

## Application of the Common Reporting Standard (CRS) to Superannuation schemes and workplace savings schemes

Please note that this memo does not apply to KiwiSaver funds (and accounts). The Commissioner has already determined that KiwiSaver will be exempt from CRS due diligence and reporting.<sup>1</sup>

### Purpose of memo

The purpose of this memo is to provide guidance on the circumstances where:

- superannuation schemes and workplace savings schemes **will already be “exempt”** “Non-Reporting Financial Institutions” (NRFIs) for the purposes of the CRS for Automatic Exchange of Information (AEOI), or otherwise will have excluded accounts. The principal focus of this guidance is on the potential application of the “Broad Participation Retirement Fund” (BPRF) exclusion to such schemes<sup>2</sup>. However, this guidance will also address the potential application of the “retirement or pension account”<sup>3</sup> exclusion, and
- those superannuation schemes and workplace savings schemes, **which are not already exempt** for CRS purposes, may want to make a submission to Inland Revenue that they (and/or their accounts) should be exempted.

### Background

In broad terms, the CRS requires that Reporting New Zealand Financial Institutions (Reporting NZFIs):

- carry out due diligence on their financial accounts to identify relevant foreign tax residents, and
- report to Inland Revenue prescribed information about any reportable accounts that they have identified (and certain accounts that the CRS refers to as undocumented accounts).

### Non-Reporting Financial Institutions

The CRS explicitly excludes various types of financial institutions as being NRFIs. These institutions are exempt from CRS due diligence and reporting obligations. Certain excluded accounts, that are also explicitly excluded by the CRS, are also not subject to such requirements.

As explained in detail further below, the type of NRFI that is most likely to apply to superannuation schemes and workplace savings schemes is the **BPRF category**.<sup>4</sup> The definition of BPRF is set out in full in appendix 1 of this memo.

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<sup>1</sup> See CRS 2017/001 and CRS 2017/002.

<sup>2</sup> The “broad participation retirement fund” exclusion is set out in Section VIII(B)(1)(b), as defined in Section VIII(B)(5) of the CRS.

<sup>3</sup> The “retirement or pension account” exclusion is set out in Section VIII(C)(17)(a) of the CRS.

<sup>4</sup> Alternatively, some smaller schemes could, potentially, come within the definition of “narrow participation retirement fund”, as defined in Section VIII(B)(6) of the CRS.

The CRS also provides scope for implementing jurisdictions (such as New Zealand) to define other types of financial institutions as being NRFIs, where the entity is not otherwise exempt, if certain specified criteria are met. In broad terms, this would apply if the following conditions are all substantially satisfied:

- The financial institution is not otherwise exempt under the CRS
- The financial institution presents a low risk of being used to evade tax
- The financial institution has substantially similar characteristics to any of the financial institutions described in sub-paragraphs B(1)(a) and (b) of section VIII of the CRS (for example, in this context, the scheme may be substantially similar to a BPRF), and
- Defining the financial institution in domestic law as a NRFI will not frustrate the purposes of the CRS.

The Commissioner of Inland Revenue will determine what other types of financial institutions are NRFIs (in this way) and publish a corresponding list of these institutions.

However, the Commissioner is not able to make a determination that a type or class of financial institution is a NRFI, if it includes institutions that are already exempted for CRS purposes.

Therefore, it will be important that any financial institution first considers whether or not it is already a NRFI for CRS purposes before making any submission to Inland Revenue that the Commissioner should determine that it is another low risk entity type of NRFI.

#### **Excluded accounts**

As explained in detail further below, the type of already excluded account that is most likely to apply to superannuation schemes and workplace savings schemes is the retirement or pension account category. The definition of retirement or pension account is set out in full in appendix 2 of this memo.

The CRS also provides scope for implementing jurisdictions (such as New Zealand) to define other types of financial accounts as being excluded accounts, where the account is not otherwise exempt, if certain specified criteria are met. In broad terms, this would apply if the following conditions are all substantially satisfied:

- the account is a financial account
- the account is not otherwise exempt under the CRS
- the account presents a low risk of being used to evade tax
- the account has substantially similar characteristics to any of the financial accounts described in section VIII(C)(17)(a)-(f) of the CRS (for example, in this context, the account may be substantially similar to an excluded “retirement or pension account”) and
- defining the account in domestic law as an excluded account will not frustrate the purposes of the CRS.

The Commissioner of Inland Revenue will determine what other types of financial accounts are excluded accounts (in this way) and publish a corresponding list of these accounts.

Again, the Commissioner is not able to make a determination that a type or class of financial account is an excluded account, if it includes accounts that are already exempted for CRS purposes.

## **Application to superannuation schemes and workplace savings schemes**

This guidance will now outline how these CRS exemptions apply to superannuation schemes and workplace savings schemes.

### **Superannuation schemes**

Some superannuation schemes may already come within the definition of BPRF, and therefore be, excluded NRFIs.

This could be on the basis that:

- (a) they are employment based retirement funds
- (b) they do not have a single beneficiary with a right to more than five per cent of the fund's assets. Superannuation schemes **are likely** to satisfy this requirement - ie not have a single beneficiary which owns more than 5% of the fund's assets)
- (c) they are subject to government regulation (superannuation schemes **will** satisfy this requirement)<sup>5</sup>
- (d) They provide information reporting to Inland Revenue (superannuation schemes **are likely** to satisfy this requirement),<sup>6</sup> and
- (e) they satisfy at least one of the following requirements<sup>7</sup>:
  - distributions or withdrawals from the scheme are generally allowed only upon the occurrence of specified events related to retirement, disability, or death, or
  - the scheme receives at least 50% of its total contributions from sponsoring employers<sup>8</sup>, or
  - contributions by employees to the scheme are either limited by reference to earned income of the employee,<sup>9</sup> or may not exceed USD/NZD 50,000 annually.

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<sup>5</sup> Superannuation schemes are subject to government regulation such as Anti-Money Laundering (the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 – unless exempt) and financial markets regulation (the Financial Markets Conduct Act 2013).

<sup>6</sup> The reference in this context to information reporting to the Inland Revenue relates to information reporting by a BPRF to the Inland Revenue - such as providing regular information about their account holders (refer to paragraph 37, page 168, of the CRS commentary) e.g. prescribed investor rate (PIR) taxation, and employer's superannuation contribution tax.

<sup>7</sup> Inland Revenue does not consider that superannuation schemes are tax favoured **due to their status of retirement or pension plans**. Therefore, sub-paragraph (c)(i) of the CRS definition of BPRF is unlikely to be satisfied. However, only **one** of the four requirements in sub-paragraph (c) needs to be satisfied. As noted in this memo, the "withdrawal" and "contribution" criteria in (c)(ii), (iii), and (iv) are the most likely to be satisfied for such schemes.

<sup>8</sup> In determining whether an employer makes the majority of the contributions to the fund, transfers into the fund from excluded pension and retirement funds and accounts can be ignored. However, other employee contributions, and transfers from other funds or schemes, must be included in this calculation.

A superannuation scheme that **already comes within the definition** of BPRT will be a NRFI as defined in the CRS, and will not have any CRS due diligence and reporting obligations.

Any superannuation scheme that **does not fully meet the definition** of BPRF in the CRS (and is not otherwise exempted)<sup>10</sup> is able to make a submission to Inland Revenue that it should be treated as a NRFI, on the basis that:

- the scheme is a financial institution
- the financial institution is not otherwise exempt under the CRS
- the financial institution presents a low risk of being used to evade tax
- the financial institution has “substantially similar characteristics” to any of the financial institutions described in sub-paragraphs B(1)(a) and (b) of section VIII of the CRS (for example, the submission may be that the scheme is substantially similar in characteristics to a BPRF), and
- defining the financial institution in domestic law as a NRFI (i.e. by way of a determination by the Commissioner of Inland Revenue) will not frustrate the purposes of the CRS.

Please ensure that any submission covers all of these key criteria. Please send submissions via: [policy.webmaster@ird.govt.nz](mailto:policy.webmaster@ird.govt.nz).

If a superannuation scheme does not meet the definition of BPRF (and is not otherwise exempted) you should also consider whether the financial accounts that the scheme maintains are either excluded “retirement or pension accounts” coming within Section VIII(B)(17)(a) of the CRS<sup>11</sup> (please see appendix 2 to this memo for a full definition of such accounts) or are potentially excluded because of being substantially similar to such “retirement or pension” accounts. If you consider that a superannuation scheme’s accounts are substantially similar to such excluded “retirement or pension” accounts (in this way) please include the reasons for this view in your submission, covering the following points:

- why the account is a financial account
- Why the account is not otherwise exempt under the CRS
- why the account presents a low risk of being used to evade tax
- why the account has substantially similar characteristics to any of the types of excluded accounts in section VIII(C)(17)(a)-(f) of the CRS (for example, the submission may be that the account of such a superannuation scheme is substantially similar to an excluded “retirement or pension account”), and
- why defining the account in domestic law as being an excluded account will not frustrate the purposes of the CRS.

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<sup>9</sup> The Inland Revenue considers that employee contributions which are calculated by reference to the employee’s earned income, and deducted from an employee’s salary, satisfy the “earned income” requirement.

<sup>10</sup> For example, some smaller schemes could potentially come within the definition of “narrow participation retirement fund” set out in Section VIII(B)(6) of the CRS. Some government retirement or pension funds will also already be exempted under the CRS (see, for example, Section VIII(B)(1)(b)).

<sup>11</sup> This is the type of excluded account that is most likely to be relevant to superannuation schemes.

## Workplace savings schemes

Some workplace savings schemes may already come within with the definition of BPRF, and therefore be, excluded NRFIs.

This could be on the basis that they:

- are employment based retirement funds
- do not have a single beneficiary with a right to more than five per cent of the fund's assets (workplace savings schemes **are likely** to satisfy this requirement – ie not have a single beneficiary which owns more than 5% of the fund's assets)
- are subject to government regulation (workplace savings schemes **will** satisfy this requirement)<sup>12</sup>
- provide information reporting to Inland Revenue (workplace savings schemes **are likely** to satisfy this requirement);<sup>13</sup> and
- satisfy either<sup>14</sup> of the following:
  - The scheme receives at least 50% of its total contributions from their sponsoring employers; or
  - Contributions by employees to the scheme are either limited by reference to earned income of the employee, or may not exceed USD/NZD 50,000 annually.

A workplace savings scheme that **already comes within the definition** of BPRF in the CRS will be a NRFI, and will not have any CRS due diligence and reporting obligations.

Any workplace savings scheme that **does not fully meet the definition** of BPRF in the CRS (and is not otherwise exempted)<sup>15</sup> is able to make a submission to Inland Revenue that it should be treated as a NRFI on the basis that:

- the scheme is a financial institution
- the financial institution is **not otherwise exempt under the CRS**
- the financial institution presents a low risk of being used to evade tax
- the financial institution has substantially similar characteristics to any of the non-reporting financial institutions described in sub-paragraphs B(1)(a) and (b) of section VIII of the CRS (for example, the submission may be that the scheme has substantially similar characteristics to a BPRF), and

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<sup>12</sup> Workplace savings schemes are subject to government regulation such as Anti-Money Laundering (the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 – unless exempt) and financial markets regulation (the Financial Markets Conduct Act 2013).

<sup>13</sup> The reference in this context to information reporting to the Inland Revenue relates to information reporting by a BPRF to the Inland Revenue - such as providing regular information about their account holders (refer to paragraph 37, page 168, of the CRS commentary) e.g. prescribed investor rate (PIR) taxation, and employer's superannuation contribution tax.

<sup>14</sup> The Inland Revenue considers that workplace savings schemes are not tax favoured **due to their status of retirement or pension plans** and are unlikely to satisfy the withdrawal criteria in the definition of BPRF. Therefore, sub-paragraph (c)(i) and (c)(iii) of the definition of BPRF are unlikely to be satisfied. However, only **one** of the four requirements in sub-paragraph (c) needs to be satisfied. As noted in this memo, the "contribution" criteria in sub-paragraphs (c)(ii) and (iv) are the most likely to be satisfied for such schemes.

<sup>15</sup> For example, some smaller schemes could potentially come within the definition of "narrow participation fund" set out in section VIII(B)(6) of the CRS. Some government retirement or pension funds will also already be exempted under the CRS (see, for example, CRS Section VIII(B)(1)(b)).

- defining the financial institution in domestic law as a NRFI will not frustrate the purposes of the CRS.

Please ensure that any submission covers all of these key criteria. Please send submissions via: [policy.webmaster@ird.govt.nz](mailto:policy.webmaster@ird.govt.nz).

[If a workplace savings scheme does not meet the definition of BPRF (and is not otherwise exempted) you should also consider whether the financial accounts it maintains are either: excluded “retirement or pension accounts” coming within Section VIII(B)(17)(a)<sup>16</sup> of the CRS (please see appendix 2 to this memo for a full definition of such accounts) or are potentially excluded because of being substantially similar to such “retirement or pension accounts”. If you consider that a workplace savings scheme’s accounts are substantially similar to such excluded “retirement or pension accounts” (in this way) please include the reasons for this view in your submission covering the following points:

- why the account is a financial account
- why the account is **not otherwise excluded from the CRS**
- why the account presents a low risk of being used to evade tax
- why the account has substantially similar characteristics to any of the types of excluded accounts in section VIII(C)(17)(a)-(f) of the CRS (for example, the submission may be that the account maintained by a workplace savings scheme is substantially similar to an excluded retirement or pension account), and
- why defining the account in domestic law as being an excluded account will not frustrate the purposes of the CRS].

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<sup>16</sup> This is the type of excluded account that is most likely to be relevant to workplace savings schemes.

**Appendix 1 – Definition of Broad Participation Retirement Fund (a type of non-reporting financial institution)**

The term “**Broad Participation Retirement Fund**” means a fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund:

a) does not have a single beneficiary with a right to more than five per cent of the fund's assets;

b) is subject to government regulation and provides information reporting to the tax authorities; and

c) satisfies at least one of the following requirements:

*i)* the fund is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, due to its status as a retirement or pension plan;

*ii)* the fund receives at least 50% of its total contributions (other than transfers of assets from other plans described in subparagraphs B(5) through (7) or from retirement and pension accounts described in subparagraph C(17)(a)) from the sponsoring employers;

*iii)* distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to other retirement funds described in subparagraphs B(5) through (7) or retirement and pension accounts described in subparagraph C(17)(a)), or penalties apply to distributions or withdrawals made before such specified events; or

*iv)* contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed USD 50000 annually, applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

**Appendix 2 – Definition of excluded “retirement or pension account” (a type of excluded account)**

a) a retirement or pension account that satisfies the following requirements:

*i)* the account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);

*ii)* the account is tax-favoured (i.e. contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);

*iii)* information reporting is required to the tax authorities with respect to the account;

*iv)* withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and

*v)* either *(i)* annual contributions are limited to USD 50 000 or less, or *(ii)* there is a maximum lifetime contribution limit to the account of USD 1 000 000 or less, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirement of subparagraph C(17)(a)(v) will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of subparagraph C(17)(a) or (b) or from one or more retirement or pension funds that meet the requirements of any of subparagraphs B(5) through (7).