML errors on uploaded reports and other software-based concerns and issues.

As a first step users should use the following link to check if the Knowledge Base can provide an answer to their query:

<https://aeoisupport.zendesk.com/hc/en-us>

If the Knowledge Base does not resolve your query, please raise a support ticket. This can be done by either emailing our IT support team at the following address: aeoisupport@vizardsoftware.com or directly through the link referred to above by selecting the "Submit a request" option. Please ensure that when opening a ticket, you select 'GIBRALTAR' from the reporting jurisdiction drop-down list.

If your query is of a technical and interpretive nature regarding the applicable exchange instruments and local filing requirements please email our dedicated support at aeoi@gibraltar.govi.gi.

[End]