Tax Alert

Common Reporting Standard (CRS) Regulations, 2023

Overview of CRS Reporting

The Common Reporting Standard (CRS) was developed in 2014 by the Organisation for Economic Cooperation and Development (OECD) in response to a need for more transparency on financial account information following revelations that many organizations were using offshore entities to trade or hold financial assets to conceal taxable income.

The CRS applies to Reporting Financial Institutions (RFIs) which include **depository institutions, custodial institutions, investment entities** and **specified insurance companies.**

- **Custodial Institution** are entities that hold as a substantial portion of their business, financial assets for the account of others.
- **Depository Institutions** are entities that accept deposits in the ordinary course of banking or similar business. A depository account includes any commercial, checking, time, savings or other similar instrument in the course of banking or similar business.
- **Investment Entities** are entities that primarily conduct business and operations relating to trading in money market instruments, individual and collective portfolio management or managing financial assets on behalf of customers.
- **Specified Insurance Companies** are entities that are either an insurance company or the holding company of an insurance company which are obligated to make payments with respect to a cash value insurance contract or an annuity contract.

The CRS details the reporting and due diligence procedures to be followed by Reporting Financial Institutions (RFIs), where RFIs have a responsibility to file financial account information with the tax authorities every year.

The CRS is parallel to the Foreign Account Tax Compliance Act (FATCA) which is a United States of America (USA) law that requires foreign financial institutions and other non-financial entities to share financial information of US account holders with the US Internal Revenue Service (IRS).

The financial information obtained is exchanged by Competent Authorities through the OECD Common Transmission System (CTS) which enables countries to obtain account information of their citizens for enhanced tax compliance.

Scope of the CRS Regulations in Kenya

In Kenya, the Finance Act, 2021 introduced the Common Reporting Standard through the introduction of Section 6B to the Tax Procedures Act (TPA). The TPA requires the Cabinet Secretary for the National Treasury (CS National Treasury) to issue Regulations to guide the implementation of the CRS in Kenya.

The CS National Treasury vide Legal Notice No. 8 of 2023, gazetted the CRS regulations on 7 February 2023, with an effective date of **1 January 2023.**

Under the Regulations, RFIs are required to identify reportable accounts and file with the Kenya Revenue Authority the following information:

- **An information return on reportable accounts** held, managed or administered by that reporting financial institution. A reportable account refers to the financial account maintained by the financial institution. A reportable account comprises of the pre-existing accounts and the new accounts. The new accounts refer to a financial account maintained by a reporting financial institution opened **on or after 1 January 2023** whereas a pre-existing account means a financial account maintained by a reporting financial institution as of **31st December 2022**.
- **A return marked "nil"** if no account held, managed or administered by that reporting financial institution is identified as a reportable account.

Pre-existing individual accounts are categorised into either lower or high value accounts. Lower value accounts are pre-existing individual accounts that have an aggregate value that does not exceed USD 1,000,000 as of 31 December of every year while high value accounts exceed the aforementioned threshold.

The due diligence requirements to be applied by RFIs depend on the classification of the accounts on account into either pre-existing or new entity or individual accounts.

A reporting financial institution may apply the due diligence procedures for new accounts to all pre-existing accounts in addition to rules for pre-existing accounts. Additionally, the reporting financial institution may apply the due diligence procedures for high value account to low value accounts.

The following are indicia used identify account holders for low value accounts;

1. Residence status;
2. Residence Address;
3. Telephone numbers;
4. Standing Instructions;
5. Power of Attorney or signatory account authority for an account; and
6. "In care of" or "hold mail" address.

Enhanced procedures apply with respect to high value accounts including a review of electronically searchable databases, a review of the current customer master file and review of the following information received within the prior 5 years.

1. The most recent documentary evidence collected with respect to the account.
2. The most recent account opening documentation
3. Documentation on Anti-Money Laundering/Know Your Customer (AML/KYC) procedures.
4. Current Power of attorney or signature authority forms
5. Current Standing instructions to transfer funds

With regards to high value account and low value account due diligence, if none of the indicia listed are discovered and the account is not identified as held by a resident for tax purposes in a reportable jurisdiction, further action is not required until there is a change in circumstances that result in any indicia being associated with the account.

Review of pre-existing high value accounts must be completed by 31 December 2022 whilst, review of lower value individual accounts must be completed by the 31 December 2023.

Implications of the CRS Regulations

Kenya is a signatory to the CRS Multilateral Competent Authority Agreement (CRS MCAA) and had initially committed to an ambitious September 2021 timeline for exchange of financial account information through the OECD Common Transmission System (CTS). With the enactment of the CRS regulations, and in accordance with Regulation 10 of the CRS Regulations, a reporting financial institution must establish, maintain and document the due diligence procedures set out in the regulations designed to identify the reportable accounts. This will enable Kenya to exchange financial account information with over 100 jurisdictions worldwide.

Regulation 6 of the CRS Regulation requires that starting with the year 2023, RFIs shall submit declarations with the Commissioner each calendar year (January to December), regarding reportable financial accounts. This information is to be submitted by **31st May of the following year.** The Kenya Revenue Authority (KRA) is thereafter expected to exchange this information via the CTS by September of every year.

The RFIs are required to update their database with information as per the CRS as follows;

1. For reportable persons (individuals) that are account holders;
   - Name;
   - Address;
   - Jurisdiction;
   - Residence;
   - Tax Identification Number (TIN); (such as the Personal Identification Number or functional equivalent in the absence of TIN) and
   - Date and Place of birth
2. For entities identified as having one or more controlling persons that is a reportable person, in addition to the above requirements for each reportable person;
   - Name;
   - Address;
   - Jurisdiction;
   - Residence; and
   - Tax Identification Number (TIN) of the entity.
3. Account number (or functional equivalent in its absence)
4. The name and identifying number of the RFI
5. The account balance or value (including cash value or surrender value for cash value insurance contracts or annuities respectively) as of the end of the relevant calendar year or other appropriate reporting period or if the account was closed during such year or period, the closure of the account.
6. For custodial accounts, in each case the amount paid or credited to the account for each calendar year;
   - The total gross amount of interest,
   - The total gross amount of dividends
   - The total gross amount of other income generated with respect to assets held in the account
   - The total gross proceeds form the sale or redemption of financial assets in that year or other reporting period with respect to which the RFI acted as a custodian, broker, nominee or otherwise as an agent for the account holder
7. For depositary accounts, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period.
8. For all other accounts not described above, the gross amount paid or credited to the account holder with respect to the calendar year or other appropriate reporting period to which the RFI is the obligor or debtor, including the aggregate amount of any redemption payments made to the account holder during the calendar year or other appropriate period.

The regulations have defined dormancy for accounts to include the following circumstances;

a) The account holder has not initiated a transaction on the account or any other account held with the RFI in the past three years

b) The RFI has not communicated with the account holder that holds the account or any other account in the past six years

An account ceases to be dormant when the account holder initiates a transaction or communicates with the RFI about the account or any other account held with the RFI.

RFIs will be required to maintain robust AML/KYC documentation on current and new accounts to ensure that their processes capture the necessary information for purposes of reporting. The demarcation for high value accounts is required to be determined as from 31st December 2022. This means that RFIs are required to have electronic systems in place that can determine high/low value accounts for ease of distinction.

Conclusion

RFIs in Kenya need to take note of the additional annual compliance requirements together with the due diligence required to comply with the CRS information requirements.

Stakeholder involvement will be key to ensure that RFIs are fully aware of their legal obligation to share the financial account information within the set timelines. Sharing of information across borders remains a challenge and it is important that security protocols are observed to ensure that the data is properly secured and used for the intended purpose.

The KRA will use the financial account information it obtains on Kenyans with offshore financial assets to aid in investigations on tax compliance. Individuals and entities with offshore financial assets need to proactively manage their tax affairs to ensure that they are compliant with the local tax legislation.

Kindly reach out to us for assistance with the evaluation of your CRS obligations and expected compliance requirements.

Stephen Ng'ang'a
Partner/Director
Tax & Regulatory Services
KPMG Advisory Services Limited
E: swnganga@kpmg.co.ke

John Kamunyi
Manager, Transfer Pricing
Tax and Regulatory Services
KPMG Advisory Services Limited
E: jkamunyi@kpmg.co.ke

home.kpmg/ke/en/home