

Consultation on proposed changes to the CRS and FATCA Regulations

Closing date for comments: 18 March 2024

Subject of this consultation: The consultation discusses proposed amendments to the Common Reporting Standard (CRS) and FATCA Regulations (collectively referred to as the AEOI Regulations).

Scope of this consultation: Views are invited on the proposed changes to the AEOI Regulations. We would also welcome comments on related matters that are not explicitly covered in this document.

Who should read this: We would like to hear comments from anyone who is affected by these proposed changes, including individuals, businesses, employers, tax agents and accountants, and representative bodies.

Duration: The consultation will run from 9 February to 18 March 2024.

Lead official: Niamh Moylan, Assistant Comptroller of Revenue (International)

How to respond: tax.policy@gov.je

Tax Policy Unit
Government of Jersey
19-21 Broad Street
St Helier
Jersey
JE2 3RR

You should provide the name and contact details of the firm/company/individual who is responding and indicate whether (a) you are answering this consultation document on your own behalf, or on behalf of another body; and (b) you would be affected directly by any of the proposed changes to the AEOI Regulations.

Note that it is our intention to be able to publish responses. Please indicate if you do not wish your comments to be published.

After consultation: A summary of responses will be presented to Ministers to inform the way ahead. The States Assembly will consider draft legislation in the summer of 2024.

1. Executive summary

- 1.1. This consultation paper outlines proposals by the Minister for External Relations to change the Regulations underpinning the operation of the Common Reporting Standard (CRS) and the US Foreign Account Tax Compliance Act (FATCA) Intergovernmental Agreement (IGA) in Jersey. These Regulations are the Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Jersey) Regulations 2015 and the Taxation (Implementation) (International Tax Compliance) (United States of America) (Jersey) Regulations 2014. Collectively, CRS and FATCA are referred to as Automatic Exchange of Information (AEOI) and the two sets of Regulations as the AEOI Regulations.
- 1.2. Jersey committed to collect and exchange tax information on financial accounts held in Jersey by residents and nationals of the United States of America under the FATCA rules in December 2013. The Organisation for Economic Cooperation and Development (OECD) later introduced a similar regime, the CRS, which requires jurisdictions to ensure that they have the necessary laws in force to collect and exchange tax information on financial accounts held by residents of jurisdictions participating in the CRS. As of December 2023, 120 jurisdictions had committed to implement the CRS.
- 1.3. The CRS is considered to be a global minimum standard, and jurisdictions which have committed to implement it are subject to periodic monitoring of their implementation of the regime by the OECD's Global Forum on Transparency and Exchange of Tax Information (the Global Forum). In order to ensure that Jersey's legal framework is fully compliant with the standard, this consultation paper sets out actions proposed to address some areas of potential uncertainty.
- 1.4. Government is also proposing to amend the way in which certain penalties are imposed under the CRS Regulations, in order to address concerns raised by industry about a potential lack of clarity in this area.
- 1.5. Given the similarities between the CRS and FATCA Regulations, it is proposed that, where appropriate, amendments proposed to the CRS Regulations should also be made to the FATCA Regulations. These are indicated in the consultation document.

2. What is not changing at this time

- 2.1. This proposal does not contain any changes to the CRS or FATCA regimes themselves. In particular, it does not propose any amendments required to implement the revisions to the CRS approved by the OECD and G20 during 2023¹, which are intended to come into force from 2026.
- 2.2. In addition, Government is aware that other aspects of the implementation framework of the AEOI Regulations could potentially be simplified or otherwise improved. This consultation does not cover these aspects, as it is intended that these should be addressed in a separate exercise beginning in the second half of 2024 (see Section 6 below for more details).

3. Background

- 3.1. The CRS is a global minimum standard in tax transparency and exchange of information. Failure to implement the rules could increase the risks of a jurisdiction being blacklisted or facing other sanctions.
- 3.2. Jersey has committed to fully implement the global minimum standards on transparency and cooperation. It was one of a small number of jurisdictions to have received the highest rating available of “on track” in the first round of peer reviews of the implementation of the CRS published by the OECD’s Global Forum² in November 2022.
- 3.3. During the current round of reviews of Jersey’s implementation of the CRS, a small number of relatively minor potential deficiencies in the island’s domestic legislation have been identified. These relate to:
 - The obligations of and application of penalties to Entities without legal personality;
 - The powers of Revenue Jersey to access premises and review documents; and
 - The scope of the anti-avoidance rule.

¹ [Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard - OECD](#)

² [Peer Review of the Automatic Exchange of Financial Account Information 2022 | en | OECD](#)

- 3.4. This paper sets out the proposed approach to address each of these issues.
- 3.5. Although not identified by the Global Forum, Government considers that if the position of Entities without legal personality referred to above is addressed in the way proposed, it would be prudent to also clarify that these provisions should not preclude the recovery of any penalties from the arrangement by the person required to pay them.
- 3.6. In addition, Government has received feedback that the penalty regime provided for in the Regulations is inflexible and, in some cases, unduly opaque. This paper sets out proposals intended to address this by:
- Introducing a new stand-alone penalty for late filing of returns; and
 - Amending the existing penalty for a failure to comply with any aspect of the Regulations to allow the Comptroller to exercise discretion over the amount charged.
- 3.7. Finally, Government is aware that other aspects of the implementation of the AEOI Regulations in Jersey could be made more efficient and effective. It is therefore seeking proposals for potential improvements which could be included in a broader review of the operation of the regimes to be undertaken later in 2024.

4. Purpose of this consultation document

- 4.1. This consultation document is being issued to seek feedback from key stakeholders (including financial institutions, industry associations, practitioners, and any related parties) on the proposed change to the AEOI Regulations with the aim of:
- Ensuring that the proposals, if implemented in the manner proposed, would be efficient and effective.
 - Identifying whether a more efficient solution to the issues raised may be available.

- Identifying opportunities to improve the operation of the current AEOI implementation framework which will be considered as part of a future review.

5. Current position

5.1. *Clarification of the obligations of and application of penalties to Entities without legal personality*

5.1.1. The AEOI rules class certain types of arrangements without legal personality as Entities in their own right and impose obligations on those arrangements on that basis. This could potentially lead to confusion over who is required to fulfil the obligation of the arrangement, or, in the case of a failure to comply, who is required to pay any penalties imposed as a result.

5.1.2. In order to put the question beyond doubt, it is therefore proposed to insert a new Regulation to clarify that where an obligation or penalty is imposed on an Entity without legal personality, the meeting of the obligation or the payment of the penalty is treated as being a requirement of each of the following:

- In the case of a trust, each trustee on a joint and several basis;
- In the case of a partnership, the partner identified as the responsible partner under the Income Tax (Jersey) Law 1961;
- In the case of a Limited Liability Company, the secretary, as defined in the Limited Liability Companies (Jersey) Law 2018.

5.1.3. Depending on the reasons for the failure to comply with the Regulations, it may or may not be appropriate for the value of the penalty charged to be recovered from the assets of the legal arrangement. Therefore, it is proposed that an additional provision should be included to clarify that the above provisions should not be read to preclude the recovery of any penalty imposed from the assets of the relevant arrangement.

5.1.4. It is proposed that these amendments should be made to both sets of AEOI Regulations.

5.1.5. **Question 1:** Do you consider that the amendments proposed provide useful clarity in respect of arrangements without legal personality? If not, what other areas should be addressed?

5.2. *Amending the powers of Revenue Jersey to access premises and review documents*

5.2.1. Revenue Jersey is responsible for enforcing the CRS Regulations.

Regulation 20 permits a person authorised by the Comptroller of Revenue to issue a notice requiring any person to produce specified business documents at the business premises in which the documents are located, and to enter business premises at any reasonable hour to examine and take copies of any business documents located there.

5.2.2. Revenue Jersey receives a high level of cooperation from Financial Institutions affected by the regime. It has not therefore been required to formally exercise the powers in Regulation 20 to date, as Financial Institutions and their advisers have cooperated on a voluntary basis with inquiries raised. Revenue Jersey does not anticipate that this is likely to change, given Jersey's overall culture of compliance with legal obligations.

5.2.3. However, a concern has been raised that the powers as currently framed could potentially prevent Revenue Jersey from accessing documents in very limited circumstances, where either the documents were not held in a business premises or a Financial Institution was not considered to be carrying on a business, so that its documents were not considered to be business documents.

5.2.4. For example, most trusts which are classed as Financial Institutions will be Investment Entities under subparagraph (A)(6)(b) of Section VIII of the CRS, i.e. Investment Entities which are classed as Financial Institutions by virtue of being managed by another Reporting Financial Institution. For the majority of trusts in Jersey which are classed as Financial Institutions, the managing Reporting Financial Institution is a professional trustee, which provides those services as part of its business. Documents relating to these trusts are therefore clearly business documents, and the premises from which the professional trustee carries on its work is clearly business premises.

5.2.5. However, a trust whose trustee is not a professional trustee can be classed as an Investment Entity under subparagraph (A)(6)(b), if decisions about the investment or management of the trust's assets are taken by a professional asset manager which is itself a Reporting Financial Institution under the CRS. The trustee in that case may not be carrying on a business activity and

therefore would not have any business premises from which Revenue Jersey could examine the documents of the trust to confirm its compliance with the standard.

- 5.2.6. In addition, an Investment Entity classed under subparagraph (A)(6)(b) of Section VIII of the CRS might, under very limited circumstances, not be considered to be carrying on a business, and therefore any documents may not be business documents. In practice, it is considered that the likelihood of this occurring is low.
- 5.2.7. In order to put this matter beyond doubt, it is proposed that Regulation 20 of the CRS Regulations be amended to replace the references to “business premises” with “the premises of a Financial Institution or trustee of a Trustee Documented Trust” and the references to “business documents” with “documents which the authorized person believes to be relevant or potentially relevant to determining the compliance of a Financial Institution or trustee of a Trustee Documented Trust with the Regulations”.
- 5.2.8. The definition of “business premises” in Regulation 1(1) would be amended to clarify that the premises of a Financial Institution or Trustee Documented Trust is the address of that Financial Institution in Jersey, or, in the case of a Trustee Documented Trust, the address of the trustee in Jersey.
- 5.2.9. As a result, an authorised person would then have the power to issue a notice requiring any person to produce any specified documents at the address of the Financial Institution or trustee of the Trustee Documented Trust, and to enter that premises at any reasonable hour to examine and take copies of any documents located on that premises.
- 5.2.10. This power is limited by paragraph 2 of Regulation 20, which restricts the use of the power to examine and copy documents located on a premises only for the purpose of investigating an issue relating to compliance with the CRS Regulations. An attempt to enter premises or to examine documents without a connection to obligations under the CRS Regulations would therefore be unlawful.
- 5.2.11. Consequential amendments would also be required to the offence of altering or destroying a document specified in a notice issued under Regulation 20(4) in Regulation 21.

5.2.12. Given the access powers contained in the FATCA Regulations are identical to those in the CRS Regulations, it is proposed that similar changes should be made to the FATCA Regulations, in order to avoid confusion.

5.2.13. **Question 2:** Do you consider that amending the powers of Revenue Jersey to access and review documents in the manner described would appropriately and proportionately address the risk that Revenue Jersey might not, in all circumstances, be able to obtain the information necessary to ensure compliance with the AEOI Regulations? What, if any, further safeguards would you wish to see put in place?

5.3. *Clarification of the scope of the anti-avoidance rule*

5.3.1. Regulation 19 of the CRS Regulations is an anti-avoidance rule, which provides that if a person enters into any arrangements and the main purpose, or one of the main purposes, of those arrangements is to avoid any requirement of the Regulations, that arrangement shall be ignored for the purposes of applying the Regulations. This is consistent with the CRS.

5.3.2. However, paragraph 11.1 of the Government's published CRS Guidance Notes³ appears to restrict the impact of Regulation 19 only to arrangements taken by a person to avoid an obligation placed upon that person by the Regulations. This restriction could prevent the anti-avoidance rule being applied where the person entering into the avoidance arrangements was not a person who had any obligations themselves under the CRS Regulations. For example, if a Financial Institution identified that an Account Holder had entered into an avoidance arrangement to prevent the Financial Institution from reporting the correct information on that Account Holder, paragraph 11.1 may prevent the Financial Institution from properly applying Regulation 19.

5.3.3. This concern may be addressed by either amending paragraph 11.1 of the Guidance Notes to clarify that the anti-avoidance measure is not limited to arrangements entered into by a person subject to obligations under the Regulations. Alternatively, the Regulations could be amended to put beyond doubt that the anti-avoidance rule applies to avoidance arrangements entered

³ [ID Jersey CRS guidance notes 10272017 VP.pdf \(gov.je\)](#)

into by any person. This second option would also require the Guidance Notes to be amended appropriately.

5.3.4. Amending the Guidance Notes only would appear to efficiently address this issue, however Government would be interested in any views on whether there is a need to instead amend the Regulations.

5.3.5. It is not proposed that this change should be made to the FATCA Regulations or Guidance Notes, given the differences between the FATCA IGA and the CRS in this respect.

5.3.6. **Question 3:** Do you consider that amending the CRS Guidance Notes would sufficiently remove the limitations created in paragraph 11.1 Guidance Notes to the anti-abuse provision contained in Regulation 19 of the CRS Regulations? If you consider that this would be better addressed by amending both the Guidance Notes and the Regulations, please provide the reasons for your choice.

5.4. *Amendments to the penalty regime*

5.4.1. Neither the CRS Regulations nor the FATCA Regulations include a penalty for the late filing of a CRS or FATCA return. Instead, late filing is covered through a more general penalty which applies to a failure to comply with any element of the Regulations (Regulation 10 of the CRS Regulations and Regulation 8B of the FATCA Regulations). This general failure to comply penalty applies to any breach of the Regulations other than from the most serious breaches which are addressed separately, in Regulation 12 of the CRS Regulations and Regulation 8D of the FATCA Regulations. This causes some challenges, in particular:

- Neither Financial Institutions nor Revenue Jersey can easily distinguish between a penalty which has been issued for a straight-forward administrative matter – the filing of a return after the specified deadline – and one which reflects more serious failings on the part of a Financial Institution.
- The level of the general failure to comply penalty is set at a fixed amount - £300 in the case of the CRS Regulations and £250 in the case of the FATCA Regulations. The Regulations do not specify whether the penalty applies in respect of every breach identified and do not give the Comptroller

any discretion in calculating the level of penalty due. As a result, it can sometimes be difficult for Financial Institutions to understand what level of penalty may be issued to them, and for the Comptroller to ensure that the penalty regime is proportionate, while at the same time encouraging Financial Institutions to cooperate and rectify breaches in a timely manner.

5.4.2. In order to address some of these concerns, it is proposed to create a new administrative penalty in both the CRS and FATCA Regulations which would apply to returns submitted after the relevant filing deadline. This would also clarify that where a Financial Institution submits a number of separate reports, for example, if a bank splits its reports up into a number of small files, the “return” is considered to be the totality of the information to be reported to Revenue Jersey in respect of the relevant period. The level of the penalty would be unchanged from its current position, i.e. £300 in the case of late return of a CRS report and £250 for FATCA.

5.4.3. In addition, it is proposed to amend the existing general failure to comply penalties to allow the Comptroller discretion to apply a penalty of “up to” £300 in the case of breaches of the CRS Regulations and £250 in the case of the FATCA Regulations. This will be supported by guidance published by the Comptroller setting out the manner in which penalties will be calculated, taking into account factors such as the materiality of the breach(es), the level of cooperation provided by the relevant Financial Institution and the speed with which the breaches were rectified.

5.4.4. **Question 4:** Do you consider that the proposed approach to the penalties provided for in the AEOI Regulations will provide more clarity?

5.4.5. **Question 5:** What, if any other factors do you consider should be included in the guidance on calculation of penalties for failure to comply with aspects of the regime?

6. Future revisions to the AEOI regimes

6.1. *The Crypto-Asset Reporting Framework (CARF) and amendments to the Common Reporting Standard*

6.1.1. During 2023, the OECD and the G20 approved the creation of a new global minimum standard on the automatic exchange of tax information by crypto-asset service providers on their customers, the Crypto-Asset Reporting Framework (CARF). This was developed as a package alongside revisions to the Common Reporting Standard which will bring certain crypto-assets within the scope of the CRS for the first time, as well as making changes to the types of information reported, with the intention of improving the usefulness of information exchanged under the standard.

6.1.2. In November 2023, Jersey joined with 47 other jurisdictions to commit to working towards a common global implementation date for both the CARF and the revised CRS of 1 January 2026, with the first reporting and exchanges being made in 2027. Government therefore intends to consult on aspects of the implementation of these rules in the autumn of 2024, before introducing the necessary legislation in 2025.

6.2. *The domestic implementation framework of AEOI in Jersey*

6.2.1. The introduction of a new AEOI reporting requirement presents an opportunity to review how well the current framework underpinning AEOI in Jersey is operating. Government therefore intends to use this consultation to consult on whether aspects of the current AEOI Regulations might be amended to give greater certainty to Financial Institutions or to improve the effectiveness of enforcement of the regimes as a whole.

6.2.2. In particular, Financial Institutions and advisers will therefore be consulted in autumn 2024 on further amendments to allow Non-Reporting Financial Institutions to identify themselves more easily to Revenue Jersey, the introduction of formal registration and nil return requirements for Financial Institutions, greater clarity on amending submitted reports, and any further changes which might be identified by the OECD in its review of Jersey's domestic implementation regime. Other potential improvements identified by either Revenue Jersey or by industry will also be considered.

6.2.3. **Question 6:** What, if any, amendments to Jersey's framework around reporting, compliance and enforcement of the CRS and/or FATCA would you wish to see, and why?