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THE COMMON REPORTING STANDARD AND CHARITIES: DO YOU HAVE FILING REQUIREMENTS WITH HMRC?

The Common Reporting Standard (the CRS) is, like FATCA (the Foreign Account Tax Compliance Act), an information exchange regime aimed at realising international tax transparency. Exchange of information under the CRS is achieved by requiring certain bodies including banks and other "Financial Institutions", to collect data and report some of it to the local tax authority. This data will then be shared globally by adopters of the CRS on an annual basis.

While FATCA specifically excluded most charitable entities from reporting, the CRS does not and so charities must apply the relevant tests to determine their reporting requirements (if any) to HMRC.

Charities may be affected by CRS in one of two ways, they may:

- fall within the definition of a "Financial Institution" (where, broadly, 50 percent or more of a charity's income resources are attributable to investments, and at least some part of the investments are managed externally) and have active reporting obligations to HMRC; or

- be required to self-certify their status to third parties such as banks and investment managers.

The CRS rules were not drawn up with charities in mind and so they apply in different ways to charitable trusts and charitable companies even if the legal form of each is the only differentiator between two entities with identical activities. This is because of the way that the definition of Account Holder applies.

Charitable trusts or unincorporated associations might be required to report to HMRC on the residence of the beneficiaries to whom they make grants if they fall within the definition of a Financial Institution. Charitable companies and charitable incorporated organisations, however, which do not hold any property on special trusts (for example, as permanent endowment) will not have the same reporting obligations.

All charities that fall within the definition of Financial Institution (regardless of their structure) will be required to report on loans made to them and other debt interests.

The CRS came into force in the UK in January 2016. This means that the first exchanges of information will occur in 2017 by reference to information gathered for the 2016 calendar year. Information for the 2016 calendar year must be filed with HMRC by 31 May 2017. At least 30 further countries have said that they will introduce the CRS in 2017.

HMRC has indicated that if reasonable steps have and are being made by charities to comply with the CRS filing requirements but it will not be possible to make the deadline, these charities should contact HMRC. HMRC will apply a light touch approach to compliance by charities with CRS reporting. They will not seek to apply penalties where charities have made efforts to carry out due diligence requirements and report accurately.

The legal framework underpinning CRS includes safeguards as to how information may be used by the receiving jurisdiction. However, HMRC has recognised that, in some circumstances, the activities or background of an individual beneficiary on whom a charity is required to report will place that individual at risk. It is possible, in such cases, for the reporting charity to apply to HMRC to redact information before it is shared. The information itself must still be reported to HMRC however.

HMRC has published detailed guidance on how CRS applies to charities which is available here. The Association of Charitable Foundations and Charity Finance Group have also jointly produced some helpful guidance for charities, including a flowchart which is available here.

CONTACT DETAILS
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