



## Nigeria – CRS webinar 17 August 2020

### Q & A

1. When will we be advised of the standard template for this report rendition?

**Response:** The Common Reporting Standard (CRS) XML Schema template used for bulk filling has been sent to all participants and can be found in the URL below:

<https://www.firs.gov.ng/AutomaticExchangeofInformation/RegulationsandGuidelines>

2. Is the FIRS going to provide FIs with the list of participating jurisdictions? I thought it was 107 but just heard that there are 114. Please clarify.

**Response:** The published list of the reportable Jurisdictions has been sent to the Financial Institutions Registered email address. The full list of participating Jurisdictions can be found on the OECD website:

<https://www.oecd.org/tax/transparency/AEOI-commitments.pdf>

3. Will the US FATCA and OECD CRS requirements ever be combined into 1 Global Standard?

**Response:** Nothing about this has been discussed at the OECD Global Forum so far.

4. We understand that for an account to be classified as "undocumented" in line with the CRS guidelines, it must be an account where a "hold mail" instruction or "in-care-of" address is discovered and no other address is discovered even after carrying out a paper search and attempting to provide the customer with a self-certification form. Our question then is how would Reporting Financial Institution (RFI)s proceed with the accounts for which they do not have sufficient information, not even a "hold mail" instruction or "in-care-of" address? In this instance, the accounts may not necessarily meet the conditions to be classified as undocumented in line with the CRS regulations.

**Response:** If all indicia search has been conducted (including relationship manager inquiry for high value accounts), there are none of any reportable indicia identified, the account would not be reported (including not be reported as an undocumented account). In practice however, the Financial Institution should have at least kept one or more of the indicia of the account holder for KYC/AML or other regulatory purposes.

5. For pre-existing due diligence purpose, what position should an RFI (Reporting FIs) take for accounts which do not have a tax identification number (TIN) or its equivalent?

**Response:** TIN information is expected to be in the records of the RFI as Nigerian law since year 2014 (see Part IV paragraph 8 and Part XI paragraph 13.4., Nigeria Taxpayers Identification Number regulations 2014, Federal Republic of Nigeria Official Gazette No.55 of 2014) does require all Financial Institutions to collect TIN before opening an account and prescribes sanctions for failure to do so. The RFI should take reasonable efforts to collect the TIN with respect to pre-existing accounts by the end of the second calendar year following the year in which the account is identified as a reportable account, unless the account holder is resident in a jurisdiction that does not issue TIN. The RFI may also wish to verify any foreign TIN provided by persons opening accounts against the TIN information of all related jurisdictions on the OECD AEOI Portal:

<https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/>

6. How should an RFI treat the account of a customer who has refused to complete the self-certification form provided?

**Response:** For new accounts, valid self-certifications must be obtained by the RFI for account to be open. For pre-existing accounts, the Reporting Financial Institutions (RFI) should review their electronically searchable data maintained by them for any of the Indicia outlined in the Income Tax (CRS) guidelines. Where this search fails, RFI should make reasonable efforts to use other sources of information (Government Regulatory Agencies) and through AML/KYC.

7. Is an RFI allowed to update its account opening forms to include the questions from the CRS self-certification form instead of having a separate CRS self-certification form that duplicates some of the information already provided by the customer in the account opening forms?

**Response:** This is allowed under CRS as long as the document contains the related information as required for a CRS self-certification and duly signed or positively affirmed.

8. According to the FIRS CRS Regulations and Commentary, a Reportable Jurisdiction is a jurisdiction with Nigeria has an agreement for exchange of information and that is on a published list issued by the FIRS but no such list has been published by the FIRS as at yet. In the absence of such a list of Reportable Jurisdictions from the FIRS, would it be correct to take jurisdictions that have signed the MCAA as Reportable Jurisdictions? It is important we have a clear understanding of what jurisdictions are classified as Reportable Jurisdictions in order to identify Reportable Persons and Reportable Accounts

**Response:** The published list of the reportable Jurisdictions has been sent to the Financial Institutions Registered (with the FIRS) email address and also published on the FIRS Website.

Please note that not all jurisdictions that have signed the MCAA are Reportable Jurisdictions. These are referred to as participating Jurisdictions.

9. What steps will FIRS want the RFIs follow in implementing CRS

**Response:** All the necessary steps to be followed in reporting/due diligence requirements are stipulated and clarified in the Income Tax (CRS) Regulations and implementation and Compliance Guidelines that has been and published by the FIRS. See slide below and refer to presentations on CRS circulated to all FIs.



10. Will Nigerians staying abroad but have investment in Nigeria be exempted from being reported in Nigeria

**Response:** It depends on where the Nigerian is resident for tax purposes. If he or she is resident in a foreign country, it's likely he or she will be a resident in a reportable jurisdiction, thus will be within the scope of the CRS in Nigeria.

11. What are participating jurisdictions that FIRS will want RFIs in Nigeria to report their citizens

**Response:** The RFIs will report on the citizens of all Reportable Jurisdictions who maintain reportable accounts with their organisation. The list of Reportable Jurisdictions have been circulated to all Financial Institutions.

12. I will appreciate if FIRS can share the link of its website where Nigeria related law and guideline can be read.

**Response:** CRS Regulations and Guidelines can be found In the URL Below:

<https://www.firs.gov.ng/AutomaticExchangeofInformation/RegulationsandGuidelines>

13. Please we are yet to receive the guidelines and slides from the training held 2 weeks ago. We will be grateful if the FIRS can grant us access to the guidelines and slides from the last training. in addition, the CRS rules

**Response:** The CRS Regulations, Guidelines and Presentation Slides has been sent to all the participants and can also be found in the links below.

<https://www.firs.gov.ng/AutomaticExchangeofInformation/RegulationsandGuidelines>

<https://www.firs.gov.ng/AutomaticExchangeofInformation/PresentationandSpeeches>

14. With respect to type B investment entity, would majority ownership by a type A investment entity or another financial institution indicate that the type B investment entity is managed by the other financial institution where such a type B investment entity is merely an investment vehicle created by the other financial institution?

**Response:** “managed by” is not relevant to ownerships. An entity is “managed by” another entity if the managing entity performs, either directly or through another service provider any of the activities or operations described in subparagraph A(6)(a) on behalf of the managed entity. (Refer to paragraph 17 of the FIRS Information Circular no.2019/02 dated 15<sup>th</sup> July 2019 - Income Tax (CRS) Implementation and Compliance Guidelines 2019: Commentary on Section VIII).

15. Will an entity ( Broker) whose 40% of its earnings is from brokerage activities be exempted from CRS even when it has reportable individuals on its clientele base

**Response:** If the broker does not meet any of the definitions of the Financial Institutions under CRS, it will not be a Financial Institution for CRS purposes (i.e. out of scope), thus no due diligence and reporting will be imposed upon such broker.

16. Can you share examples of tax-favoured accounts?

**Response:** An account is said to be “tax-favoured” if contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate. You may refer to Paragraph 102 of the Income Tax (CRS) Guidelines/Commentary on Section VIII for some examples for excluded accounts, including some tax favoured ones.

17. Hello, why is annuity not excluded when retirement and pensions account is excluded?

**Response:** There are specific conditions for an account including retirement and pension account to be excluded under CRS. Subject to the domestic laws in Nigeria, annuity contract may also be excluded if relevant requirements are met, e.g. the example of unlimited annuity contract in paragraph 102 of the Income Tax (CRS) Guidelines/Commentary on Section VIII.

18. Can a manufacturing company in Nigeria that obtain a loan of N1million USD from a country in Europe be classified as a reporting entity /financial institution?

**Response:** If it's a manufacturing company which does not meet any of the definitions of the Financial Institutions under CRS, it may be a Non-financial Entity (NFE), which will not be subject to the due diligence or reporting obligations under CRS.

19. An Active NFE" amongst others means any NFE with less than 50% of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50% of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income.

How is an RFI, for example a bank, meant to determine the assets held by an NFE (where the information is not available publicly) for the purpose of classifying an account as active or passive during the pre-existing accounts due diligence?

**Response:** If the information is not publicly available or the RFI does not have the information in its possession to determine the status of the account holder (e.g. Passive NFE or not), the RFI must obtain a self-certification from the account holder (see paragraph 20 of the Income CRS Guidelines/Commentary on section V).

20. For a reportable jurisdiction person, what are detailed due diligence that FI should employ?

**Response:** The FI has to apply due diligence for all financial accounts it maintains, including those held by the reportable jurisdiction persons.

21. Please regarding 'Direct reporting NFEs' and 'Participating FIs'...are they obtainable in this framework? And what more can you say about them?

**Response:** There are no such terms (of FATCA) under CRS. Please for CRS purposes, only refer to the CRS regulations and guidelines in Nigeria.

22. Are Active NFEs registered in Nigeria, with beneficial owners from reportable Jurisdiction qualified for reporting?

**Response:** For Active NFEs, there is no requirements to identify the Controlling Persons (Beneficial Owners).

23. When did you say was the commencement date for New individual accounts?

**Response:** Please note that commencement date for new individual accounts is 1st July 2019

24. With this Global, Common Reporting Standard in place, what is the position of FATCA?

**Response:** FATCA is managed by the US Treasury and OECD Global Forum's work does not cover that.

25. When will the full implementation of CRS commence in Nigeria?

**Response:** The Regulations for the implementation of CRS took effect from 1 July 2019. However, the RFI in Nigeria are required to file their reports for 2019 on or before 30 September 2020.

26. Should we convert the 250,000 Dollars to local currency or apply the local NFIU cash transaction equivalent in Nigeria?

**Response:** The 250,000 Dollars should be converted into the Naira equivalent at the exchange spot rate

27. Kindly confirm the cut-off date for the threshold of \$250k for pre-existing entity accounts. The CRS Commentary states that you should determine the threshold as of 31 December 2019 and 31 December of any subsequent calendar year but I heard the presenter mention 30 June 2019. Please clarify.

**Response:** Paragraph A of the CRS Guidelines and Commentary on section V exempts from review all Pre-existing Entity Accounts with an account balance or value that does not exceed USD250,000 as of the corresponding date as stated in the CRS, until such balance or value exceeds USD250,000 as of the last day of any subsequent calendar year. This means that pre-existing entity account with an aggregate account balance or value that does not exceed USD250,000 or its equivalent in Naira as of 31st December 2019 is not required to be reviewed, identified, or reported as a Reportable Account until the aggregate account balance or value exceeds USD250,000 as of the last day of any subsequent calendar year.

28. Individuals don't have TIN but PID. Is it ok to fill in PID where TIN is required for Individuals?

**Response:** TIN is the required form of identification or an equivalent form of identification issued by the Authority of the Reporting Jurisdiction for tax purposes. However note that for persons who are tax residents of Nigeria, Nigerian law since year 2014 (see Part IV paragraph 8, Nigeria Taxpayers Identification Number regulations 2014, Federal Republic of Nigeria Official Gazette No.55 of 2014) does require all Financial Institutions to collect TIN before opening an account and prescribes sanctions for failure to do so.

29. When is the cut-off date for reporting?

**Response:** The cut-off date for Filing of 2019 report is 30<sup>th</sup> September 2020 while the cut-off date for filing reports of subsequent years will be 31st May.

30. Is FIRS/OECD taking steps to educate/inform the public as per the obligations of FIs in this CRS regime? I think this is necessary to ease the burden on financial institutions especially Insurance Companies. As we all know or would agree with me that insurance is being sold and not being bought in Nigeria????

**Response:** The FIRS has undertaken series of sensitization programmes for RFIs who have obligation to report under the CRS. The FIs are expected to educate and enlighten their account holders on their obligations toward the Income Tax (CRS) regulation and guidelines.