

## **WHAT IS CRS?**

- An international (EU led) multi country agreement for the automatic exchange of financial account information to help combat global tax evasion.

## **WHAT IS FATCA?**

- US legislation aimed at preventing tax evasion by US citizens, tax residents & entities

# **CRS AND FATCA**

## **PART OF NZ DOMESTIC LAW**

- Part 11B Tax Administration Act 1994
- Section 185E to M – FATCA
- Section 185N to O - CRS

## IMPORTANT DATES

- FATCA-NZ IGA 12 June 2014, in force 1 July 2014
- CRS – in force from 1 July 2017
- CRS reporting for trusts (if required) 30 June 2019

# ENTITIES AND FINANCIAL INSTITUTIONS

Only financial institutions (FI) carry out due diligence and (if required) report

- Entities are either
  - FIs or
  - Non Financial Entities (NFE)
- A trust is an entity
- Individuals are NOT entities

## WHAT IS A FI?

- Four types
  - Custodial
  - Depository
  - Investment
  - Some insurance companies

## What is a FI cont'd

- We are concerned with Investment entities which conduct business for customers including investing, administering or managing funds or money – specified investment activities.
- Which is what a trustee does
- BUT is not all a trustee does!
- IRD Guidance states that a family trust is unlikely to be a FI, *BUT READ ON!*

## WHAT IS A NON FINANCIAL ENTITY (NFE)?

- Two types
  - Passive
  - Active

CRS and FATCA aimed at passive NFEs and their controlling persons.

**Passive** = derives 50% or more income from financial assets

**Active** = everything else

## WHAT ARE FINANCIAL ASSETS (PASSIVE Investments)?

- Shares - Dividends
- Bonds - Interest
- Debentures - Interest
- Bank deposits - Interest

Other investments of a similar type

*Note:* NOT real estate directly owned or a commodity that is a physical good (gold? art? Etc)



## FI OBLIGATIONS

Due diligence by

- Reviewing “financial accounts”
- Identifying “account holders”
- Identifying “controlling persons” of account holders if NFEs
- Objective is to identify accounts held by foreign tax residents and report to IRD which will pass on to foreign tax authority
- Due diligence commenced 30 June 2017 but for trusts goes to 30 June 2019

## WHEN IS A TRUST A “MANAGED INVESTMENT ENTITY FI”?

- Although a family trust is unlikely to be a FI it may be a managed investment entity FI if the trust is “managed by” another FI
- There are two types of “managed by”
  - A trustee company that is a FI;
  - Where the trust has investments managed by another FI such as a discretionary investment manager (DIM)
  - *Note:* A trust with individual trustees only cannot come within the first category, but will be caught if there is a DIM.

## IS YOUR CORPORATE TRUSTEE A FI?

- See IRD Guidance notes May 2018
  - Does the corporate trustee derive 50% or more of its income from managing, investing and administering financial assets.
  - If the trustee company does not directly charge trustee fees but the firm charges for the same services IRD considers that the above rule applies

## WHAT IS A DIM?

- A FI which has fully delegated power to invest trust assets without reference back to the trustee for approval
- Where trustee employs an investment adviser to review and advise on investments but the trustee makes the final decision the investment adviser is NOT a DIM

## **IF THE TRUSTEE IS A FI OR THERE IS A DIM FI WHEN WILL THE TRUST BE “MANAGED BY” IT?**

- A family trust will be “managed by” if at least 50% of its gross income comes from “investing, reinvesting or trading” in financial assets over prior three years (or since inception)
- The DIM does not have to reach the 50% test

## WHAT IS TO BE REPORTED?

- Trust capital – this is the “account”
- Holders of Equity Interests. These are:
  - The Settlor
  - The Trustee/s
  - Any Appointor or Protector
  - Any other person in “control”
  - Fixed beneficiaries
  - Discretionary beneficiaries – will only be treated as holding such an interest if distributions are made
- Apart from discretionary beneficiaries (distributions only) each is reported as holder of entire trust capital

## What is to be reported cont'd

- Holders of Debt Interests
  - Monies owed by the trust to foreign lenders
  - Undrawn beneficiary accounts if beneficiary is a foreign tax resident

## DUE DILIGENCE

Pre-existing (30.06.2017) trusts

- If assets < US250,000 – none
- If assets between US250,000 and US1m rely on existing information.
- If assets US1m + enhanced due diligence ie self-certification of each person as to tax status.
  - Trace through entities to natural persons
  - Obtain full name, residential address and date of birth
  - Obtain details of foreign tax jurisdiction and TIN



## **Due Diligence cont'd**

Trusts established after 30.06.2017

- No de minimis exception

## REPORTING

- Required if there is a foreign tax resident
- If trust has a trust company FI will be a “Trustee Documented Trust”
- Trust company and trust must register under MyIR and have tax numbers
- Trust company (not trust) reports through IRD new reporting portal (not easy or clear)
- May need help from IRD helpline

## SUMMARY OF MAIN ISSUES

If trustees are individuals action only needed if investments include DIMs.

If trustee is your trust company:

- Does it or firm charge for financial asset management?
- If so are fees 50% or more of total fees for that trust?
- If Yes does trust itself receive 50% or more income from financial assets?

If Yes

- Due diligence is mandatory
- Reporting only required if there is a foreign taxpayer who is a “controlling person” or discretionary beneficiary who has received a distribution or a beneficiary with unpaid account

## WHERE TO GET MORE INFORMATION

- Email questions to IRD at [global.aeoi@ird.govt.nz](mailto:global.aeoi@ird.govt.nz)
- IRD forms available
  - 1048 Guidance on CRS
  - 1052 is the trust a Reporting NZFI
  - 1053 family trust obligations under CRS
  - 1089 Guidance for accountants

## Where to get more information cont'd

Various FATCA forms:

- 1081, 1082, 1083
- 1087 – FATCA Guidance notes

## A PRACTICAL CHECK LIST

1. Does the trust have any “foreign elements”?
2. If Yes is its income over the last three years (or from inception) 50% or more from investing reinvesting or trading in financial assets?
3. If Yes is the trustee a FI?
4. If No are any investments managed by a DIM FI?

## A Practical checklist cont'd

### 5. Before 30 June 2019

- should DIM be replaced?
- should individual trustees be appointed?
- should beneficiary current accounts be repaid?

# Overview

FI Trustee Company

50% income from  
“relevant services”

Trust

50% + income from  
Financial assets

DIM Provider

Not a 50%  
requirement

Equity interests

Debt interests

Trust and Trustee register  
under MyIR and get IRD  
number  
Trustee reports to IRD  
online