

# INTERNATIONAL DISCLOSURES OF FINANCIAL INFORMATION

You may have heard recent news of various international regimes requiring the disclosure of financial information. Media recently reported that some bank account holders that did not provide full information in a timely manner have had their accounts frozen.

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**T**HESE RULES ARE LIKELY TO affect anyone in New Zealand who has an "overseas connection" such as being tax resident in an overseas country or the US, being US citizens or holding a US Green Card.

There are also a number of other disclosure regimes that can affect New Zealand businesses, and in some rare cases, a trust with managed investments may have its own separate reporting requirement. Some key regimes and acronyms that you may hear from your bank or other financial institution include:

### COMMON REPORTING STANDARDS (CRS)

CRS requires a report to be submitted by all entities with a reporting obligation. Effectively, this means that all entities need to check whether they have reporting requirements under CRS. The vast majority will not have reporting obligations.

There are three steps to determine whether an entity has a reporting obligation under CRS:

- i. Is the entity a Financial Institution (FI)?
- ii. Is the FI a New Zealand Financial Institution (NZFI)?
- iii. Is the NZFI a Reporting NZFI?

An entity that answers yes to all the above will be a Reporting New Zealand Financial Institution. If the answer for any of the above is no, then the entity will be classified as a non-financial entity (NFE) and does not have reporting requirements. If all interest holders (e.g. beneficiaries) are New Zealand tax resident, then there will also be no reporting obligation.

#### *Is the entity a Financial Institution?*

Any entity can fall under the definition of a financial institution (e.g. companies, partnerships, unit trusts, trusts). Individuals are not defined as an entity, so will not have to report under CRS.

There are four different classes of financial institution: Depository Institution, Specified Insurance Company, Custodial Institution and Investment Entity.

#### *Managed Investment Entity*

An entity is a Managed Investment Entity where it meets both elements of this test:

- a) It derives 50% of its income from investing, reinvesting or trading in financial assets (shares, bonds, debentures, money); and
- b) It is managed by another financial institution where the manager has discretionary authority over the assets allocated to them.

#### *Is the entity a New Zealand Financial Institution?*

A financial institution (excluding a trust) will be a New Zealand Financial Institution (NZFI) if it is a New Zealand tax resident or has a New Zealand branch. A trust will be an NZFI where one or more trustees are New Zealand tax residents, under New Zealand law.

#### *Is the Entity a Reporting New Zealand Financial Institution?*

An entity is a Reporting NZFI unless it falls within the definition of a Non-Reporting NZFI.

The only relevant exclusion in most cases is where a trust has a trustee that is a Financial Institution which has agreed to carry out CRS compliance on behalf of the Trust.

#### *CRS Reporting*

Reporting NZFIs are required to submit CRS via MyIR on Inland Revenue's website. An entity simply registers for CRS and submits a number of prescribed forms to complete the report. If there are no foreign account holders, then a nil report is required.

A reporting NZFI must report three main categories of information on foreign account holders, along with its identifier to Inland Revenue by **30 June 2018**.

- Identity information: name, address, jurisdiction(s) of residence, tax identification number(s), and date of birth (where applicable).
- Financial Account Information: Account balance/value as at the end of the reporting period or the closure of the account. Additional information is reported based on the type of account being reported on.
- Other Information: A list of accounts where the residency of an account holder is unable to be determined.

#### *CRS Penalties*

There are steep penalties for non-compliance so check with your Staples Rodway advisor if in any doubt about your obligations.

### CRS EXAMPLES

*A Family Trust owns a rental property (the majority asset that is managed by a third party) and derives rental income from it.*

**Not a Financial Institution** (real property is not including the definition of a financial asset), so no reporting requirement.

*A Family Trust owns a rental property and a share portfolio managed by a financial institution provider of discretionary investment management services. More than 50% of income is earned from the share portfolio.*

**It is a Financial Institution** under the Investment Entity class, as it derives more than 50% of its income from financial assets, and is managed by another Financial Institution. The family trust will have a reporting obligation if there are foreign account holders.

#### FATCA EXAMPLE

*A Family Trust settled by an American (while New Zealand tax resident) owns a rental property and a share portfolio managed by a financial institution provider of discretionary investment management services.*

**It is a Financial Institution** under the Investment Entity class, as it derives income from financial assets, and is managed by another Financial Institution. It is likely the managing Financial Institution will have met the FATCA compliance requirements already.

#### FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA)

This regime has been around for three years, so should be familiar to anyone affected. FATCA requires all entities with a reporting obligation to submit a report on US persons that hold an account with them. However, there is nothing to report on if the investments are less than US\$50,000. The test for a reporting entity under FATCA is very similar to CRS, but there are nuances that generally widen the tests under FATCA.

#### ANTI-MONEY LAUNDERING (AML)

The Anti-money laundering rules have an overlap with the above and have become a regular feature of the banking system. Essentially, these rules are designed to identify the true beneficial owners of funds in the banking system and ensure that the source and destination of the relevant funds are legal. While the information required to meet these requirements is similar to the other reporting requirements mentioned above, they are separate regimes.

#### COUNTRY-BY-COUNTRY (CbC) REPORTING

CbC was established by the OECD to address the issues of base erosion and profit shifting (BEPS). Inland Revenue has contacted New Zealand-headquartered corporate groups that are required to file CbC reports, being those entities with a global turnover of over NZ\$1.3 billion that have their headquarters in New Zealand. Those groups have been provided with the required templates and guidance notes for the collection of information.

If you act for a subsidiary of a large global corporation, you may be required to provide information about the New Zealand subsidiary to meet the global reporting requirement. Staples Rodway can assist with compiling the relevant New Zealand information if required, but no information goes directly from the New Zealand entity to Inland Revenue. Inland Revenue is expected to receive CbC information from the tax authorities of the countries where the worldwide headquarters are located. This provides a remarkable degree of transparency about the tax affairs of large multi-national groups between tax authorities. None of the information will be publicly available.



#### GENERAL DATA PROTECTION RULES (GDPR)

Some New Zealand businesses may be affected by the recently introduced GDPR rules. GDPR was introduced to ensure the personal data of European Union (EU) residents are protected to a minimum standard. GDPR also imposes obligations on the user or processor of personal data.

GDPR is imposed on anyone who sells goods or services or monitors the behavior of a person who resides in the EU. Effectively this means, all New Zealand businesses (whether online or not) are required to comply with GDPR if they hold or acquire personal data relating to an EU resident. Anyone who passively or actively collects personal data of a person who resides in the EU is required to obtain active consent in order to share it or use it.

GDPR introduces four rights for the subject of the data (Breach Notification, Right to Access, Right to be Forgotten, and Data Portability), and two requirements to entities who hold personal data of EU residents (Privacy by Design, and Data Protection Officers).

GDPR also applies to a physical copy of the information (i.e. a data subject asserts the Right to be Forgotten if the digital data is destroyed but a physical copy remains, then technically the entity is in breach of GDPR.)

*Staples Rodway are aware of these rules but are not specialists. We recommend you seek professional advice if you have any concerns about your requirements with this new regime.*