
OECD Common Reporting Standard

The OECD Standard for Automatic Exchange of Tax Information in The Bahamas

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Introduction: The OECD Standard for Automatic Exchange of Tax Information and its context

Following the example of the US and its FATCA regulations, the Organization for Economic Cooperation and Development (OECD), with strong support from the G20 countries, developed **the Standard for Automatic Exchange of Information (AEI)**, with the aim of combating cross-border tax evasion. It is the global standard for the automatic exchange of financial account information for tax purposes and **the Common Reporting Standard (CRS)**, among other legal documents, sets out the due diligence rules that financial institutions must follow to identify accounts that shall be reported. The AEI ensures that all participating jurisdictions exchange the same information.

To date, more than 100 countries and territories have committed themselves to implementing the AEI standard. Before two countries start exchanging information, they need to implement the CRS into local law and to inform the OECD with which countries they agree to exchange information, as well as the date of the beginning of the exchange. The Bahamas tax authorities will only exchange information with other participating jurisdictions where there is an agreement in place.

CRS is largely inspired by the FATCA rules in terms of identifying individuals and entities. In application of the OECD Standard, the account holders or Controlling Persons (as applicable) of the financial account have to be identified and the data will be exchanged electronically through national tax authorities. The Bahamas has signed non-reciprocal agreements with participating jurisdictions meaning that The Bahamas will disclose information to such jurisdictions but will not receive information.

Purpose of this document

This document gives an overview of the OECD AEI in The Bahamas, with particular reference to the CRS requirements as well as the implications for financial intermediaries and their clients.

The document is divided into the following sections:

SECTION 1

- Accounts that are reported

SECTION 2

- Information that is reported

SECTION 3

- Self-certification of tax residence

SECTION 4

- Alternative reporting method

ANNEX

- Glossary of OECD CRS Key Terms

This document gives just an overview of the OECD AEI; the entire legislation is extremely complex and involves numerous other cases that are not described here. The onus is on clients to contact and seek advice from a tax expert or lawyer and, if necessary, to determine the reporting obligations.



Section 1

Accounts that are reported

An account has to be reported if the account holder – whether an individual or an entity – is tax-resident in a jurisdiction with which the country where the financial institution is located has agreed to exchange information based on the OECD standard (a so-called “reporting jurisdiction”).

If the account holder is an **entity**, under CRS it has to be determined whether the entity qualifies as a **Financial Institution (FI)** or as a **Non-Financial Entity (NFE)**.

1. Financial Institution (FI)

The definition of **FI** covers financial institutions such as banks, asset managers, insurance companies, pension funds, investment funds and investment entities.

The term Investment Entity means any of the following:

- a) **Managing Investment Entity:** an entity that primarily conducts as a business one or more of the following activities: (i) trading in securities, foreign currencies, commodities, etc., (ii) individual and collective portfolio management, or (iii) investing, administering or managing financial assets or money. Entities that are typically treated as such include Asset Managers.
- b) **Professionally Managed Investment Entity:** an entity that is managed by another Financial Institution and the gross income of which is primarily attributable to investing, reinvesting or trading in financial assets. Entities that are typically treated as such include private and collective investment vehicles (e.g. private investment companies, trusts, foundations or funds) that have a discretionary management mandate with another Financial Institution.

The term **Investment Entity** does not include an entity that is an active NFE (see below).

Usually, FIs are not reportable persons from a bank perspective, which means that they are responsible for their own reporting. However, Professionally Managed Investment Entities located in non-participating jurisdictions are to be considered as Passive NFEs and reported as such (see below 2.2 for further details).

2. Non-Financial Entity (NFE)

An **NFE** is any entity that is not a Financial Institution. Once identified as an NFE, an additional distinction should be made between an **active NFE** and a **passive NFE**.

2.1. Active NFE

An active entity is typically an entity that is engaged in business (apart from financial business) or industrial activity and has its own personnel and infrastructure. Also includes but is not limited to:

- a) **Listed companies, governmental entities, international organizations, Central Banks** or an entity wholly owned by one or more of the foregoing; and
- b) **Holding companies and treasury centers of non-financial groups** under certain conditions; and
- c) **Start-up companies** that have been organized less than 24 months ago, are not yet operating a business and have no prior operating history, but are investing capital into assets with the intent to operate a business other than that of a FI. The same is also the case for **entities in liquidation** that were not a FI in the past five years, and are in the process of liquidating their assets or are reorganizing with the intent to continue or recommence operations in a business other than that of a FI.

Active NFEs will be reported to their countries of incorporation if these countries are reportable jurisdictions.



2.2.Passive NFE

An NFE which is not an Active NFE, as well as an Investment Entity located in a non-participating jurisdiction are generally classified as **Passive NFEs**.

A **Passive NFE** will be reported in its country of incorporation if such country is a reportable jurisdiction and each controlling person of a passive NFE will be reported in his/her country of tax residence if a reportable jurisdiction.

The term **Controlling Person** means any natural person that exercises control over the entity, including through intermediary structures.

The table below provides the different type of entities and the controlling persons concerned:

Type of entity	Controlling persons
Company	Any natural person that holds directly or indirectly 10% or more of the shares or voting rights of an Entity as a beneficial owner or if no such person exists, then any natural person that exercises control over the management of the Entity (e.g. senior managing official, which can include the managing director or it could be all of the directors).
Partnership	Any natural person that exercises control through direct or indirect ownership of the capital or profits of the partnership, voting rights in the partnership or who otherwise exercises control over the management of the partnership.
Trust	Any natural person who is a Settlor, Protector (if any), Trustee, Beneficiary or any natural person exercising ultimate effective control over the trust.
Foundation	Any natural person who is a Founder, Council Member, Protector and Beneficiary or any natural person exercising ultimate effective control over the foundation.

In summary, for the bank, a **reportable person** is as follows:

- an account holder who is a natural person;
- an Active NFE;
- a Passive NFE (which includes an Investment Entity located in a non-participating jurisdiction);
- a Controlling Person of a passive NFE

The bank will therefore determine the tax residence of the reportable persons listed above and report information on their accounts (as applicable) if a reportable person is resident in a reportable jurisdiction.

Non-reportable Entities

A corporation, the stock of which is regularly traded on one or more established securities markets or an affiliated company of such listed entity; government entities, international organizations and central banks are **not reportable persons**. Moreover, certain categories of accounts are excluded from reporting such as retirement and pension accounts, accounts held by estates, escrow accounts and other low-risk accounts excluded under local implementations rules.



Section 2

Information that is reported

Once the bank has determined that an account needs to be reported, it will transmit **annually** to its local tax authorities the following data:

INDIVIDUAL ACCOUNT HOLDERS + CONTROLLING PERSONS	ENTITY ACCOUNT HOLDERS
<ul style="list-style-type: none"> • Name • Address • Jurisdiction of tax residence • TIN • Date of Birth 	<ul style="list-style-type: none"> • Name of entity • Address • Jurisdiction of tax residence • TIN
<ul style="list-style-type: none"> • Account • Name of reporting FI • Year-end account value (or "Closure") • Gross amount of: <ul style="list-style-type: none"> – interest – dividends and – other income • Gross proceeds • Reporting currency 	

The bank will transfer this information to its local tax authority which, in turn, forwards it to the relevant reportable jurisdiction's tax authority.



Section 3

Self-certification of tax residence

FIs have to obtain a **self-certification**, confirming the country of tax residence and TIN (Taxpayer Identification Number) of the account holder, as well as from controlling persons of passive NFEs. Such self-certification is compulsory for all accounts that are opened after the AEI entered into force.

For accounts opened before the entry into force of the AEI, a self-certification has to be obtained only from entity account holders as well as for individuals' accounts where the client file contains so-called "indicia", that is, information relating to different reportable jurisdictions (e.g. mailing address in reporting jurisdiction A and phone number in reporting jurisdiction B). In the absence of such self-certification, the account will be reported to all jurisdictions where indicia exist.

Self-certifications also have to be obtained and/or renewed during the life-time of the account if there is a change of circumstances (for example when a new mailing address, outside the current country of tax residence, is provided to the FI).



Section 4

Alternative reporting method

According to the alternative reporting method as provided by The Bahamas Guidance Notes on Common Reporting Standard for Automatic Exchange of Financial Account Information in Tax Matters and other applicable laws, the bank does not report, upon request of the account holder, the discretionary beneficiaries if the following requirements are met:

- The account holder is a discretionary trust, foundation or underlying company of such trust or foundation;
- The account holder is a Passive Non-Financial Entity as defined by the Common Reporting Standard;
- The discretionary beneficiaries did not receive any direct or indirect distributions (financial or in-kind) during a specific calendar year;
- An annual confirmation is received in due time from the trustee and/or from the duly authorized representative(s) of the underlying company (where applicable) confirming which (if any) of the discretionary beneficiaries received distributions in the reportable period; and
- A self-certification is received from each beneficiary who received a distribution.

DISCLAIMER

This document is for general information only and aims to remain as objective as possible regarding the key elements of AEI. The content is provided by way of example and does not claim to be exhaustive. It should not be interpreted as advice or guidance in respect of the actions to be taken by clients concerning AEI. Moreover, the information contained herein is likely to change in the future.



Appendix – Definition of Key Terms

<p>Active Non-Financial Entity (Active NFE)</p>	<p>The term Active NFE is an entity where:</p> <ul style="list-style-type: none"> a) operating entity: less than 50% of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income (e.g. certain dividends, interest, rents and royalties not derived in the active conduct of a trade or business) 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 (calculated as a weighted average of the percentage of passive assets measured quarterly); b) listed company: the stock of the NFE is regularly traded on an established securities market or the NFE is an affiliated company of such listed entity; c) the NFE is a governmental entity, an international organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing; d) the NFE is a holding company owning (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution; e) start-up company: the NFE was organised less than 24 months ago, is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution; f) entity in liquidation: the NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution; g) group treasury center: the NFE primarily engages in financing and hedging transactions exclusively with, or for, related group entities that are not Financial Institutions, provided that the group is primarily engaged in a business other than that of a Financial Institution; or h) non-profit organisation: the NFE meets all of the following requirements: <ul style="list-style-type: none"> i) it is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare; ii) it is exempt from income tax in its jurisdiction of residence; iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets; iv) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property that the NFE has purchased; and v) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organisation, or escheat to the government of the NFE's jurisdiction of residence or any political subdivision.
<p>Common Reporting Standard (CRS)</p>	<p>The standard set of rules developed by the OECD on which the automatic exchange of financial account information is based.</p>
<p>Controlling Person</p>	<p>Controlling Persons are the natural persons who exercise control over an entity. Generally, these will be the natural persons who ultimately have a (direct or indirect) controlling ownership interest in the Entity (e.g. shareholder of a company or partner of a partnership).</p> <p>In the case of a trust, the term Controlling Person includes all the following individuals: the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, or any other natural person(s) exercising ultimate effective control over the trust (including through a chain of control or ownership). The settlor(s), the trustee(s), the protector(s) (if any), and the beneficiary(ies) or class(es) of beneficiaries, must always be treated as Controlling Persons of a trust, regardless of whether or not any of them exercises control over the activities of the trust.</p>
<p>Custodial Institution</p>	<p>Means any Entity that holds, as a substantial portion of its business, financial assets for the account of others.</p>
<p>Depository Institution</p>	<p>Means any Entity that accepts deposits in the ordinary course of a banking or similar business.</p>



Documentary Evidence	The term “Documentary Evidence” includes – for an individual – any of the following: a) a certificate of residence issued by an authorised government body of the jurisdiction in which the payee claims to be a resident; b) any valid identification issued by an authorised government body that includes the individual’s name and is typically used for identification purposes.
Entity	The term “Entity” means a legal person or a legal arrangement, such as a corporation, organisation, partnership, trust or foundation.
Financial Institution (FI)	The term “Financial Institution” means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.
Investment Entity	The term “Investment Entity” means any of the following: a) An Entity that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer: i) trading in money market instruments, foreign exchange, interest rate and index instruments, transferable securities or commodity futures; ii) individual and collective portfolio management; or iii) otherwise investing, administering, or managing financial assets or money on behalf of other persons; or b) An Entity that is managed by another Financial Institution and whose gross income is primarily attributable to investing, reinvesting, or trading in financial assets. The term “Investment Entity” does not include an Entity that is an Active NFE.
Non-Financial Entity (NFE)	Means any Entity that is not a Financial Institution.
Participating Jurisdiction	A jurisdiction (i) with which an agreement is in place pursuant to which it will provide the information specified in section I of the Common Reporting Standard and (ii) which is identified in a published list.
Passive Non-Financial Entity (Passive NFE)	Means: (i) an NFE that is not an Active NFE; or (ii) an Investment Entity incorporated or established in a country which is not a Participating Jurisdiction and which is therefore deemed to be Passive NFE.
Reportable Jurisdiction	A Reportable Jurisdiction is another jurisdiction with which an obligation to provide financial account information is in place, pursuant to the requirements set out in the Common Reporting Standard. Each government will publish a list of the jurisdictions for which it has agreed to exchange information and which therefore qualify as Reporting Jurisdictions.
Reportable Person	Means a natural person or Entity that is a tax resident in a Reportable Jurisdiction under the laws of that jurisdiction.
Reporting Financial Institution	Means a Financial Institution that is subject to the reporting requirements under the Common Reporting Standard or equivalent legislation.
Self-Certification	A certification (that is also part of the account-opening documentation) that may be used to confirm the account holder’s (and any Controlling Person (if applicable)) tax residency status and any other information that may be reasonably requested by the Financial Institution to fulfil its reporting and due diligence obligations.
Specified Insurance Company	Means any Entity that is an insurance company (or the holding company of an insurance company) that issues or is obligated to make payments with respect to cash value insurance contracts or annuity contracts.
Tax Identification Number (TIN)	Is a unique combination of letters or numbers, however described, assigned by a jurisdiction to an individual or an entity and used to identify the individual or entity for purposes of administering the tax laws of such jurisdiction.
Tax Residence	For individuals, the Tax Residence is the jurisdiction in which the individual is subject to taxation on their worldwide income; except in rare exceptions, this is usually the country in which the individual has their permanent home. Countries where individuals are subject to limited tax liability (e.g. limited to the ownership of real estate) are not considered a Tax Residence under the Common Reporting Standard. For entities, the Tax Residence is usually their jurisdiction of incorporation or organisation. However, entities that are fiscally transparent (e.g. some partnerships) are considered to have their Tax Residence in the jurisdiction where their effective management is located. Trusts are deemed resident in the jurisdiction(s) where the trustee(s) is (are) resident, unless the trust itself is subject to taxation.





