



Tax Laws Amendment (Implementation of the Common Reporting Standard) Act 2016

No. 23, 2016

**An Act to implement the Common Reporting
Standard, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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No. 23, 2016

An Act to implement the Common Reporting Standard, and for related purposes

[Assented to 18 March 2016]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (Implementation of the Common Reporting Standard) Act 2016*.

No. 23, 2016

Tax Laws Amendment (Implementation of the Common Reporting Standard) Act 2016

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2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 18 March 2016 |
| 2. Schedule 1, items 1 and 2 | The day after this Act receives the Royal Assent. | 19 March 2016 |
| 3. Schedule 1, items 3 to 7 | The day after this Act receives the Royal Assent. However, the provisions do not commence at all if Part 2 of Schedule 4 to the <i>Tax and Superannuation Laws Amendment (2015 Measures No. 5) Act 2015</i> commences before the day after this Act receives the Royal Assent. | Never commenced |
| 4. Schedule 1, items 8 to 11 | The day after this Act receives the Royal Assent. | 19 March 2016 |
| 5. Schedule 1, item 12 | The day after this Act receives the Royal Assent. However, the provisions do not commence at all if Part 2 of Schedule 4 to the <i>Tax and Superannuation Laws Amendment (2015 Measures No. 5) Act 2015</i> commences before the day after this Act receives the Royal Assent. | Never commenced |
| 6. Schedule 1, items 13 to 15 | The day after this Act receives the Royal Assent. | 19 March 2016 |
| 7. Schedule 1, items 16 to 18 | Immediately after the commencement of Part 1 of Schedule 4 to the <i>Tax and</i> | Never commenced |

| Commencement information | | |
|---------------------------------|---|--|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| | <p><i>Superannuation Laws Amendment (2015 Measures No. 5) Act 2015.</i></p> <p>However, the provisions do not commence at all if that Part commences before the day after this Act receives the Royal Assent.</p> | |
| 8. Schedule 1, item 19 | <p>The later of:</p> <p>(a) immediately after the commencement of the provisions covered by table item 6; and</p> <p>(b) immediately after the commencement of Part 2 of Schedule 4 to the <i>Tax and Superannuation Laws Amendment (2015 Measures No. 5) Act 2015.</i></p> <p>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.</p> | 19 March 2016 (paragraph (a) applies) |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Common Reporting Standard

Part 1—Main amendments

Income Tax Assessment Act 1997

1 Subsection 995-1(1)

Insert:

CRS (short for Common Reporting Standard) has the meaning given by subsection 396-110(1) in Schedule 1 to the *Taxation Administration Act 1953*.

CRS Commentary has the meaning given by subsection 396-110(2) in Schedule 1 to the *Taxation Administration Act 1953*.

Taxation Administration Act 1953

2 After section 288-80 in Schedule 1

Insert:

288-85 Failure by Reporting Financial Institution to obtain self-certification

An entity that:

- (a) is:
 - (i) a Reporting Financial Institution (within the meaning of the *CRS); or
 - (ii) an institution that a notice under subsection 396-130(5) requires to act as a Reporting Financial Institution; and
- (b) is required to obtain a self-certification, in relation to an account maintained by the institution, when applying the due diligence procedures described in the CRS; and
- (c) fails to obtain the self-certification:
 - (i) if the account is a Reportable Account (within the meaning of the CRS) or an account that a notice under subsection 396-130(2) requires the entity to treat as a

Reportable Account—by the time by which a statement under subsection 396-105(2) relating to the account must be given to the Commissioner; or

- (ii) otherwise—by the time by which such a statement would be required to be given to the Commissioner if the account were such a Reportable Account;

is liable to an administrative penalty of 1 penalty unit.

3 Division 396 in Schedule 1 (heading)

Repeal the heading, substitute:

Division 396—Third party reporting

4 Division 396 in Schedule 1 (after the heading)

Insert:

Table of Subdivisions

| | |
|-------|---------------------------|
| 396-A | FATCA |
| 396-C | Common Reporting Standard |

5 Before section 396-1 in Schedule 1

Insert:

396-1A What this Division is about

This Division requires financial institutions to give to the Commissioner information for the purposes of:

- (a) the FATCA Agreement; and
- (b) the Common Reporting Standard.

Subdivision 396-A—FATCA

Guide to Subdivision 396-A

6 Section 396-1 in Schedule 1 (heading)

Repeal the heading, substitute:

396-1 What this Subdivision is about

7 Before section 396-5 in Schedule 1

Insert:

Operative provisions

8 At the end of subsection 396-5(2) in Schedule 1

Add:

Note: Section 286-75 provides an administrative penalty for breach of this subsection.

9 Subsection 396-5(6) in Schedule 1

Before “year”, insert “calendar”.

10 At the end of subsection 396-10(2) in Schedule 1

Add:

Note: Section 286-75 provides an administrative penalty for breach of this subsection.

11 Subsection 396-10(6) in Schedule 1

Before “year”, insert “calendar”.

12 Subsection 396-20(1) in Schedule 1

Omit “Division”, substitute “Subdivision”.

13 At the end of Division 396 in Schedule 1

Add:

Subdivision 396-C—Common Reporting Standard

Guide to Subdivision 396-C

396-100 What this Subdivision is about

Australian Financial Institutions must give the Commissioner certain information about accounts of foreign residents. This obligation is based on the Common Reporting Standard.

Note 1: This obligation will assist the Australian Government to exchange information with other jurisdictions in accordance with international agreements, such as the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, done at Strasbourg on 25 January 1988.

In 2015, the text of the Convention was available on the OECD's website (<http://www.oecd.org>).

Note 2: The purpose of the Common Reporting Standard is to reduce international tax evasion. It sets out due diligence procedures for financial institutions to apply to identify account holders that are foreign tax residents, and provides for financial institutions to report information with respect to such account holders.

This Subdivision also creates record-keeping obligations in relation to the requirement to give the Commissioner information.

This Subdivision also requires the Commissioner to report on certain Reportable Accounts that are maintained by Australian Reporting Financial Institutions.

Table of sections

Operative provisions

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| 396-110 | Meaning of CRS |
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| 396-120 | Application of Common Reporting Standard |
| 396-125 | Record keeping |
| 396-130 | Anti-avoidance provisions |
| 396-135 | Application of penalty to false or misleading self-certification |

Operative provisions

396-105 Statements about Reportable Accounts

- (1) Subsection (2) applies if:
- (a) at any time in a calendar year, an entity:
 - (i) is a Reporting Financial Institution (within the meaning of the *CRS); or
 - (ii) is an institution that a notice under subsection 396-130(5) requires to act as a Reporting Financial Institution; and
 - (b) at that time in the year, the entity:
 - (i) is resident in Australia (within the meaning of the CRS); or
 - (ii) is a branch located in Australia (within the meaning of the CRS); and
 - (c) at any time in the year, the entity maintains:
 - (i) a Reportable Account (within the meaning of the CRS); or
 - (ii) an account that a notice under subsection 396-130(2) requires the entity to treat as a Reportable Account.

Note: Subsection 396-120(3) applies the CRS to all jurisdictions.

- (2) The entity must give the Commissioner a statement that contains in respect of the account the information that the *CRS states the entity must report.

Note: Section 286-75 provides an administrative penalty for breach of this subsection.

- (3) Whether an entity maintains a Reportable Account (within the meaning of the *CRS) must be determined by the entity by applying the due diligence procedures described in the CRS.

Note: Section 288-85 provides an administrative penalty for failing to obtain a self-certification in relation to the account when applying the due diligence procedures.

- (4) A statement under subsection (2) must be in the *approved form.

- (5) More than one statement under subsection (2) may be included in the same document.

- (6) The statement must be given to the Commissioner no later than the first 31 July after the end of the calendar year.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

396-110 Meaning of *CRS*

- (1) The ***CRS*** is the Common Reporting Standard set out in Part II.B of the Standard for Automatic Exchange of Financial Account Information in Tax Matters approved by the Council of the Organisation for Economic Co-Operation and Development on 15 July 2014.

Note: In 2015, the text of the Standard was available on the OECD's website (<http://www.oecd.org>).

- (2) Subject to section 396-120, for the purposes of this Subdivision, the *CRS must be applied consistently with Part III.B (the ***CRS Commentary***) of the Standard for Automatic Exchange of Financial Account Information in Tax Matters.

396-115 Matters Common Reporting Standard leaves to domestic law

Defined terms

- (1) For the purposes of subparagraph B(1)(c) of Section VIII of the *CRS, the following Entities (within the meaning of the CRS) are defined as Non-Reporting Financial Institutions:
- (a) an Entity to which any of the following paragraphs of Annex II of the *FATCA Agreement applies:
 - (i) paragraph A (government entity), B (international organisation) or C (central bank) of section I;
 - (ii) paragraph A (retirement fund) of section II;
 - (b) an Entity the Minister prescribes by legislative instrument.
- (2) Subparagraph (1)(a)(i) does not apply with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution (within the meaning of the *CRS).

- (3) For the purposes of subparagraph C(17)(g) of Section VIII of the *CRS, the following accounts are defined as Excluded Accounts:
- (a) an account to which any of the following subparagraphs of paragraph A of section V of Annex II of the *FATCA Agreement applies:
 - (i) subparagraph (1) (retirement and pension accounts);
 - (ii) subparagraph (3) (certain other tax-favoured accounts);
 - (b) an account the Minister prescribes by legislative instrument.

Elections by entities

- (4) To the extent that the *CRS gives Australia the ability to provide for an entity to make an election in determining obligations under the CRS, assume that the entity may make the election.

Modifications mentioned in CRS Commentary

- (5) The *CRS has effect with the following modifications mentioned in the *CRS Commentary:
- (a) the inclusion mentioned in paragraph 13 of the Commentary on Section VII concerning Special Due Diligence Requirements;
 - (b) the 2 replacements mentioned in paragraph 82 of the Commentary on Section VIII concerning Defined Terms.

396-120 Application of Common Reporting Standard

Scope of this section

- (1) This section applies:
- (a) for the purposes of section 288-85 (Failure by Reporting Financial Institution to obtain self-certification); and
 - (b) for the purposes of this Subdivision:
 - (i) in determining whether the conditions in subsection 396-105(1) are satisfied; and
 - (ii) in determining which information the *CRS states a Reporting Financial Institution must report.

General reporting requirements

- (2) Paragraph F of Section I of the *CRS is to be disregarded.

Reportable and Participating Jurisdictions

- (3) All jurisdictions (other than Australia) are to be treated as Reportable Jurisdictions.
- (4) Without limiting subparagraph D(5) of Section VIII of the *CRS, Australia is to be treated as a Participating Jurisdiction.

Accounts

- (5) Without limiting subparagraph D(1) of Section VIII of the *CRS, an account maintained by a Reporting Financial Institution for an entity is treated as being a Reportable Account (within the meaning of the CRS) if:
- (a) the Reporting Financial Institution does not apply the due diligence procedures described in the CRS in relation to the account; and
 - (b) the CRS does not state that the account is not required to be identified; and
 - (c) the account would be such a Reportable Account if the Reporting Financial Institution applied those procedures.
- (6) The date provided for in subparagraph C(9) of Section VIII of the *CRS (about Preexisting Accounts) (as affected by paragraph 396-115(5)(b) in this Schedule) is taken to be 30 June 2017.
- (7) A reference in the *CRS to a New Account is treated as being a reference to a Financial Account maintained by a Reporting Financial Institution that is not a Preexisting Account.

Dollar amounts

- (8) An entity may choose to treat all dollar amounts in the *CRS as being in Australian dollars.

Note: Otherwise, all dollar amounts are in United States dollars: see subparagraph C(4) of Section VII of the CRS.

396-125 Record keeping

- (1) If paragraph 396-105(1)(a) applies to an entity for a calendar year, the entity must keep written records that:
 - (a) correctly record the procedures by which the entity determines:
 - (i) whether, at any time during the year, the entity maintains an account to which paragraph 396-105(1)(c) applies; and
 - (ii) the information that is required to be contained in the statement (if any) the entity is obliged to give the Commissioner under subsection 396-105(2); and
 - (b) are in English, or readily accessible and easily convertible into English.
- (2) The entity must retain the records, to the extent that they relate to a particular account, until:
 - (a) the expiration of 5 years after the entity gives the Commissioner the statement in respect of the account under subsection 396-105(2); or
 - (b) if the entity is not required to give the Commissioner a statement in respect of the account for the year—31 July in the sixth year after the end of the year.

Note: Section 288-25 imposes an administrative penalty if an entity does not keep and retain records as required by this section.

396-130 Anti-avoidance provisions

Commissioner may require an account to be treated as a Reportable Account

- (1) The Commissioner may require an entity that:
 - (a) is a Reporting Financial Institution (within the meaning of the *CRS); or
 - (b) is a Financial Institution that a notice under subsection (5) requires to act as a Reporting Financial Institution;to treat an account the institution maintains or has maintained as if it is a Reportable Account (within the meaning of the CRS), if the Commissioner reasonably believes that:

- (c) the account would not be, or would not have been, such a Reportable Account if the Commissioner had not made such a requirement; and
 - (d) the Reporting Financial Institution or the Account Holder (within the meaning of the CRS) undertook a transaction, or entered into an *arrangement:
 - (i) for the purpose of causing the account not to be such a Reportable Account; or
 - (ii) for 2 or more purposes of which that purpose is the dominant purpose.
- (2) The Commissioner must give written notice of the requirement to the Reporting Financial Institution.
- (3) The Reporting Financial Institution may object, in the manner set out in Part IVC, against the Commissioner's decision to give the notice.

Commissioner may require a Financial Institution to act as a Reporting Financial Institution

- (4) The Commissioner may require an entity that is a Financial Institution (within the meaning of the *CRS) to act as if it is a Reporting Financial Institution (within the meaning of the CRS), if the Commissioner reasonably believes that:
- (a) the institution would not be, or would not have been, such a Reporting Financial Institution if the Commissioner had not made such a requirement; and
 - (b) the Financial Institution undertook a transaction, or entered into an *arrangement:
 - (i) for the purpose of causing the institution not to be such a Reporting Financial Institution; or
 - (ii) for 2 or more purposes of which that purpose is the dominant purpose.
- (5) The Commissioner must give written notice of the requirement to the institution.
- (6) The institution may object, in the manner set out in Part IVC, against the Commissioner's decision to give the notice.

396-135 Application of penalty to false or misleading self-certification

For the purposes of applying Part 4-25 (Charge and penalties) in relation to a statement that is, or that relates to, a self-certification (within the meaning of the *CRS) that a Reporting Financial Institution is required to obtain when applying, under subsection 396-105(3), the due diligence procedures described in the CRS:

- (a) the CRS is treated as permitting the self-certification; and
- (b) the CRS is treated as being a *taxation law (but not an *Excise Act).

Note: You are liable to an administrative penalty under subsection 284-75(4) if you give a self-certification that is false or misleading in a material particular.

396-136 Report on Reportable Accounts maintained by Australian Reporting Financial Institutions

- (1) This section applies if:
 - (a) the Commissioner receives one or more statements under subsection 396-105(2) in relation to:
 - (i) the 2018 calendar year; or
 - (ii) a calendar year commencing after 2018; and
 - (b) the statement contains information about a Reportable Account (within the meaning of the CRS); and
 - (c) the total number of accounts of the kind mentioned in paragraph (b) for a jurisdiction (other than Australia) that is a Reportable Jurisdiction (within the meaning of the CRS) (the *relevant jurisdiction*) for the calendar year is 6 or more.
- (2) The Commissioner must, no later than 31 December of the year following the calendar year, prepare and give to the Minister a report that sets out for each relevant jurisdiction in relation to the calendar year the following information:
 - (a) the total number of accounts of the kind mentioned in paragraph (1)(b);
 - (b) the sum of the amounts in those accounts.

- (3) The Minister must cause a copy of the report given under subsection (2) to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.
- (4) The report given under subsection (2) is not a legislative instrument.

14 Application of amendments and CRS

- (1) The amendments made by this Schedule apply to:
- (a) the period from 1 July 2017 to 31 December 2017, as if the period were a calendar year; and
 - (b) 2018 and later calendar years.
- (2) The date provided for in the CRS as mentioned in column 1 of an item of the following table is taken to be the date mentioned in column 2 of the item:

| Dates | | |
|--------------|---|--|
| Item | Column 1 Date provided for in the CRS | Column 2 Actual date |
| 1 | the date provided for in subparagraph C(6) of Section III | 30 June 2017 |
| 2 | the date provided for in paragraph D of Section III | (a) in relation to a Preexisting Individual Account (within the meaning of the CRS) that is a Lower Value Account (within the meaning of the CRS)—31 July 2019; and (b) in relation to a Preexisting Individual Account that is a High Value Account (within the meaning of the CRS)—31 July 2018 |
| 3 | the date provided for in paragraph A of Section V | 30 June 2017 |
| 4 | the dates provided for in paragraph B of Section V | 30 June 2017 |

Schedule 1 Common Reporting Standard
Part 1 Main amendments

| Dates | | |
|--------------|---|---------------------------------|
| Item | Column 1 Date provided for in the CRS | Column 2 Actual date |
| 5 | the first occurring date provided for in subparagraph E(1) of Section V | 30 June 2017 |
| 6 | the last occurring date provided for in subparagraph E(1) of Section V | 31 July 2018 |
| 7 | the date provided for in subparagraph E(2) of Section V | 30 June 2017 |
| 8 | the date provided for in subparagraph B(8)(b) of Section VIII | 1 July 2017 |
| 9 | the date provided for in subparagraph C(14) of Section VIII | 30 June 2017 |
| 10 | the first occurring date provided for in subparagraph C(15) of Section VIII | 30 June 2017 |
| 11 | the date provided for in subparagraph C(17)(f)(ii) of Section VIII | 1 July 2017 |

- (3) For the purposes of:
- (a) subparagraph C(6) of Section III of the CRS; and
 - (b) paragraphs A and B and subparagraph E(2) of Section V; and
 - (c) subparagraph C(15) of Section VIII;
- the following periods are taken to be separate calendar years:
- (d) the period from 1 January 2017 to 30 June 2017;
 - (e) the period from 1 July 2017 to 31 December 2017.

15 Transitional provisions

Participating Jurisdiction Financial Institutions

- (1) For the purposes of applying subparagraph D(2) of Section V and subparagraph A(2) of Section VI of the CRS under Schedule 1 to the *Taxation Administration Act 1953* (as amended by this Part), a Financial Institution (within the meaning of the CRS) that:
- (a) is an Investment Entity (within the meaning of the CRS) because of subparagraph A(6)(b) of Section VIII of the CRS; and

- (b) is not a Participating Jurisdiction Financial Institution (within the meaning of the CRS); and
- (c) would be a Participating Jurisdiction Financial Institution if the jurisdictions declared to be committed jurisdictions under subitem (2) were Participating Jurisdictions (within the meaning of the CRS);

is taken not to be a Passive NFE (within the meaning of the CRS) during the period from 1 July 2017 to 31 December 2017, and during the whole of 2018 and 2019.

- (2) The Commissioner may, by legislative instrument, declare one or more jurisdictions (within the meaning of the CRS) to be committed jurisdictions.

High Value Accounts

- (2A) For the purposes of subsections 396-105(1) and (2) in Schedule 1 to the *Taxation Administration Act 1953*, as amended by this Schedule, an account maintained by a Reporting Financial Institution on 1 July 2017 is treated as being a Reportable Account (within the meaning of the CRS) on that day if the account:
 - (a) would be a Reportable Account (within the meaning of the CRS) on that day if the Reporting Financial Institution applied the due diligence procedures described in the CRS in relation to the account on or before that day; and
 - (b) is a High Value Account (within the meaning of the CRS) on 30 June 2017.

Preexisting Entity Accounts

- (2B) For the purposes of subsections 396-105(1) and (2) in Schedule 1 to the *Taxation Administration Act 1953*, as amended by this Schedule, an account maintained by a Reporting Financial Institution on 1 July 2017 is treated as being a Reportable Account (within the meaning of the CRS) on that day if the account:
 - (a) would be a Reportable Account (within the meaning of the CRS) on that day if the Reporting Financial Institution applied the due diligence procedures described in the CRS in relation to the account on or before that day; and
 - (b) is a Preexisting Entity Account (within the meaning of the CRS).

Statements

- (3) Despite subsection 396-105(6) in Schedule 1 to the *Taxation Administration Act 1953*, to the extent that a statement under subsection 396-105(2) in that Schedule for 2017 relates to an account that is a Lower Value Account (within the meaning of the CRS), the statement must be given to the Commissioner no later than 31 July 2019.

Note: Section 388-55 in that Schedule allows the Commissioner to defer the time for giving an approved form.

- (4) For the purpose of subitem (2A), (2B) or (3), subsections 396-120(2) to (8) in Schedule 1 to the *Taxation Administration Act 1953*, as amended by this Part, apply in determining the meaning of a term used in that subitem.

**Part 2—Amendments contingent on the Tax and
Superannuation Laws Amendment (2015
Measures No. 5) Act 2015**

*Tax and Superannuation Laws Amendment (2015 Measures
No. 5) Act 2015*

16 Item 1 of Schedule 4 (heading)

Repeal the heading, substitute:

1 After Subdivision 396-A in Schedule 1

17 Item 1 of Schedule 4

Omit “Add”, substitute “Insert”.

18 Items 17 to 21 of Schedule 4

Repeal the items.

Taxation Administration Act 1953

19 Section 396-1A in Schedule 1

Repeal the section, substitute:

396-1A What this Division is about

This Division requires:

- (a) financial institutions to give to the Commissioner information for the purposes of the FATCA Agreement and the Common Reporting Standard; and
- (b) certain entities to give to the Commissioner information about transactions that could have tax consequences for other entities.

*[Minister's second reading speech made in—
House of Representatives on 3 December 2015
Senate on 22 February 2016]*

(211/15)

20

*Tax Laws Amendment (Implementation of the Common Reporting
Standard) Act 2016*

No. 23, 2016