

Government of Pakistan
Revenue Division
Federal Board of Revenue

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CIRCULAR

Subject: **Common Reporting Standard Rules- Optional Provisions**

In certain areas, the CRS Rules provide optional approaches allowing jurisdictions to adopt the most suitable option according to their circumstances. The optional provisions are intended to provide greater flexibility for financial institutions in implementation of Common Reporting Standard. This Circular explains various options, for the financial institutions to be adopted for implementation of the CRS Rules notified through SRO No 166(I) /2017 dated 15th March, 2017.

1. **Wider Approach**

The 'wider approach' is intended to enable Reporting Financial Institutions to capture and maintain information on the tax residence of account holders irrespective of whether or not that account holder is a resident in a Reportable jurisdiction for any given reportable period. Foreseeing the possibility of more and more jurisdictions reaching agreement with Pakistan over the period of time, FBR intends to opt for wider approach and accordingly the due diligence rules have been designed to adopt a wider approach to record the territory in which a person is tax resident irrespective of whether that territory is a Reportable Jurisdiction or not during the period of due diligence by the financial institutions. at the time that the CRS Rules come into force.

Adopting the wider approach for the due diligence of reportable accounts will help the financial institution to standardize their processes and makes the due diligence process convenient at the time when a new jurisdiction is added to the list of Reportable Jurisdictions. This will also lower the cost for financial institutions in complying with their obligations as, since wider approach is adopted, financial institutions will only need to revisit the determination of tax residence in those cases where there has been a change of circumstances, instead of conducting the due diligence procedures for the newly added reporting Jurisdictions.

2. Non Reporting Financial Institutions

The reporting financial institutions of Pakistan are required to start the due diligence procedures for identifying the reportable accounts from 1st July, 2017 onwards. However, as the CRS Rules provide certain exceptions to different types of accounts which are excluded from the ambit of the CRS Rules and also prescribe the non-reporting financial institutions, therefore, it is imperative to identify such financial institutions before the due diligence process is initiated.

Reference is drawn towards clauses (i) through (v) of sub-rule (i) of rule 78B which provide different categories of financial institutions which are not required to conduct due diligence or report under the CRS Rules. Sub clause (iii) prescribes that FBR will publish a list of such non-reporting financial institutions on recommendations of the SBP and SECP, as the case may be.

Accordingly, SBP and SECP have been requested to furnish a list of such entities with low risk of being used to evade tax and have substantially similar characteristics to any of entities described in sub clauses (i) and (ii) of clause (i) of rule 78B. The list so received shall be reviewed and published by FBR on its official website.

It may however, be clarified that no such financial institution shall treat itself as non reporting financial institution until it has been notified by FBR. As such, all financial institutions shall continue to adhere to the CRS Rules and carry out the due diligence process until they are notified by FBR as being non reporting financial institutions.

As the OECD has adopted a strict approach towards the domestic lists of non reporting financial institutions of every jurisdiction, therefore, stringent criteria should be adopted by SECP and SBP in determining the status of financial institutions as non reporting financial institutions so that such classification may not frustrate the purposes of the CRS Rules.

3. Due date for Reporting by Financial Institutions to FBR

The due date for reporting of financial information of reportable accounts by the reporting financial institutions of Pakistan to FBR is 31st May each year commencing from 31st May, 2018 onwards. Accordingly, every reporting Financial Institution is responsible to provide complete information on reportable accounts to FBR by the due date, in accordance with the prescribed procedure.

4. Registration of Reporting Financial Institutions with FBR

All the reporting Financial Institutions are required to register with FBR, for transmission of reportable financial accounts information under the CRS Rules. The

financial institutions will enroll with FBR through their respective regulators i.e. State Bank of Pakistan or Securities and Exchange Commission of Pakistan, as the case may be. Initially, the financial institutions will enroll manually by providing information under clause (c) of sub-rule (1) of Rule 78C of the CRS rules; however, at a later stage when the CRS compliant software is in place, the financial institutions will be linked into the system accordingly.

The financial institutions are required to get themselves registered with FBR through their respective regulators latest by 31st July, 2017. However, this does not preclude the reporting financial institutions to carry on with requirement of due diligence procedures for reportable financial accounts. All the reporting financial institutions will start the due diligence process by prescribed date i.e. 1st July, 2017 irrespective of the fact whether it is registered with FBR or not.

5. **Other Optional Provisions:**

Detail	Option	Reference
1. Alternative approach to calculating account balances. <i>"A jurisdiction that already requires Financial Institutions to report the average balance or value of the account may provide for the reporting of average balance or value instead of the reporting of the account balance or value as of the end of the calendar year or other reporting period. This option is likely only desirable to a jurisdiction that has provided for the reporting of average balance or value in its FATCA IGA. The EU Directive does not provide for the reporting of average balance or value."</i>	FBR does not opt for this provision.	OECD Commentaries given in the Standard for Automatic Exchange of Information Page 98
2. Use of other reporting period. <i>"A jurisdiction that already requires Financial Institutions to report information based on a designated reporting period other than the calendar year may provide for the reporting based on such reporting period. This option is likely only desirable to a jurisdiction that includes (or will include) a reporting period other than a calendar year in its FATCA implementing legislation. The period between the most recent contract anniversary date and the previous contract anniversary date (e.g. in</i>	FBR does not opt for alternative reporting periods. The reporting period as per CRS rules is the calendar year, except for the first year where the reportable period is 1 st July, 2017 to 31 st December, 2017.	OECD Commentaries given in the Standard for Automatic Exchange of Information Page 99

the case of a Cash Value Insurance Contract), and a fiscal year other than the calendar year, would generally be considered appropriate reporting periods. The EU Directive allows a jurisdiction to designate a reporting period other than a calendar year."		
3. Phasing in the requirement to report gross proceeds. <i>"A jurisdiction may provide for the reporting of gross proceeds to begin in a later year. If this option is provided a Reporting Financial Institution would report all the information required with respect to a Reportable Account. This will allow Reporting Financial Institutions additional time to implement systems and procedures to capture gross proceeds for the sale or redemption of Financial Assets. This option is contained in the Model FATCA IGAs, with reporting required beginning in 2016 and thus Financial Institutions may not need additional time for reporting of gross proceeds for the CRS. The MCAA and the EU Directive do not provide this option."</i>	FBR does not opt for this provision.	CRS rule 78C(6) OECD Commentaries given in the Standard for Automatic Exchange of Information Page 105
4. Filing of nil returns. <i>"A jurisdiction may require the filing of a nil return by a Reporting Financial Institution to indicate that it did not maintain any Reportable Accounts during the calendar year or other reporting period. The Model FATCA IGAs do not require nil returns but this could be required by local law."</i>	FBR opts for this provision. A financial institutions is required to file a return to the effect that it did not have any reportable account(s) during the relevant reporting period by 31 st May each year commencing from 31 st May, 2018.	
5. Allowing third party service providers to fulfill the obligations on behalf of the financial institutions. <i>"A jurisdiction may allow Reporting Financial Institutions to use service providers to fulfill the Reporting Financial Institution's reporting and due diligence obligations. The Reporting Financial Institution remains responsible for fulfilling these requirements and the actions of the service provider are imputed to the Reporting Financial Institution. This option is available for FATCA. The EU Directive includes this option."</i>	FBR opts to allow a reporting Financial Institutions to use service providers to fulfill their reporting or due diligence obligations, or both. However, the reporting Financial Institutions remains responsible for its reporting and due diligence obligations and the actions of the service provider shall be imputed to the financial institutions.	CRS rule 78D(4) OECD Commentaries given in the Standard for Automatic Exchange of Information Page 108
6. Allowing the due diligence procedures for New Accounts to be	FBR opts to allow a reporting financial institution to apply the	CRS rule 78D(5)

<p>used for Preexisting Accounts.</p> <p><i>“A jurisdiction may allow a Financial Institution to apply the due diligence procedures for New Accounts to Preexisting Accounts. This means, for example, a Financial Institution may elect to obtain a self- certification for all Preexisting accounts held by individuals consistent with the due diligence procedures for New Individual Accounts. If a jurisdiction allows a Financial Institution to apply the due diligence procedures for New Accounts to Preexisting Accounts, a jurisdiction may allow a Reporting Financial Institution to make an election to apply such exclusion with respect to (1) all Preexisting Accounts; or (2) with respect to any clearly identified group of such accounts (such as by line of business or location where the account is maintained). This option may also be applied under FATCA and the EU Directive.”</i></p>	<p>due diligence procedures for new accounts to pre existing accounts.. This option will provide an opportunity to obtain a self-certification together with additional or amended customer information.</p> <p>However, where a reporting financial institution uses the new account due diligence procedures for pre-existing accounts, the rules otherwise applicable to pre-existing accounts continue to apply.</p>	<p>OECD Commentaries given in the Standard for Automatic Exchange of Information Page 108</p>
<p>7. Allowing the due diligence procedures for High Value Accounts to be used for Lower Value Accounts.</p> <p><i>“A jurisdiction may allow a Financial Institution to apply the due diligence procedures for High Value Accounts to Lower Value Accounts. A Financial Institution may wish to make such election because otherwise they must apply the due diligence procedure for Lower Value Accounts and then at the end of a subsequent calendar year when the account balance of value exceeds \$1 million, apply the due diligence procedures for High Value Accounts. This option may also be applied under FATCA and the EU Directive.”</i></p>	<p>FBR opts to adopt this option. The financial institutions are allowed to apply the due diligence procedures for High Value Accounts to be used for Lower Value Accounts.</p>	<p>CRS rule 78D (5)</p> <p>OECD Commentaries given in the Standard for Automatic Exchange of Information Page 108</p>
<p>8. Residence address test for Lower Value Accounts.</p> <p><i>“A jurisdiction may allow Financial Institutions to determine an Account Holder’s residence based on the residence address provided by the account holder so long as the address is current and based on Documentary Evidence. The residence address test may apply to Preexisting Lower Value Accounts (less than \$1 million) held by Individual Account Holders. This test is an alternative to the electronic</i></p>	<p>FBR allows the Financial Institutions to opt for applying the ‘residence address test’ for Pre-existing Lower Value Accounts. In order to apply this test, following conditions must be fulfilled:</p> <ul style="list-style-type: none"> ▪ The Reporting Financial Institution has in its records a residence address for the 	<p>CRS rule 78E(2)</p> <p>OECD Commentaries given in the Standard for Automatic Exchange of Information Page 111</p>

<p><i>indicia search for establishing residence and if the residence address test cannot be applied, because, for example, the only address on file is an "in-care of" address, the Financial Institution must perform the electronic indicia search. The residence address test option is not available for FATCA. The EU Directive includes the residence address test."</i></p>	<p>Individual Account Holder,</p> <ul style="list-style-type: none"> ▪ Such residence address is current, and ▪ Such residence address is based on documentary evidence. ▪ A PO Box and 'Care-Of' address are not considered to be a residence address. A residence address is considered to be 'current' where it is the most recent residence address recorded by the Financial Institution but it cannot be considered where mail has been returned undelivered from it. 	
<p>9. Optional Exclusion from Due Diligence for Preexisting Entity Accounts of less than \$250,000. <i>"A jurisdiction may allow Financial Institutions to exclude from its due diligence procedures pre-existing Entity Accounts with an aggregate account balance or value of \$250,000 or less as of a specified date. If, at the end of a subsequent calendar year, the aggregate account balance or value exceeds \$250,000, the Financial Institution must apply the due diligence procedures to identify whether the account is a Reportable Account. If this option is not adopted, a Financial Institution must apply the due diligence procedures to all Preexisting Entity Accounts. A similar exception exists for FATCA, however, FATCA allows the review to be delayed until the aggregate account balance or value exceeds \$1 million. This option is foreseen by the EU Directive."</i></p>	<p>FBR opts for this provision. The financial institutions may opt not to apply the Due Diligence procedures for Preexisting Entity Accounts of less than \$250,000. This threshold is provided to reduce the compliance burden for financial institutions.</p>	<p>CRS rule 78G(1) OECD Commentaries given in the Standard for Automatic Exchange of Information Page 135</p>
<p>10. Alternative documentation procedure for certain employer sponsored group insurance contracts or annuity contracts. <i>"With respect to a group cash value insurance contract or annuity contract that is issued to an employer and individual employees, a jurisdiction may allow a Reporting Financial Institution to treat such</i></p>	<p>FBR does not opt for this provision.</p>	<p>CRS rule 78 I(2) OECD Commentaries given in the Standard for Automatic Exchange of</p>

<p>contract as a Financial Account that is not a Reportable Account until the date on which an amount is payable to an employee/certificate holder or beneficiary provided that certain conditions are met. These conditions are: (1) the group cash value insurance contract or group annuity contract is issued to an employer and covers twenty-five or more employees/certificate holders; (2) The employees/certificate holders are entitled to receive any contract value related to their interest and to name beneficiaries for the benefit payable upon the employee's death; and (3) the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed \$1 million. This provision is provided because the Financial Institution does not have a direct relationship with the employee/certificate holder at inception of the contract and thus may not be able to obtain documentation regarding their residence. This option is not contained in the FATCA IGA but may be available through adopting the due diligence procedures of the US FATCA regulations. The EU Directive includes this option."</p>		<p>Information Page 153</p>
<p>11. Allowing financial institutions to make greater use of existing standardized industry coding systems for the due diligence process. <i>"A jurisdiction may define documentary evidence to include any classification in the Reporting Financial Institution's records based on a standard industry coding system provided that certain conditions are met. With respect to a pre-existing entity account, when a Financial Institution is applying its due diligence procedures and accordingly required to maintained a record of documentary evidence, this option would permit the Financial Institution to rely on the standard industry code contained in its records. This option is not contained in the FATCA IGAs, but similar requirements may be adopted for FATCA by using the definition of documentary evidence in the US FATCA regulations. This option is contained in the EU Directive."</i></p>	<p>FBR opts to allow financial institutions to use standardized industry coding systems for classification of reportable accounts. This applies to pre existing entities accounts only.</p>	<p>OECD Commentaries given in the Standard for Automatic Exchange of Information Page 203</p>

<p>12. Currency translation. <i>"All amounts in the Standard are stated in US dollars and the Standard provides for the use of equivalent amounts in other currencies as provided by domestic law. For example, a lower value account is an account with an aggregate account balance or value of less than \$1 million. The Standard permits jurisdictions to include amounts that are equivalent (or approximately equivalent) in their currency to the US dollars amounts as part of their domestic legislation. Further, a jurisdiction may allow a Financial Institution to apply the US dollar amount or the equivalent amounts. This allows a multinational Financial Institution to apply the amounts in the same currency in all jurisdictions in which they operate. Both these options are available for FATCA. The EU Directive allows for this option."</i></p>	<p>FBR opts to allow the financial institutions to use equivalent amounts of currencies other than US dollar. In determining the balance or value financial institutions must translate the relevant USD threshold amount into local currency by reference to the spot rate of exchange on the date for which the financial institutions is determining the threshold.</p>	<p>CRS rule 78 I (3) OECD Commentaries given in the Standard for Automatic Exchange of Information Page 156</p>
<p>13. Expanded definition of Preexisting Account. <i>"A jurisdiction may, by modifying the definition of Preexisting Account, allow a Financial Institution to treat certain new accounts held by preexisting customers as a Preexisting Account for due diligence purposes. A customer is treated as pre-existing if it holds a Financial Account with the Reporting Financial Institution or a Related Entity. Thus, if a preexisting customer opens a new account, the Financial Institution may rely on the due diligence procedures it (or its Related Entity) applied to the customer's Preexisting Account to determine whether the account is a Reportable Account. A requirement for applying this rule is that the Reporting Financial Institution must be permitted to satisfy its AML/KYC procedures for such account by relying on the AML/KYC performed for the Preexisting Account and the opening of the account does not require new, additional, or amended customer information. This option is not contained in the FATCA IGAs, but similar requirements may be adopted for FATCA by using the definition of pre-existing account in the US FATCA regulations. The EU Directive includes this option."</i></p>	<p>FBR opts to adopt the expanded definition of pre existing accounts. For the purposes of CRS Rules the term "Pre existing Accounts" means:</p> <ul style="list-style-type: none"> a) a Financial Account maintained by a Reporting Financial Institution as of [30/06/2017]. b) any Financial Account of an Account Holder, regardless of the date such Financial Account was opened, if: <ul style="list-style-type: none"> i) the Account Holder also holds with the Reporting Financial Institutions (or with a Related Entity within the same jurisdiction as the Reporting Financial Institution) a Financial Account that is a Preexisting Account under para (a) above; ii) the Reporting Financial Institution (and, as applicable, the Related Entity within the same jurisdiction as the Reporting Financial Institution) treats both of the aforementioned Financial Accounts, and any other 	<p>OECD Commentaries given in the Standard for Automatic Exchange of Information Page 181</p>

	<p>Financial Accounts of the Account Holder that are treated as Preexisting Accounts under para (b) above, as a single Financial Account for purposes of satisfying the standards of knowledge requirements set forth in sub rule (1) of rule 78l, and for purposes of determining the balance or value of any of the Financial Accounts when applying any of the account thresholds;</p> <p>iii) with respect to a Financial Account that is subject to AML/KYC Procedures, the Reporting Financial Institution is permitted to satisfy such AML/KYC Procedures for the Financial Account by relying upon the AML/KYC Procedures performed for the Preexisting Account described in para (a) above; and</p> <p>iv) the opening of the Financial Account does not require the provision of new, additional or amended customer information by the Account Holder other than for purposes of the Common Reporting Standard.</p>	
<p>14. Expanded definition of Related Entity.</p> <p><i>"Related Entities are generally defined as one entity that controls another entity or two or more entities that are under common control. Control is defined to include direct or indirect ownership of more than 50 percent of the vote and value in an Entity. As provided in the Commentary, most funds will likely not qualify as a Related Entity of another fund, and thus will not be able to apply the rules described above for treating certain New Accounts as Preexisting Accounts or apply the account aggregation rules to Financial Accounts</i></p>	<p>FBR does not adopt this option and hence financial institutions will follow the definition of "Related Entity" as given in the CRS Rules.</p>	<p>OECD Commentaries given in the Standard for Automatic Exchange of Information Page 183</p>

<p><i>maintained by Related Entities. A jurisdiction may modify the definition of Related Entity so that a fund will qualify as a Related Entity of another fund by providing that control includes, with respect to Investment Entities described in subparagraph (A)(6)(b), two entities under common management, and such management fulfils the due diligence obligations of such Investment Entities. A similar approach can be achieved under FATCA by applying the Sponsoring Regime. The EU Directive also provides this modification."</i></p>		
<p>15. Grandfathering rule for bearer shares issued by Exempt Collective Investment Vehicle. <i>"With respect to an Exempt Collective Investment Vehicle, a jurisdiction may provide a grandfathering rule if the jurisdiction previously allowed collective investment vehicles to issue bearer shares. The Standard provides that a collective investment vehicle that has issued physical shares in bearer form will not fail to qualify as an Exempt Collective Investment Vehicle provided that: (1) it has not issued and does not issue any physical shares in bearer form after the date provided by the jurisdiction; (2) it retires all such shares upon surrender; (3) it performs the due diligence procedures and reports with respect to such shares when presented for redemption or payment; and (4) it has in place policies and procedures to ensure the shares are redeemed or immobilized as soon as possible and in any event prior to the date provided by the jurisdiction. FATCA contains this option and includes 31 December 2012 as the date after which bearer shares can no longer be issued and 1 January 2017 as the date to ensure redemption or immobilization. The EU Directive contains this option and includes 31 December 2015 as the date after which bearer shares can no longer be issued and 1 January 2018 as the date to ensure redemption or immobilization."</i></p>	<p>FBR does not choose to apply this provision.</p>	<p>CRS rule 78B(q)</p>
<p>16. Controlling Persons of a trust. <i>"With respect to trusts that are Passive</i></p>	<p>FBR does not opt for this provision to align the scope of</p>	<p>OECD Commentaries</p>

<p><i>NFEs, a jurisdiction may allow Reporting Financial Institutions to align the scope of the beneficiary(ies) of a trust treated as Controlling Person(s) of the trust with the scope of the beneficiary(ies) of a trust treated as Reportable Persons of a trust that is a Financial Institution. In such case the Reporting Financial Institutions would only need to report discretionary beneficiaries in the year they receive a distribution from the trust. Jurisdictions allowing their Financial Institutions to make use of this option must ensure that such Financial Institutions have appropriate safeguards and procedures in place to identify whether a distribution is made by their trust Account Holders in a given year. The EU Directive does not contain this option."</i></p>	<p>the beneficiary of a trust treated as Controlling Person of the trust with the scope of the beneficiary of a trust treated as Reportable Persons of a trust that is a Financial Institution.</p>	<p>given in the Standard for Automatic Exchange of Information</p> <p>Page 198</p>
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6. **Reference to Commentaries by OECD:**

In addition to the CRS Rules as notified by FBR, the Commentaries on the Common Reporting Standard as developed by the OECD and available on its website i.e. www.oecd.org are also required to be consulted for necessary action and further clarification. Rule 78J of the CRS Rules provide binding provision in this regard.

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