



Challenges for charities under the Common Reporting Standard

In a global effort to tackle cross border tax evasion, UK tax resident charities could be UK Reporting Financial Institutions under the Common Reporting Standard (CRS) and required to perform due diligence on their beneficiaries and report them to HMRC. This is a change in the previous exchange of information agreements (such as the FATCA agreement with the United States of America), where registered charities were deemed to be Non-Reporting Financial Institutions. This sounds an alarming scenario. However, it should be noted that not all charities will be Financial Institutions for the purpose of the CRS – just because a charity was a Non-Reporting Financial Institution for the agreement with the United States of America does not automatically mean it is a Reporting Financial Institution for the CRS. The definitions are slightly different as we discuss below.

So what is CRS and what do charities have to do?

Legal background

The UK implemented several Automatic Exchange of Information (AEOI) agreements, the International Tax Compliance Regulation 2015 implementing the Financial Accounts Tax Compliance Act (FATCA), the Common Reporting Standard and the Directive on Administrative Cooperation (CRS/DAC) and The International Tax Compliance (Crown Dependencies and Gibraltar) Regulations 2014 (CDOT).

All of these AEOI regimes have similar principles, requiring Reporting Financial Institutions to collect data on individuals and entities that hold accounts with them and are tax resident in another country, and pass this data to HMRC to share with the tax authorities in the relevant countries. In return other countries will share information with HMRC on UK tax residents who hold financial accounts in these jurisdictions.

The term Reporting Financial Institution includes obvious financial businesses such as banks and insurers, but it can also include some trusts and other entities that handle investments. As the definition of Financial Institution is broad some charities may be caught by the FATCA, CDOT and CRS regimes.

Charities AEOI Status

FATCA took the approach of defining certain entities as low risk for tax evasion and certain charities were on this list, e.g. entities registered with the Charity Commission of England and Wales. This “exemption” from being Reporting Financial Institutions could be applied even if the charity itself did not meet the definition of being a Financial Institution.

However, the CRS takes a different approach and does not offer a similar exclusion for charities. Under the CRS regime, a charity is regarded as a Financial Institution where:

- at least 50 percent of its income is from investing in financial assets; this includes interest, dividends, royalties, rental income on investment property and similar returns on financial investments; and



- it is professionally managed where either one or more trustees is a Financial Institution or if the trustees have appointed a discretionary fund manager (e.g. a charitable trust managed by a firm of professional trustees).

A charity that meets these conditions will be an Investment Entity type of Financial Institution.

However, if the charity's income is primarily (at least 50 percent) from gifts, donations (including legacies), grants and similar, the charity will be treated as a Non-Financial Entity which has no reporting obligations. In this case the charity is required, on request by a bank or fund manager, to certify its status as a Non-Financial Entity to Financial Institutions with which it has an account.

So who are the Account Holders for a charity?

A charity that is a Financial Institution will be required to collect information on its Account Holders. While the term 'Account Holder' is obvious for financial businesses such as a bank (i.e. a bank account holder), it is less obvious for charities which tend to be set up as a trust arrangement.

Under the CRS rules, an Account Holder of a charitable trust will include those individuals or entities who are entitled to (either via a mandatory or discretionary award) a payment in accordance with the charity's purpose.

Again, it should be noted that the purpose of CRS (as applied in the UK) is to identify recipients of payments who are tax resident outside of the UK.

Charity reporting and due diligence obligations

Charities that are Financial Institutions are required to report annually to HMRC the following information on Account Holders tax resident in a CRS jurisdiction:

- Name, tax residence, address and Tax Identification Number (TIN) or functional equivalent;
- The account balance and gross amount paid or credited to the Account Holder in the reporting period; and
- The closure of any accounts.

In order to report the above mentioned information on Account Holders, the charities are required to perform due diligence procedures (e.g. a search of their electronic records for pre-existing Account Holders) which were mainly designed for financial businesses such as banks. If there are no electronic records a search of paper records could be required in order to identify if anyone that has received an award prior to 1 January 2016 was a non-UK tax resident. Going forward a charity will be required to obtain a self-certification form before the payment is made to the recipient of the donation to obtain the TIN and tax residency of the recipient.

Obviously it may be difficult for the charity to obtain such a self-certification or even to ask the beneficiary to verbally confirm tax residence and the TIN. The self-certification must show where the recipient is resident for tax purposes, and if this is outside the UK, include the name, address and TIN. If the recipient is an entity, it must also include the entity's CRS classification.

There is no set format for self-certification, and it can be included within existing record keeping and correspondence arrangements the charity has in place where new grants and similar payments are awarded.



Next steps

HMRC will shortly be issuing guidance around the areas of concern for charities, i.e. due diligence (reasonableness tests and collection of self-certification) and reporting requirements.

However, charities should determine their CRS status (if nothing else in anticipation of a form issued from the bank to complete). If the charity is a Financial Institution, then a review of the grant issuing procedures may be required to ensure there is a 'reasonableness test' of the self-certification form received from Account Holders. A Financial Institution is considered to have confirmed the "reasonableness" of a self-certification if upon review of the information obtained in connection with the opening of the account (including any documentation collected pursuant to AML/KYC Procedures), it does not know or have reason to know that the self-certification is incorrect or unreliable.

If any Account Holders are non-UK tax residents then registration with HMRC may be required by the charity in order to complete its reporting obligations.

For Your Reference

HMRC guidance on charities can be accessed by clicking [here](#).

Should you have any questions on the above or wish to discuss further, please contact your usual KPMG contact or one of the contacts below.

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