

FAQs concerning the Austrian Common Reporting Standard Act (GMSG)

June 2018

FAQs

On 1 October 2016, Austria joined the Common Reporting Standard (CRS), the global mechanism of OECD for the automatic exchange of information (AEOI) in tax matters. From this point onwards, personal data of foreign customers from participating jurisdictions have gradually been reported by institutions in Austria to the competent authorities in the respective jurisdictions. Vice versa, the Austrian Federal Ministry of Finance (BMF) has been receiving such data of persons taxable in Austria who maintain financial accounts abroad.

Who and what is affected by this data exchange? Please find the answers to this under the following FAQs.

We have summed up the most important questions and answers relating to the topic of automatic exchange of information (AEOI) and Common Reporting Standard (CRS).

What is the “CRS” (“AEOI” or “Common Reporting Standard”)?

The OECD Common Reporting Standard (CRS), for which the relevant was signed in Berlin in the fall of 2014, was initiated by OECD as that organisation had been impressed by the success of the Foreign Account Tax Compliance Act (FATCA). The participating jurisdictions agreed to henceforth automatically exchange data relating to accounts of foreign beneficiaries with one another on an annual basis. This includes data relating to financial accounts of legal persons and trusts having foreign beneficiaries if such legal persons are entities other than operating companies (so-called passive NFEs).

What does automatic exchange of information as envisaged by the CRS mean?

Automatic exchange of information means the systematic communication of information defined by law about financial accounts of reportable persons to any other participating jurisdiction, such communication to be made by reporting institutions (in each case via the national fiscal authority competent for reporting) at annual intervals without a prior request from the other jurisdiction.

In Austria, the past year's data are, in a first step, reported to the BMF by the reporting institutions until 30 June of each year (using the FinanzOnline system). The BMF then communicates the data, by 30 September at the latest, to the competent authorities in the respective participating jurisdictions.

Likewise by 30 September of every year (starting in 2017), the BMF, vice versa, receives the reports of other participating jurisdictions about persons residing in Austria and holding financial accounts in those jurisdictions, and passes those reports on to the competent fiscal authorities in Austria.

Who is a reportable person within the meaning of the CRS?

Reportable persons as defined under the CRS are any persons - both individuals and entities - that are tax residents in a participating jurisdiction, except

- any corporations the stock of which is regularly traded on one or more recognized securities markets;
- any corporation that is a related entity of a corporation;
- governmental entities;
- international organisations;
- central banks; or
- financial institutions.

CRS reporting obligations do not affect customers tax resident exclusively in Austria.

Which financial institutions must submit reports and are there any exceptions?

All financial institutions having their registered address or a branch establishment in Austria must submit CRS reports. This includes custodial institutions, depository institutions, investment entities, as well as specified insurance companies.

Certain credit institutions and insurance companies are exempted by law from the reporting obligation relating to their customers.

Austrian Anadi Bank AG counts as a reporting institution within the meaning of the GMSG.

Who participates in the CRS scheme?

Member States of the European Union are obligated to participate in the CRS. Third countries become CRS participants after accepting the relevant OECD standard with binding effect and transposing it into national law. The commitment to the OECD includes stating the year when the country will first participate in the CRS (currently 2017 or 2018).

Currently (May 2018), the following countries participate in the CRS:
<http://www.oecd.org/tax/exchange-of-tax-information/mcaa-signatories.pdf>

Which data are exchanged under the CRS?

The following data are reported:

- name of investor,
- address,
- jurisdiction(s) of residence,
- taxpayer identification number,
- date of birth / place of birth (with individuals),
- account/securities account number(s) - savings, deposit, checking-account and custodian business,
- year-end account balances/values or closure of the account,
- capital gain, other yields from assets on the account and sales proceeds.



What are reportable financial accounts within the meaning of the CRS?

“Financial account” means an account of a reportable person maintained at a financial institution, which is held by one or more reportable persons or a passive NFE which is controlled by one or more reportable person(s); financial accounts include

- deposit accounts,
- custodial accounts, and
- in the case of an investment entity, any equity or debt interest in the financial institution (except for any equity or debt interest in an entity that is an investment entity solely because it renders investment advice to, and acts on behalf of; or 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).
- Furthermore, “financial account” means any cash value insurance contract and any annuity contract issued or maintained by a financial institution, other than a non-investment-linked, non-transferable immediate life annuity that is issued to an individual and monetises a pension or disability benefit provided under an account that is an excluded account.

Certain financial accounts are exempted from the reporting obligation. These mainly include tax-favoured retirement or pension accounts for which annual contributions are limited to an amount of USD 50,000 or less or for which a maximum lifetime contribution limit of USD 1,000,000 or less exists; accounts established in connection with a court order; certain life insurance contracts; entity accounts with an aggregate account balance that does not exceed USD 250,000; and low-value dormant accounts.

Difference between new accounts and pre-existing accounts

All accounts opened on or after 01/10/2016 are regarded as “new accounts”. Any accounts already existing at the cut-off date, 30/09/2016, fall under the term “pre-existing accounts”.

Does the CRS also apply to “old accounts”?

Yes. All financial accounts existing as at 30/09/2016 are subject to the following regulations:

- Pre-existing accounts of individuals with a high value (exceeding USD 1,000,000) as at 30/09/2016 must be identified by 31/12/2017 and reported for the first time by 30/06/2018 (with respect to the 2017 account data);
- Pre-existing accounts of individuals with a lower value (not more than USD 1,000,000) as at 30/9/2016 must be identified by 31/12/2018 and reported for the first time by 30/6/2019 (with respect to the 2018 account data);
- Pre-existing entity accounts with a high value (exceeding USD 250,000) as at 30/9/2016 must be identified by 31/12/2018 and reported for the first time by 30/6/2019 (with respect to the 2018 account data);

- Pre-existing entity accounts with a lower value (not more than USD 250,000 as at 30/9/2016) are not reportable.

How does Austrian Anadi Bank AG determine a customer's residence within the meaning of the CRS regulations?

With individuals:

With respect to new accounts of individuals, upon account opening (current-account, savings account, securities account, fixed-term deposit), Austrian Anadi Bank must obtain a self-certification that allows Austrian Anadi Bank to determine the account holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the reporting financial institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC procedures. The self-certification may be part of the account opening documentation; since 01/10/2016, accounts may only be opened if the self-certification has been provided. If the self-certification establishes that the account holder is resident for tax purposes in a jurisdiction participating in the automatic exchange of information, Austrian Anadi Bank must treat the account as a reportable account and the self-certification must also include the account holder's TIN with respect to such participating jurisdiction and date of birth. If there is a change of circumstances with respect to a new account of an individual that causes Austrian Anadi Bank to know, or have reason to know, that the original self-certification is incorrect or unreliable, it cannot rely on the original self-certification and must obtain a valid self-certification that establishes the residence(s) for tax purposes of the account holder (time-limit: 90 days).

With entities:

The reporting financial institution must obtain a self-certification, which may be part of the account opening documentation, that allows the reporting financial institution to determine the account holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the reporting financial institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC procedures. If the entity certifies that it has no residence for tax purposes, the reporting financial institution may rely on the address of the principal office of the entity to determine the residence of the account holder. If the self-certification indicates that the account holder is resident in a jurisdiction participating in the automatic exchange of information, Austrian Anadi Bank must treat the account as a reportable account, unless it reasonably determines based on information in its possession or that is publicly available that the account holder is not a reportable person within the meaning of this Act (the GMSG).

In any case: A reporting financial institution cannot rely on self-certification or on documents, if it knows, or has reason to know, that the self-certification or documents are incorrect or unreliable.

What is an active NFE?

A non-financial entity (NFE) is any entity that is not a financial institution. Active NFEs





are basically those NFEs that generated at least 50 % of their gross income for the preceding year from sources other than passive types of income, such as dividends, interest, rentals and license fees, etc. and had at least 50 % of their assets for the production of non-passive income.

Further active NFEs include governmental entities, international organisations, central banks or any entity wholly owned by one or more of the foregoing.

What is a passive NFE?

A passive NFE is any NFE that is not an active NFE. Passive NFEs are subject to reporting under CRS like individuals because they are usually established for the purpose of personal asset management and are often fiscally transparent (i.e. inexistent). In the case of passive NFEs, both the NFEs as such and the individuals controlling them must be reported.

What is the relationship between CRS and FATCA?

As the US does not participate in the Common Reporting Standard (CRS), every jurisdiction continues to exchange information with the US as agreed on the basis of the respective bilateral intergovernmental agreement concluded under the Foreign Account Tax Compliance Act (FATCA). In the absence of any government-level agreements with the US, financial institutions may enter into direct agreements with the US concerning the transfer of tax data of US taxpayers. Austria and the US concluded an intergovernmental agreement in the form of a Model 2 IGA.

In terms of substance, FATCA and the CRS are largely identical given that the OECD standard was developed on the basis of FATCA.

In contrast to FATCA, "citizenship" is not a connecting factor regarding residence for tax purposes under the CRS. Furthermore, the CRS regime does not provide for any threshold values regarding the applicability of the rules on old accounts of individuals (under FATCA: USD 50,000). And, unlike FATCA, the CRS does not impose any penalty tax on non-participating credit institutions.

What are the sanctions for non-compliance with CRS regulations?

Financial institutions commit a fiscal offence carrying a fine of up to EUR 200,000 if committed intentionally and up to EUR 100,000 in case of gross negligence, if they

- fail to submit a report in due time, or
- fail to report reportable persons, or
- fail to, or incorrectly, report data required for identifying a person, including without limitation, their name, address or date of birth, or
- fail to, or incorrectly, report information regarding residence or the reportable amount.

Any person providing false information to financial institutions may be punishable under other regulations (e.g. tax fraud).

