Verband der Auslandsbanken in Deutschland e.V.
Association of Foreign Banks in Germany

Organisation for Economic Co-operation and
Development (OECD)
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FRANCE

via e-mail to taxpublicconsultation@oecd.org

29 April 2022

Position paper to the public consultation Crypto-Asset Reporting Framework (CARF) and Amendments to the Common Reporting Standard (CRS)

Dear Sir or Madam,

We appreciate the opportunity to provide input to the above-mentioned consultation paper of 22 March 2022.

The Association of Foreign Banks in Germany represents the interests of more than 200 foreign banks and other financial services institutions which operate in Germany via subsidiary or branch. Almost all member institutions are therefore part of a cross-border banking group. Those banking groups benefit from the regulatory level playing field arising from the harmonisation of the Common Reporting Standard (CRS), but also from comparable standards regarding the fight against money laundering and the financing of terrorism.

We hope to give constructive input with regards to the CRS amendments in the following annex and have no objections to the disclosure of our comments. Regarding the announced public consultation meeting that is to be held by the end of May 2022, we would be interested to participate.

Kind regards,

Dr Andreas Prechtel Andreas Kastl

- **Annex I**

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Association of international banks, investment firms and asset managers

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Association of Foreign Banks in Germany

Responses of the Association of Foreign Banks in Germany on the specific questions of the public consultation paper with regard to the proposed amendments to the Common Reporting Standard (CRS)

Excluded Accounts

2. Are there any other types of accounts or financial instruments that present low tax compliance risks and that should be added to the Excluded Account definition?

As part of the 2021 results of the peer review of the automatic exchange of financial account information that is facilitated by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, for the case of Germany, "escrow/securities accounts managed by lawyers, auditors, chartered accountants (tax advisers) and insolvency administrators" were identified to be removed from the German list of excluded accounts (SR 1.). It should be ensured that those escrow/securities accounts managed by lawyers, auditors, chartered accountants (tax advisers) and insolvency administrators are kept on the Standard's list of excluded accounts. These accounts regularly do not present a high level of tax compliance or money laundering risks.

Collection of TIN for Pre-existing Accounts

1. The inclusion of the TIN of Reportable Persons (if issued by the jurisdiction of residence) significantly increases the reliability and utility of the CRS information for tax administrations. Although not included in the current proposal, the OECD is still exploring feasible measures to ensure the collection and reporting of TINs with respect to Pre-Existing Accounts. What approaches could Financial Institutions take to collect TIN information in respect of Pre-Existing Accounts, while mitigating potential burdens for Reporting Financial Institutions?

The collection of TIN for pre-existing accounts should be limited to cases of change of circumstances. If this new requirement to collect TIN for (all?) pre-existing accounts (once or annually?) is adopted by the OECD, financial institutions will need a suitable legal basis for the collection of this further item of personal data. Therefore, such an amendment must be incorporated in the Standard, and not in the Commentary.

Dual-resident Account Holders

1. The proposed changes to the Commentary foresee that Account Holders that are resident for tax purposes in two or more jurisdictions under the domestic laws of such jurisdictions declare all jurisdictions of residence in the self-certification and that Reporting Financial Institution must treat the account as a Reportable Account in respect of each jurisdiction. The OECD is still considering whether an exception to this rule should apply where the Account Holder provides the Reporting Financial Institution with government-issued documentation to resolve cases of dual residence under applicable tax treaties. Are there instances where Reporting Financial Institutions have received such documentation and, if so, in what form (e.g. a letter issued by one or more competent authorities)?

Besides the elaborations on suitable government-issued documentation, it should be noted that respective declarations or documentation of lawyers and tax advisers could also be used for the purposes of a further documentation in cases of dual-resident account holders.

Integrating CBI/RBI guidance within the CRS

1. Are there any additional and/or alternative questions, other than those already in the CBI/RBI guidance, that would be useful to include in the Commentary to the CRS, for purposes of requiring Financial Institutions to determine the jurisdiction(s) of residence of a CBI/RBI holder?

According to paragraph 3bis to the Commentary on Section VII, a reporting financial institution should ask certain CBI/RBI-related questions if there are any doubts as to the tax residency(ies) of an Account Holder or Controlling Person as the institution should not only rely on self-certification in those cases. For this purpose, the consultation paper also introduces four examples of such questions: "Whether the Account Holder (1) has obtained residence rights under an CBI/RBI scheme; (2), holds residence rights in any other jurisdiction(s); and (3) has spent more than 90 days in any other jurisdiction(s) during the previous year, as well as (4) the jurisdictions in which the Account Holder has filed personal income tax returns during the previous year."

In order to ask account holders and controlling persons these or similar questions will need a suitable legal basis, as the answers mostly touch personal data of the asked individuals. Therefore, if the OECD plans to supplement the CRS with CBI/RBI-related requirements, these need to be supplemented to the Standard itself, and not to the Commentary, as proposed in the consultation paper. Commentary requirements do not necessarily are being adopted in national legislation; amendments to the Standard will be incorporated in the EU Directive 2011/16/EU on administrative cooperation in the field of taxation (so-called DAC) which must then be adopted by EU Member States with national legislation.

Transitional Measures

1. Are the proposed transitional measures in Section X appropriate for Reporting Financial Institutions to update their processes and systems to comply with the proposed amendments to the CRS?

The new reporting items being introduced besides the new "role" item with regards to the controlling person are not linked to the transitional measure of section X. We therefore propose to align this transitional measure with the new reporting items, which are: whether the account is a Preexisting Account or a New Account and whether a valid self- certification has been obtained; whether the account is a joint account, as well as the number of joint Account Holders; as well as the type of Financial Account. In reporting financial institutions, these information must not be necessarily part of the internal databanks and could therefore not easily being used for the next reporting after the CRS amendment.

Other comments

2. Comments are also welcomed on all other aspects of amendments to the CRS.

The consultation paper proposes – under the headline of look-through requirements in respect of controlling persons of publicly traded entities – to clarify in paragraphs 21 and 19 to the Commentary on section V and VI, respectively, that financial institutions are not required to request information on the beneficial owner(s) of publicly traded companies if such company is already otherwise subject to disclosure requirements ensuring adequate transparency of beneficial ownership information. As it is correctly outlined in the consultation paper, this is recommended by the FATF. In order to reach a higher level of legal certainty, this clarification should not only be inserted in the Commentary, but should rather become part of the Standard itself.

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