

CRS eConsultation 2014

CONSULTATION ON IMPLEMENTING AGREEMENTS UNDER THE GLOBAL STANDARD ON AUTOMATIC EXCHANGE OF INFORMATION TO IMPROVE INTERNATIONAL TAX COMPLIANCE

Welcome to the States of Jersey CRS eConsultation hosted by Jersey Finance Limited.

~~[Please ensure you have sufficient time to complete the eConsultation as there is no ability to save a partial response for later completion. You can, however, freely navigate backwards and forwards through the eConsultation to assess the extent of the material remaining.]~~

[Update: 18 December 2014] **We have now introduced an ability to save responses (see top of each page), allowing you to leave the eConsultation and come back to it where you left off.]**

[A PDF copy of the eConsultation is available [here](#). Respondees may wish to consider and/or print this version prior to embarking on their electronic submission.]

Each "yes/no" response option comes with an associated text box to allow for any further comments. If you are unable to complete the eConsultation electronically a paper response can be sent to [William Byrne at Jersey Finance](#)¹.

The eConsultation is open for responses until midday on **Friday 30 January 2015**.

Whilst this eConsultation can be read on mobile devices, we strongly recommend for technical and security reasons completing your final submission on a desktop device. Should you require any technical support, please email digital@jerseyfinance.je.

¹ <http://www.jerseyfinance.je/meet-the-team/william-byrne->

INTRODUCTION & BACKGROUND

In October 2013, Jersey signed an automatic exchange of information agreement with the United Kingdom to improve international tax compliance (the UK IGA). In December 2013, it signed an automatic exchange of information agreement with the United States of America to implement the reporting required under US FATCA (the US IGA).

These two intergovernmental agreements (the IGAs) were ratified by the States of Jersey in May 2014. The Regulations putting the agreements into effect (and in force as of 18 June 2014) are –

- [Taxation \(Implementation\) \(International Tax Compliance\) \(United Kingdom\) \(Jersey\) Regulations 2014²](#)
- [Taxation \(Implementation\) \(International Tax Compliance\) \(United States of America\) \(Jersey\) Regulations 2014³](#)

Jersey, together with the other Crown Dependencies, has published [Guidance](#) on the application of the UK and US IGAs.

In April 2013, the United Kingdom along with France, Germany, Italy and Spain (the G5) set up a pilot to explore the possibility of developing a common global approach to automatic exchange of information of financial account information. This was adopted by the G20, leading to work being commissioned with the OECD to develop a new global standard. In February 2014, the OECD delivered the Model Competent Authority Agreement (MCAA) for a Common Reporting Standard (the CRS) which was subsequently approved by the G20 as the global standard for Automatic Exchange of Financial Account Information. The CRS is designed to provide maximum consistency with the US FATCA and, in doing so, minimise the additional costs and burdens for business from the increased reporting requirements.

Jersey joined in a joint statement issued on 28 November 2013 by 36 countries, and a further statement in March 2014 by 44 countries, committing to the early adoption of the CRS. On 6 May 2014, the OECD issued a Declaration signed by 48 jurisdictions welcoming the OECD Standard for Automatic Exchange of Financial Account Information. As at the end of October 2014 there were 54 jurisdictions, including Jersey, which had agreed to the early adoption of the CRS with first exchanges by 2017. On 29 October 2014 in Berlin Jersey joined with 51 of the 54

² <http://www.jerseylaw.je/law/display.aspx?url=LawsInForce%5Chtm%5CROFiles%5CR%26OYear2014%2FR%26O->

³ <http://www.jerseylaw.je/law/display.aspx?url=LawsInForce%5Chtm%5CROFiles%5CR%26OYear2014%2FR%26O-069-2014.htm>

countries in the “Early Adopters Group” in signing a multilateral Competent Authority Agreement as a first step in the implementation of the CRS.

The Global Forum on Transparency and Exchange of Information for Tax Purposes in its [Annual Report published at the end of October 2014](#)⁴ (p.35) identified 20 further jurisdictions who were not included in the ‘Early Adopters Group’ but who had undertaken to make first exchanges in accordance with the CRS by 2018.

This eConsultation is designed to obtain the views of industry on a number of issues arising from the adoption of the CRS in Jersey and reflects a similar UK [Discussion Document](#)⁵ issued by the HMRC on 31 July 2014.

⁴ <http://www.oecd.org/tax/transparency/GFannualreport2014.pdf>

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/337919/CRS_consultation_document.pdf

THE AGREEMENTS

The **Standard for Automatic Exchange of Financial Information in Tax Matters** was published by the OECD on 21 July 2014. It can be [read online on the OECD website](#)⁶; a [PDF download](#)⁷ is also available (8MB).

- The Common Reporting Standard (CRS) (p.19ff)
- The Commentary on the CRS (p.63ff)
- The Multilateral Model Competent Authority Agreement (MCAA) (p.215ff)

The MCAA is comprised of two parts - the agreement and an annex. The MCAA contains sections which mirror the articles in the existing IGAs that Jersey has signed. The annex contains the due diligence obligations (the equivalent of Annex 1 in the IGAs) and defines the non-reporting institutions and exempt products (the equivalent of Annex II in the US IGA and Annexes II and III in the UK IGA). There is nothing in the MCAA that matches Annex IV in the UK IGA. The confidentiality rules and other safeguards in the IGAs are mirrored in the CRS.

Question 1

Section 1 of the MCAA contains a [number of definitions](#)⁸. Do any of these definitions give rise to uncertainty or raise practical issues which have not been covered by the existing Jersey Guidance on the IGAs with the UK and the USA?

No _____

Yes _____

If Yes, please specify which definitions and explain the uncertainty

⁶ http://www.keepeek.com/Digital-Asset-Management/oeed/taxation/standard-for-automatic-exchange-of-financial-account-information-for-tax-matters_9789264216525-en#page1

⁷ <http://www.gfintegrity.org/wp-content/uploads/2014/07/OECD-Full-AutoExchangeStandard-July2014.pdf>

⁸ <http://www.jerseyfinance.je/media/Technical%20-%20General%20Public%20Access%20Documents/MCAA.pdf>

The information to be obtained in respect of each Reportable Account held by each Reporting Financial Institution (RFI), and then exchanged annually between the parties under the MCAA, is very similar to that reported under the existing IGAs. For individuals there is an additional requirement to capture the place of birth in addition to the date of birth, and there is a requirement to capture and report the Tax Identification Number (TIN) of the Entity. There is, however, provision in the CRS that removes the requirement to report the place of birth or the TIN if the date of birth or TIN is not in the RFI's records and is not otherwise required to be collected by such RFI under domestic law.

Question 2

Will the additional CRS requirement to report an individual's place of birth and and entity's TIN result in a significantly increased administrative burden for your business?

No _____

Yes _____

If Yes, if this burden will result in additional costs, please identify what these costs are likely to be, how these costs arise and to what they relate.

Question 3

As an RFI, would you find it useful for the Jersey Competent Authority to publish (in guidance) the format that TINs take for each of the CRS exchange jurisdictions?

Yes _____

No _____

Question 4

Will the identification of jurisdictions that do not issue (or do not require collection of) TINs give you, as an RFI, sufficient certainty that the need to report has been removed?

Yes _____

No _____

If No, how should this be addressed to provide the required certainty?

Under the IGAs, RFIs can use certain procedures set out in the US Treasury Regulations. This option will not be available when implementing the CRS although the CRS closely follows the procedures in the IGAs. The general due diligence requirements in the CRS envisage that each jurisdiction may allow RFIs to use third party service providers to meet their reporting and due diligence requirements – as with the IGAs – while retaining ultimate responsibility for those obligations. They also provide that each jurisdiction may allow New Account due diligence procedures to be applied to Pre-existing Accounts and High Value Account due diligence procedures to be applied to Lower Value Accounts.

Question 5

Is the option to use New Account due diligence procedures for Pre-existing Accounts something that you would like to have available?

Yes _____

No _____

Question 6

Is the option to use High Value Account due diligence procedures for Lower Value Accounts something that you would like to have available?

Yes _____

No _____

The due diligence for New Individual Accounts is substantially the same as for the UK IGA apart from the lack of the \$50,000 *de minimis* election. For reporting Pre-existing Entity Accounts with an aggregate account balance or value not exceeding \$250,000 the *de minimis* rule applies for the CRS in a similar way as to the IGAs. For the IGAs, all accounts are in scope unless the FI elects to apply *de minimis*, and it is intended that this approach will also be applied for the CRS.

Question 7

Does a positive election to apply the *de minimis* meet the needs of business better than having an election to disapply the limit?

Yes _____

No _____

If No, what are the factors that make electing to disapply the better option?

The IGAs include in an Annex the categories of Non-Reporting FIs. These are also specifically defined as Non-Reporting FIs for CRS purposes. It is open to Jersey to bring other FIs within the scope of being non-Reporting Jersey FIs provided they are clearly defined in domestic law, have a low risk of being used to evade tax and comply with any other conditions of the CRS. For a FI to present a low risk of tax evasion it is understood that the FI must be subject to regulation and must otherwise report to the Jersey Taxes Office, usually by way of an annual return, persons that would be included as Reportable Persons under the CRS.

Question 8

Are there other types of FIs that meet the above conditions that could be included as Non-Reporting FIs?

No _____

Yes _____

If Yes, please identify these institutions and detail the characteristics that enable them to satisfy the requisite criteria?

The IGAs, in their Annexes, provide for various categories of Excluded Accounts; that is, accounts that do not need to be reported because they carry a low risk of tax evasion. The CRS gives tax administrations the scope to identify low risk excluded accounts and define these in domestic legislation.

The commentary on the CRS provides an example of where a 'dormant account' (namely, an account where the Account Holder has not initiated a transaction in the past three years and not communicated with the FI in the past six years) could be defined as an Excluded Account where the annual balance does not exceed \$1000.

Question 9

Are there other types of account that meet the conditions for low risk, as defined by the CRS, that could be included as Excluded Accounts?

No _____

Yes _____

If Yes, please identify these account types and detail the characteristics that enable them to satisfy the requisite criteria?

Question 10

Would the identification of 'dormant accounts with a value not exceeding \$1000' as Excluded Accounts be beneficial to Jersey FIs?

Yes _____

No _____

IMPLEMENTATION OF THE CRS

The “Early Adopters” have agreed to meet the following timetable:

1. A public intention to exchange is made through the signing of a MCAA (this was signed in Berlin on 29 October 2014).
2. The jurisdiction puts in place: (i) the necessary laws, (ii) an agreed method for transmission that ensures the protection of personal data, and (iii) a completed confidentiality questionnaire, demonstrating the confidentiality requirements are met.
3. Once a jurisdiction has completed these three steps, it provides the notification specified in Section 7, which also includes a list of other jurisdictions with which it intends to exchange information.
4. Finally, the agreement then comes into effect in relation to each bilateral exchange relationship where two such lists of jurisdictions match.

The timetable for the ‘Early Adopters’ is shown below. For those jurisdictions who are not Early Adopters but who are committed to make a first exchange in 2018, the expectation is that the same sequence will apply but starting one year later.

Accounts	Intended to be defined as	Intended dates to exchange information by		
		Individual High-Value Accounts	Individual Low-Value Accounts and Entity Accounts	Entity Accounts
New Accounts	A Financial Account maintained by a Reporting Financial Institution opened on or after 1 January 2016.	September 2017		
Pre-existing Accounts	A Financial Account maintained by a Reporting Financial Institution as of 31 December 2015.	September 2017	September 2017 or September 2018, depending on when identified as reportable	September 2017 or September 2018, depending on when identified as reportable

Following the signing of the MCAA the States of Jersey will be asked to ratify the signed Agreement to which the CRS will be attached. Following ratification, the

States will be asked to adopt the necessary Regulations to bring the Common Reporting Standard into effect. These Regulations will be similar to those made to bring the UK and US IGAs into effect.

The intention is that the new Regulations will apply to information exchange in respect of jurisdictions listed in a Schedule. This Schedule would include the other Crown Dependencies (for whom the legal basis for AEOI would be the existing Double Taxation Agreements which entered in force in 2013) and other jurisdictions (for whom the legal basis would be the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters which they will have signed and ratified).

In all cases, however, before a jurisdiction would be included in the Schedule the Jersey authorities would need to be satisfied that the international standards on confidentiality are to be complied with (that is, that the jurisdiction has in place appropriate safeguards to ensure that the information received pursuant to the MCAA remains confidential and is used solely for the purposes set out in the Convention/MCAA).

Question 11

Please identify any jurisdictions in the Early Adopters and the Global Forum Annual Report lists which you would **NOT feel comfortable exchanging confidential information with, in each instance providing your reasoning.**

Early Adopters Group

- | | | |
|---|--|---|
| <input type="checkbox"/> Anguilla | <input type="checkbox"/> Gibraltar | <input type="checkbox"/> Netherlands |
| <input type="checkbox"/> Argentina | <input type="checkbox"/> Greece | <input type="checkbox"/> Norway |
| <input type="checkbox"/> Barbados | <input type="checkbox"/> Greenland | <input type="checkbox"/> Poland |
| <input type="checkbox"/> Belgium | <input type="checkbox"/> Guernsey | <input type="checkbox"/> Portugal |
| <input type="checkbox"/> Bermuda | <input type="checkbox"/> Hungary | <input type="checkbox"/> Romania |
| <input type="checkbox"/> British Virgin Islands | <input type="checkbox"/> Iceland | <input type="checkbox"/> San Marino |
| <input type="checkbox"/> Bulgaria | <input type="checkbox"/> India | <input type="checkbox"/> Seychelles |
| <input type="checkbox"/> Cayman Islands | <input type="checkbox"/> Ireland | <input type="checkbox"/> Slovakia |
| <input type="checkbox"/> Colombia | <input type="checkbox"/> Isle of Man | <input type="checkbox"/> Slovenia |
| <input type="checkbox"/> Croatia | <input type="checkbox"/> Italy | <input type="checkbox"/> South Africa |
| <input type="checkbox"/> Cyprus | <input type="checkbox"/> Korea | <input type="checkbox"/> Spain |
| <input type="checkbox"/> Curaçao | <input type="checkbox"/> Latvia | <input type="checkbox"/> Sweden |
| <input type="checkbox"/> Czech Republic | <input type="checkbox"/> Liechtenstein | <input type="checkbox"/> Trinidad |
| <input type="checkbox"/> Denmark | <input type="checkbox"/> Lithuania | <input type="checkbox"/> Tobago |
| <input type="checkbox"/> Estonia | <input type="checkbox"/> Luxembourg | <input type="checkbox"/> Turks & Caicos Islands |
| <input type="checkbox"/> Faroe Islands | <input type="checkbox"/> Malta | <input type="checkbox"/> United Kingdom |
| <input type="checkbox"/> Finland | <input type="checkbox"/> Mauritius | |
| <input type="checkbox"/> France | <input type="checkbox"/> Mexico | |
| <input type="checkbox"/> Germany | <input type="checkbox"/> Montserrat | |

Global Forum Annual Report List

- | | | |
|---|---|---|
| <input type="checkbox"/> Andorra
_____ | <input type="checkbox"/> Hong Kong China
_____ | <input type="checkbox"/> Russia
_____ |
| <input type="checkbox"/> Antigua and Barbuda
_____ | <input type="checkbox"/> Indonesia
_____ | <input type="checkbox"/> Saint Kitts and Nevis
_____ |
| <input type="checkbox"/> Aruba
_____ | <input type="checkbox"/> Israel
_____ | <input type="checkbox"/> Saudi Arabia
_____ |
| <input type="checkbox"/> Australia
_____ | <input type="checkbox"/> Japan
_____ | <input type="checkbox"/> Saint Lucia
_____ |
| <input type="checkbox"/> Austria
_____ | <input type="checkbox"/> Marshall Islands
_____ | <input type="checkbox"/> Saint Vincent and the
Grenadines
_____ |
| <input type="checkbox"/> Belize
_____ | <input type="checkbox"/> Macau China
_____ | <input type="checkbox"/> Samoa
_____ |
| <input type="checkbox"/> Brazil
_____ | <input type="checkbox"/> Malaysia
_____ | <input type="checkbox"/> Singapore
_____ |
| <input type="checkbox"/> Brunei Darussalam
_____ | <input type="checkbox"/> Monaco
_____ | <input type="checkbox"/> Sint Maarten
_____ |
| <input type="checkbox"/> Canada
_____ | <input type="checkbox"/> New Zealand
_____ | <input type="checkbox"/> Switzerland
_____ |
| <input type="checkbox"/> Costa Rica
_____ | <input type="checkbox"/> People's Republic of
China
_____ | <input type="checkbox"/> The Bahamas
_____ |
| <input type="checkbox"/> Grenada
_____ | <input type="checkbox"/> Qatar
_____ | <input type="checkbox"/> Turkey
_____ |

Any further comments:

The implementation of the UK and US IGAs and the new Common Reporting Standard has a cost for industry.

Question 12

Please provide an estimate of the initial and annual recurring cost burden borne by your Jersey business in implementing the US IGA (FATCA)?

Initial cost estimate

£

Comments: _____

Annual recurring cost estimate

£

Comments: _____

Question 13

Please provide an estimate of the initial and annual recurring cost burden borne by your Jersey business in implementing the UK IGA?

Initial cost estimate

£

Comments: _____

Annual recurring cost estimate

£

Comments: _____

Question 14

Please provide an estimate of the additional costs (over and above these incurred implementing the IGAs) likely to be incurred by your Jersey business assuming the CRS extends to all jurisdictions in the Early Adopters Group and Global Forum Annual Report list.

Additional costs

£

Comments: _____

Question 15

If possible, please provide an estimate of the additional costs (over and above these incurred implementing the IGAs and CRS) likely to be incurred by your Jersey business if the CRS is implemented on a global basis?

Additional costs

£

Comments: _____

CONVERSION OF UK IGA TO THE CRS

Following the adoption of the CRS, the UK has expressed its intention to seek the agreement of the Island authorities on amending the present IGA to bring it into line with the CRS. This would have the advantage that there would then be two reporting requirements (one for the US IGA (FATCA) and the other for the CRS) rather than having three if the UK IGA remained in place as a separate obligation. The downside would be that the CRS has no provision for the alternative reporting arrangements in Annex IV of the UK IGA for those in the UK who are in the resident but non-domiciled category.

The alternative reporting arrangements that are included as Annex IV in the UK IGA were accepted by the UK on the grounds that otherwise significant amounts of business would be lost to jurisdictions not faced with the same AEOI obligations. The UK always indicated that it saw the arrangements as temporary, to be withdrawn as AEOI became global. With the adoption of the CRS, and the commitment to implement CRS obtained from countries including Luxembourg and Singapore, the UK considers that its conditionality will be met and that there are no grounds for the alternative reporting requirements to be maintained.

It is expected that the UK will seek to make the change so that 2014 and 2015 reporting (required by September 2016) will be undertaken in accordance with the UK IGA and reporting for 2016 (required by September 2017), and for the years thereafter, would be undertaken in accordance with the CRS.

Some of the Island's major competitors (Singapore, Switzerland etc) will be making first reports under the CRS in 2018. As such, it might be argued that the competitive threat, to which Annex IV of the UK IGA is a response, is only removed in 2018 and that, therefore, any change in the IGA should reflect this i.e. reporting in accordance with the CRS should start in 2017 with first exchanges in 2018.

The counterview might be that the small difference in reporting times would not affect business levels and that this would be more than offset by the advantage for RFIs of reporting to the UK on the same CRS basis as reporting to other jurisdictions (with the exception of the USA).

Question 16

Do you agree that, with the adoption of the CRS by the Early Adopters and the commitment of other competitor jurisdictions to follow suit one year later, there would no longer be a need for the Island’s competitive position in respect of the Resident Non-Domiciled business to be safeguarded by the alternative reporting arrangements included in Annex IV of the UK IGA?

Yes _____

No _____

If No, please state your reasons

Question 17

Would you support the conversion of the UK IGA into the CRS with effect from 1 January 2016 (i.e. with first CRS reporting by September 2017)?

Yes _____

No _____

If No, please provide any reasons why conversion to the CRS with effect from 1 January 2016 would be considered not to be in the best interests of the Island.

INTERACTION OF THE CRS WITH THE EUSD

At the ECOFIN meeting in October 2014, the EU took the decision that Member States would adopt the CRS through a Directive on Administrative Cooperation and, at the same time, the EU Directive on the Taxation of Savings Income (EUSD) would be repealed. The first reporting under the CRS would be in 2017 in respect of financial accounts information for 2016. This would apply to all the EU Member States with the exception of Austria, who have been granted a one year transitional period (with the EUSD continuing for that transitional year and the CRS reporting commencing in 2018 in respect of reportable financial accounts for 2017).

Jersey has an EUSD agreement with each of the 28 EU Member States. They include provision for suspension of the agreements with immediate effect should the EUSD cease to be applicable, either temporarily or permanently, in accordance with European Community law. Thus, with the repeal of the EUSD by the EU the agreements with the 28 Member States will be suspended and, in due course, formally terminated.

Question 18

Do you foresee any issues arising from the decision taken by the EU to repeal the EUSD and implement the CRS with first reporting in 2017 with a one year delay in implementation for Austria?

No _____

Yes _____

If Yes, what issues do you foresee?

FEEDBACK & SUBMISSION DETAILS (*indicates required field)

How long did it take you to complete this eConsultation?

Reading/Preparation

Mins _____

Online completion

Mins _____

I have found this eConsultation easier to respond to than a paper consultation

- Strongly Agree Agree Neutral Disagree Strongly Disagree

I would like to see further consultations carried out electronically.

- Strongly Agree Agree Neutral Disagree Strongly Disagree

Jersey Finance would be grateful for any further feedback or suggestions which might assist in devising and running any future eConsultations.

Name*

Email*

I am responding*

- solely in a personal capacity
- on behalf of an organisation

Name of organisation*

I would describe my organisation as*

- | | | |
|---|--|---|
| <input type="checkbox"/> Accountancy | <input type="checkbox"/> Independent Financial Advisers | <input type="checkbox"/> Marine/Aviation Services |
| <input type="checkbox"/> Banking | <input type="checkbox"/> Insurance Brokers | <input type="checkbox"/> Mortgage Brokers |
| <input type="checkbox"/> Business Consultants | <input type="checkbox"/> International Employee Benefit Administrators | <input type="checkbox"/> Philanthropic Services |
| <input type="checkbox"/> Captive Insurance Managers | <input type="checkbox"/> Investment Banking | <input type="checkbox"/> Private Client Wealth Management |
| <input type="checkbox"/> Compliance & Risk | <input type="checkbox"/> Investment Consultants | <input type="checkbox"/> Stockbrokers |
| <input type="checkbox"/> English Solicitors | <input type="checkbox"/> Investment Managers | <input type="checkbox"/> Taxation Practitioners |
| <input type="checkbox"/> Family Office | <input type="checkbox"/> Islamic Finance | <input type="checkbox"/> Trade Association |
| <input type="checkbox"/> Financial Planning Services | <input type="checkbox"/> Law | <input type="checkbox"/> Trust and Company Administration |
| <input type="checkbox"/> Fund Administration Custody and Distribution | <input type="checkbox"/> Life and Pensions | <input type="checkbox"/> Other |
| <input type="checkbox"/> Fund Managers | <input type="checkbox"/> Management Consultants | |

I would describe the size of my organisation (in a Jersey context) as*

- Small
- Medium
- Large

Permissions*

- I would like my submission to remain anonymous (save, if provided, by reference to my organisation type and size)
- I give permission for full details of my submission to be supplied to the States of Jersey (if requested)

[By clicking 'Submit my response', you are completing this eConsultation and will not be able to edit your responses.]

If you are not submitting your response electronically, please deliver in hard copy to the address below or scan (in PDF format) to william.byrne@jerseyfinance.ie by the required deadline -

William Byrne, Head of Technical
Jersey Finance Limited
4th Floor, Sir Walter Raleigh House
48 -50 Esplanade
St Helier
Jersey JE2 3QB

Thank You

Thank you for very much for taking the time to complete this eConsultation.