Inland Revenue
Te Tari Taake

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Common Reporting Standard - process for obtaining valid self-certifications for all new accounts

Executive summary

In broad terms, the Common Reporting Standard (CRS) requires that reporting New Zealand financial institutions (reporting NZFIs) **always** obtain valid self-certifications for new accounts (ie, those accounts opened on or after 1 July 2017). A Reporting NZFI is able to rely on such self-certifications, unless they know or have reason to know that they are incorrect or unreliable.

The OECD has updated its Frequently Asked Question (FAQ) 22 (*Timing of self-certifications*), regarding CRS new account on-boarding processes, and makes it clear that[1]:

- A reporting NZFI must adopt a "day one" process for *obtaining* new account self-certifications (unless this is not possible – for example, when an insurance contract is transferred).
- A reporting NZFI can use a "day two" process for *validating* self-certifications for new accounts if a "back office" process is adopted for such validation. However, this does not change the fact that *correct*[2] *and valid self-certifications must **always** be obtained for all new accounts*.
- A reporting NZFI should ensure that they have obtained and validated such self-certifications in time to be able to meet their CRS due diligence and reporting obligations (i.e. within a 90 day period, and no later than the deadline for reporting in which the account was opened (**i.e. 30 June of the relevant year**)[3].
- A reporting NZFI should adopt "*strong measures*" if they adopt a "day two" process for *validating* a self-certification. If it has not been able to obtain and validate the self-certification within the abovementioned timeframes (i.e. within a 90 day period, and no later than **30 June of the relevant year**), it must:
  - not complete its account opening procedures, and/or
  - freeze or close the account. If an account is frozen, it would then be able to be reactivated if a valid self-certification is subsequently obtained. (The OECD has confirmed that "freezing", in this context, means no deposits into the account and no withdrawals from the account.)

  As the general principle is that valid self-certifications must always be obtained for all new accounts, the OECD considers that these measures do not include merely adopting an indicia search (and reporting on the basis of whether or not there are any foreign indicia). Using an indicia search regarding new accounts that have not been validated in time would merely reduce new account due diligence to a similar standard as pre-existing account due diligence (c.f. page 211 of the CRS Commentary, which requires a higher standard for new account due diligence).
- A reporting NZFI and/or account holder may be subject to penalties if correct and valid self-certifications are not obtained (or provided) for new accounts on a timely basis. For example, penalties may be imposed if a reporting NZFI fails to take reasonable steps to obtain a valid self-certification,[4] or if an account holder fails to provide such a self-certification (or provides incorrect or incomplete information).[5] However, a reporting NZFI that adopts the strong measures outlined above would not be subject to such a penalty (assuming that they have otherwise taken reasonable steps in complying with their CRS obligations).

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[1] See FAQ 22 (at the web link: **www.oecd.org/tax/automatic-exchange/common-reporting-standard/ CRS-related-FAQs.pdf**) titled "Timing of self-certifications". FAQ 22 is reproduced in the Appendix to this guidance.

[2] This means that (as a first step) all of the required fields in the self-certification must be completed.

[3] June 2018 for the first CRS period.

[4] See section 142H(3) of the Tax Administration Act 1994 (for failure to obtain a self-certification) and section 142H(5) of the Tax Administration Act 1994 (for failure to take reasonable care to meet CRS due diligence and reporting obligations).

[5] See section 142I(2) of the Tax Administration Act 1994.

1. Background

1.1 For CRS purposes, reporting NZFIs are required to obtain valid self-certifications from account holders upon account opening for all new accounts (ie, accounts opened on or after 1 July 2017). This requirement also covers controlling persons (if the account holder is a passive non-financial entity (passive NFE).

1.2 There are two key elements here:

- **Obtaining** a self-certification for such accounts, **and**
- **Validating** (confirming the reasonableness of) the self-certification.

2. Requirement to always obtain a valid self-certification for a new account

2.1 The CRS commentary is clear that reporting NZFIs need to have strong measures and robust processes in place to ensure that valid self-certifications are **always** obtained for such new accounts (see paragraph 18 on page 211 of the CRS commentary).

"Day one" account opening process

2.2 The OECD has confirmed in a frequently asked question (FAQ 22) on its CRS automatic exchange portal[6] that reporting NZFIs must generally obtain a complete self-certification on "day one" of the account opening process.[7]

2.3 The OECD has also approved an update of FAQ 22 (Timing of self-certifications) see Appendix, which advises that:

- the general rule is that self-certifications need to be both obtained and validated on "day one" of the account opening process, and
- the limited circumstances when self-certifications can be obtained and validated as part of a "day two" process (viz. within 90 days, and no later than the deadline for CRS reporting for the period in which the account was opened). We elaborate on these circumstances below.

2.4 Reporting NZFIs are required to obtain, as part of this "day one" self-certification process, all of the required identity information such as the account holder's (and, if the account holder is a passive NFE, controlling person's):

- name
- address
- date of birth
- jurisdiction(s) of tax residence, and
- foreign taxpayer identification number(s) (TINs), or equivalent.

2.5 Reporting NZFIs should **not materially progress the account opening process until** they have obtained a complete self-certification (including all of this information). For example, reporting NZFIs should not allow deposits into the account until they have obtained a complete self-certification.

Confirming the "reasonableness" (validity) of a self-certification

2.6 Reporting NZFIs **also** need to confirm the "reasonableness" (or validity) of such completed self-certifications. There are two options that apply here:

- **"Day one" "reasonableness" process** (default rule): the reporting NZFI may confirm the "reasonableness" (validity) of such self-certifications as part of a "day one" process (ie, confirming the validity of a self-certification before materially progressing the account opening process – e.g. before allowing deposits into the account), or
- **"Day two" "reasonableness" process** (option): alternatively, the reporting NZFI can choose to adopt a "day two" process for confirming the "reasonableness" of this self-certification if it uses a "back office" process to carry out these procedures.

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[6] See FAQ 22 (at the web link: **www.oecd.org/tax/automatic-exchange/common-reporting-standard/ CRS-related-FAQs.pdf**) titled "Timing of self-certifications".

[7] The only exception to this "day one" rule is if it is not possible for the reporting NZFI to obtain a self-certification on "day one", which will be very rare (including, for example, the transferring of an insurance contract). In such exceptional circumstances, the reporting NZFI needs to both obtain and validate the self-certification as part of a "day two" process (viz. within 90 days and no later than the deadline for CRS reporting).

However, a Reporting NZFI should only adopt a "day two" "reasonableness" process if they have the functionality to freeze or close those accounts where they are unable to confirm the reasonableness of such self-certifications, within 90 days and no later than the deadline for reporting. This is because reporting NZFIs have obligations to take reasonable care when carrying out their CRS due diligence obligations. They also have specific obligations to always obtain valid self-certifications for new accounts.

2.7 The ability for a reporting NZFI to use this "day two" validation process is **subject to a condition** that the reporting NZFI must have obtained a valid self-certification within 90 days – and no later than the deadline for reporting (**i.e. 30 June of the relevant year**).[8]

2.8 The OECD has confirmed that the 90 day period available to reporting NZFIs under the "day two" validation process is subject to the proviso that it does not result in the reporting of the new account at a later date than would otherwise be required under the "day one" process.

2.9 In other words, the OECD considers that the "day two" validation process does not change the overarching requirement that reporting NZFIs must **always** obtain a valid self-certification for new accounts (see page 211 of the CRS commentary) in the period when the account is opened. The "day two" validation process is an operational concession and the requirement that a NZFI must complete the validation within 90 days and no later than the deadline for reporting that account, means that a NZFI adopting this concession is placed in the same position or no more favourable position for reporting purpose as if they had applied a "day one" validation (the default rule).

3. Consequences if a valid self-certification is not obtained within 90 days of account opening of a new account

3.1 The OECD has also confirmed that, as a result of this requirement, reporting NZFIs need to have strong measures in place that provide for consequences if a valid self-certification is not obtained within 90 days of account opening (and by 30 June of the relevant year).[9]

3.2 The OECD has confirmed that the following can be examples of sufficiently *strong measures* (after the 90 day period), involving the reporting NZFI:

- not completing their account opening procedures, **if** they are unable to receive a valid self-certification
- freeze the account,[10] until[11] they have received a valid self-certification, or
- closing the account, if they do not receive a valid self-certification.

Reporting NZFIs are required to take these strong measures because:

- they have a legal obligation to always obtain valid self-certifications for new accounts and may be subject to penalties if they fail to do so[12]
- they are subject to penalties for lack of reasonable care if they do not take reasonable steps[13] to comply with their CRS obligations (including not taking such "strong measures" to help ensure that they are able to obtain valid self-certifications for new accounts), and
- reporting NZFIs are not able to rely on self-certifications that are incorrect or unreliable.

Therefore, it is important that reporting NZFIs take these strong measures in these circumstances, so they are in a position to be able to comply with their legal obligations.

3.3 These strong measures may also be supplemented by penalties being imposed on reporting NZFIs that do not take appropriate and reasonable measures to obtain a valid self-certification and/or on account holders (or controlling persons) that fail to provide a correct and valid self-certification on a timely basis. A reporting NZFI that adopts the *strong measures* outlined above would not be subject to such a penalty (assuming that they have otherwise taken reasonable steps to comply with their CRS obligations).

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[8] 30 June 2018 for the first CRS period.

[9] 30 June 2018 for the first CRS period

[10] The OECD has confirmed that "freezing", in this context, means no deposits into the account and no withdrawals from the account.

[11] A reporting NZFI that chooses to take the serious measure of "freezing" an account should also consider when it may be reasonable for them to "close" any such account that has been frozen. Inland Revenue will provide further guidance on this point – ie, about our expectations of the timing for when frozen accounts will need to be closed.

[12] See section 142H(3) of the Tax Administration Act 1994.

[13] See section 142H(5) of the Tax Administration Act 1994.

3.4 Reporting NZFIs are also required to keep a record of any instances where they have failed to obtain valid self-certifications.

3.5 A Reporting NZFI may consider that, in light of the above requirements, it is easier for them to make the opening of the account contingent or conditional on receiving a valid self-certification (ie, the default rule of adopting a "day one" approach to confirming the reasonableness/validity of a self-certification, as opposed to adopting a "day two" approach). Furthermore, as noted above, a reporting NZFI should only adopt a "day two" "reasonableness/validation" process if they have the functionality to freeze or close accounts within 90 days and no later than the deadline for reporting.

3.6 Lastly, the OECD has confirmed that reporting for new accounts (where a valid self-certification has not been obtained) on the basis of an indicia search, or in accordance with the undocumented account procedures, are not **sufficiently strong measures** to ensure that valid self-certifications are always obtained for new accounts.

Appendix

The OECD has recently approved an update to FAQ Question 22 (in December 2017), which is published on their Automatic Exchange Portal, and states as follows:

[Update to FAQ 22] – With respect to New Individual and Entity Accounts the Standard provides that the Reporting Financial Institution must obtain a self-certification upon account opening. In such cases, is it expected that Reporting Financial Institutions can only open the account once a valid self-certification is received?

Answer:

The Standard provides that a Reporting Financial Institution must obtain a self-certification upon account opening (Sections IV(A) and V(D)(2)). Where a self-certification is obtained at account opening but validation of the self-certification cannot be completed because it is a 'day two' process undertaken by a back-office function, the self-certification should be validated within a period of 90 days.

There are a limited number of instances, where due to the specificities of a business sector it is not possible to obtain a self-certification on 'day one' of the account opening process, for example where an insurance contract has been assigned from one person to another or in the case where an investor acquires shares in an investment trust on the secondary market. In such circumstances, the self-certification should be both obtained and validated as quickly as feasible, and in any case within a period of 90 days. Given that obtaining a self-certification for New Accounts is a critical aspect of ensuring that the CRS is effective, it is expected that jurisdictions have strong measures in place to ensure that valid self-certifications are always obtained for New Accounts.

What will constitute a "strong measure" in the above exceptional instances may vary from jurisdiction to jurisdiction and should be evaluated in light of the actual results of the measure. The crucial test for determining what measure can qualify as "strong measures" is whether the measures have a strong enough impact on Account Holders and/or Financial Institutions to effectively ensure that self-certifications are obtained and validated in accordance with the rules set out in the CRS. In that light, for instance, measures that foresee the closure or freezing of the account after the expiry of 90 days or the application of very elevated penalties on Financial Institutions and/or Account Holders, all of which can constitute "strong measures".

In all cases, Reporting Financial Institutions shall ensure that they have obtained and validated the self-certification in time to be able to meet their due diligence and reporting obligations with respect to the reporting period during which the account was opened.