Response to OECD consultation on a crypto-asset reporting framework and amendments to the common reporting standard

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Insurance Europe appreciates the opportunity to contribute to this consultation, in particular to some of the questions from page 61 onwards, which relate to aspects of the amendments of the Common Reporting Standard (CRS).

Reliance on AML /KYC Procedures for determining Controlling Persons

The current EU applicable regulation for AML and KYC procedures is consistent with the latest version of the 2012 FATF recommendations for the purposes of determining Controlling Persons of Entity Account Holders.

Collection of TIN for pre-existing accounts

Financial institutions already do their best to obtain Taxpayer Identification Numbers (TINs) for pre-existing accounts. Account holders who do not respond to a first query of financial institutions usually also do not respond to later queries.

Regarding life insurance business, it must also be kept in mind that, in many jurisdictions, eg. in France and Germany, insurers are legally prohibited to terminate or restrict their insurance policies once they are active. The insurer can only refuse the onboarding (new accounts) in cases where there is no self-certification but has no leverage on pre-existing accounts to obtain a TIN. Therefore the "non-cooperative" behaviour of the account holder should not result in additional obligations for financial institutions.

From the industry's perspective, it should be sufficient for a financial institution to make reasonable efforts in asking the account holder for the TIN after the pre-existing account becomes a reportable account. A lasting obligation to ask for a missing TIN would permanently burden financial institutions, although a significant increase of the TIN-rate for pre-existing accounts cannot be expected.

Instead of increasing reporting requirements on pre-existing accounts, a foreseeable avenue would be to strengthen the data quality on the reporting achieved on the current scope. Indeed, tax administrations could provide tools that would enable Reporting Financial Institutions to check before filing the report that the TINs collected from account holders are valid (structure, number of digits, etc).

Reporting in respect of dual-resident account holders

The tax residence of the account holder is the key element of self-certification. In cases of dual or multi-residence it is understandable that all relevant jurisdictions would want to have access to the CRS-reports. The inclusion of the question of dual-residence scenarios in the self-certification and the following IT systems nevertheless requires substantial adjustments. A sufficient transition period of at least two years is, therefore, necessary. In addition, it is crucial that the rule only applies to financial accounts opened after the transition period. In no case should financial institutions be obliged to obtain a new self-certificate if they already received a valid self-certificate in the past or were not obliged to obtain a self-certificate at all. Because the assessment of dual or multi tax-residencies can be unnecessarily complex (and also controversial), that requirement should not be transferred to the reporting financial institutions.
If an account holder has received a government-issued documentation to resolve a case of dual residence under applicable tax treaties, this should be recognized for purpose of the self-certification, but without obligation for the financial institutions to verify this confirmation.

Integrating CBI/RBI guidance within the CRS

Financial Institutions facing CBI/RBI holders are expected to have implemented a process including the four questions recommended in the CBI/RBI guidance. There is no need to change or provide for further compliance in such cases that are not so common.

In this matter, only fiscal authorities are entitled to further analysis or investigation of the tax residence of such account holders.

Transitional measures

Generally, any changes in the CRS need a sufficient implementation period for the financial institutions, given the need to set up adequate checks and IT systems to deal with them. Prior legislative changes of the CRS implementation at national level have also shown that the fiscal authorities require adequate time for a proper transition as well.

It is worth noting that IT systems updates tend to require 18 to 36 months at least for a comprehensive implementation, even in large companies. Moreover, IT developments are programmed beforehand and IT resources and budget discussions may well require a whole year before launching said developments.

Other comments

General remarks on the amendments to the CRS

In recent years, the CRS has become an integral component in work to improve global tax transparency. The reporting financial institutions thereby have proven to be a reliable partner for fiscal authorities. Insurance Europe understands the OECD's efforts to further improve the quality and usability of the CRS reporting. Nevertheless, it must be kept in mind, that the envisioned adjustments and expansions of the CRS will result in an extensive burden for the reporting financial institutions, while providing little to no usable additional information for assessing tax authorities.

Due to the long-term nature of the insurance business, a life insurer regularly has several different IT-systems. Any changes made to the CRS must, therefore, be integrated multiple times in different systems. Given that every single adjustment in the reporting leads to costs and administrative burdens for the reporting financial institutions, further amendments of the CRS must, therefore, be carefully considered.

In this context, it is questionable whether the foreseen expansions of the reported information will actually improve the quality and usability of the CRS reporting, while offsetting the rising administrative burdens for financial institutions. This is aggravated by the fact that often the fiscal authorities still do not fully exploit the already reported information. Implementing an increasing number of reporting obligations for financial institutions would increase the administrative burden on companies, without improving the reporting system.

Information on whether an account is a joint account

Regarding the information on whether an account is a joint account, including the number of joint account holders (see Section I: General reporting Requirements A(1)(c)), implementing two additional reporting

attributes in administrative systems and reporting databases will present a considerable challenge, especially outside a standard bank account environment (eg in the case of the succession of undistributed assets of a deceased person, when there are uncertain distribution quotas that will likely affect the succession of the policyholder role of a life insurance contract with many people identified as heirs). It is the view of insurers that the reporting of such additional information should – if at all – be limited to depository accounts and custodial accounts in order to avoid adding unnecessary complexity to cases known as high complexity cases already.

Account type to be reported

From the insurers' perspective, it should be obvious to tax authorities what type of financial account has been reported, by virtue of the entity reporting it. As a regulated industry, entities must be regulated and licensed to provide certain types of accounts. An insurance company, for example, cannot provide depository accounts. If an insurance group wished to provide a depository account, it would set up a separate entity and obtain the required license. Therefore, Insurance Europe does not see the value of this additional field being added to the reporting schema.

In addition, information on the type of the financial account does not help the tax authorities with the proper classification for tax reasons. The taxation can also vary in between one type of the financial account. For example, in Germany the taxation of a life insurance contract depends on the type of payment (capital or annuity) and the retirement age.

If the CRS reporting is made at the policyholder level — for example, if the values of a multitude of contractual relationships are aggregated for reporting purposes at account holder level — the reporting of an "account type" might, depending on the specific circumstances, not be reasonably possible. If, for example, a policyholder has an insurance policy, as well as a pay-out plan, with the same specified insurance company (one to be reported as "other account" and one as "depository account"), the envisaged addition of this requirement cannot be feasibly implemented and would likely lead to misinterpretation by the information receiving authorities or unnecessary need for explanation by the account holder reported.

Role of controlling persons in relation to the entity account holder

The industry understands the interest of tax administrations in obtaining detailed information about the role of the controlling person in relation to the entity account holder. Obtaining this information is, however, the task of fiscal authorities. Furthermore, the current CRS already provides information about the account holder and, if applicable, the controlling person. Additional information on the role of the controlling person currently is not present and the collection of this complex information would require a substantial effort from the financial institutions. In cases where the role of the controlling person is relevant for tax purposes, the tax administrations themselves must investigate. There are many ways for fiscal authorities to obtain this information: for example, through transparency registers or direct inquiries.

Insurers do not wish to be obligated to report the role of the controlling persons in relation to the entity account holder, as this would require a further outsourcing of official tasks at the expense of the reporting financial institutions.

Should the CRS nevertheless be revised to require the reporting of the role of the controlling person, this should only apply after a sufficient implementation phase and should only be applicable for accounts opened after this implementation phase. In addition, there should be detailed guidance on how the role of the controlling persons should be requested: there could for example, be an "official" list with all possible roles which then could be ticked where applicable by the account holder.

Whether an account is a pre-existing account or a new account, and whether a valid self-certification has been obtained

The CRS aims to inform tax authorities about financial accounts for the purpose of a proper taxation of the account owner. Therefore, only information that allows tax authorities in a first step to identify tax relevant facts should be reported. The CRS cannot replace the tax assessment of tax authorities, nor should the reported information include information which is not relevant for the purpose of the CRS.
The information whether the account is a pre-existing account or a new account, and whether a valid self-certification has been obtained is irrelevant for a proper taxation of the account holder. The consultation

document states that this information nevertheless would give tax administrations visibility with respect to due diligence procedures applied.

In addition, contradicting information is to be expected: for example, in the case of a change of policyholder of a cash value insurance contract. The new policyholder is to be treated like a new account holder for CRS purposes, however the contract itself may very well be decades old. In such cases, the information receiving authority might come to the unjustified conclusion, that a reporting was incomplete in the years prior to the first reporting or might falsely assume that the new policyholder failed to disclose such a contract prior to the initial reporting through the financial institution. The complexity of business interactions, especially in the insurance industry, cannot be depicted with the addition of such information and will likely lead to an unnecessary need for clarifications and explanations, mainly at the level of the account holder, without any improvement of the overall reporting quality. Finally, this new information would cause inconsistencies where the CRS reporting is prepared at the account holder level: for example, aggregating all reportable contracts at the level of the account holder. There will be numerous instances in the life insurance industry where a policyholder has policies dating back to the pre-existing period while simultaneously having post CRS implementation cut-off date policies. The only available data that may be relevant is the onboarding date. Therefore, the proposed requirement to report information on the validity of a self-certification or whether an account is qualified as a new or pre-existing account should not be part of the revised standard or the revised commentary.

In this context it must be considered that the inclusion of this data would require changes in the reporting procedures and IT-systems and would therefore lead to an administrative burden for financial institutions. Also, it cannot be expected that the reporting financial institutions store the required information in an electronically searchable format. In these cases, a manual evaluation of every single contract would be necessary. Even though the proposed changes seem "small", the implementation is costly for the reasons stated above (in particular multiple electronic data processing systems).

From the perspective of insurers, these costs are heavier than the additional benefit this information would provide to tax authorities. The principle of proportionality should also be recognised for the purpose of the CRS. In addition, the due diligence procedures of the reporting financial institutions are already examined by fiscal authorities: for example, via special CRS tax audits.