Standard for Automatic Exchange of Financial Account Information in Tax Matters – The Common Reporting Standard (CRS)

Part 38-03-23

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Introduction

The purpose of this manual is to provide guidance on CRS domestic implementation issues in Ireland. The legislation that implements CRS in Ireland is contained in:

A. Section 891F of the Taxes Consolidation Act (TCA) 1997 (as inserted by Section 28 of Finance Act 2014; and

B. Returns of Certain Information by Reporting Financial Institutions Regulations 2015 (S.I. No. 583 of 2015).

Where the legislation or the Standard does not address the issue, the primary source for guidance should be the commentary to the CRS (which accompanies the Standard as published by the OECD), the CRS Implementation Handbook and the OECD issued FAQs. These OECD publications and other AEOI information are available on the OECD website. Further information on CRS is also available at AEOI. While every effort is made to ensure that the information given in this manual is accurate, it is not a legal document. Responsibility cannot be accepted for any liability incurred or loss suffered as a consequence of relying on any matter published herein.

1. The CRS provides jurisdictions with a number of implementation options. What implementation options have Ireland chosen and where can I find an explanation of these options?

Ireland will be implementing the options listed in the table below and further information detailing the options is contained in Appendix 1 of this document.

1.Alternative approach to calculating account balances	**No**
2.Use of reporting period other than calendar year	**No**
3.Phasing in the requirements to report gross proceeds	**No**
4.Requirement to file nil returns	**Yes**
5.Allowing third party service providers to fulfil obligations for FIs	**Yes**
6.Allowing due diligence procedures for New Accounts to be used for Preexisting Accounts	**Yes**
7.Allowing the due diligence procedures for High-Value Accounts to be used for Low-Value Accounts	**Yes**
8.Residence address test for Lower Value Accounts	**Yes**
9.Threshold of $250,000 for Preexisting Entity Accounts	**Yes**
10. Simplified due diligence rules for Group Cash Value Insurance Contracts and Group Annuity Contracts	**Yes**
11. Allowing greater use of existing standardised industry coding systems for the due diligence process	**Yes**
12. Permitting a single currency translation rule	**Yes**
13. Expanding definition of Preexisting Account when preexisting customers open a new account	**Yes**
14.Expanded Related Entity definition	**Yes**
15.Grandfathering rule for bearer shares issued by Exempt Collective Investment Vehicle	**Yes**
16. Controlling persons of a trust	**No**

2. Ireland has adopted the Wider Approach to CRS due diligence. What Data Protection requirements do Irish Financial Institutions need to comply with in respect of this Wider Approach?

Ireland has adopted the "Wider Approach" for CRS due diligence. The Wider Approach requires Financial Institutions (FIs) to collect the country of residence and the Tax Identification Number (TIN)[1] for all non-resident customers, not only residents of jurisdictions with which Ireland has an exchange of information agreement. This is provided for in Section 891F of the Taxes Consolidation Act and S.I. No. 583 of 2015.

The application of the "Wider Approach" requires FIs to:

- Report data collected for all non-resident customers (except US account holders) to Revenue[2]. Revenue will use the country of origin code to determine with which partner jurisdictions data should be exchanged. Revenue will delete any data which is not exchanged.
- Provide 'Customer Information Notices' to Individual Account Holders (including Controlling Persons[3]), to explain the data collection and reporting requirements under CRS. See paragraph 3 for details of the information which should be contained in a Customer Information Notice.
- Provide Customer Information Notices to both New and Preexisting Account Holders. The notification to New Account Holders should be clearly worded and prominently placed within the relevant account opening documentation. For Preexisting Account Holders, the Customer Information Notice can be distributed via the normal communication channels used by the FI to communicate with Account Holders e.g. including a letter with the annual statements etc.
- Update their Privacy / Data Protection notices to incorporate a reference to CRS.
- Inform any person who makes a Subject Access Request to the FI of the processing done under CRS by the FI.

Revenue will audit / review the data collection and customer notification process as part of their CRS compliance program.

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[1] As per paragraph 4, the Tax Identification Number (TIN) does not need to be provided by Account Holders and Controlling Persons who are resident in non-reportable jurisdictions (i.e. Ireland or the USA) but it should be noted that Account Holders may be required to provide a TIN for other purposes (e.g. where the Account Holder is a specified US person and reportable under FATCA or for domestic reporting purposes).

[2] Under Regulation 3(2) of S.I. No. 583 of 2015.

[3] A Customer Information Notice should be provided to a Controlling Person when that Controlling Person is asked to complete a self-certification to determine their status for CRS purposes.

3. What Information should be contained in a Customer Information Notice?

Such notices must include, at a minimum, the following information:

- An explanation as to why the data is being collected;
- An explanation as to what will be done with the data;
- Details of the information to be reported to Revenue (i.e. name, address, tax identification number (TIN), date of birth, place of birth (where present in the records of the Financial Institution), the account number, the account balance or value at year end, and payments made with respect to the account during the calendar year);
- A statement that the data may be exchanged by Revenue with other tax authorities; and
- Details of where the account holder can find further information including the Automatic Exchange of Information portal on the Irish Revenue website.

4. How does the application of the Wider Approach to CRS due diligence in Ireland work in conjunction with the OECD published FAQ 9 “Collection of TINs from a Controlling Person that is not a Reportable Jurisdiction Person” which provides guidance on the requirement to collect a TIN subject to provisions in domestic law??

Ireland has adopted the Wider Approach to CRS due diligence. Therefore, under Irish legislation implementing CRS, Irish Financial Institutions are required to carry out due diligence on all customers, including Controlling Persons of Passive NFEs, and to obtain a Self-Certification upon account opening. Where an Account Holder or Controlling Person is resident in a non-Reportable Jurisdiction, i.e. Ireland or the USA[4], the Account Holder or Controlling Person is not required to provide their TIN on the Self-Certification provided to the Irish Financial Institution.

While Irish Financial Institutions are required to report all non resident Account Holders and Controlling Persons to Revenue (with the exception of US resident Account Holders and Controlling Persons), Ireland will only exchange CRS information with jurisdictions where there is a legal arrangement in place to do so.

5. Is the place of birth for a reportable Controlling Person of an Entity Account Holder required to be reported?

Similarly to Individual Account Holders, the place of birth of a reportable Controlling Person of an Entity Account Holder is not required to be reported unless it is stored in the electronically searchable data maintained by the Reporting Financial Institution.

4 Regulation 2(1) of S.I. No. 583 of 2015 defines Reportable Jurisdiction as meaning “any jurisdiction, other than the State and the United States of America”.

6. Is the TIN or date of birth with respect to Preexisting Entity Accounts required to be reported if such TIN or date of birth is not in the records of the Reporting Financial Institution?

Regulations 3(3)(a) and 3(3)(b) apply to Preexisting Entity Accounts and Controlling Persons of Preexisting Entity Accounts in the same manner as to Preexisting Individual Accounts. Therefore with respect to any Preexisting Account, the TIN or date of birth is not required to be reported if such TIN or date of birth is not in the records of the Reporting Financial Institution. However, a Reporting Financial Institution shall use reasonable efforts to obtain the TIN and date of birth with respect to Preexisting Accounts by the end of the second calendar year following the year in which Preexisting Accounts were identified as Reportable Accounts.

7. Is a TIN required to be reported where a jurisdiction does not issue TINs to entities?

Regulation 3(4) applies to Entity Accounts and the Reportable Controlling Persons of an Entity Account Holder in the same manner as Individual Accounts. Therefore if a TIN is not issued by the jurisdiction of residence of the Account Holder, the TIN is not required to be reported.

8. Are Retirement Annuity Contracts Reportable Accounts under CRS?

An approved Retirement Annuity Contract within the meaning of Chapter 2 of Part 30 of the Taxes Consolidation Act 1997 meets the criteria of an Excluded Account under CRS and is deemed an Excluded Account for CRS purposes.

9. Are Buy Out Bonds Reportable Accounts under CRS?

Buy Out Bonds meet the criteria of an Excluded Account under CRS and are deemed Excluded Accounts for CRS purposes. A Buy Out Bond means an insurance policy or bond purchased in the name of the beneficiary by the trustees of an occupational pension scheme, in lieu of the beneficiary's entitlement to claim benefits under the scheme.

10. What schema should Financial Institutions use to prepare and report information under CRS to Revenue in Ireland?

Financial Institutions should use the OECD issued CRS schema which can be found on the OECD Automatic Exchange Portal. The CRS XML Schema Version 1.0 and User Guide Version 2.0 are applicable for all exchanges until 31 December 2020, whereas the CRS User Guide Version 3.0 and CRS XML Schema Version 2.0 will be in use from 1 February 2021.

11. Is a Financial Institution required to file a separate return for CRS and DAC2?

No, a Financial Institution will not be required to file a separate return for CRS and DAC2 - one return will fulfil both the CRS and DAC2 reporting obligations of a Financial Institution.

12. Are all Non-Reporting Financial Institutions and Excluded Accounts included in S.I. No. 583 of 2015?

Regulation 2(2) of S.I. No. 583 of 2015 defines Non-Reporting Financial Institutions and Excluded Accounts for CRS purposes. There may be circumstances where an entity or account meets the criteria within this Regulation, however the entity or account is not listed and in these instances, clarification should be sought from Revenue.

13. For umbrella funds, FATCA registration and reporting can be done at either umbrella level or sub-fund level. In respect of CRS reporting, at which level should reporting take place?

In the case of a Financial Institution which is an Investment Entity, the filing of returns for CRS should be done at the level of the Financial Institution. Where the Investment Entity is set up with an umbrella and sub-fund structure, reporting can take place at either umbrella or sub fund level.

Where FATCA/CRS reporting is completed by an Investment Entity at umbrella level, reporting should not also take place at sub-fund level, as this will give rise to duplicate reporting. FATCA and CRS reporting should only be completed at either umbrella or at sub-fund level, but not both.

It should be noted that there is no Sponsoring Entity regime under CRS and that each Financial Institution has responsibility for filing its own CRS returns. The filing of CRS returns may be outsourced to a third party, but the Financial Institution remains responsible for ensuring its own compliance with CRS.

14. Can an Individual Account Holder or the Controlling Person of an Entity Account Holder have more than one jurisdiction of tax residence? If so, what are the reporting requirements?

Yes, an Individual Account Holder or the Controlling Person of an Entity Account Holder may have multiple jurisdictions of tax residence. In these circumstances, a Reporting Financial Institution should obtain and report the relevant information as outlined in Regulation 3(2) of S.I. No. 583 of 2015 for each jurisdiction in which the Account Holder or the Controlling Person of an Entity Account Holder is tax resident.

15. What are the reporting requirements in relation to an Account Holder that is resident in the United States and tax resident in another jurisdiction other than the State, for example France?

Under Regulation 2(1) of S.I. No. 583 of 2015, Reportable Jurisdiction "means any jurisdiction, other than the State and the United States of America". As France falls within the definition of Reportable Jurisdiction, in these circumstances, the Account Holder is reportable under CRS and FATCA.

16. Can a Reporting Financial Institution use a classification determined by a standardised industry coding system as Documentary Evidence for Pre-existing Entity Account when carrying out the due diligence procedures referred to in Regulation 6 of S.I. No. 583 of 2015?

Yes. As set out in paragraph 154 in the Commentary on Section VIII of the Standard, Reporting Financial Institutions may use as Documentary Evidence a classification in the Reporting Financial Institution's records with respect to the Account Holder that was determined based on a standardised industry coding system, that was recorded by the Reporting Financial Institution consistent with

its normal business practices for purposes of AML/KYC Procedures or another regulatory purposes (other than for tax purposes) and that was implemented by the Reporting Financial Institution prior to the date used to classify the Financial Account as a Pre-existing Account, provided that the Reporting Financial Institution does not know or does not have reason to know that such classification is incorrect or unreliable. The term "standardised industry coding system" means a coding system used to classify establishments by business type for purposes other than tax purposes.

17. What should a Reporting Financial Institution do if an Account Holder provides a self-certification which fails the reasonableness check at account opening?

Section IV(A) and V(D)(2) of the Standard requires that upon account opening a Reporting Financial Institution must obtain a self-certification and confirm the reasonableness of the self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.

In circumstances where the self-certification fails the reasonableness test, a Reporting Financial Institution should not proceed with the opening of the account. This also applies to the account opening processes described in the OECD published guidance, FAQ 22.

18. One of the key requirements of CRS is obtaining a valid self-certification for New Accounts (Sections IV(A) and VI(A)(1) of the Standard). For the sake of clarity, can Revenue confirm the position regarding opening an account without a valid self-certification?

Revenue can confirm that in all circumstances an account cannot be opened in Ireland if a valid self-certification has not been obtained. If an account is opened without a valid self certification then this is in breach of the Irish CRS legislation and the Financial Institution shall be liable to the penalties set out in the legislation. In limited circumstances where a Reporting Financial Institution is applying the guidance set out in the OECD FAQ22, the Financial Institution should not allow a process longer than 90 days to obtain and validate a self-certification and in all circumstances the Reporting Financial Institution should ensure that they have obtained and validated the self-certification within a period which allows them to meet their reporting obligations. If a Reporting Financial Institution has not obtained a valid self-certification within the given timeframe, they should not proceed with the account opening process. It also follows that

transactions should not be permitted on the account until the account opening process is concluded and a valid self-certification obtained. Reporting Financial Institutions should note that this guidance does not apply in circumstances where it is appropriate to apply the treatment allowed under Section VI(A)(1)(b) of the Standard (and further described in OECD FAQ 20).

19. What are the CRS reporting requirements in respect of a Pre-existing Entity Account that had an account balance exceeding US$250,000 at 31 December 2015, was closed in 2016 but the due diligence on the account was not carried out until 31 December 2017?

Based on the scenario described above, although the account was not identified as reportable until 31 December 2017 (as provided for under Section V(1)(E) of the Standard), the account will be reportable in respect of 2016. As the 2016 CRS data has been exchanged, a Reporting Financial Institution should report such accounts by filing a supplementary return for 2016.The supplementary return should be submitted to Revenue in the normal manner (i.e. via Revenue Online Service (ROS)) no later than 30 June 2018.

20. What are the CRS reporting requirements in respect of a Pre-existing Individual Account (i.e. open at 31 December 2015), was closed in 2016 but the due diligence on the account was not carried out until 31 December 2017?

In this case, although the account was not identified as reportable until 31 December 2017 (as provided for under Section III(D) of the Standard), the account is reportable in respect of 2016. As the 2016 CRS data has been exchanged, a Reporting Financial Institution should report such accounts by filing a supplementary return for 2016. The supplementary return should be submitted to Revenue in the normal manner (i.e. via Revenue Online Service (ROS)) no later than 30 June 2018.

21. The CRS requires Financial Institutions to report where an Account Holder is Tax resident. What guidance can Revenue give in assisting Account Holders in determining their jurisdiction of tax residence?

Appendix II contains “Irish Tax Residence Frequently Asked Questions” which provides some guidance for Account Holders.

APPENDIX I - Explanatory note to main CRS options

There are areas where the Standard provides options for jurisdictions to implement as suited to their circumstances and the main options are set out below.

Reporting Requirements (Section I to the CRS)

1. Alternative approach to calculating account balances. 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. **(Commentary on Section I, paragraph 11)**

2. Use of other reporting period. 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 EU Directive allows a jurisdiction to designate a reporting period other than a calendar year**. (Section I, subparagraphs A(4) through (7); Commentary on section I, paragraph 15)**

3. Phasing in the requirement to report gross proceeds. 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 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. **(Section I, paragraph F; Commentary on Section I, paragraph 35)**

4. Filing of nil returns. 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.

Due Diligence (Section II-VII of the CRS)

5. Allowing third party service providers to fulfil the obligations on behalf of the financial institutions A jurisdiction may allow Reporting Financial Institutions to use service providers to fulfil the Reporting Financial Institution's reporting and due diligence obligations. The Reporting Financial Institution remains responsible for fulfilling these requirements and the accounts of the service provider are imputed to the Reporting Financial Institution. This option is available for FATCA. The EU Directive includes this option. **(Section II, paragraph D; Commentary on Section II, paragraph 6-7)**

6. Allowing the due diligence procedures for New Accounts to be used for Pre-existing Accounts. A jurisdiction may allow a Financial Institution to apply the due diligence procedures for New Accounts to Pre-existing Accounts. This means, for example, a Financial Institution may elect to obtain a self-certification for all Pre-existing 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 Pre-existing Accounts, a jurisdiction may allow a Reporting Financial Institution to make an election to apply such exclusion with respect to (1) all Pre-existing 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. **(Section II, paragraph E; Commentary on Section IV, paragraph 8)**

7. Allowing the due diligence procedures for High Value Accounts to be used for Lower Value Accounts. 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. **(Section II, paragraph E; Commentary on Section II, paragraph 8)**

8. Residence address test for Lower Value Accounts. 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 Pre-existing Lower Value Accounts (less than $1 million) held by Individual Account Holders. This test is an alternative to the electronic 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. **(Section III, subparagraph B(1); Commentary on Section III, subparagraph 7-13)**

9. Optional Exclusion from Due Diligence for Pre-existing Entity Accounts of less than $250,000. 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 Pre-existing 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. **(Section V, paragraph A; Commentary on Section V, subparagraph 2-4)**

10. Alternative documentation procedure for certain employer-sponsored group insurance contracts or annuity contracts. With respect to a group cash value insurance contract or annuity contract that is issued to an employer or individual employees, a jurisdiction may allow a Reporting Financial Institution to treat such 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. **(See Section VII, paragraph B; Commentary on Section VII, paragraph 13)**

11. Allowing financial institutions to make greater use of existing standardised industry coding systems for the due diligence process. 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. **(Commentary on Section VIII, paragraph 154)**

12. Currency translation. 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**. (Section VII, subparagraph C(4); Commentary on Section VII, paragraph 20-21)**

Definitions (Section VIII of the CRS)

13. Expanded definition of Pre-existing Account. A jurisdiction may, by modifying the definition of Pre-existing Account, allow a Financial Institution to treat certain new accounts held by pre-existing customers as a Pre-existing 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 pre-existing 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 Pre-existing 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 Pre-existing 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. **(Commentary on Section VIII, paragraph 82)**

14. Expanded definition of Related Entity. 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 Pre-existing Accounts or apply the account aggregation rules to Financial Accounts 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. **(Commentary on Section VIII, paragraph 82)**

15. Grandfathering rule for bearer shares issued by Exempt Collective Investment Vehicle. 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 provide 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. **(Section VIII, subparagraph B(9)).**

16. Controlling Persons of a trust. With respect to trusts that are Passive 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. **(Commentary on Section VIII, paragraph 134)** purposes.

APPENDIX II - Irish Tax Residence Frequently Asked Questions

In determining the tax status of an individual the purpose of the visit to the State is not relevant. The only relevant factor is the number of days present in the State.

There are two statutory residency tests, which are set out below. If either test is satisfied the individual will be regarded as resident in the State for tax purposes.

Under the statutory residency test an individual is resident in the State if he or she is present in the State for a total of:

(1) 183 days or more in a tax year, or

(2) 280 days or more in a tax year plus the previous tax year taken together, with a minimum requirement of 30 days in each year. This is commonly known as the 'look-back rule'.

A tax year follows the calendar year and a 'day' means any part of a day.

Comprehensive information regarding tax residence is contained in Tax and Duty Manual 34-00-01

Example 1

Kate lives and works in England and is sent by her employer to work in Dublin on a project from 1 March 2016 to 31 July 2016 (total of 153 days). Further work is subsequently required and she spends a further 30 days in the State in November 2016. As she has been present in the State for a total of 183 days in 2016, she will be treated as Irish resident for 2016.

Example 2

Jack lives and works in France and is assigned to work in Ireland from 1 April 2016 to 31 January 2017. As he has spent more than 183 days in Ireland during 2016, he will be treated as Irish resident in 2016. As he has spent more than 280 days in Ireland during 2017 and the preceding year (with 30 days relating to 2017) he will also be treated as Irish tax resident in 2017.

Example 3

Mike lives in Dublin but travels daily from his home to Northern Ireland for work and returns to Dublin that evening. He will be treated as being present in the State for each day he commutes as he is present in the State for part of that day.

Example 4

Mary takes a ferry from England to Dublin and arrives in Dublin at 10pm. She will be treated as being present in the State for that day as she spends part of that day in the State.

Example 5

Emily lives in Germany but spends some time in Ireland at her holiday home in Kerry. Her profile and Irish tax residence position over the years is set out below.

Tax Year	**Number of days in the State**	**Irish tax resident**	**Reason**
2014	180	No	Test 1 or 2 not met Present for less than 183 days in 2014 and less than 280 for 2014 and 2013 (Note: assumed days for 2013 are zero)
2015	110	Yes	Satisfies test 2 Present for more than 280 days for 2015 and 2014 (i.e. look back rule)
2016	260	Yes	Satisfies test 1 and 2 Present for more than 183 days in 2016 and more than 280 in 2016 and 2015
2017	29	No	Test 1 or 2 not met Less than 183 days for 2017 and 30 day requirement not satisfied for 2017

1) How are days present in Ireland determined?

For 2009 and subsequent years, an individual is regarded as being present in the State for a day if he or she is present in the State at any time during the day.

For years up to and including 2008 an individual was regarded as being present in the State for a day if he or she was present in the State at the end of the day i.e. midnight.

2) What is the treatment for individuals resident in more than one jurisdiction for same tax year?

It is possible that under the domestic tax legislation of a country, an individual may be resident in more than one jurisdiction for the same tax year.

In such circumstances, the 'tie-break rules' contained in double taxation agreements (DTA) between Ireland and other countries will be used to determine in which of the two countries the individual is considered to be 'a resident of' for the purposes of interpreting and granting relief under the DTA.

3) What is a Double Taxation Agreement?

A double taxation agreement is an international treaty concluded between the Government of Ireland and the government of another country or territory in order to prevent income and gains being doubly taxed in both countries. Ireland has signed comprehensive Double Taxation Agreements with numerous countries, including the United Kingdom. Double Taxation Agreements.

4) What are the DTA "Tie-Break" tests for residence?

Broadly there are four tests which must be applied in order to determine whether the individual will be regarded as a resident of Ireland or another country for the relevant tax year.

The four tests - which must be applied in the order they appear in the relevant double taxation agreement (DTA) – are applied until the tax residence position of the individual is determined for the relevant tax year. The tests are -

Tie-break Rule 1

An individual will be a resident of the country -

(a) where he has a **permanent home** available to him or her; but

(b) if he or she has a permanent home available to him in both jurisdictions, he or she is deemed to be a resident of the state with which his personal and economic relations are closer (i.e. the state in which he has his '**centre of vital interests'**).

Example 6

Frank, has his permanent home in Dublin, however he travels each day to Belfast for work, returning in the evening. He does not have a permanent home available to him outside of Dublin.

The individual is present in Ireland for more than 183 days in a year, but is also resident in the UK for the same year because of UK tax residency rules. However as Frank's permanent home is in Dublin, under tie break rule 1, he is resident of Ireland under the UK / Ireland DTA.

Example 7

Siobhán, has her permanent home in Derry, however she travels each day to Letterkenny for work, returning in the evening. She does not have a permanent home available to her outside of Derry.

The individual is tax resident in the UK under UK tax residency rules and is also tax resident in the Ireland for the same year as she is present in Ireland for more than 183 days.

However as Siobhán's permanent home is in Derry, under tie break rule 1, she is resident of the UK under the UK / Ireland DTA.

If after Tie-break Rule 1, the individual is still a resident of both countries, then one moves on to Tie-break Rule 2.

Tie-break Rule 2

If his or her centre of vital interests cannot be determined or if he or she does not have a permanent home available to him in either state then he or she will be deemed to be resident where he or she has a **habitual abode** (i.e. in whichever country is his/her principal place of abode).

If after Tie-break Rule 2, the individual is still a resident of both countries, then one moves on to Tie-break Rule 3.

Tie-break Rule 3

If he or she has a habitual abode in both states, or in neither of them, he or she is deemed to be a resident of the state of which he is a **national**.

If after Tie-break Rule 3, the individual is still a resident of both countries, then one moves on to Tie-break Rule 4.

Tie-break Rule 4

If he or she is a national of both states, or of neither of them, the question as to where the individual is resident will be decided by **mutual agreement** between the competent authorities in both countries.

Note - If an individual's treaty residence is determined in, for example, **Tie-break Rule 1** above, it is not necessary (or permitted) to apply any of the other tests further down the order.

Example 8

An individual is tax resident in the UK, where she has her permanent home and her main business interests. She also has some subsidiary business interests and a holiday home in Ireland. When she flies to Ireland for business meetings she often returns on the same day. The individual is present in Ireland for more than 183 days in a year, but is also resident in the UK for the same year because of UK tax residency rules.

This individual has a permanent home available to her in both countries. Under the tie-break rule in the Ireland-UK double taxation treaty, the individual will be treated as a resident of the UK because her personal and economic relations (her centre of vital interests) are closer to the UK than Ireland.