

EXPOSURE DRAFT

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Inserts for
**Tax and Superannuation Laws
Amendment (2015 Measures No. 6) Bill
2015: Common Reporting Standard**

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule CRS	The day after this Act receives the Royal Assent.	
2.		

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Schedule CRS—Common Reporting Standard

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 Division 396 in Schedule 1 (heading)

Repeal the heading, substitute:

Division 396—Third-party reporting

3 Division 396 in Schedule 1 (after the heading)

Insert:

Table of Subdivisions

396-A	FATCA
396-C	Common Reporting Standard

4 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.

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1 **Subdivision 396-A—FATCA**

2 **Guide to Subdivision 396-A**

3 **5 Section 396-1 in Schedule 1 (heading)**

4 Repeal the heading, substitute:

5 **396-1 What this Subdivision is about**

6 **6 Before section 396-5 in Schedule 1**

7 Insert:

8 **Operative provisions**

9 **7 At the end of subsection 396-5(2) in Schedule 1**

10 Add:

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

13 **8 Subsection 396-5(6) in Schedule 1**

14 Before “year”, insert “calendar”.

15 **9 At the end of subsection 396-10(2) in Schedule 1**

16 Add:

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

19 **10 Subsection 396-10(6) in Schedule 1**

20 Before “year”, insert “calendar”.

21 **11 Subsection 396-20(1) in Schedule 1**

22 Omit “Division”, substitute “Subdivision”.

23 **12 At the end of Division 396 in Schedule 1**

24 Add:

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1 Subdivision 396-C—Common Reporting Standard

2 Guide to Subdivision 396-C

3 396-100 What this Subdivision is about

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

8 Note 1: This obligation will assist the Australian Government to exchange
9 information with other jurisdictions in accordance with international
10 agreements, such as the Multilateral Convention on Mutual
11 Administrative Assistance in Tax Matters, done at Strasbourg on
12 25 January 1988.

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

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

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

22 Table of sections

23 Operative provisions

24	396-105	Statements about Reportable Accounts
25	396-110	Meaning of <i>CRS</i>
26	396-115	Matters Common Reporting Standard leaves to domestic law
27	396-120	Application of Common Reporting Standard
28	396-125	Record keeping
29	396-130	Application of penalty to false or misleading self-certification

30 Operative provisions

31 396-105 Statements about Reportable Accounts

32 (1) Subsection (2) applies if:

33 (a) at any time in a calendar year an entity:

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- 1 (i) is a Reporting Financial Institution (within the meaning
2 of the *CRS); and
3 (ii) is resident in Australia (within the meaning of the CRS),
4 or is a branch located in Australia (within the meaning
5 of the CRS); and
6 (b) the entity maintains a Reportable Account (within the
7 meaning of the CRS) at any time in the year.

8 Note: Subsection 396-120(3) applies the CRS to all jurisdictions for the
9 purposes of this Subdivision.

- 10 (2) The entity must give the Commissioner a statement that contains in
11 respect of the Reportable Account the information that the *CRS
12 states the entity must report.

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

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

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

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

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

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

25 **396-110 Meaning of CRS**

- 26 (1) The **CRS** is the Common Reporting Standard set out in the
27 Standard for Automatic Exchange of Financial Account
28 Information in Tax Matters approved by the Council of the
29 Organisation for Economic Co-Operation and Development on
30 15 July 2014.

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

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

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(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, for the purposes of this Subdivision:
- (a) in determining whether the condition in subsection 396-105(1) is satisfied; and
 - (b) 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 paragraph 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 of an entity is treated as being a Reportable Account if:
- (a) the entity 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 a Reportable Account if the entity applied those procedures.
- (6) Subparagraph C(9)(a) of Section VIII of the *CRS (as affected by paragraph 396-115(5)(b) in this Schedule) applies to a Financial Account maintained by a Reporting Financial Institution as of 31 December 2016.
- (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 Pre-existing Account.

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Dollar amounts

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

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

396-125 Record keeping

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7 (1) If paragraph 396-105(1)(a) applies to an entity for a calendar year,
8 the entity must keep written records that:

9 (a) correctly record the procedures by which the entity
10 determines:

11 (i) whether the entity maintains a Reportable Account
12 (within the meaning of the *CRS) at any time during the
13 year; and

14 (ii) the information that is required to be contained in the
15 statement (if any) the entity is obliged to give the
16 Commissioner under subsection 396-105(2); and

17 (b) are in English, or readily accessible and easily convertible
18 into English.

- 19 (2) The entity must retain the records until:

20 (a) the expiration of 5 years after the entity gives the
21 Commissioner the statement under subsection 396-105(2); or

22 (b) if the entity is not required to give the Commissioner a
23 statement for the year—31 July in the sixth year after the end
24 of the year.

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

396-130 Application of penalty to false or misleading self-certification

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29 For the purposes of applying Part 4-25 (Charge and penalties) in
30 relation to a self-certification (within the meaning of the *CRS)
31 that a Reporting Financial Institution obtains as part of applying,
32 under subsection 396-105(3), the due diligence procedures
33 described in the CRS:

34 (a) the CRS is treated as permitting the self-certification; and

35 (b) the CRS is treated as being a *taxation law (but not an
36 *Excise Act).

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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.

13 Application of amendments

The amendments made by this Schedule apply to 2017 and later calendar years.

14 Transitional provisions—2017

Financial Institutions

- (1) For the purposes of Subdivision 396-C in Schedule 1 to the *Taxation Administration Act 1953*, as amended by this Schedule, an entity may, by notice in writing given to the Commissioner in the approved form before 1 January 2017, choose to be treated as not being a Reporting Financial Institution during the whole of 2017.
- (2) If the entity makes such a choice:
 - (a) a reference in that Subdivision to 31 December 2016 is treated as being a reference to 31 December 2017; and
 - (b) a reference in that Subdivision to 1 January 2017 is treated as being a reference to 1 January 2018.

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