Regulation Impact Statement – Implementation of the Common Reporting Standard for the automatic exchange of financial account information

Problem to be addressed

Addressing tax evasion - undisclosed foreign sourced income

Globalisation has made it easier for taxpayers to make, hold and manage investments in and through financial institutions outside of their country of residence, which creates opportunities for tax evasion. Investment income earned by Australian residents in offshore financial institutions may form part of their Australian assessable income and this income may not be subject to tax if it remains unreported to the Australian Taxation Office (ATO). People that do not comply with their Australian tax obligations undermine the integrity of the tax system. Community trust in the fairness and integrity of Australia's tax system is needed to maintain its effectiveness and efficiency.

The exchange of taxpayer information between tax authorities is critical to combating tax evasion at the international level. Australia, along with many other countries, currently shares information through automatic exchange, spontaneous exchange, and exchange on request.[1] This is facilitated through a network of tax treaties and tax information exchange agreements, and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Multilateral Convention).

Automatic exchange of information is the most advanced form of exchange of information. One of its largest benefits is that it enables tax authorities to receive information on individuals who have no previous indication of non-compliance. When the ATO receives automatic tax information, it undertakes identity matching with the information and uses a risk-based approach to income match selected cases against tax returns. If there are discrepancies then the ATO can clarify the information with the

1 Exchange of information on request is when a tax authority asks for particular information from another tax authority. Typically, the information requested relates to an examination, inquiry or investigation of a taxpayer's tax liability for specified tax years. Exchange of information on request does not assist in the detection of cases of non-compliance when tax administrations have had no previous indication of non-compliance, because they need to have reasonable grounds to request information on a person or entity from another tax authority. Spontaneous exchange of information is the provision of information from one tax authority to another that is foreseeably relevant and that has not been previously requested.
The automatic exchange of information between tax authorities involves the systematic and periodic transmission of bulk taxpayer information from the source country where the income was earned to the country of residence of the taxpayers.

specific taxpayer, and any undeclared income can result in taxable income adjustments and penalties and interest.

ATO's receipt of automatic information

The ATO's collection of tax from current automatic exchange arrangements is very small compared to the amount collected from on request and spontaneous exchanges. In 2013-14, the ATO collected $10.2 million of adjusted tax, penalties and interest as a result of other countries sending automatic tax information to Australia. In 2012-13, on request and spontaneous exchanges of information with treaty partners contributed approximately $450 million of adjusted tax, penalties and interest, in 2013-14 contributed approximately $250 million, and in 2014-15 approximately $255 million.

The ATO is one of the leading tax authorities in sending automatic tax information to other tax authorities. It sends the information to approximately 40 countries' tax authorities. It uses information on foreign residents collected for domestic reporting purposes when it sends the information. The ATO receives automatic information from approximately 20 countries.

The effectiveness of the automatic tax information that the ATO receives is reduced by two main factors: the limited network of countries from which it receives automatic information and the quality of the information it receives from other tax authorities.

The ATO does not receive automatic information from the countries that are often referred to as tax secrecy jurisdictions. The use of tax secrecy jurisdictions by Australians for tax evasion purposes is unable to be quantified as there is often legitimate business activities conducted within these jurisdictions. However, such use is known to be significant. For example, Project Wickenby which was established in 2006 to prevent people from promoting or participating in the abusive use of tax secrecy jurisdictions yielded $2.2 billion in liabilities until it finished this year, as well as increased tax collections from improved compliance behaviour following interventions. The enforcement activities under Project Wickenby have identified the use of evasive structures and transactions through tax secrecy jurisdictions. As a result of the Project, over 4,500 audits were undertaken by the ATO and there were over 45 criminal convictions.

The Government has subsequently established the Serious Financial Crime Taskforce to build on the work of Project Wickenby. One of the Taskforce's initial operational priorities is international tax evasion. The Government is providing $127.6 million over four years for the Taskforce's investigations and prosecutions that will address superannuation and investment fraud, identity crime and tax evasion.

In addition, the ATO's offshore disclosure initiative, Project DO IT: disclosure offshore income today, has provided detailed data and intelligence about taxpayers and advisers who engage in offshore tax evasion. Under the Project, more than 5,800 Australians have brought $600 million in offshore income and $5.4 billion in assets back into the Australian economy and the ATO has raised more than $235 million in additional tax liabilities.

Tax secrecy jurisdictions provide corporations and individuals with opportunities to avoid tax. They do this by not effectively undertaking exchange of information, coupled with the lack of transparency in the ownership of companies and the tax authority being unable to identify financial account information of individuals.

Australians' deposits in offshore banks are approximately $68.8 billion. Although almost half of deposits are in financial institutions in the UK and US, there are substantial deposits in the jurisdictions of Guernsey, Hong Kong, Isle of Man, Jersey, Luxembourg, Netherlands and Switzerland.

Country	***Cross-border liabilities to non-banks in Australia by reporting country[2], as of end-March 2014*** ***US$ (in millions)***
Guernsey	209
Isle of Man	2,445
Jersey	942
Luxembourg	139
Switzerland	1,275
United Kingdom	16,489
United States	16,148
All reporting countries	**68,810**

Source: Bank for International Settlements.

The second factor is that the automatic tax information on Australian residents received by the ATO from other national tax authorities often lacks sufficient information on the identity of the account holder. This makes it difficult for the ATO to match it to Australian taxpayers with sufficient confidence. From 2008 to 2013, gross income of around $14.4 billion in automatic exchange of information records received by the ATO was not matched to an Australian taxpayer or matched with a low level of confidence. This information is unable to be used.

Improving the automatic exchange of tax information

On 5 and 6 September 2013, the G20 Leaders committed to automatic exchange of information as the new global standard for exchange of information and supported the OECD work, with G20 countries, to develop a common reporting standard in 2014.

At the G20 Leaders' Meeting in Brisbane in November 2014, Leaders endorsed the Common Reporting Standard (CRS) for the automatic exchange of information and

2 Australians' deposits in Hong Kong financial institutions are substantial, however there is a restriction on this amount being detailed.

committed to begin to exchange information automatically with each other and other countries by 2017 or end-2018, subject to completing necessary legislative procedures.

The CRS provides a single global standard for the collection of financial account information by financial institutions on account holders who are foreign tax residents, the reporting of that information to the jurisdictions' tax authorities, and the exchange of that information with the foreign residents' home tax authorities.

The CRS draws extensively on the United States' Foreign Account Tax Compliance Act (FATCA) intergovernmental regime. FATCA requires foreign (non-US) financial institutions that have US customers, to identify and disclose information on their US account holders to the US Internal Revenue Service. If a financial institution fails to comply with the requirements it will be subject to a 30 per cent withholding tax on its US-based operations' investment income and its sales proceeds from instruments which yield revenues from US sources. This withholding tax operates as an international enforcement mechanism for financial institutions to meet their FATCA reporting requirements.

Other similar reporting requirements for financial institutions to the CRS and FATCA include the ATO's Annual Investment Income Report (AIIR), and Anti-Money Laundering (AML)/Counter Terrorism Financing (CTF) regime. Information collection and reporting under the CRS would build on these existing requirements but would operate as an additional reporting regime.

Although, FATCA, the ATO's AIIR and AML/CTF are different information collection and reporting regimes, they will help to minimise financial institutions' compliance costs as the CRS builds on existing processes. Further, the ongoing compliance costs of the CRS are not expected to be significant.

The CRS is intended to discourage countries enacting their own unilateral schemes to obtain information on their tax residents in other countries, similar to FATCA. A proliferation of different schemes would cause significantly higher compliance costs for financial institutions, compared to a consistent international standard.

Objectives of government action

Objectives of the CRS

Offshore tax evasion is a problem faced by jurisdictions all over the world. To assist in addressing tax evasion, the CRS is a single global standard for the automatic exchange of financial institutions' financial account information. It will enable tax authorities to be more effective in matching the identity of taxpayers and checking this information against tax returns.

Under Australia's G20 Presidency, in November 2014, G20 Leaders' endorsed the CRS and committed to begin to exchange information automatically with other jurisdictions by 2017 or end-2018.

Benefits of the CRS: better information exchanged

The CRS has been designed with the requirements of the tax compliance of an individual's jurisdiction of residence rather than as a by-product of a financial institution's domestic reporting requirements. One of its key elements is sufficient information to identify an account holder for data matching purposes (for example, through the requirement to collect tax identification numbers and dates of birth). It has also been designed to limit the opportunities for continued tax evasion, so it is comprehensive in the scope of:

- financial information to be reported. It includes different types of investment income, such as interest, dividends, and income from certain insurance contracts, and account balances and sales proceeds from financial assets.

- account holders subject to reporting. It includes individuals and controlling persons (beneficial owners) of companies, partnerships and trusts.

- financial institutions required to report. It includes banks and other deposit taking institutions, custodial institutions, investment entities, brokers that hold financial assets for the account of others, and insurance companies that issue or make payments to investment-linked life insurance or annuity contracts.

As a single global standard, the global implementation of the CRS will result in a large increase in the amount, accuracy and comprehensiveness of financial account information exchanged between national tax authorities. This will improve tax authorities' identity matching accuracy and enable them to better detect unreported foreign income and ensure compliance with tax laws in their jurisdiction, helping to reduce tax evasion and provide a further deterrence to engage in it.

Benefits of the CRS: more countries automatically exchanging information

The overall effectiveness of the CRS depends on the number of jurisdictions that implement it and the way in which it is implemented. Countries are being encouraged to adopt the CRS by the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes. The Global Forum is the premier international body for ensuring the implementation of the internationally agreed standards of transparency and exchange of information in the tax area. It has 129 member jurisdictions that are both developed and developing jurisdictions.

Over 95 jurisdictions have committed to implement it, with over 55 jurisdictions committing to implement it from 1 January 2016 and first exchange information in 2017. The jurisdictions include Luxembourg, the Seychelles, and the UK's Crown Dependencies of Isle of Man, Guernsey and Jersey, and the UK's Overseas Territories of Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Montserrat, and the Turks and Caicos Islands.

Almost 40 jurisdictions have committed to implement the CRS from 1 January 2017 and first exchange information in 2018. The jurisdictions include Aruba, The Bahamas, Hong Kong, Singapore and Switzerland.

Most former tax secrecy jurisdictions have committed to implement the CRS. The jurisdictions of Bahrain and Vanuatu have not yet made this commitment, however if Australians moved their deposits to banks in these jurisdictions there is increased risk for their deposits.

The Global Forum has also launched a process to monitor and review jurisdictions' implementation of the CRS. It involves all Global Forum members that are committed to implementing the CRS providing regular updates on their progress on implementation and from 2016 monitoring of this implementation. The G20 has also requested the Global Forum to create a mechanism for comprehensive reviews of CRS implementation.

The CRS does not include a withholding tax similar to FATCA's, however its international enforcement mechanism includes other jurisdictions suspending the exchange of information. This includes if there is or has been significant non-compliance with the CRS by a tax authority or if the status of entities as Non-Reporting Financial Institutions or accounts as Excluded Accounts are defined in a manner that frustrates the purposes of the CRS.

The CRS also imposes requirements on financial institutions from participating jurisdictions to document the beneficial owners of certain financial institutions from non-participating jurisdictions. This is also a form of global enforcement as it increases the cost of doing business for financial institutions in non-participating jurisdictions.

It is also expected that in the future that developed countries and former tax secrecy jurisdictions that do not implement the CRS or are reviewed by the Global Forum and are found to not be compliant with its requirements will be subject to taxation measures from other jurisdictions, similar to exchange of information on request. These taxation measures (or "tougher incentives") are outlined in *OECD Secretary-General Report to G20 Finance Ministers with its annexes (Reports on "Possible Tougher Incentives for the countries that fail to comply with the Global Forum standards on exchange of information on request" and "SMEs and Taxation"), September 2015*. Generally, these measures increase the cost of business for financial institutions and entities and for financial institutions dealing with them. They include special withholding tax rules and increased information reporting requirements for entities with operations in these jurisdictions.

Revenue gains from implementing the CRS

Australia's exchange of information under the CRS with other jurisdictions will enable Australia to receive significantly more information on offshore financial accounts held by Australian residents than it does under existing arrangements, especially from former tax secrecy jurisdictions, and significant trade and investment partners that do not automatically exchange at present.

The amount of Australian residents' offshore income not reported to the ATO is inherently unknown. The implementation of the CRS in Australia is estimated to deliver a small but unquantifiable revenue gain ($0 to $10 million per annum) over the forward estimates period, with larger unquantifiable gains ($10 to $100 million per annum) beyond this, as more jurisdictions implement the CRS.

The revenue gain is unquantifiable due to lack of reliable data. As more countries implement the CRS and the ATO undertakes more compliance activity, it is expected that the revenue gain will increase over time.

Although the revenue gain is unquantifiable, it is important to note that the automatic reporting of foreign financial accounts of Australian residents to the ATO will act as a strong deterrent against the concealment of foreign source income by such residents. This will drive substantial improvements in voluntary compliance and increase community confidence and willingness to participate in the tax system.

An indication of the revenue gain to Australia is provided by the UK's estimate from implementing the CRS, however the revenue gain is expected to be smaller in Australia given the UK's proximity to former tax secrecy jurisdictions in Europe and the higher number of high net worth individuals in the UK.

Exchequer impact (£m)	***2015-16***	***2016-17***	***2017-18***	***2018-19***	***2019-20***
	-5	+90	+270	+75	+130

The Common Reporting Standard

The CRS will require financial institutions in Australia to collect and report information about the financial accounts of foreign tax residents to the ATO, unless the financial institutions are specifically exempt.

Financial Institutions required to report under the CRS

Financial institutions required to report under the CRS include banks and other deposit taking institutions, custodial institutions, investment entities, and insurance companies that issue or make payments to investment linked life insurance or annuity contracts.

This covers a broad range of the Australian financial sector, including banks, building societies and credit unions, life insurance companies that offer insurance products that include an investment component, private equity funds, managed funds, exchange traded funds and brokers that hold financial assets for the account of others.

Financial institutions subject to the CRS are referred to as Reporting Financial Institutions and exempt financial institutions are referred to as Non-Reporting Financial Institutions.

Non-Reporting Financial Institutions are considered to be a low risk for use by foreign residents for evading tax. The most significant Non-Reporting Financial Institutions are:

1. Governmental entities, international organisations or central banks;

2. Broad or narrow participation retirement funds, or Qualified Credit Card Issuers; and

3. Any other entities that present a low risk of being used to evade tax, have substantially similar characteristics to any of the entities described above in points 1 or 2, and are defined in Australia's implementing legislation for the CRS as a Non-Reporting Financial Institution, provided that the status as a Non-Reporting Financial Institution does not frustrate the purposes of the CRS.

Points 2 and 3 provide a basis for exempting Australia’s retail and industry superannuation funds and self-managed retirement funds from the CRS.

Financial accounts subject to reporting under the CRS

Under the CRS, Reporting Financial Institutions will be required to collect and report to the ATO financial account information for accounts and insurance policies that they identify as being owned or controlled by foreign tax residents (unless the accounts or policies are explicitly exempt). These accounts are known as ‘Reportable Accounts’.

Reportable Accounts may be held by foreign tax resident individuals or entities, including companies, trusts and foundations.

The CRS’ due diligence procedures require financial institutions to look through certain entities (passive non-financial entities (NFEs)) to report on accounts that have Controlling Persons who are foreign tax residents. This requirement to look through passive NFEs is intended to limit opportunities for taxpayers to circumvent reporting by using interposed legal entities or arrangements.

The Controlling Persons are the natural persons who exercise control over an entity. The term ‘Controlling Persons’ corresponds to the ‘beneficial owners’ as described in Recommendation 10 of the Financial Action Task Force (FATF) Recommendations.

FATF is the inter-governmental body responsible for developing and promoting policies to combat money laundering and terrorist financing.

Some financial accounts are not subject to reporting as they are considered a low risk for evading tax (referred to as Excluded Accounts). The most significant Excluded Accounts are:

- Superannuation and other retirement accounts;
- Non-superannuation tax favoured accounts (for example First Home Savers Accounts);
- Life insurance contracts with a coverage period that will end before the insured individual attains age 90;
- Accounts held solely by an estate if the documentation for such an account includes a copy of the deceased's will or death certificate; and
- Accounts that present a low risk of being used to evade tax, have substantially similar characteristics to any of the specified Excluded Accounts, and are defined in domestic law as an Excluded Account, provided that the status of that account as an Excluded Account does not frustrate the purposes of the CRS.

Due diligence to identify foreign tax residents

Reporting Financial Institutions are required to undertake due diligence procedures to identify financial accounts that have a foreign tax resident account holder from a Reportable Jurisdiction. A 'Reportable Jurisdiction' is a jurisdiction with which Australia has an agreement in place that enables automatic exchange of information.

There are different legal bases for the automatic exchange of information, including Australia's bilateral tax treaties and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Convention). The Convention provides for all forms of administrative cooperation and contains strict rules on confidentiality and proper use of information. Australia signed amended Convention in 2011.

Automatic exchange under the Convention also requires an administrative agreement between the ATO and other countries' tax authorities. On 3 June 2015, Australia signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (MCAA), which is based on Article 6 of the Convention. To date, the MCAA has been signed by over 70 jurisdictions.

The CRS due diligence requirements vary depending on whether the account is held by an individual or an entity, and whether the account is a Preexisting or New Account. This recognises that it is more difficult and costly for financial institutions to collect information from existing account holders than it is to request the information from new account holders when an account is opened.

For a New Account, Reporting Financial Institutions are required to collect and report jurisdiction(s) of residence for tax purposes. For Preexisting Accounts, jurisdiction(s) of residence are used as a proxy for jurisdiction of residence for tax purposes.

Preexisting Individual Accounts

For Preexisting Individual Accounts, the requirements distinguish between Higher and Lower Value Accounts. Unlike FATCA, there is no minimum threshold for account balances.

Lower Value Accounts: for account balances less than $1,000,000 the residence of the account holder is determined using either a current residence address test based on documentary evidence or alternatively a search of electronic records. If the search of electronic records is undertaken and no information is found which indicates the account holder is a foreign resident, financial institutions will not be required to report the account to the ATO. If the search indicates the Account Holder is a foreign resident the account will be a Reportable Account, unless financial institutions elect to apply additional 'curing' procedures. The curing procedure generally involves reviewing or obtaining a self-certification and/or documentary evidence from the account holder. A self-certification is a statement from the account holder that enables the Reporting Financial Institutions to determine the Account Holder(s) residence(s) for tax purposes.

Higher Value Accounts: for account balances greater than $1,000,000 enhanced due diligence procedures apply, including a paper record search and an actual knowledge test by the relationship manager.

New Individual Accounts

New Individual Accounts require self-certification of the account holder's jurisdiction of residence *for tax purposes* and confirmation by the Reporting Financial Institution of the reasonableness of this self-certification.

A Reporting Financial Institution is considered to have confirmed the 'reasonableness' of a self-certification if, upon receipt of the self-certification and review of the information obtained in connection with the opening of the account (including any documentation collected pursuant to Australia's Anti-Money Laundering (AML) and its associated Customer Due Diligence (CDD) requirements), it does not know or have reason to know that the self-certification is incorrect or unreliable.

Preexisting Entity Accounts

For Preexisting Entity Accounts, Reporting Financial Institutions are required to determine:

- whether the entity itself is a Reportable Person, which can generally be done on the basis of available information (such as AML and CDD requirements) and if not, a self-certification; and

- whether the entity is a passive NFE and, if so, whether it has any Controlling Persons that are foreign tax residents. For a number of account holders the active/passive assessment should be straight forward and can be made on the basis of available information, for others this may require self-certification. Preexisting Entity Accounts below $250,000 are not subject to review.

New entity accounts

New Entity Accounts require self-certification of the account holder's jurisdiction of residence for tax purposes, unless for Passive NFEs the Reporting Financial Institution has information in its possession or that is publicly available based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution (other than a non-participating professionally managed investment entity). Reporting Financial Institutions are to also confirm the reasonableness of this self-certification.

For New Entity Accounts the $250,000 threshold does not apply.

Optional CRS provisions

There are a number of optional provisions in CRS and its Commentary to provide greater flexibility for financial institutions, thereby reducing their compliance costs. The optional provisions include:

- using third party service providers to fulfil their obligations;
- applying the due diligence procedures for New Accounts to Preexisting Accounts;
- applying the due diligence procedures for High Value Accounts to Lower Value Accounts;
- applying the residence address test for Lower Value Accounts;
- excluding Preexisting Entity Accounts with an aggregate value or balance of $250,000 or less from its due diligence procedures;
- making use of existing standardised industry coding systems for the due diligence process;
- using a single currency translation rule; and
- diligence procedures for all residents of foreign jurisdictions regardless of whether those countries have implemented the CRS, rather than residents of jurisdictions that have a CRS information exchange agreement with Australia at the time the due diligence procedures are performed.

Information to be reported

Under the CRS, Reporting Financial Institutions are to report the following information with respect to each Reportable Account:

- for accounts held by an individual: their name, address, jurisdiction(s) of residence, Taxpayer Identification Number(s) (TIN(s)) and date and place of birth of the individual;

- for accounts held by an entity: its name, address, jurisdiction(s) of residence and TIN(s);

- for accounts held by an entity that is a passive NFE, and is identified as having one or more foreign resident Controlling Persons:

  - the name, address, jurisdiction(s) of residence and TIN(s) of the entity; and

  - the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth of each foreign resident Controlling Person;

- the account number (or functional equivalent in the absence of an account number);

- the name and identifying number (if any) of the Reporting Financial Institution; and

- the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account.

- for a Custodial Account:

  - the total gross amount of interest paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period;

  - the total gross amount of dividends paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period;

  - the total gross amount of other income generated with respect to the assets held in the account paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and

  - the total gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder.

- for a Depository Account: the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period.
- for any other account, such as equity or debt interests in certain Investment Entities and investment linked insurance or annuity contracts: the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period, with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

The CRS recognises that some of the above information will not always be readily available to financial institutions or easily obtainable from existing account holders, and provides certain exceptions to these information requirements. For example, for existing account holders, the TIN and date of birth are not required to be reported if they are not in the records of the financial institution or are not required to be collected under the financial institution’s domestic law. However, financial institutions will be required to employ reasonable efforts to obtain that data within a certain period of time.

Financial institutions in Australia will not be required to report a place of birth.

The TIN requirements refer to the TIN issued by the account holder’s jurisdiction of residence for tax purposes, and not the TIN issued by the jurisdiction where the account is held. The CRS recognises that for Australia an individual cannot be required to report their Australian Tax File Number (TFN).

Method of reporting

The ATO is continuing to consult with financial institutions on their preference for the reporting arrangements. The feedback received was that there is a preference by most Reporting Financial Institutions for the OECD CRS XML schema, which is based on the reporting arrangements for FATCA, and for a fit-for-purpose solution for smaller volume reporters.

Consultation

As a global initiative, consultation on the CRS has been a continuous process at both the international and domestic level. At the international level, the OECD sought written submissions from governments and business to inform the development of the CRS and its Commentary. These submissions were considered by Australia and the

OECD’s Working Party 10 on the Exchange of Information and Tax Compliance. Governments and businesses were also given the opportunity to discuss their submissions with the Working Party. Participating governments, including the Australian Government, engaged closely with business and the OECD as the CRS and its Commentary were developed.

Participating governments consulted domestically, which informed the OECD’s process. In Australia, Treasury and the ATO targeted consultation towards those directly affected by the CRS, with a focus on minimising compliance costs and developing a feasible implementation timeframe. This consultation included meetings and ongoing discussions with industry representatives[3].

In June 2014, Treasury consulted publicly through a discussion paper that sought submissions on:

- timing of implementation;
- financial institutions’ potential implementation and compliance costs; and
- suggestions on how to minimise the implementation and compliance costs.

In early 2015, Treasury and the ATO undertook targeted consulted with financial institutions and peak industry bodies on a proposed list of Non-Reporting Financial Institutions and Excluded Accounts, the identification of foreign residents and the domestic reporting mechanism. The consultation paper on the identification of foreign residents sought submissions on whether financial institutions should be able to identify all foreign residents when undertaking due diligence rather than only those residents of jurisdictions that have a CRS information exchange agreement with Australia and whether it should be mandatory or optional.

From 18 September to 9 October 2015, consultation was also undertaken on draft legislation to implement the CRS.

Outcomes from consultation

The analysis of compliance costs within this RIS was informed by the information sought and received during consultation.

3 Stakeholders consulted include the Australian Bankers’ Association, Customer Owned Banking Association, Financial Services Council, Stockbrokers Association of Australia, and the Self-Managed Superannuation Fund Professionals’ Association of Australia, as well as individual financial institutions.

Compliance Costs

Financial institutions raised concerns about the compliance costs of implementing the CRS. Different types of institutions expect to incur different levels of compliance costs.

Banking institutions provided most of the compliance cost information. Cost estimates between banks varied significantly. The reasons given for this variance include:

- the complexity of existing banking systems;
- competing IT priorities (e.g. core banking system upgrades);
- whether they intend to use manual or automatic processes;
- the number of foreign resident customers; and
- the size of the bank.

Larger banks estimated their individual total compliance costs are between $20 million and $100 million. Smaller banks had much lower compliance costs.

Timing

Financial institutions did not agree on when Australia should implement the CRS, but did indicate that 2017 was the earliest achievable timeline.

Some banks preferred implementation on 1 January 2017, which would allow them to leverage their current FATCA expertise and reduce costs, and others prefer implementation on 1 January 2018 to better sequence systems changes and other regulatory changes. The effect of adopting different timelines on compliance costs can be seen in the comparison of the different options outlined below.

Following feedback on the timing of implementation in the draft legislation, and in particular one major bank indicating that it preferred implementation on 1 July 2017, Treasury undertook consultations with some financial institutions and peak industry bodies on CRS implementation on 1 July 2017. As part of implementation on 1 July 2017, financial institutions would collect CRS information from 1 July to 31 December 2017, report the information to the ATO by mid-2018 and the ATO would exchange information by late-September 2018.

The consultations indicated that it is possible and that compliance costs would be similar to allowing financial institutions to implement it on 1 January 2017 (for exchange in 2018) or 1 January 2018 (for exchange in 2019).

Other issues

Financial institutions also raised the following issues:

- The reporting mechanism: different reporting mechanisms are supported by different sectors of the finance industry.
  - The ATO is working with the industry and intends to be flexible on the reporting solution.
- Certainty around CRS requirements: financial institutions require certainty on the details of the CRS before they can begin implementation.
  - Draft legislation has been released, and the OECD CRS Commentaries, CRS Implementation Handbook and some CRS Frequently Asked Questions have been publicly released.
- Alignment between the CRS and FATCA.
  - The OECD, Treasury and ATO have consulted with financial institutions on alignment and any differences are generally related to the multilateral context of the CRS.
- Global uniformity of approach: global uniformity will help financial institutions that have operations outside Australia.
  - The CRS Commentary, CRS Implementation Handbook and CRS Frequently Asked Questions are intended to ensure consistent application across jurisdictions.
- The use of residential address as a proxy for tax residence: this will reduce compliance costs for some financial institutions, although others would prefer global uniformity.
  - Treasury raised this issue at an OECD CRS meeting and a large number of other countries considered the proposal to be inconsistent with the explicit requirements of the CRS and undermine its effectiveness. Therefore, Australia is not implementing this approach.
- Financial institutions identifying all residents regardless of whether those countries have implemented the CRS and to report this information to the ATO.
  - This is reflected in the legislation.
- The transitional arrangements for Investment Entities that are not Participating Jurisdiction Financial Institutions should be specified. Specifically, the Commissioner should publish a “Committed Jurisdiction” list and financial

institutions should be able to use their existing information to identify controlling persons for these financial institutions.

  - The Commissioner will declare by legislative instrument a list of committed jurisdictions for the due diligence of Investment Entities that are not Participating Jurisdiction Financial Institutions.

- The Government should review the reporting requirements under third party reporting, FATCA and CRS holistically, and design a comprehensive data collection and reporting framework that will achieve the objectives of all three regimes in the most efficient and practical manner possible.

  - Treasury and the ATO have reviewed the Third Party Reporting, FATCA and CRS reporting requirements. Third Party Reporting and the CRS (and FATCA) require reporting of different information on different customers.

- The CRS should leverage the ATO's existing information, allow alternative methods of satisfying it and be principle based.

  - CRS information is being exchanged between a large number of jurisdictions and has been standardised so as to benefit the maximum number. If the ATO does not provide the information required by the CRS, other tax authorities are able to suspend their information provision to the ATO.

- Clarification of implementation and review dates in draft legislation.

  - The dates will be clarified in the legislation.

- Listed investment entities will have difficulty in obtaining a self-certification upon account opening.

  - Treasury and the ATO are working with the industry to resolve this issue.

Policy options

The CRS is a standardised automatic exchange model and has been developed by the OECD and non-OECD G20 countries, at the request of the G20. The CRS sets out the due diligence rules for financial institutions to follow to collect and then report the information. It includes an enforcement mechanism of a tax authority suspending or terminating CRS information exchange with another tax authority if there is or has been significant non-compliance with the CRS. As it is a standardised model, the policy options are limited to Australia not implementing the CRS and the timing of implementation.

The six options are:

1. Australia does not implement the CRS (status quo).
2. CRS implementation on 1 January 2016, with the first exchange of information occurring by September 2017.
3. CRS implementation on 1 January 2017, with the first exchange of information occurring by September 2018.
4. CRS staged implementation CRS from 1 January 2017, with the first exchange of information by September 2018. This option permits financial institutions to voluntarily implement the CRS on 1 January 2017 and requires all financial institutions to implement it on 1 January 2018.
5. CRS implementation on 1 January 2018, with the first exchange of information occurring by September 2019.
6. CRS implementation on 1 July 2017, financial institutions report information for the period 1 July 2017 to 31 December 2017 in 2018 and the ATO exchanges information with other tax authorities by September 2019.

Option 1 – Australia does not implement the CRS (status quo)

This option involves Australia not implementing the CRS.

Impact on financial institutions

Financial institutions in Australia would not incur compliance costs from implementing the CRS. However, financial institutions that have operations in countries that implement the CRS will be required to comply with the CRS in those countries and therefore incur some compliance costs. Certain Australian financial institutions would face increased costs of engaging in international business as they would be required to document their investors to financial institutions in countries that have implemented the CRS under the CRS's 'non-participating jurisdiction investment entity trace-through' requirements.

Impact on Government

There are risks for Australia in not implementing the CRS.

- If Australia does not implement the CRS, tax authorities in other jurisdictions would not exchange CRS information with the ATO. The CRS is estimated to deliver a small but unquantifiable revenue gain over the forward estimates period ($0 to $10 million per annum to 2017-18), with larger unquantifiable gains beyond this ($10 to $100 million), as more jurisdictions implement the CRS, and assuming full implementation by jurisdictions.

- The effectiveness of the global work to bring former tax secrecy jurisdictions into the automatic exchange of information network would be reduced.

Australia is likely to be criticised by other countries, civil society, and the Global Forum on Transparency and Exchange of Information for Tax Purposes, especially as G20 Finance Ministers and Central Bank Governors, including the Treasurer and the Prime Minister have endorsed the CRS.

Option 2 – CRS implementation on 1 January 2016

This option involves implementing the CRS on 1 January 2016, financial institutions reporting information to the ATO on the 2016 calendar year in mid-2017 and the ATO exchanging information with other jurisdictions' tax authorities by September 2017.

Impact on financial institutions in Australia

Australian financial institutions have indicated that this option would involve very high compliance costs, especially as it is less than two months to 1 January 2016, legislation has not been enacted and financial institutions have indicated that 18 months is the minimum amount of time needed to undertake the system changes and testing.

The overall compliance costs for option 2 are $76.8 million per year. Option 2 has the highest compliance costs of the options to implement the CRS due to the rushed timeframe for implementation.

Impact on the Government

Under this option, the ATO will receive CRS information from other tax authorities in 2017 and can undertake compliance activity in 2017-18. However, the ATO would have to make systems changes in a short amount of time to receive the data from financial institutions in Australia and exchange it with other tax authorities.

Australia first exchanging information in 2017 would be consistent with the timeframe of exchanging with other countries by 2017 or end-2018 that Australia committed to at the G20 Leaders' meeting in Brisbane in November 2014.

The CRS is estimated to deliver a small but unquantifiable revenue gain over the forward estimates period ($0 to $10 million per annum to 2017-18), with larger unquantifiable gains beyond this ($10 to $100 million).

Option 3 – CRS implementation on 1 January 2017

This option involves implementing the CRS on 1 January 2017, financial institutions reporting information to the ATO on the 2017 calendar year in mid-2018 and the ATO exchanging information with other jurisdictions' tax authorities by September 2018.

Impact on financial institutions in Australia

Several financial institutions prefer implementation on 1 January 2017 rather than later as it allows them to transition resources, including employees and their expertise, from similar regulatory compliance projects, such as FATCA, to the CRS.

Some other financial institutions have indicated that this is generally an achievable timeline.

However, for a number of financial institutions a 1 January 2017 start date would impose increased compliance costs and may be difficult to achieve as resources would have to be diverted from other IT and regulatory compliance projects to meet this timeline.

The overall compliance costs for option 3 are $68.4 million per year.

Impact on the Government

Under this option, the ATO will receive CRS information from other tax authorities in 2018 and can undertake compliance activity in 2018-19. Australia first exchanging information in 2018 would be consistent with the timeframe of exchanging with other countries by 2017 or end-2018 that Australia committed to at the G20 Leaders' meeting in Brisbane in November 2014.

The CRS is estimated to deliver a small but unquantifiable revenue gain over the forward estimates period ($0 to $10 million per annum to 2017-18), with larger unquantifiable gains beyond this ($10 million to $100 million).

Option 4 – CRS staged implementation CRS from 1 January 2017

This option involves allows financial institutions to voluntarily implement the CRS on 1 January 2017 and requires mandatory implementation by financial institutions on 1 January 2018. Financial institutions implementing the CRS on 1 January 2017 would report information to the ATO for the 2017 calendar year in mid-2018 and financial institutions implementing the CRS on 1 January 2018 would report information to the ATO for the 2018 calendar year in mid-2019. The ATO would then exchange the information with other jurisdictions' tax authorities.

Impact on financial institutions in Australia

Staging implementation would reduce compliance costs for some financial institutions by enabling them to flexibly allocate their resources across competing obligations, and reducing operation and project risks for their system upgrades and testing procedures. However, legislation would be required well in advance to enable those financial institutions who want to leverage off their existing FATCA resources to do so, minimising their compliance costs.

The overall compliance costs for option 4 are $64.8 million per year.

Impact on the Government

The ATO might not receive information from other tax authorities until 2019, when they consider that Australia has implemented the CRS. Other countries might also consider that Australia’s implementation is outside the timeframe of exchanging with other countries committed to at the G20 Leaders’ Meeting in November 2014. It could also encourage other jurisdictions to delay their implementation, especially former tax secrecy jurisdictions.

The CRS is estimated to deliver a small but unquantifiable revenue gain over the forward estimates period ($0 to $10 million per annum to 2017-18), with larger unquantifiable gains beyond this ($10 million to $100 million).

Option 5 – CRS implementation on 1 January 2018

This option involves implementing the CRS on 1 January 2018, financial institutions reporting information to the ATO on the 2018 calendar year in mid-2019 and the ATO exchanging information with other jurisdictions’ tax authorities by September 2019.

Impact on financial institutions in Australia

Some financial institutions prefer 1 January 2018 as it reduces compliance costs by enabling them to have flexibility in their allocation of resources across competing obligations, and reducing operation and project risks for their system upgrades and testing procedures.

Other financial institutions have stated that a 1 January 2018 implementation date would cost more than a 1 January 2017 implementation date as they will not be able to transition resources, including employees and their associated expertise, from similar regulatory compliance projects, such as FATCA, to the CRS.

The overall compliance costs for option 5 are $65.9 million per year.

Impact on the Government

The ATO will not receive CRS information from other tax authorities until 2019.

Australia’s implementation will also be outside the timeframe of exchanging with other countries by 2017 or end-2108 that Australia committed to at the G20 Leaders’ meeting in November 2014. It could also encourage other jurisdictions to delay their implementation, especially former tax secrecy jurisdictions.

The CRS is estimated to deliver a small but unquantifiable revenue gain over the forward estimates period ($0 to $10 million per annum to 2017-18), with larger unquantifiable gains beyond this ($10 million to $100 million).

Option 6 – CRS implementation on 1 July 2017

This option involves implementing the CRS on 1 July 2017, financial institutions reporting information to the ATO for the period 1 July 2017 to 31 December 2017 in mid-2018 and the ATO exchanging information with other jurisdictions' tax authorities by September 2018.

Impact on financial institutions in Australia

Financial institutions have indicated that this is an achievable timeline, as it allows for 18 months between the enactment of legislation and implementation if the legislation is passed by Parliament by early 2016.

The overall compliance costs for option 6 are $67.2 million per year.

Impact on the Government

Under this option, the ATO will receive CRS information from other tax authorities in 2018. It will also ensure that Australia's CRS implementation is consistent with its commitment at the G20 Leaders' Meeting in November 2014 to exchange information by end-2018 and that Australia is less likely to be criticised for delaying its CRS implementation.

The CRS is estimated to deliver a small but unquantifiable revenue gain over the forward estimates period ($0 to $10 million per annum to 2017-18), with larger unquantifiable gains beyond this ($10 million to $100 million).

Compliance costs

Costs for financial institutions

Methodology for determining compliance costs

Treasury consulted peak industry bodies and individual financial institutions to obtain information on the compliance costs of the CRS[4].

Treasury's estimates of the compliance costs resulting from each of the five implementation options are detailed below. These estimates are the sum of:

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4 Peak industry bodies consulted included the Australian Bankers' Association, the Customer Owned Banking Association, the Financial Services Council, the Property Council of Australia, the Australian Custodial Services Association and the Australian Financial Markets Association. Additional compliance cost information was provided by individual financial institutions on a confidential basis.

- the expected costs of individual financial institutions, where those were provided;
- an estimate of the costs of the remaining financial institutions which may be affected; and
- an estimate of consumers' compliance costs from the additional time to complete the account opening process.

In general, the estimates provided by financial institutions were not disaggregated into categories or activities, limiting Treasury's ability to provide a detailed costing.

Treasury could not obtain data on expected compliance costs from all the financial institutions which may be affected by the CRS. The costs of these financial institutions were determined by:

- using the CRS cost estimate provided by similar financial institutions; and/or
- using FATCA cost estimates, provided in CRS consultation or in the compliance costs estimates used in the Regulation Impact Statement on the Implementation of the United States Foreign Account Tax Compliance Act in Australia[5].

As discussed above, the CRS is based on FATCA and the compliance cost impact is expected to be very similar. Where necessary, FATCA cost estimates were scaled to provide an approximation of CRS cost estimates for a proportion of financial institutions.

5 http://ris.dpmc.gov.au/2014/05/15/implementation-of-the-united-states-foreign-account-tax-compliance-act-in-australia-regulation-impact-statement-department-of-the-treasury/

Regulatory Burden and Cost Offset (RBCO) Estimate Tables

Option 1 – Australia does not implement the CRS (status quo): Average Annual Regulatory Costs				
Change in costs ($million)	Business	Community Organisations	Individuals	Total change in cost
Total, by sector	$0	$0	$0	$0
Cost offset ($ million)	Business	Community organisations	Individuals	Total, by source
Agency	$0	$0	$0	$0
Are all new costs offset? ☑Yes, costs are offset □ No, costs are not offset □ Deregulatory—no offsets required				
Total (Change in costs – Cost offset) ($million) $0				

Option 2 – CRS implementation on 1 January 2016: Average Annual Regulatory Costs				
Change in costs ($million)	Business	Community Organisations	Individuals	Total change in cost
Total, by sector	$74.6	$0	$2.2	$76.8
Cost offset ($ million)	Business	Community organisations	Individuals	Total, by source
Agency	$74.6	$0	$2.2	$76.8
Are all new costs offset? ☑ Yes, costs are offset □ No, costs are not offset □ Deregulatory—no offsets required				
Total (Change in costs – Cost offset) ($million) $0				

Option 3 – CRS implementation on 1 January 2017: Average Annual Regulatory Costs				
Change in costs ($million)	Business	Community Organisations	Individuals	Total change in cost
Total, by sector	$66.1	$0	$2.3	$68.4
Cost offset ($ million)	Business	Community organisations	Individuals	Total, by source
Agency	$66.1	$0	$2.3	$68.4
Are all new costs offset? ☑Yes, costs are offset □ No, costs are not offset □ Deregulatory—no offsets required				
Total (Change in costs – Cost offset) ($million) $0				

Option 4 – CRS staged implementation from 1 January 2017: Average Annual Regulatory Costs				
Change in costs ($million)	Business	Community Organisations	Individuals	Total change in cost
Total, by sector	$62.4	$0	$2.3	$64.8
Cost offset ($ million)	Business	Community organisations	Individuals	Total, by source
Agency	$62.4	$0	$2.3	$64.8
Are all new costs offset? ☑Yes, costs are offset □ No, costs are not offset □ Deregulatory—no offsets required				
Total (Change in costs – Cost offset) ($million) $0				

Option 5 – CRS implementation on 1 January 2018: Average Annual Regulatory Costs				
Change in costs ($million)	Business	Community Organisations	Individuals	Total change in cost
Total, by sector	$63.5	$0	$2.3	$65.9
Cost offset ($ million)	Business	Community organisations	Individuals	Total, by source
Agency	$63.5	$0	$2.3	$65.9
Are all new costs offset? ☑Yes, costs are offset □ No, costs are not offset □ Deregulatory—no offsets required				
Total (Change in costs – Cost offset) ($million) $0				

Option 6 – CRS implementation on 1 July 2017: Average Annual Regulatory Costs				
Change in costs ($million)	Business	Community Organisations	Individuals	Total change in cost
Total, by sector	$65.1	$0	$2.2	$67.2
Cost offset ($ million)	Business	Community organisations	Individuals	Total, by source
Agency	$65.1	$0	$2.2	$67.2
Are all new costs offset? ☑Yes, costs are offset □ No, costs are not offset □ Deregulatory—no offsets required				
Total (Change in costs – Cost offset) ($million) $0				

Comparison of compliance costs

Option 1 has the lowest compliance costs, however the ATO will not receive CRS information from other tax authorities, Australia will be criticised by other countries and in the future is likely to be subject to measures from other jurisdictions that will increase the costs of business for financial institutions and entities.

Options 3, 4, 5 and 6 have similar compliance costs.

Option 1 – Australia does not adopt the CRS (status quo)

There are no compliance costs under this option.

Option 2 – Implement the CRS on 1 January 2016

The compliance costs are highest under this option.

Financial institutions estimate the minimum upfront implementation costs in total are $63.9 million per year.

Ongoing compliance costs for both financial institutions and individuals are estimated to total $12.9 million per year.

Collectively, the annualised yearly costs for this option of both the start-up and recurring costs is $76.8 million per year.

Option 3 – Implement the CRS on 1 January 2017

Option 3 compliance costs are higher than those under options 4, 5 and 6, but significantly lower than costs under option 2.

Financial institutions estimate the minimum upfront implementation costs in total are $55.6 million per year.

Ongoing compliance costs for both financial institutions and individuals are estimated to total $12.8 million per year.

Collectively, the annualised yearly costs for this option of both the start-up and recurring costs is $68.4 million per year.

Option 4 – Staged implementation from 1 January 2017

This is the lowest cost option of the options to implement the CRS.

Financial institutions estimate the minimum upfront implementation costs in total are $51.9 million per year.

Ongoing compliance costs for both financial institutions and individuals are estimated to total $12.8 million per year.

Collectively, the annualised yearly costs for this option of both the start-up and recurring costs is $64.8 million per year.

Option 5 – Implement the CRS on 1 January 2018

This is the second lowest cost option of the options to implement the CRS.

Financial institutions estimate the minimum upfront implementation costs in total are $53.0 million per year.

Ongoing compliance costs for both financial institutions and individuals are estimated to total $12.9 million per year.

Collectively, the annualised yearly costs for this option of both the start-up and recurring costs is $65.9 million per year.

Option 6 – Implement the CRS on 1 July 2017

This is the third cost option of the options to implement the CRS.

Financial institutions estimate the minimum upfront implementation costs in total are $54.5 million per year.

Ongoing compliance costs for both financial institutions and individuals are estimated to total $12.7 million per year.

Collectively, the annualised yearly costs for this option of both the start-up and recurring costs is $67.2 million per year.

Costs for the general public

Individuals and entities will be required to provide additional information to financial institutions when opening new accounts after the CRS has been implemented. For individuals, this compliance cost is expected to be negligible per individual as they will generally be answering two additional questions. These are questions on their tax residence and taxpayer identification number from other jurisdictions.

Entities may incur similar additional costs to individuals as they also will be providing additional information in determining the tax residence of their controlling persons. Individuals and entities are estimated to take an additional one minute to provide this information to financial institutions. Other information that is used to estimate the compliance costs for individuals includes the number of financial institutions' new account holders per year, and the average weekly earnings, adjusted to include income tax.

The annual yearly costs for the general public are approximately $2 million per year. This is based on new account openings per year multiplied by one minute of the average hourly rate.

Distribution of compliance costs

The compliance costs for the CRS will predominantly fall on the financial and insurance services sector. The sector employs approximately 390,000 people[6] and contributed $138.6 billion to the economy in 2014-15 by gross value added[7].

The CRS is expected to affect over 184 financial institutions[8]. This is estimated to be around 101 small, 50 medium and 33 large financial institutions. The types of financial institutions include:

- Authorised Deposit-taking Institutions (ADIs), which at March 2014 comprised 70 banks ($3,251.8 billion in assets), nine building societies ($23.3 billion in assets) and 85 credit unions ($41.0 billion in assets);
- Some non-ADIs, in particular securitisers (total non-ADI assets are $127.5 billion); and
- Some insurers and fund managers, excluding superannuation entities and general insurance companies (total insurer and fund manager assets are $514.8 billion, excluding superannuation entities).[9]

Within the financial and insurance services sector, the majority of costs will be incurred by larger institutions with complex IT systems and a larger proportion of foreign tax resident and entity customers.

Nature of compliance costs

For financial institutions, the start-up and ongoing compliance costs to implement the CRS are expected to be similar to the FATCA compliance costs. Some large financial institutions have identified the start-up costs relate to:

- professional legal services;
- business systems design and development;
- development of staff training and education;

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6 ABS data – Labour Force, Australia, Detailed, Quarterly, August 2015 (6291.0.55.003).
7 5206.0 Australian National Accounts: National Income, Expenditure and Product, Industry Gross Value Added, Chain volume measures, Annual.
8 This is based on the estimated number of financial institutions used in the FATCA Regulation Impact Statement which captured members of the FSC and the ABA. In addition to this, the members of the COBA have also been included for the CRS.
9 http://www.rba.gov.au/fin-stability/fin-inst/ .

- internal compliance assurance; and
- other costs (including management of global conglomerates, project governance and administration costs).

For some businesses, the business system design and development costs account for 70 per cent to 80 per cent of the of the start-up costs due to the complexity of the existing IT systems.

The nature of the ongoing costs generally relate to:

- ongoing operation of business systems (i.e. classification of new accounts and monitoring systems);
- delivery of ongoing staff training and education; and
- reporting.

Operation of business systems makes up the highest proportion of ongoing costs - 50 per cent of ongoing costs for some financial institutions.

Financial institutions have advised that their compliance costs to implement the CRS are expected to be borne by Australian consumers of financial services in the form of higher fees and charges and/or higher interest rates, rather than being borne by the owners of the financial institutions. This is a result of financial institutions' cost of capital being set in international capital markets, especially for foreign owners, and if the compliance costs were borne by these owners it would lower their return, possibly leading to disinvestment.

Offsets

The costs associated with the implementation of the CRS under option 6 will be offset against the cost savings from transfer pricing record keeping simplification. These savings are within the Treasury portfolio.

Other considerations

Australian privacy laws

The implementation of the CRS in Australia would engage the right to protection from arbitrary or unlawful interference with privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR).

This engagement with the right to privacy is in the furtherance of a legitimate objective and is reasonable and necessary. The principal objective of these amendments is to improve tax compliance and enhance the integrity of the Australian and other jurisdictions' tax systems by improving reciprocal tax information-sharing arrangements between Australia and other jurisdictions.

The exchange of CRS information by the ATO with other jurisdictions' tax authorities relies on existing legal frameworks to ensure the confidentiality of exchanged tax information and limit its use to appropriate purposes. The main protection for taxpayer confidentiality is provided by a general prohibition on the disclosure of taxpayer information by ATO officers (see subdivision 355-B of Schedule 1 to the *Tax Administration Act 1953* (TAA 1953)). The disclosure of taxpayer information to other countries' tax authorities is allowed by section 355-50 of Schedule 1 to the TAA 1953.

Information exchanges are subject to strict treaty confidentiality rules which are consistent with Australia's domestic tax secrecy rules. Confidentiality rules are set out in Article 22 of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as well as in the equivalent of the standard OECD Model Article 26 in Australia's bilateral tax treaties. These rules limit the circumstances in which taxpayer information can be disclosed to third parties and the purposes for which it can be used. In general, this means that taxpayer information Australia shares with other countries' tax authorities can only be used for tax administration purposes and may only be disclosed to persons (including courts and administrative bodies) concerned with the assessment, collection, administration or enforcement of, or with litigation with respect to the country's taxes.

Although over 60 jurisdictions have signed the CRS Multilateral Competent Authority Agreement (MCAA), Australia will not automatically exchange CRS information with another country's tax authority unless that tax authority has the legal and administrative capacity to ensure confidentiality of taxpayer information. The ATO will also be able to suspend the exchange of information with another country's tax authority if it determines that there is or has been significant non-compliance with confidentiality safeguards (section 7 of the MCAA).

Australian anti-discrimination laws

The CRS does not raise issues of unlawful discrimination under the *Racial Discrimination Act 1975* as 'nationality' is not a ground of discrimination prohibited under the Act.

Regulation Impact Statement Early Assessment

A Regulation Impact Statement (RIS) for Early Assessment of CRS implementation was submitted to the Office of Best Practice Regulation (OBPR) on 3 September 2015, before the former Treasurer, the Hon Joe Hockey MP, announced on 20 September 2015 that Australia was to implement the CRS from 2017.

OBPR assessed the RIS as meeting best practice at that stage of the policy development process.

Conclusion

The preferred option for implementing the CRS in Australia is to implement it on 1 July 2017. Australia not implementing the CRS will subject it to international criticism and likely measures in the future that will increase the cost of business for financial institutions. Implementation also improves the integrity of the tax system and helps to engender confidence in the community that taxes are not being evaded, encouraging greater voluntary compliance.

Implementation by staged implementation from 1 January 2017, or on 1 January 2018 or 1 July 2017 have similar compliance costs, however implementation on 1 July 2017 results in the ATO receiving financial account on Australian residents in other jurisdictions in 2018, enabling it to undertake compliance activity in 2018-19. Implementation by staged implementation from 1 January 2017 or on 1 January 2018 is expected to result in the ATO receiving financial account on Australian residents in other jurisdictions in 2019-20, which would delay its compliance activity. Further, it is expected under these options that Australia would be subject to public criticism from other countries and the OECD from exchanging information later than its commitment to the G20.

The revenue gain from the compliance activity is expected to be significant — an unquantifiable revenue gain of between $10 million to $100 million per year beyond the forward estimates — even though the revenue estimate from implementing the CRS is unquantifiable.

The revenue gain will be dependent on the number of jurisdictions implementing the CRS — to date over 95 jurisdictions have committed to implement it, including all major former tax secrecy jurisdictions — and the number of jurisdictions that agree to exchange information with Australia. It is expected that Australia will exchange information with most, if not all jurisdictions, that implement the CRS, subject to the jurisdictions having the legal framework and administrative capacity and processes in place to ensure the confidentiality of the information received and that such information is only used for agreed purposes. Over 70 jurisdictions have taken the step of signing the Multilateral Competent Authority Agreement to automatically exchange information under the CRS, which specifies the details of what information will be exchanged and when.

Implementation and evaluation

Legislation is required to implement the CRS and the Bill implementing it is expected to be introduced into Parliament in late 2015.

Australia's later implementation of the CRS compared to some other jurisdictions is expected to enable Australia to address any problems identified in early implementation in these jurisdictions before it commences in Australia.

The ATO will administer the CRS and is well placed to evaluate financial institutions' implementation.

The Treasury and ATO are continuing to consult with financial institutions on CRS implementation and the ATO intends to release guidance in early 2016. The Treasury and the ATO are also continuing to engage the OECD's Working Party 10 and the Global Forum on CRS implementation.

The Working Party has agreed to review the CRS reporting format late in 2017 for jurisdictions exchanging in that year and to recommend any revisions in early 2018 for exchanges in 2020.

The Working Party has also agreed to carry out a comprehensive substantive review of the CRS, based on the experience of jurisdictions first exchanging in 2017 and 2018 and their use of the information. This review is to cover the CRS, the CRS Commentary and the reporting format and is expected to occur after a number of exchanges by jurisdictions first exchanging in 2017 and 2018. To enable Australia to effectively contribute to the Working Party review a domestic review of implementation will be undertaken, which will include consultations with financial institutions and the ATO.