



Explanatory Statement

CRS committed jurisdiction list

General Outline of Instrument

1. This instrument is made under sub-item 15(2) of the *Tax Laws Amendment (Implementation of the Common Reporting Standard) Act 2016* (transitional provisions).
2. This instrument declares committed jurisdictions. This will temporarily relieve Australian Financial Institutions from applying required due diligence procedures to certain foreign resident held accounts for a defined legislated period being from 1 July 2017 to 31 December 2019.
3. The instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Date of effect and expiry

5. The instrument commences on 1 July 2017 and is repealed at the end of the day on 31 December 2019.

What is this instrument about

6. The purpose of this instrument is to provide a list of committed jurisdictions so that Australian Financial Institutions are effectively relieved from applying certain due diligence procedures imposed under Subdivision 396-C of Schedule 1 to the *Taxation Administration Act 1953* (TAA) to accounts held by particular Investment Entities resident in foreign jurisdictions during the period from 1 July 2017 to 31 December 2019.

What is the effect of this instrument

7. The effect of this instrument is to temporarily relieve Australian Financial Institutions from carrying out the required due diligence procedures on specified foreign resident held accounts, if the relevant account holders (Investment Entities) are resident in jurisdictions declared to be committed jurisdictions. This will provide a temporary equivalent treatment for accounts held by entities resident in Participating Jurisdictions and accounts held by entities resident in committed jurisdictions. Only those jurisdictions that have expressed an intention to automatically exchange financial account information with Australia, but have not yet completed arrangements by 1 July 2017, will be declared as committed jurisdictions.

Background

8. The Common Reporting Standard ('CRS') is a standardised automatic exchange model that has been developed by the Organisation for Economic Co-operation and Development (OECD) and non-OECD G20 countries, at the request of the G20. So far, more than 100 jurisdictions have committed to its implementation.
9. The CRS establishes a common international standard for Financial Institutions to identify the financial accounts of foreign tax residents, report information on those account holders and their financial accounts to their local tax authority and for exchange of that information between relevant tax authorities. The CRS sets out the due diligence procedures that Financial Institutions must apply to identify account holders who are tax residents of a foreign jurisdiction.
10. Under Subdivision 396-C of Schedule 1 of the TAA, an Australian Financial Institution is required to collect and report the specified information to the Australian Taxation Office (ATO). The ATO will exchange the information automatically with a Participating Jurisdiction.
11. A Participating Jurisdiction is a jurisdiction as identified in a published list that has implemented the CRS and has an agreement in place with Australia to automatically exchange CRS information.
12. An Australian Financial Institution maintaining an account for particular Investment Entities has differing due diligence procedures depending on whether the Investment Entity is resident in a Non-Participating Jurisdiction or

a Participating Jurisdiction. Broadly speaking, these are accounts held by a professionally managed investment entity. If the Investment Entity is resident in a Non-Participating Jurisdiction, an Australian Financial Institution is required to look through the Investment Entity to identify and report on any Controlling Persons of the entity that are resident in any foreign jurisdiction. This look through is not required if the Investment Entity is resident in a Participating Jurisdiction.

13. A number of jurisdictions have implemented or committed to implement the CRS but have not yet completed and activated the necessary legal arrangements with Australia to be classified as a Participating Jurisdiction. In legislating the CRS, Australia has recognised that a transitional period may be necessary to allow completion of all requisite arrangements. Provision has been made to allow the Commissioner to declare committed jurisdictions via legislative instrument. If declared, an Australian Financial Institution is temporarily relieved from looking through certain entity account holders that are resident in the committed jurisdictions for a period from 1 July 2017 but no later than 31 December 2019.
14. This legislative instrument declares the jurisdictions that are committed jurisdictions for this purpose.
15. Subject to earlier repeal, the transitional relief period will end on 31 December 2019.

Consultation:

16. This instrument was developed in consultation with financial institutions affected by the CRS as well as advisers, service providers and representative bodies of financial institutions with an interest in the implementation of the CRS. Targeted consultation occurred during the period 9-16 June 2017 through circulation of a draft instrument and explanatory statement. Further consultation occurred with interested stakeholders for an extended period up until 21 June 2017.
17. Written submissions were received and phone a telephone conference was held between representatives from those financial institutions, the ATO and Treasury on 20 June 2017.
18. The responses and discussions highlighted the additional compliance burden imposed on financial institutions in relation to due diligence on account holders resident in Non-Participating Jurisdictions. A further layer of difficulty was identified for financial institutions with operations in multiple jurisdictions when faced with in CRS obligations that are misaligned across jurisdictions.
19. While these issues arising from differences between Participating Jurisdictions and Non-Participating Jurisdictions are ultimately an intended outcome of the CRS as designed by the OECD and its members, the Commissioner has given further consideration to whether the burden on Australian financial institutions might be further relieved by re-assessing the criteria for

determining whether jurisdictions are committed to implementing the CRS and exchanging information on financial accounts with Australia.

20. As a result of consultation the Commissioner revised the draft list of committed jurisdictions to include certain additional jurisdictions. He has accepted that a jurisdiction is sufficiently committed to be listed in the instrument where, despite not having the Multilateral Convention on Mutual Administrative Assistance on Tax Matters in effect (or a tax treaty with Australia), the jurisdiction has either signed the Convention or has officially expressed an intention to sign the Convention in the near future.
21. The Commissioner has also taken account of the latest developments since issuing the draft for consultation including actions taken by other jurisdictions in CRS implementation and new information from the OECD.

Legislative references:

Taxation Administration Act 1953

Tax Laws Amendment (Improvements to Self Assessment) Act (No.2) 2005

Human Rights (Parliamentary Scrutiny) Act 2011

Legislative Instruments Act 2003

Tax Laws Amendment (Implementation of the Common Reporting Standard) Act 2006

Acts Interpretation Act 1901

Statement of compatibility with Human Rights

This Statement is Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

CRS committed jurisdiction list

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Legislative Instrument

The objective of this legislative instrument is to declare committed jurisdictions. This temporarily relieves Australian Financial Institutions from certain due diligence procedures under the CRS in relation to accounts held by particular entities resident in foreign jurisdictions during the period from 1 July 2017 but no later than 31 December 2019.

The CRS is a standardised automatic exchange model that has been developed by the OECD and non-OECD G20 countries, at the request of the G20. The CRS establishes a common international standard for financial institutions to identify the financial accounts of foreign tax residents, report information on those account holders and their financial accounts to their local tax authority and for the authority to exchange that information with the tax authority of the foreign resident. Exchange of this information will help the ATO and other tax authorities to combat tax evasion. In Australia, CRS obligations commence from 1 July 2017.

The effect of this instrument is to relieve Australian Financial Institutions from applying more onerous due diligence procedures to accounts held by particular Investment Entities resident in jurisdictions declared by the Commissioner as committed jurisdictions than those applied to accounts held by entities resident in Participating Jurisdictions. This allows a period of time from 1 July 2017 to 31 December 2019 during which those jurisdictions can complete exchange arrangements with Australia.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms. It provides transitional relief for Australian Financial Institutions in relation to accounts held by entities resident in jurisdictions that have committed to the CRS and expressed an intention to exchange financial account information with Australia, but have not yet finalised legal or administrative arrangements to carry out such exchange.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.