



OECD releases final guidance on Crypto-Asset Reporting Framework and Common Reporting Standard amendments

Global Information Reporting

On October 10, 2022, the Organisation for Economic Co-operation and Development (“OECD”) released the [Crypto-Asset Reporting Framework \(“CARF”\)](#) and [Amendments to the Common Reporting Standard \(“CRS”\)](#). The initial draft was released as a public consultation document on March 22, 2022, with a request for industry comments. Having received feedback in writing and at the public forum in May, the OECD has now published the final guidance. These rules, detailed further below, establish new Crypto-Asset due diligence and reporting requirements under CARF and amend existing due diligence and reporting requirements under CRS. These amendments bring new financial products and intermediaries in scope and are aimed at further improving the operation of CRS. The OECD has indicated that “work will be undertaken to ensure a broad implementation of the CARF as the single global reporting framework for Relevant Crypto-Assets.”

A. Crypto-Asset Reporting Framework (“CARF”)

1. Crypto-Asset scope

The definition of Crypto-Assets under CARF is a broad one, covering a range of digital assets, including those that can be held and transferred without intermediary involvement. The term is limited to digital representations of value, which, in addition to cryptocurrencies, includes stablecoins, derivatives issued in the form of Crypto-Assets, and certain non-fungible tokens (“NFTs”) provided they represent a right to value or a claim or right of membership or property. The rules are intended to encompass Crypto-Assets that fall within the scope of the Financial Action Task Force (“FATF”) recommendations ([2012 General Recommendations](#), [2019 Virtual Currency Recommendations](#), [2021 Updates](#)) to align with anti-money laundering (“AML”) and “know-your-customer” (“KYC”) obligations.

Three categories of Crypto-Assets that are digital representations of value have been excluded from the scope of CARF—Closed-Loop Crypto-Assets, Central Bank Digital Currencies (“CBDCs”), and Specified Electronic Money Products. While CBDCs and certain e-money products are excluded from CARF, they are included within the scope of CRS. These terms are defined as follows:

- Closed-Loop Crypto-Asset: A Crypto-Asset that is restricted for use within a fixed network (i.e., a closed loop) for the purchase of goods or services with participating merchants and, therefore, presents a low risk of tax evasion because of its limited redemption rights
- CBDCs: A Crypto-Asset representing a claim in Fiat Currency on an issuing Central Bank or monetary authority which functions similarly to money held in a traditional bank account
- Specified Electronic Money Product: A digital representation of a Fiat Currency issued in exchange for receipt of equivalent funds used for payment transactions that, under regulatory requirements, is redeemable on demand for the same value of that currency. This category is intended to cover Crypto-Assets that do not result in gain or loss relative to the underlying currency

The final rules define “Relevant Crypto-Asset”—the Crypto-Assets for which reporting is required—as further limited to exclude “any Crypto-Asset for which the Reporting Crypto-Asset Service Provider has adequately determined that it cannot be used for payment or investment purposes.” The OECD acknowledges that additional guidance will be needed to assist with determining which Crypto-Assets can or cannot be used for payment and investment purposes, with specific attention given to decentralized finance (“DeFi”).

2. Intermediary scope

Entities or individuals that, as a business, provide services effectuating Exchange Transactions of Crypto-Assets for or on behalf of customers, including by making available a trading platform, are considered Reporting Crypto-Assets Service Providers with due diligence and reporting obligations under CARF. These service providers include centralized finance (“CeFi”) and some DeFi Crypto-Asset exchanges; Crypto-Asset brokers, dealers, and market makers, whether acting as intermediary or principal; and operators of Crypto-Asset ATMs. As with the Crypto-Asset scope, the rules intend to apply to service providers within the scope of the FATF definition of a “virtual asset service provider.”

Although potentially falling within the broad definition of a service provider, CARF notes that the following types of persons are not intended to be included as Reporting Crypto-Asset Service Providers:

- Investment funds investing in Crypto-Assets because investors cannot transact on their own behalf
- Those solely engaged in validating distributed ledger transactions, even where they are paid for such service, such as miners, stakers, and node validators
- Issuers when acting solely as creator or issuer of the Crypto-Asset
- Those operating DeFi platforms that solely allow users to make posts for purchases and sales of Crypto-Assets or those solely creating or selling software that facilitate Crypto-Asset transactions on behalf of customers (provided they are not also using the software to provide an exchange service)

Reporting and due diligence obligations will apply to Reporting Crypto-Asset Service Providers where they have sufficient nexus to a participating jurisdiction. Rules are included to avoid duplicative reporting where a service provider has nexus to more than one jurisdiction with respect to a reportable transaction.

3. Reporting requirements

CARF outlines a transactional reporting regime, requiring annual reporting aggregated by Crypto-Asset type on (i) exchanges between Crypto-Assets and Fiat Currencies, (ii) exchanges between one or more forms of Crypto-Assets and, (iii) Transfers (including Reportable Retail Payment Transactions) of Crypto-Assets. With respect to Transfers, CARF requires reporting of the number of units and total value of Transfers of Crypto-Assets from service providers to unhosted wallets, intending to increase visibility of tax authorities into transactions without intermediary involvement. Retail payment transactions are also reportable when a service

provider processes payments on behalf of a merchant accepting Crypto-Assets in payments for goods or services. This reporting is limited to high value transactions, with the OECD proposing a threshold of USD 50,000.

Reportable information includes tax-relevant demographic and financial information on each transaction, including details such as Crypto-Asset type and Transfer type. Where exchanges of Crypto-Assets are made for Fiat Currency, the reportable acquisition amount or disposition gross proceed amount is equal to the fiat received net of transaction fees. For crypto-to-crypto transactions, retail payments, and transfers, the service provider is responsible to determine and report the fair market value of the Crypto-Assets in Fiat Currency at the time of the transaction and in a consistent manner.

4. Due diligence procedures

The due diligence procedures included in CARF are based on the CRS requirements and existing AML/KYC obligations included in the FATF recommendations, using self-certifications and information on file to determine tax residency and reportability of individual and Entity customers. The intent of this consistent approach is to minimize due diligence burdens for service providers in scope under both CARF and CRS, with the final rules specifically permitting a service provider to rely on new account due diligence procedures performed for CRS purposes.

Under the final rules, a Reporting Crypto-Asset Service Provider must stop effectuating transactions if:

- A self-certification is not provided upon establishment of a new account;
- A pre-existing account holder has not provided a self-certification within 12 months; or
- An updated self-certification is not received within 90 days of a change in circumstances.

Notably, the final guidance removes the requirement for information on a self-certification to be confirmed by a Crypto-Asset User within 36 months of the date on which they provide the form to their service provider.

Next steps

The OECD indicates that it will soon publish (i) a framework of bilateral/multilateral competent authority to facilitate information exchange between participating jurisdictions, (ii) technical solutions for information exchange, and (iii) further guidance on the effective implementation of CARF. In this final guidance, the OECD has also stated it will release additional guidance on Reportable Retail Payment Transactions, presumably including guidance on whether collection of Controlling Person information will be required for such transactions. “The elaborated rules will be delivered as soon as is feasible and preferably in a manner that such elaborated rules can be applied simultaneously with the current rules in the CARF on Reportable Retail Payment Transactions.”

For CARF requirements to apply, jurisdictions will need to adopt CARF into local law, leaving effective dates for due diligence and reporting requirements unknown at this time. As noted above, the OECD intends to work toward global adoption and implementation of CARF “as the single global reporting framework for Relevant Crypto-Assets.” Service providers potentially impacted by CARF in any jurisdiction should monitor local regulatory developments for further information on jurisdiction-specific requirements.

B. Common Reporting Standard (“CRS”)

The amendments to the CRS provided for in the final guidance cover broadly two main areas of focus. The first area of focus is to bring new, digital financial products within the scope of the CRS. The final guidance extends the scope of the CRS to cover electronic money products and CBDCs. In addition, and in parallel to the CARF definitions, the amendments include changes to the definition of Financial Asset and Investment Entity to ensure that derivatives that reference Crypto-Assets and are held in Custodial Accounts, and Investment Entities investing in Crypto-Assets are covered by the CRS. In this area, the amendments include new co-ordination provisions between CARF and CRS to limit instances of duplicative reporting. Second, the amendments aim to improve due diligence procedures and reporting requirements under current CRS rules by expanding the reportable information under the CRS as well as adjusting certain due diligence provisions in light of feedback received by participating jurisdictions and other participants in the CRS.

Additionally, the Commentary to the CRS now include further details to increase consistency in applying the CRS and to incorporate frequently asked questions and interpretive guidance that was previously released.

1. Modernization of the CRS

The scope of the CRS has been expanded to cover products functionally similar to a traditional bank account from the spectrum of customer, namely certain e-money products, as well as CBDCs:

- Excluded Accounts include low-risk specified e-money products whose rolling average 90-day end-of-day account balance or value does not exceed USD 10,000 in any consecutive 90-day period
- The term Specified Electronic Money Product does not include a product created for the sole purpose of facilitating the transfer of funds from a customer to another person pursuant to instructions of the customer
- Income attributable to related financial services now also includes commissions and fees from holding, transferring, and exchanging of Relevant Crypto-Assets held in custody
- In order to ensure consistency between derivatives referencing Crypto-Assets and derivatives referencing other Financial Assets, derivative contracts referencing Crypto-Assets will now be included in the definition of Financial Assets in the CRS

Further, to align the treatment of indirect investments in Crypto-Assets with other types of investments in funds and wealth management vehicles, the definition of Investment Entity has been expanded to include the activity of investment in Crypto-Assets. However, this does not include the provision of services effectuating Exchange Transactions for or on behalf of customers.

Additionally, income derived from Crypto-Assets, the excess of gains over losses from the sale or exchange of Crypto-Assets, and the excess of gains over losses from transactions (including futures, forwards, options, and similar transactions) in any Crypto-Asset, are included in what is generally considered to be passive income.

To maintain the alignment between the CARF and the CRS and considering that there are certain assets that may qualify both as Relevant Crypto-Assets under the CARF and as Financial Assets under the CRS, the CRS now contains an optional provision to switch-off gross proceeds reporting under CRS if such information is reported under the CARF.

2. Enhanced due diligence and reporting

Reporting requirements have been expanded to allow tax administrations to better contextualize the information they receive under the CRS and to facilitate the use of the information for tax compliance purposes. A few examples include:

- Indication of 'new' or 'pre-existing' account;
- Indication of whether the account holder has provided a valid self-certification;
- Role(s) by virtue of which each Reportable Person is a Controlling Person of the Entity and whether a valid self-certification has been provided for each Reportable Person (however, with respect to each reportable account maintained by a reporting Financial Institution as of the effective date of the revised CRS-1 day and for reporting periods ending by the second calendar year following such date, this information is only required to be reported if such information is available in the electronically searchable data maintained by the reporting Financial Institution);
- In the case of any Equity Interest held in an Investment Entity that is a legal arrangement, the role(s) by virtue of which the Reportable Person is an Equity Interest holder;
- Whether the account is a joint account and the number of joint account holders; and
- Indication of the type of account (e.g., custodial, depository, equity and debt interests, and Cash Value Insurance Contracts).

The due diligence requirements have also been strengthened, in particular by specifying that for new Entity accounts AML/KYC procedures must be in line with the 2012 FATF recommendations. It is also clarified that if the Reporting Financial Institution is not legally required to apply AML/KYC Procedures that are consistent with the 2012 FATF recommendations, the reporting Financial Institution must apply substantially similar procedures.

With respect to the collection of self-certification forms, in exceptional cases where a Reporting Financial Institution did not comply with the requirement to obtain a valid self-certification for new accounts in time to meet its due diligence and reporting obligations, the Reporting Financial Institution is required to apply the due diligence procedures for preexisting accounts until the self-certification is obtained and validated.

Additionally, a Reporting Financial Institution will have reason to know that a self-certification is unreliable or incorrect if the self-certification does not contain a Taxpayer Identification Number (“TIN”) and the information disseminated by the OECD indicates that the Reportable Jurisdiction issues TINs to all tax residents. The CRS now provides that the confirmation of an account holder’s or Controlling Person’s identity and tax residence via Government Verification Services (“GVS”) or similar IT-driven process is recognized as a functional equivalent to a TIN.

In residence tiebreaker scenarios, all jurisdictions of tax residence should be self-certified by the account holder and the account holder should be treated as tax resident in all identified jurisdictions. Reliance on tiebreaker rules to determine the jurisdiction of residence for self-certification purposes will no longer be permitted on a prospective basis once the changes to the CRS have taken effect.

Finally, Reporting Financial Institutions are not required to request information on the beneficial owner(s) of a publicly traded company if such company is already otherwise subject to disclosure requirements ensuring adequate transparency of beneficial ownership information.

3. Definitional changes

Certain definitional changes have also been made to the CRS. In the context of Investment Entity definition, the Commentary now explicitly confirms that investors of funds can be considered “customers” and that the funds themselves can be considered to conduct activities “as a business.”

Capital contribution accounts, used to block funds for a limited period of time in view of the incorporation of a new company or a pending capital increase, are now considered Excluded Accounts subject to certain conditions and only where the use of such accounts is prescribed by law and for a maximum period of 12 months.

The CRS now contains an optional and targeted new Non-Reporting Financial Institution category for genuine non-profit Entities. This new category, Qualified Non-Profit Entities, which was not included in the public consultation document, has been added to address concerns of the non-profit sector, particularly regarding the application of due diligence procedures to beneficiaries, while also preventing abuse of the exclusion by requiring certain verification procedures by the tax administration (or other governmental authority) of the jurisdiction in which the entity is otherwise subject to reporting as an Investment Entity.

The Commentary now expands the scope of the term Depository Institution to include Entities that are licensed to engage in certain banking activities but are not actually so engaged.

Next steps

The appropriate mechanisms to automatically exchange information pursuant to the amended CRS will now need to be put in place, including the exchange frameworks and an updated XML schema. Additionally, implementation timelines will need to be agreed.

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