Common Reporting Standard: HMRC Releases Revised Guidance for UK Charities

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The Common Reporting Standard (CRS) is, like FATCA before it (a regime established by US legislation, the Foreign Account Tax Compliance Act, which was brought into UK law by a treaty with the US), an information exchange regime aimed at international tax transparency: 'financial institutions' are required to pass information about their clients to their clients' domestic tax authorities with the aim of preventing the use of offshore structures to evade tax. Whereas FATCA dealt with the exchange of information with the US, CRS requires multi-party information exchange around the world.

CRS will affect many charities in two different ways:

- the definition of a 'financial institution' (to which CRS applies) is drawn widely and many charities fall within the definition; and
- charities may be asked by their bank or investment manager to provide details of their CRS status or classification.

CRS IN BRIEF

The Organisation for Economic Co-operation and Development (OECD) is responsible for the global CRS regime, which has been implemented at the EU level in a Directive on Administrative Cooperation in the field of taxation (DAC).

The CRS came into force in January 2016. Over 40 countries have signed up as early adopters of CRS, including the UK, and they will start to collect information this year for filing in 2017. Over 70 countries have pledged to introduce the CRS by 2017. In the UK, the International Tax Compliance Regulations 2015 have been brought in to implement the CRS principles as contained in the DAC. Despite the fact that the Regulations implement a European Directive, they are part of English law and are not immediately affected by the result of the EU Referendum. Due to the international scope of the CRS and the UK's commitment to transparency, it seems unlikely that the UK would opt out of CRS even following a full 'Brexit'. Exchange of information under CRS is achieved by requiring banks and other 'financial institutions' to collect data on 'Account Holders' and report some of it to their local tax authority annually for onward global exchange.

THE REVISED HMRC GUIDANCE

The revised guidance for charities went live online on 25 August 2016 and is available here.

In place of the much shorter guidance released in June 2016, the revised guidance contains several detailed sections that link in places to HMRC's general Manual on the Automatic Exchange of Information regime.

The revised guidance explains how UK charities may assess their CRS status and includes useful examples to guide charities in applying the regime's high specialised definitions to real charity circumstances.

Below are our top ten key CRS points for charities:

- Any charity may be affected – There is no charity exemption; a charity considered to be a 'Financial Institution' will have active obligations to HMRC, while others will merely have to self-certify their status as 'Active Non-Financial Entities' to third parties such as banks.

- Those charities with managed investments are the most likely to 'Financial Institutions' – Regardless of a charity's legal form, if more than 50% of a charity's incoming resources in the last three calendar years was derived from investments and at least some part of the charity's assets are managed by an external investment manager, the charity is likely to be caught as a 'Financial Institution' and required to gather data and report on 'Account Holders'.
- Legal form does matter – Any type of charity may be caught as a 'Financial Institution'. However, who amounts to an 'Account Holder' will differ depending on legal form. For some charities, this term may include all their grantees as well as a living settlor (but not other donors). For others, there may be no 'Account Holders' at all. This is a significant change from the previous HMRC Guidance issued in June 2016. In particular:

(a) A Financial Institution that is formed as a charitable trust or a charitable unincorporated association will have to consider its charitable grantees and any settlor as 'Account Holders', since these will be seen, under the CRS, as having an 'equity interest' in the charity. This means that due diligence will need to be taken and, depending on grantees' tax residence, reports may need to be made to HMRC for onward exchange.
(b) The same is true of a body of trustees of a charitable trust that have been incorporated under the Charities Act and an incorporated charity that holds property on special trusts (including permanent endowment)
(c) In contrast, a Financial Institution formed as a charitable company (whether limited by guarantee or by shares), or a Charitable Incorporated Organisation (CIO) will not have to treat its charitable grantees as 'Account Holders'.
(d) All charitable Financial Institutions, regardless of legal form, will have to report on loans and other 'debt interests'. The administrative burden of CRS will therefore fall most heavily on unincorporated charities.

- Action is required NOW – Charitable 'Financial Institutions' must collect certain data on all Account Holders, wherever located, and retain this data for six years. They must then file an online return with HMRC by 31 May 2017 listing data in respect of 'Account Holders' that are resident in certain jurisdictions only. Those required to report on charitable grantees will need to work self-certification into their grant-making procedures, as well as dealing with 2016 grants already paid.
- Self-certification – The default CRS position is that 'Account Holders' should be asked to self-certify their details, including their place of tax residency and tax ID number (if any). HMRC has indicated that this information may be collected verbally if necessary, as part of a grant application form or under a standalone form.
- UK Accounts –If an 'Account Holder' is UK resident, there is no reporting required. HMRC has helpfully accepted that reporting charities may assume that charities registered with the Charity Commission for England and Wales, Northern Ireland or the Office of the Scottish Charity Regulator registers are resident in the UK. HMRC has indicated that UK individuals who receive a grant can simply tick a box on the charity's grant application that they are UK resident.

* Participating Jurisdictions – The ever-expanding list of countries participating in CRS will change from time to time. When a reporting charity makes its return to HMRC, it will report on those jurisdictions that are on HMRC's list for the reporting year. * Gifts of goods alone are excluded – A charitable Financial Institution formed as a trust or unincorporated association that hands out goods such as clothing will not have to consider those gifts for CRS purposes while one that gives out cash for food and clothes will do. * Data Protection – Reporting charities should ensure that they have notified all Account Holders, including grantees, if relevant, that their data may be reported to HMRC and, from there, exchanged abroad. * Human rights – watch this space – Some charities may be concerned that a grantee whose details are required to be reported may be endangered if personal information is ultimately provided back to their home government. There is no exception for reporting in this scenario. Draft guidance on this issue is 'under review' but will be added in due course. It is expected at this stage that a common sense approach to compliance may be taken by HMRC.

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