

18 July 2014

Simon Milnes
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By email: BEPS@treasury.gov.au

Dear Simon,

Common Reporting Standard Discussion Paper

Thank you for the opportunity to comment on Treasury's discussion paper on the proposed Common Reporting Standard.

The Property Council is the peak body representing the interests of owners and investors in Australia's \$670 billion property investment industry. The Property Council represents members across all four quadrants of property investment, debt, equity, public and private.

The Common Reporting Standard will introduce a complicated set of rules covering compliance for all property groups.

The broad definition of reporting entities for the purposes of the Common Reporting Standard will result in significant duplication of time and compliance costs.

For example, the current rules require listed collective investment vehicles to report their distributions to non-resident investors. However, these distributions will generally be paid into bank accounts, which will be subject to reporting by banks.

In addition, we recommend that the Common Reporting Standard be aligned, as closely as possible, to the FATCA regulations to minimise the implementation costs and ongoing compliance burden for industry.

The Appendix sets out further details on the specific discussion points raised in Treasury's paper.

Please contact Belinda Ngo (on 0400 356 140) or myself to arrange a suitable time to discuss.

We look forward to your reply.

Yours sincerely,



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***Response to Treasury
Discussion Paper:
Common Reporting Standard
for the automatic exchange of
tax information***

*Property Council of Australia
July 2014*

Submission

1. Introduction

The submission below covers the following issues raised in Treasury's Discussion Paper on the implementation of Common Reporting Standard (CRS):

- Who should report?
- What accounts should be reported
- How should the relevant account information be reported?
- When should CRS be implemented?

2. Who should report?

Recommendation 1: Blanket exemption for listed collective investment vehicles

Industry recommends that all listed collective investment vehicles be exempted from CRS reporting.

The vast majority of investors in listed collective investment vehicles require their distributions to be paid into depository accounts (bank accounts held by the investor) which would have to be reported by the relevant bank under CRS in any event

To require the listed investment vehicles to report would duplicate reporting efforts, and place a compliance burden on a very large number of entities.

Alternatively, exempting listed collective investment vehicles will contain the compliance burden to the relatively few entities that provide such depository accounts.

Recommendation 2: Align CRS "Financial Institution" definition with FATCA

Where recommendation 1 is not adopted, the entities that are required to report under CRS should be aligned as closely as possible to those that are required to report under FATCA.

In particular, the test for whether an entity is a Reporting Australian Financial Institution (**RAFI**) should pick up the alternate definitions from:

- the intergovernmental agreement between the USA and Australia (**the IGA**); and
- the US Treasury FATCA Regulations.

A potential RAFI can choose which of the above definitions it wishes to apply.

Access to the two sets of definitions gives rise to potentially more exemptions than are currently offered by the definitions relevant to whether an entity is a reporting entity under CRS.

For example, the US Treasury Regulations contain an "Inter-affiliate foreign financial institution" exemption which does not appear in the CRS definition.

Application for property groups

Most Australian property groups have at least one listed entity, as well as unlisted wholesale funds that have as their trustee, and are managed by, a subsidiary entity of the listed group.

(a) *Listed stapled group – head company and head trust*

The listed group generally consists of at least two entities whose securities trade together (the most common of which is a company whose shares are traded together with units in a unit trust), and are known as a "stapled group".

(b) Holding companies and finance companies (treasury centres)

The company within the staple will generally have wholly-owned subsidiary companies, some of which would be holding companies for other subsidiaries, and others may act as the finance company (or treasury centre) for the entire group.

(c) Wholly-owned sub-trusts

The trust within the staple may have wholly-owned sub-trusts. Those sub-trusts may either:

- Hold units in other sub-trusts (these are referred to as intermediate trusts); or
- Hold direct interests in real property (these are referred to as asset sub-trusts).

(d) Joint-venture trusts

The head trust, or an intermediate trust, in a listed stapled group may also hold a partial interest in a trust that has a direct interest in real property (these are referred to as joint venture sub-trusts).

(e) Managed funds and investment management entities

A wholly-owned subsidiary company of the head company of the stapled group may also act as responsible entity, or trustee, of another trust that is a wholesale unit trust.

The wholesale unit trust may own direct interests in real property, or units in its own asset sub-trusts, or units in its own joint venture sub-trusts.

Recommended treatment

The following table sets out industry’s recommended treatment for each type of entity listed above and the rationale for that outcome.

The table below replicates industry’s submission to the ATO regarding the proposed ATO FATCA guidance materials.

Type of entity	Recommended treatment	Rationale
Head Company of listed stapled group	Not a Financial Institution	Not applicable – not a “Financial Institution” under CRS definition
Holding Companies (which can include trusts) and Finance Companies (Treasury Centres)	Not a Financial Institution	Either: <ul style="list-style-type: none">• not a “Financial Institution” under CRS definition; or• exempt inter-affiliate financial institution for FATCA (and therefore, for CRS). Also, should not have anything to report under CRS.
Head Trust of listed stapled group	Not a Financial Institution	Head Trust is ultimately a collector of rent, and not a financial entity of the type CRS is intended to capture.

Type of entity	Recommended treatment	Rationale
Intermediate Trusts	Not a Financial Institution	Should be exempt inter-affiliate financial institution for FATCA (and therefore, for CRS). Also, should not have anything to report under CRS.
Asset sub-trusts	Not a Financial Institution	As above.
Joint venture trusts	Not a Financial Institution	Same as Head Trust of listed stapled group
Managed Funds	Not a Financial Institution	Same as Head Trust of listed stapled group
RE/ trustee company in listed corporate group	Financial Institution only if a trust to which the RE/ trustee provides services is a Financial Entity Otherwise – Not a Financial Institution	A remunerated RE/ trustee should need only register if a trust to which it provides such services is a Financial Entity, and such RE/ trustee should then be able to report on behalf of that trust. Otherwise, such RE/ trustee entities would have nothing to report.
Trustee company in listed corporate group (where not remunerated for acting as trustee)	Not a Financial Institution	Not applicable – not a “Financial Institution” under CRS definition

3. What accounts should be reported?

Recommendation 3: Align CRS reportable account rules with FATCA

The CRS should mirror the FATCA reportable account rules.

In particular, the exemption in FATCA for securities that are regularly traded on a recognised stock exchange that are not registered in the holder's name in the issuer's books should also be contained in the CRS rules.

Recommendation 4: Carve out accounts where Tax File Number quoted

An account should not be reportable where an investor has quoted a TFN to the CRS reporting entity.

This would be unnecessary duplication because the ATO will already have access to the investor's information through the tax return lodgement process.

Recommendation 5: Minimising due diligence requirements on Financial Accounts

The vast majority of “reportable” accounts for property groups will be equity interests, but there will also be some listed debt interests, unlisted debt (bonds) and bank debt.

The equity interests, the listed debt interests and some unlisted debt are, in the main, administered by a share registry provider (eg, Computershare).

The Property Council supports submissions by share registry providers, particularly in respect of the identification of indicia within pre-existing account information that shows the account holder is a non-resident, and whether a "Big Bang" approach is to be preferred.

4. How should that information be reported?

The Property Council understands there are currently two options being considered by Treasury:

- use of the existing AIRR framework; or
- use of the proposed FATCA reporting framework.

As the FATCA reporting regime has yet to commence, it is difficult to gauge how complex or difficult complying with these requirements will be for property groups.

We support Treasury’s proposal to be flexible on the way the information is reported, and to allow each reportable entity to select the best approach for their circumstances.

5. When should CRS be implemented?

The Discussion Paper proposes legislation to be enacted by mid-2015, and implementation to commence from the 2017 calendar year.

The preferred start date for the property industry will depend on how many types of entities relevant to a property group will be considered Financial Institutions and be required to report.

It is imperative that the CRS rules clearly specify the type of entities that would be required to report, and the indicia that triggers the requirement to report.

Where the recommended treatment of property group entities (set out under Recommendation 2 above) is adopted in the final CRS rules, industry would be supportive of the start date set out in the Discussion Paper.

However, if some of the property entities listed above will be considered Financial Institutions for CRS purposes (in particular, Head Trusts of listed stapled groups and Managed Funds), industry will need at least 18 months lead time to capture the required information from registries, etc.