

Standard on the tax compliance of foreign accounts

Introduction CRS

Common Reporting Standard (CRS) is a global standard on automatic exchange of information issued by the Organisation for Economic Co-operation and Development (OECD). It aims to prevent tax evasion and improving international tax compliance by providing transparent participating countries on offshore financial assets held by their residents.

From 1 January 2016, CRS apply to individuals and legal entities. More than 100 countries have committed themselves to adhere to the CRS, including all EU Member States and various key international financial centers.

How does CRS function?

Financial institutions (such as TBI Bank) are obliged to apply certain due diligence procedures to identify customer accounts and report their financial accounts held directly or indirectly by foreign tax residents, the local tax authorities. Later, the automatic exchange of information, local tax authorities will report this information to the corresponding foreign tax authorities.

What will TBI Bank do?

TBI Bank will apply certain due diligence procedures to identify client accounts provided by Law 207/2015 regarding the Fiscal Procedure Code. Subsequently, financial accounts held directly or indirectly by foreign tax residents will be reported to the local tax authority.

What does it mean for you?

If you will be impacted by CRS, we will ask you to fill in a form of self-certification, which includes information regarding your tax residency. With changes in circumstances that will affect your classification in terms CRS, please inform us about this issue and to complete a new form of self-certification.

Other questions?

For more information on CRS, please visit the website of the [OECD](#) or contact the local tax authorities / tax authorities of your country of residence.

CRS Glossary

Financial Account

The term Financial Account means an account maintained by a Financial Institution, and includes a Depository Account, a Custodial Account and:

A. in the case of an Investment Entity, any equity or debt interest in the Financial Institution. Notwithstanding the foregoing, the term “Financial Account” does not include any equity or debt interest in an Entity that is an Investment Entity solely because it (i) renders investment advice to, and acts on behalf of, or (ii) manages portfolios for, and acts on behalf of, a Customer for the purpose of investing, managing, or administering Financial Assets deposited in the Name of the Customer with a Financial Institution other than such Entity; AND

B. in the case of a Financial Institution not described in the above paragraph, any equity or debt interest in the Financial Institution, if the class of interests was established with a purpose of avoiding reporting in accordance with Section I of the Agreement; AND

C. any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a Noninvestment-linked, non-transferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit provided under an account that is an Excluded Account.

The term “Financial Account” does not include any account that is an Excluded Account.

Active operating company

An operating company which generates 50% or more of its gross income from active operations (as opposed to investments). In this respect, a financial institution is not an active operating company.

Active NFE - Non-Financial Entity (NFE)

A Non-Financial Entity is any entity other than a Financial Institution. Based on CRS, entities that are not financial institutions can be divided as Active or Passive NFE. Whether you are an Active NFE or Passive NFE can be determined based on the below questions. If you can fulfill the requirements set forth in any of the below chapters you can be considered an Active NFE. If you cannot fulfill the requirements you can be considered a Passive NFE. Please note that Passive NFEs need to provide information on their Controlling Persons.

Questions to determine whether your company is an active NFE:

Active entity (Active NFE)

If both answers are yes then the entity is an Active NFE.

During the last year:

1. More than 50% of the entity’s gross income consisted of active income; and
2. Less than 50% of the assets held by the entity were used to produce passive income.

Holding or financing company (Active NFE)

If all answers on question 1 and 2 are yes and the entity can answer yes to question 3, 4 or 5 then the entity is an Active NFE.

The entity is a holding or financing company and fulfills the below criteria:

1. All the subsidiaries of the holding company are active operating companies;
2. Apart from the income from the subsidiaries, the entity has no other income, or the other income of the entity is less than 50% passive income and is acquired with less than 50% of the assets of the entity.

Important: Please do not take the equity interests in the active operating companies into account nor the debt claims on such companies for the other income.

In addition, entity has to answer yes to question 3, 4 or 5 to be considered an Active NFE.

3. Does the entity perform activities that substantially consist of holding subsidiaries;
4. Does the entity perform activities that substantially consist of providing financing and services to subsidiaries?
5. Does the entity perform a combination of the in 3 and 4 above mentioned activities?

Non-profit organization (Active NFE)

If the answer is yes then the entity is an Active NFE.

1. Is the entity a non-profit organization?

Entity in liquidation or reorganization (Active NFE)

If all answers are yes then the entity is an Active NFE.

1. Is the entity currently in liquidation or bankruptcy or is the entity reorganizing to resume activities and the entity was not considered a financial institution for the last 5 years.
2. The entity is not planning to resume activities as a financial institution.

Treasury center (Active NFE)

If all answers are yes then the entity is an Active NFE.

1. The entity is a treasury center in the group that is primarily engaged in a business other than the business of a financial institution.
2. The entity does not provide treasury services to third parties or to financial institutions (treasury services to financial institutions which are group entities is also not allowed).

Startup companies (Active NFE)

If all answers are yes then the entity is an Active NFE.

1. The entity is established less than 24 months ago and is currently not operating a business or has previously not operated a business.
2. The entity is planning to operate a business other than the business of a financial institution.

If the entity cannot fulfill any of the above requirements the entity is considered a Passive NFE.

Assets

The total of all possessions of an entity.

Authorized representative

An authorized representative is authorized to sign statements or conclude contracts on behalf of the entity. The authorized representative is determined by the legal form of the entity or appointed by the entity. Is the entity registered with the Chamber of Commerce? Then the authorized representative will also be registered with the Chamber of Commerce. You will find this on the Chamber of Commerce extract.

Central bank

An institution that is by law the principal authority issuing instruments intended to circulate as currency.

Controlling person

“Controlling Persons” means the natural person(s) who exercises control over the Entity. “Control” over an Entity is generally exercised by the natural person(s) who ultimately has a controlling ownership interest in the Entity. A “control ownership interest” depends on the ownership structure of the legal person and is usually identified on the basis of a threshold applying a risk-based approach (e.g. any person(s) owning more than a certain percentage of the legal person, for example 25%). Please note that the 25% threshold is country specific and can deviate per country. Where no natural person(s) exercises control through ownership interests, the Controlling Person(s) of the Entity will be the natural person(s) who exercises control of the Entity through other means. Where no natural person(s) is identified as exercising control of the Entity, the Controlling Person(s) of the Entity will be the natural person(s) who holds the position of senior managing official. The term Controlling Persons shall be interpreted in a manner consistent with the Recommendations of the Financial Action Task Force (FATF).

In the case of a trust, the term “Controlling Persons” means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust. The settlor(s), the trustee(s), the protector(s) (if any), and the beneficiary(ies) or class(es) of beneficiaries, must always be treated as Controlling Persons of a trust, regardless of whether or not any of them exercises control over the trust.

CRS

CRS is the Common Reporting Standard under which countries that have concluded competent authority agreements exchange financial account information.

Entity

An entity is a legal person or a legal arrangement such a corporation, partnership, trust or foundation.

Financial institution

There are 4 types of financial institutions.

1. Custodial institution: an entity that holds, as a substantial portion of its business, financial assets for the account of others (mostly clients). An entity holds financial assets for the account of others as a substantial portion of its business if the entity’s gross income attributable to the holding of financial assets and related financial services equals or exceeds 20% of the entity’s gross income during the shorter of:

- o Three years prior to the current year;
- o The period since the establishment of the entity.

2. Depository institution: an entity that accepts deposits in the ordinary course of a banking or similar business. For example, a bank or a financial lease company.

3a. Investment entity: an entity that conducts as a business one or more of the following activities or operations on behalf of a customer:

- o Trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
- o Individual and collective portfolio management; or
- o Otherwise investing, administering, or managing funds, money, or financial assets on behalf of other persons.

3b. Investment entity: an entity the gross income of which is primarily attributable to investing, reinvesting, or trading in financial assets, if the entity is managed by another entity that is a type 1, 2, 3a, or 4 financial institution.

Note: An investment entity includes an entity that functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes.

4. Specified insurance company: an entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a cash value insurance contract or an annuity contract.

If you are uncertain whether the entity is a financial institution, please consult a professional advisor.

Governmental entity

This means the government of a country, any political subdivision of a county (which includes a state, province, county, or municipality) or any wholly owned agency or instrumentality of a county or of any one or more of the foregoing.

Group

A group is comprised of all the individual companies that are affiliated with other companies in the same group. Entities are affiliated if:

1. one of the entities controls the other entity; or
2. the entities are all controlled by the same entity.

In this respect an entity is 'controlled' if:

- an individual or legal entity in the group has a direct or indirect majority interest in the entity;
- an individual or legal entity in the group has a direct or indirect majority vote in the entity.

Holding company

A holding company is an entity that functions as a (central) holding or controlling company for the underlying subsidiaries. The holding company controls and manages the shares of the entities in the group.

An entity is not a holding company if it functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes.

International organization

This means any international organization or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organization (including a supranational organization) (1) that is comprised primarily of governments; (2) that has in effect a headquarters or substantially similar agreement with the country; and (3) the income of which does not inure to the benefit of private persons.

Non-reportable entity

A non-reportable entity is an entity that does not have to be reported by the financial institutions to the local tax authorities for CRS purposes.

Non-profit organization

The entity is considered a non-profit organization if the entity is considered a non-profit organization with only a religious, charitable, scientific, artistic, cultural, athletic, or educational purpose, or the entity is a professional organization, business league, chamber of commerce, labor organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare that was established and is operated in its country of residence.

Additionally the entity must fulfill the following conditions:

- the entity is exempt from income tax in its country of residence;
- the entity has no shareholders or members who have a proprietary or beneficial interest in the income or assets of the entity;
- the applicable laws of the entity's country of residence or the entity's formation documents do not permit any income or assets of the entity to be distributed to, or applied for the benefit of, a private person or non-charitable entity. An exception is made for income or assets used:
 - pursuant to the conduct of the entity's charitable activities,

- as payment of reasonable compensation for services rendered, or
- as payment representing the fair market value of property which the entity has purchased.
- The applicable laws of the entity's country of residence or the entity's formation documents require that upon the entity's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organization.

If you are uncertain whether the entity is a non-profit organization, please consult a professional advisor.

Operating company

An operating company is a legal body which is engaged in a business that is different from the business of a financial institution.

Participating country

A country that has adopted the Common Reporting Standard and that has concluded a competent authority agreement with the country in which the entity holds the reportable account mentioned in the form put at the client's disposal by the Bank. For further information we refer to www.oecd.org.

Passive income

Passive income is the portion of the gross income that consists of:

- dividends and dividend substitute payments (income equivalent to dividend);
- interest and income equivalent to interest;
- rents and royalties, other than rents and royalties derived in the active conduct of a trade or business conducted, at least in part, by employees of the NFE;
- annuities;
- income from swap-contracts;
- rental income of real estate property provided that this income can be obtained by performing little to no activity.

Passive NFE

A Passive NFE is any entity that is:

- (i) Not an Active NFE; or
- (ii) Professionally managed investment entity

Regularly traded on one or more established securities markets

An entity is considered to be regularly traded on one or more established securities markets if at least 50% of the securities of the entity are regularly traded on an established securities market.

Regularly traded securities

Securities are considered "regularly traded" if there is a meaningful volume of trading with respect to the stock on an on-going basis.

Established securities market

A securities market/exchange that is officially recognized and supervised by a governmental authority in which the market is located and that has a meaningful annual value of shares traded on the exchange.

Related entity

A related entity is an entity that is part of a group.

Subsidiary

A subsidiary is an entity that is directly or indirectly controlled by the holding company (this also includes subsidiaries of subsidiaries).

Professionally managed investment entity

Solely for CRS purposes, a type 3b financial institution that is not tax resident in a CRS country is a Professionally managed investment entity.

Tax resident

A person is a Tax Resident in a jurisdiction when it is considered a resident under a tax law of that jurisdiction and there is a full liability to tax. One could think of tax laws regarding income, such as the Corporate Income Tax. The concept of tax residency may differ from jurisdiction to jurisdiction. Common international criteria that may be factored into tax residency include:

- domicile in a jurisdiction;

- OR place of effective management or incorporation/organisation of an entity, respectively where an individual has his centre of vital interests;
- OR nationality.

It should be noted that a temporary stay in a jurisdiction can contribute to tax residency. Further, it is possible that an individual or entity is considered a Tax Resident in more than one jurisdiction. Government officials, diplomats and military personnel are generally Tax Resident in their home jurisdiction. The actual determination of tax residency takes place under the local tax regime(s).

The domestic laws of each country lay down the conditions under which a person is to be treated as tax resident. They cover various forms of attachment to a country which, in the domestic taxation laws, form the basis of a comprehensive taxation (full tax liability). You can check the conditions with the local government or by visiting the website www.oecd.org. ING is not allowed to provide tax advice to determine a client's tax residence.

Legal arrangements and tax residency

An entity such as a legal arrangement, that has no residence for tax purposes (transparent entities) is tax resident for CRS purposes in the jurisdiction in which its place of effective management is located. If there is no place of effective management, the address of its principal office can serve as a proxy for determining residence. Please note therefore that the residence for CRS purposes may differ from the residence for other purposes (profits tax, treaty application etc.).

Branches of entities

The tax residence of the branch of an entity is only in the country of tax residence of the entity to which the branch belongs. It is not necessary to list all countries in which the entity maintains branches.

Please consult a tax advisor if you are not sure about your tax residence.

TIN

The 'Taxpayer Identification Number' (TIN) is an entity's personal identification number for tax administration purposes.

Third party

A third party means the following: An individual or company which is not part of the affiliated group.

Treasury center

An entity is considered a treasury center if the primary activity of the entity is to enter into hedging and financing transactions.

FATCA is a United States (USA) law aiming to identify USA Persons who hold assets or a financial account outside USA.

USA Person

A person is a **USA Person** if:

- has the residence in the USA¹; or
- is an American citizen² or
- is or was the holder of a Green Card issued by the USA Authorities or
- has been in the USA at least 31 days this year and at least 183 days in the last three years (current year and the previous two years)³

¹ USA means the United States of America, Minor Outlying Islands, Guam, Northern Mariane Islands, Puerto Rico, Virgin Islands, American Samoa.

² A person is an American citizen if:

- was born in USA or
- has been naturalized as an American citizen or
- one of the parents is an American citizen.

³ The days spent on the USA territory is calculated as follows:

- all the days spent in USA in the current year and
- 1/3 of the days you were in USA in the previous year and
- 1/6 of the days you were in USA two years ago.

A person may be a taxpayer in the USA in case he/she meets the criteria for a USA Person. The above mentioned criteria are not exhaustive, therefore please consult www.irs.gov to check if a person has the quality of a USA Person and/or USA taxpayer.

SSN/ ITIN

The fiscal identification number with the Financial Administration in USA; **SSN** (Social Security Number) for American citizens residents in USA or the **ITIN** (Individual Tax Identification Number) for foreign USA taxpayer individuals.

The list above is not exhaustive. A complete overview of passive income can be found on www.oecd.org. If you are uncertain whether income is passive income, please consult a professional advisor.