On 15 April 2016, the federal Department of Finance released draft legislative proposals related to the implementation of the Organisation for Economic Co-operation and Development (OECD) Common Reporting Standard, (CRS or Standard) as well as related explanatory notes, which provide the proposed framework for the implementation of the OECD CRS in Canada.

Under the proposed legislation, a new part, Part XIX, will be added to the *Income Tax Act (Canada)* (the Act), which will contain the reporting and due diligence requirements of the standard as well as definitions that will apply for purposes of Part XIX of the Act. The proposed legislation also contains proposed amendments to the *Income Tax Regulations (Canada)*, adding section 9005 with respect to prescribed non-reporting financial institutions and Section 9006 with respect to prescribed excluded accounts.

The Canada Revenue Agency (CRA) is expected to issue additional commentary in the form of Guidance Notes in due course to assist with the interpretation and implementation of these requirements.

Comments on the proposed legislation are requested to be submitted by 15 July 2016. The effective date of the proposed legislation is 1 July 2017.

**Wider approach**

Canada will implement the standard by applying a “wider approach” to account documentation and reporting. The wider approach is intended to enable Canadian financial institutions (FIs) required to
report under the standard (reporting FIs) to capture and maintain information on the tax residence of account holders irrespective of whether the account holders are tax residents of jurisdictions with which Canada has agreed to exchange information under the standard. This allows reporting FIs to apply the same account documentation/due diligence process across all financial accounts and avoids having to revisit or reapply account review procedures each time Canada enters into a new exchange agreement with another country under the standard.

Canada is also adopting the wider approach with respect to annual reporting. If an account holder is identified as being a tax resident in a jurisdiction other than Canada or the United States, the account holder is to be reported to the CRA regardless of whether Canada has an exchange agreement with that jurisdiction. As a result, reporting FIs will send all reportable account information to the CRA and will not be required to filter that information in order to identify only those account holders resident in jurisdictions with which Canada has an exchange agreement. The CRA will filter through the information provided and only forward on account information to those countries with which it has entered into an information exchange agreement.

**Reporting FI definition**

Under the proposed legislation, an entity that meets the definition of a reporting FI is required to perform certain account due diligence procedures to determine whether accounts are reportable to the CRA.

A reporting FI is defined as a Canadian financial institution that is not a non-reporting financial institution (i.e., a financial institution that is not otherwise exempted from these requirements).

Consistent with the approach taken in implementing the US Foreign Account Tax Compliance Act (FATCA) regime, an entity must meet the definition of an FI contained in the standard as well as the definition of a listed FI which was introduced under Canadian FATCA legislation, contained in Part XVIII of the Act, to be considered a Canadian FI. As a result, in general, a Canadian entity that is not subject to regulation as an FI under federal or provincial law, including most family trusts and personal holding companies established under Canadian law, will not be considered a Canadian FI for purposes of the proposed legislation.

While retaining the listed FI concept, Canada has adopted the definition of an investment entity contained in the standard for purposes of the proposed legislation. The definition of investment entity under the standard is slightly different from the definition contained in the Model 1 IGA, and therefore entities that are considered investment entities for the purposes of FATCA may not be considered investment entities for purposes of the standard and the proposed legislation in limited circumstances. An entity that has been classified as an investment entity solely because it is managed by an entity that primarily conducts business trading, portfolio management or other investing, administering or managing of financial assets on behalf of other persons should reconsider whether it will continue to be considered an FI for purposes of the proposed legislation. It is anticipated that this difference will have minimal impact on most Canadian entities due to the interaction of the listed financial institution definition in determining whether an entity is a Canadian FI.

**Non-reporting FIs**

The following entities are considered non-reporting FIs under the proposed legislation, and therefore such entities are not required to identify, review, document or report any accounts under the requirements outlined in the proposed legislation:
- Bank of Canada
- Government entities and international organizations (other than with respect to commercial financial activities), as well as pension funds of these entities
- Broad participation retirement funds, narrow participation retirement funds and pension funds of central banks
- Qualified credit card issuers
- Exempt collective investment vehicles
- Certain trusts where the trustee is a reporting FI that reports with respect to all reportable accounts of the trust
- Labour-sponsored venture capital corporations as prescribed in section 6701 of the Act
- RRSPs, RRIFs, RPPs, PRPPs, RDSPs and RESP
- Deferred profit sharing plans
- A central cooperative credit society, as defined in Section 2 of the Cooperative Credit Association Act, whose accounts are maintained for member financial institutions

Note that several categories that qualified as non-reporting FIs under FATCA in Canada are not included as non-reporting FIs above, including:

- Local banks
- Financial institutions with local client base
- Financial institutions with only low-value accounts
- Restricted funds
- Sponsored investment entities, controlled foreign corporations and sponsored, closely held investment vehicles

As a result, entities that may have been exempted from certain or all FATCA requirements based on these statuses may be required to comply with the proposed legislation.

**Account documentation and due diligence responsibilities for Canadian FIs**

Canadian entities that meet the definition of a reporting FI under the proposed legislation will be required to implement documentation and due diligence procedures for accounts opened on or after 1 July 2017 (with limited exceptions for new accounts opened by pre-existing account holders) and will need to apply due diligence procedures to all pre-existing individual accounts (other than accounts that are cash value insurance or annuity contracts that meet certain criteria) and to pre-existing entity accounts with balances in excess of US$250,000 as of 30 June 2017.

**Self-certifications for new accounts**

Similar to FATCA, the proposed legislation establishes separate due diligence requirements applicable to pre-existing and new accounts and individual and entity accounts. Unlike FATCA, reporting FIs will be required to obtain self-certifications from all new individual accounts, defined as accounts held by one or more individuals (other than trusts) and opened on or after 1 July 2017. The self-certification must allow the reporting FI to determine the account holder’s tax residence(s) and must contain the individual's Taxpayer Identification Number (TIN) for tax residences declared (other than Canada and the United States) unless the jurisdiction does not issue TINs. The self-certification must also contain the account holder’s date of birth if the account holder declares one or more tax residences outside of Canada or the United States.
For new entity accounts, the wording in the proposed legislation appears to indicate that a self-certification must be obtained for all new accounts to determine, at a minimum, the account holder’s residence for tax purposes. When an entity opens a new account and provides a self-certification indicating a tax residence in a country other than Canada or the United States, the FI must treat the account as a reportable account unless it can determine, based either on the self-certification or on information in its possession or publicly available, that the entity account holder is not a reportable person.

A further self-certification may also be required to determine whether the entity account holder is a passive non-financial entity (passive NFE) with controlling persons that are reportable persons to the extent the reporting FI is unable to reasonably determine based on publicly available information or information on file that the entity is an active NFE or FI (other than certain investment entities that are located in a country with which Canada has not agreed to exchange information). Note that under these requirements, certain investment entities that are located in countries that are not considered to be participating countries under the CRS and that would otherwise be considered FIs under FATCA can be considered passive NFES and not financial institutions under the CRS.

While the proposed legislation appears to indicate that a self-certification to determine residence must be obtained for all new entity accounts, the commentary released by the OECD with the standard allows a reporting FI to reasonably determine that an account is not a reportable account based on information on file or that is publicly available without obtaining a self-certification with respect to tax residence, therefore allowing FIs the option of not obtaining a self-certification for certain new entity accounts. It is hoped that the Canadian Government will also allow such an approach in documenting new entity accounts in its Guidance Notes once issued.

A reporting FI must also confirm the reasonableness of the information provided on a self-certification, taking into account other information collected in connection with account opening, including documentation collected pursuant to Anti-Money Laundering and Know-Your-Customer Procedures.

Further, reporting FIs must collect a new self-certification from an account holder if there is a change of circumstance that results in the FI knowing, or having reason to know, that the original self-certification is no longer correct or is otherwise unreliable.

Pre-existing account review

Accounts in existence immediately before the effective date of the proposed legislation (30 June 2017) and not otherwise exempt from due diligence procedures are considered pre-existing accounts and will be subject to pre-existing due diligence procedures that are similar in concept to the FATCA pre-existing account review procedures. Reporting FIs will generally be required to complete a mixture of electronic and paper-based searches to determine the reportable account status of pre-existing accounts.

Key features of the pre-existing account review include:

- Pre-existing individual accounts with an aggregated balance or value not exceeding US$1 million on 30 June 2017 (lower-value accounts) are subject to an electronic search for indicia indicating that the account holder is resident in a reportable jurisdiction. Further, in lieu of the electronic search,

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1 Paragraph 6 of the Commentary to Section VI of the OECD CRS allows a reporting FI the option of applying the rules to determine reportable person status in the order most appropriate. As such, a reporting FI has the option of determining that an account is not a reportable person based on information of file or that is publicly available (i.e., information that reasonably determines that the account holder is a corporation the stock of which is regularly traded on an established securities market or a related entity of such an entity, a governmental entity, an international organization, a central bank or a financial institution) without obtaining a self-certification.
reporting FIs will have the option of determining the tax residence of the account holder based on the account holder’s current residence address where the reporting FI maintains a residence address of the account holder based on documentary evidence.

- Pre-existing individual accounts exceeding US$1 million on an aggregated basis (higher-value accounts) as at 30 June 2017 or on 31 December of any subsequent calendar year are subject to the electronic search and, where relevant data elements are not electronically maintained, a paper record search for indicia. Such accounts are also subject to a relationship manager enquiry for actual knowledge of reportable account status. Under the proposed legislation, reporting FIs will have the option of treating pre-existing accounts as if they were new accounts for purposes of the due diligence procedures.

- Pre-existing entity accounts with an aggregated balance exceeding US$250,000 on 30 June 2017 are subject to a review of information maintained for regulatory or customer relationship purposes to determine whether the account holder is resident in a reportable jurisdiction. If the information on file indicates that the account holder is not a reportable person, or the FI is able to determine, based on publicly available information or information in its records, that the account holder is not a reportable person. Further, a self-certification may also be required to determine whether the entity is a passive NFE unless it can be reasonably determined that the account holder is an active NFE or an FI (other than certain investment entities) based on information on file or that is publicly available. Pre-existing entity accounts with an aggregate balance that does not exceed US$250,000 on 30 June 2017 are not required to be reviewed, identified or reported until the aggregate account balance exceeds US$250,000 on the last day of any subsequent calendar year.

An FI may elect out of the threshold exemption for all pre-existing entity accounts, or separately only to clearly identifiable groups of these accounts. The pre-existing account review must be completed by 31 December 2018 for accounts determined to be high-value individual accounts as at 30 June 2017 or by 31 December 2019 for lower-value individual accounts and entity accounts with an aggregate value exceeding US$250,000 as at 30 June 2017.

Note that under the proposed legislation, reporting FIs will be required to maintain separate pre-existing account listings for FATCA and CRS purposes and that separate aggregation calculations may be required where accounts are exempted from one regime but not the other. Further, accounts that may have been eligible for exclusion under certain threshold exemptions for FATCA purposes may be subject to review and reporting for CRS purposes.

**Definition of excluded accounts**

Accounts that fall within the definition of excluded accounts are not subject to review, identification or reporting under the proposed legislation. Most accounts that are considered excluded for purposes of existing Canadian FACTA requirements have also been excluded for purposes of Part XIX of the Act, with the following exceptions:

- Tax-free savings accounts have not been excluded for purposes of Part XIX of the ITA.
- Dormant accounts, as defined, have been included in the definition of excluded accounts for purposes of Part XIX of the Act.
Reporting requirements

Reporting FIs are required to report account-specific information, including account identifying, account balance and certain payment information, for any accounts held by reportable persons or accounts held by passive NFEs with one or more controlling persons that are reportable persons. Information returns will be due on 1 May of the year following the year to which the return relates and must be electronically filed. It is anticipated that accounts subject to reporting under the proposed legislation will be included in a separate information return from accounts to be reported under Part XVIII of the Act for FATCA purposes. The schema to be followed for creating information returns under the proposed legislation is expected to be somewhat similar but not the same as the schema used for the creation of Part XVIII FATCA information returns.

Administrative provisions: document retention

Reporting FIs are required to keep records that the institution obtains or creates for the purpose of complying with the proposed legislation, including self-certifications and documentary evidence. To the extent such records are maintained electronically, the institution must maintain the records in an electronically readable format for the duration of the retention period.

Records must be maintained for a period of at least six years following:

- In the case of a self-certification, the last day on which a related account was opened
- In any other case, the end of the last calendar year in respect of which the record is relevant

Under these provisions, it appears that there may be a requirement to keep all self-certifications ever gathered for an account, and not just the most recent version, until six years after the last day on which a related account was opened. This may conflict with existing documentation retention policies.

Enforcement provisions

The proposed legislation includes a provision that has the objective of effectively nullifying the impact of any arrangement or practice engaged in by a person which can reasonably be considered to have a primary purpose of avoiding an obligation under the proposed legislation. Such persons will be subject to the obligation as if the person had not entered into the arrangement or engaged in the practice.

Further, the explanatory notes indicate that the Act will be amended to introduce a $500 penalty where a reportable person fails to provide their TIN on request to a reporting FI. It is unclear at this point as to who will be responsible for collecting this penalty. It is also anticipated that standard penalties for failure to file a return, failure to report information on a form and failure to maintain adequate books and records under Sections 162 and 238 of the Act could also apply.
## CRS implementation timeline for Canadian FIs

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| **1 July 2017** | - New account documentation and due diligence procedures must be in place; accounts opened on or after 1 July 2017 are considered new accounts.  
  - Determine account balances as of 30 June 2017 to facilitate execution of pre-existing due diligence requirements. |
| **1 May 2018** | - First annual reporting deadline for Part XIX information returns. First reporting due to the CRA to include information with respect to reportable accounts opened on or after 1 July 2017 and pre-existing accounts identified as reportable accounts as a result of due diligence procedures completed to date. |
| **30 September 2018** | - Deadline for first exchange of information between Canada and jurisdictions with which it has entered into an exchange agreement. |
| **31 December 2018** | - Review account balances as of 31 December 2018 to identify pre-existing individual accounts with aggregated balances in excess of US$1 million that were previously lower-value accounts (aggregate balance of US$1 million or less as of 30 June 2017) and pre-existing entity accounts with aggregated balances in excess of US$250,000 that previously had an aggregate account balance not exceeding US$250,000 as of 30 June 2017.  
  - Deadline for completion of due diligence with respect to pre-existing individual accounts with aggregated balances in excess of US$1 million as of 30 June 2017 (high-value accounts).  
  - Deadline for completion of due diligence procedures in respect of pre-existing individual accounts identified as high-value accounts on 31 December 2018 and entity accounts identified as having an account balance in excess of US$250,000 as at 31 December 2018 but not at 30 June 2017. |
| **1 May 2019** | - Reporting deadline for 2018 Part XIX information returns.  
  - Deadline for exchange of 2018 information between Canada and jurisdictions with which it has entered into an exchange agreement. |
| **30 September 2019** | - Deadline for completion of due diligence with respect to pre-existing lower-value individual accounts and pre-existing entity accounts with balances in excess of US$250,000 as of 30 June 2017.  
  - Deadline for completion of due diligence procedures in respect of pre-existing individual accounts identified as high-value accounts on 31 December 2018 and entity accounts identified as having an account balance in excess of US$250,000 as at 31 December 2018 but not at 30 June 2017. |
| **31 December 2019** | - Deadline for exchange of 2018 information between Canada and jurisdictions with which it has entered into an exchange agreement.  
  - Deadline for completion of due diligence procedures in respect of pre-existing individual accounts identified as high-value accounts on 31 December 2018 and entity accounts identified as having an account balance in excess of US$250,000 as at 31 December 2018 but not at 30 June 2017. |
Learn more

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