European Banking Federation

Chief Executive

Ref.:EBF_008525

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Brussels, 20 May 2014

Dear Mr Saint-Amans,

Subject: ***Comments on the Common Reporting Standard's Commentary***

I am writing to you on behalf of the European Banking Federation (EBF) to provide you with the EBF comments on the draft Commentary of the Common Reporting Standard (CRS) which will be discussed at the next meeting of the Working Party N° 10 on 26 May, with a final version being approved by the OECD Committee on Fiscal Affairs at its June meeting.

As from the start, the EBF has actively participated in the OECD consultation process and has always endeavoured to provide useful and constructive comments despite a very challenging timetable imposed by the G20.

For the last year, the EBF has continuously called for a single, consistent Automatic Exchange Of Information (AEOI) system and warned that any fragmentation of the framework would significantly increase costs for tax authorities and Financial Institutions (FIs), harm the efficacy of the system in preventing tax evasion and distort competition. To ensure consistency, the key concepts used in any AEOI components (e.g. the EU directive(s) meant to implement the CRS) must rely on common definitions notably to enable FIs to use the same fields with the same meaning in a potentially consolidated data base. Consistency between jurisdictions is fundamental and this is particularly true with respect to timing. The introduction of new partner jurisdictions to the AEOI regime at different dates would entail excessive disruption and costs, as the addition of each new jurisdiction would necessitate a new review of client files. We are very concerned about the current or potential lack of consistency at different levels of the AEOI framework:

- Those Governments which have committed themselves to be early adopters of the CRS envisage concluding hundreds of bilateral agreements, with high risks of fragmentation, of conceptual divergences and of spreading over time the implementation of the CRS.

- It is questionable whether the objective of consistency between FATCA IGAs and the CRS, both in terms of concepts and schemas for reporting is effectively met. In this respect, we are concerned that the schema for reporting under the CRS has not been discussed in further details with the Business Advisory Group.

- Although the Commission and EU Member States have stated several times that they are committed to a single standard, the ECOFIN Council recently adopted a Review Directive on the Savings Tax which is poorly aligned on the CRS. Therefore, the EBF remains very concerned about the EU developments which may lead to multiple, overlapping obligations, which could distort intra- and extra-EU competition and international business.

- In addition, the EBF has repeatedly called for the OECD to exploit synergies between the CRS and TRACE, which provides at-source tax relief and simplified procedures for governments to ensure the tax relief claims are appropriate. We do believe that aligning the CRS and TRACE concepts on common definitions is feasible without too many efforts and would bring significant efficiencies for both business and governments.

As regards the timeline, we would strongly urge Governments to agree on a realistic implementation calendar with a common start date ("big bang approach"). To implement FATCA and the CRS, FIs absolutely need a sufficient consolidation period, during which Governments would not table any other initiatives than those required for the setting-up of a legislative framework to implement the CRS. In addition, a grace period should be provided for the first stages of this implementation, in order to ensure a smooth implementation by tax administrations and FIs as they both will be learning the lessons from the first practical steps. Parties involved may realize that further guidance, or amendments to certain rules, are necessary.

We also believe that further work is required to ensure consistency at all levels of the AEOI framework (FATCA, IGAs, EU Directives, TRACE, etc) and, as the case may be, further convergence. Because of the political and time pressure imposed on the OECD by the G20 leaders, the CRS and its Commentary have been developed under a fast-track procedure which may not have created the most appropriate framework for high-quality standards. We believe that the OECD was indeed prevented from conducting a proper consultation of the industry, from carrying on an in-depth analysis of the legal and constitutional implications, including privacy aspects, and from undertaking an impact assessment of the volume of data to be generated, processed and cross-checked, and of the associated costs for tax administrations and FIs. Given the accelerated timeframe imposed by the G20, we have so far focused our comments on the "big issues" and have not had the opportunity to examine the smaller or more technical aspects of the CRS and Commentary as much as we would have wished. To address all these issues, we would strongly recommend the OECD to provide for a review process, with which the industry would be closely associated.

Such review process would help achieve a more proportionate system. In this respect, we would like to emphasize the risks inherent to the perceived lack of proportionality in relation to the fundamental right to privacy and to the protection of personal data. Given the early adoption of the CRS by most - if not all - EU Member States, the effectiveness of the CRS in the EU will impact the standard globally. It is crucial that any risk of legal uncertainty arising from the lack of proportionality of the CRS be cleared upfront, before any legislation implementing the CRS is introduced either by way of an EU legal instrument (e.g. a Directive) or through internal law aimed at implementing bilateral or multilateral agreements domestically. A very recent and important decision of the Court of Justice of the European Union (CJEU) has led to the invalidation of the "Data retention Directive" on the basis of the European Charter on Fundamental Rights (Judgment of the Court - Grand Chamber - of 8 April 2014: Case C-293/12 Digital Rights Ireland and C-594/12). Limitations on the exercise of the rights recognised by this Charter are subject to a principle of proportionality. According to the CJEU, *"the principle of proportionality requires that acts of the EU institutions be appropriate for attaining the legitimate objectives pursued by the legislation at issue and do not exceed the limits of what is appropriate and necessary in order to achieve those objectives"*.

You will find enclosed an Excel spreadsheet including our detailed comments on the draft Commentary. In this respect, I would like to draw in particular your attention on the following comments:

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- **New Account Opening for Preexisting Customer Relationships**: The latest version of the commentary provides that an account is considered a new account if the opening of the account requires the "*provision of new, additional or amended customer information by the Account Holder for purposes other than CRS purposes*." The EBF continues to be very concerned that this paragraph will require FIs to apply new account due diligence procedures for a very large number of accounts. The already existing AML/KYC accounts should be sufficient to address Governments' concerns under the CRS, and this was acknowledged for FATCA after a long deliberation by Treasury and the IRS. We therefore urge Governments to follow the "FATCA rule" in this area. However, in order to be constructive, we suggest at least amending the text to "*the opening of the Financial Account does not require the provision of new, additional or amended customer information by the Account Holder for purposes other than AML/KYC purposes*." With a view to ensuring consistency, the concept of "*treating new accounts of a pre-existing customer as pre-existing accounts*" should be reflected in all countries applying the CRS and should not be left to governments' discretion.

- **Reasonableness of self-certification**: It will be difficult for commercial and front office staff to evaluate whether an explanation is reasonable. Further guidance in this field would be much welcomed.

- **Dormant accounts**: The two definitions used in the definition of dormant accounts (no transaction for 3 years and no communication for 6 years) should not be cumulative (the current wording of the Commentary is rather confusing in this respect). There should be an exception to the reporting requirement during the period of dormancy when one of these two criteria is met. Furthermore, the classification of dormant accounts must follow an FI's policies and procedures rather than being evidenced on an account-by-account basis. In addition, we believe that the threshold of 1.000 USD is too low and should be raised to a balance of 10.000 USD. Below this threshold, the account would be considered as an excluded account even if it comes out of dormancy.

- **Place of birth**: Where a TIN is held and reported, we do not see the value in reporting the place of birth as it is the intention to collect TIN which will be a unique identifier for all accounts. We do not believe that this should be an additional requirement unless no TIN is issued in a particular jurisdiction. Nevertheless, we note that there is no commentary on the place of birth; as a minimum this should be defined as only one of either 'State', 'Town', 'City' or 'Country'. For pre-existing accounts a preference should be indicated but any of these should be acceptable. Consistency is essential in the implementation and as such we believe the definition of place of birth should be ideally stipulated in the CRS but, at the very least, should align to the provisions of the current CRS schema (Page 13).

As always, we remain available should you request any further clarification with respect to this submission.

Yours sincerely,

Guido Ravoet

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Section	Paragraph	page as of 02 May 2014 version	Issue	Proposal	Comments
			General	Align FATCA IGA and CRS definitions.	A number of definitions do not mirror the model IGA definitions. This could lead to lack of consistency which is unhelpful for FIs and Governments. We would strongly urge the inclusion of a glossary of defined terms in the Commentary.
			Cross references to FATCA final regs	Delete cross references to the FATCA Final Regulations.	These definitions should be incorporated into the CRS in their own right. A reader should not need to refer to US Treas Regs, where, for example, not impacted by FATCA. E.g Treas Regs quoted under page 12 para 5 references specified USP's and substantial US owners. The audience (outside of FATCA world) will find this confusing. Could cross referencing substantial US owners with owners from another country result in legal issues?
			General	We strongly recommend to not repeatingly include the CRS text within the Commentary but to only provide additional guidance and examples to the CRS. Otherwise the Commentary gets blown up without added value. In parts, the repetitive text within the Commentary is even not identical to the CRS/CAA, which brings further confusion and may lead to diverging interpretations by Governments/countries.	Examples : Page 11, 3.: Reporting items are listed as they are listed in the CRS except for the TIN which becomes "TIN(s)". It would be sufficient only to comment on this modification / clarification. Page 66, 34: First 5 rows are identical to the language of the CRS. Only the last sentence on "Arrangements …" adds useful comments.
			US & FATCA and CRS	Clarify how US FATCA and CRS will articulate.	With USA joining the early adopters what does this mean? Do we have to provide US resident data under the CRS reporting in addition to specified US person data under FATCA? Or is FATCA seen as being part of the single reporting standard?

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Introduction		10	Reciprocity issue	Clarify what happens, in particular for Fis, if "rules and administrative procedures" are not in place in an implementing jurisdiction.	Introduction - the text states that the CRS prescribes that "the rules and administrative procedures a jurisdiction is expected to have in place to ensure effective implementation of, and compliance with, the CRS". What will happen if the rules are not developed for the early adopting countries? What will FIs be required to do in a country A which enters into a bilateral agreement with country B which does not implement any rules or procedures to make its own FIs compliant?
I	2	11	Copy of Reporting to the client	Clarify the requirement to provide a copy to the client to leave flexibility for FIs. Check whether any Data Protection Issues in certain jurisdictions.	While we welcome confirmation that notifying account holders that they will be reported is not in conflict with the purpose of the CRS, we would want this to be at the discretion of the FI or in compliance with other legal or regulatory requirements. We believe that it should be sufficient to include the possibility of disclosure within the terms and conditions. Countries adopting the CRS may need to amend existing local requirements to supply a copy of information reported to the account holder – this we consider to be onerous for FIs as this would effectively compel them to provide annual statements in relation to CRS reporting. In cases of multiple tax residence, we see issues with providing copies of the information provided to various tax authorities as the income will be taxed in one or other jurisdiction depending on the agreement of the competent authorities rather than a decision by the individual. We see particular problems in meeting such a requirement in respect of both the fund and insurance industries, where the ability to contact pre-existing account holders is more challenging.

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I	3 a)	11	Information to be reported: Place of Birth	AMEND item 3. a) as follows: "in the case of any individual that is an Account Holder and a Reportable Person: the name, address, juridiction(s) of residence, TIN(s) and date **~~and place~~** of birth".	The place of birth has not been recorded up to now by many Financial Intermediaries and when a TIN is held and reported, we do not see the value in reporting Place of Birth, neither for tax reasons nor is it required according to the AML/KYC rules. The place of birth is - except in the USA - not relevant for tax matters.
I	3 a)	13	Place of Birth	Need for additional comments on Place of Birth	As already expressed, where a TIN is held and reported, we do not see the value in reporting place of birth. Nevertheless, we note that there is no commentary on place of birth, as a minimum for new accounts this should be defined as only one of either 'State', 'Town', 'City' or 'Country'. For pre-existing accounts a preference should be indicated but any of these should be acceptable. Consistency is essential in the implementation and as such we believe the definition of place of birth should be ideally stipulated in the CRS. There is a lack of specific commentary on Place of Birth: What should be reported? Eg. State, town or city or country etc? At the very least, it should be aligned with the FATCA and CRS XML schema specifications.
I	3c	11	Look-through approach for "Any entity" versus only for Passive NFEs	Correct mistake at item 3.b) which states "… in the case of **any Entity** that is an Account Holder and that is identified as having one or more Controlling Persons …"	Identifying Controlling Persons is only relevant on Passive NFEs and not on all types of Entities. No look-through approach for Active Entities.
I	7	13	General	Clarify unclear comment on jurisdiction of residence	Should this piece in brackets not state (i.e. not by a jurisdiction of source income?)

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I	9	13	Indentifying number	Introduce a hierarchy for the use of Identifying Numbers	There should be a hierarchy of numbers and a clear preference for the identifying number that should be reported, if held. For example, we would suggest that if the FI has a GIIN it should use that, in the absence of a GIIN it should use the number issued by the local country but there should be no requirement to report the GIIN and all other domestic identifiers. Consistency is essential in the implementation and as such we believe that guidance with respect to identifying numbers should be included within the commentary rather than being made available by individual countries. This would ease the burden for global organisations' implementing systems.
I	10	12	Referencing	Clarify referencing	To facilitate the usage of the Commentary we would recommend to implement references between connected sections, i.e. in this case between A(4) 10. and 14.
I	16	15	Definition of "Other income"	Delete "including deemed income". Need for additional comments on the example of "premiums paid at redemption or at issue"	The reference to "deemed income" may open the door to unexpected items and divergence / inconsistencies between countries. We should stick to the IGA provisions with respect to the definition of "Other Income". regarding the example on "premiums paid at redemption or at issue", we wonder how would we record the premium here? It would not normally be captured on any reporting in certain countries. FIs should only be required to report the information held on their systems and should not be required to make further calculations to determined deemed or other taxable income. Useful to pick this up in the glossary – is "premium" the right word? Perhaps associated amounts or income?

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I	16	15	Gross amounts and proceeds on closed accounts	Clarify reporting on closed Accounts	We recommend adding a section in the Commentary that clarifies that with respect to closed accounts only the account balance can be dismissed (just report on the closure on the account), but the gross income payments and gross proceeds still may need to be reported to that closed account that occured in the relevant reporting period until the closure of the account (analogue to FATCA).
I	23	16	Reporting	Allow flexibility to report in any currency	For flexibility purposes, we should suggest that the FI should be able to choose the currency in which the information is reported. Eg. a EU FI maintains an account in Japanese Yen. It may however prefer to report in Euros because it already does so for purposes of domestic tax reporting.
I	24	17	Reporting	Allow flexibility for spot rate dates: add "RFIs should be allowed to use the last spot rate know as of year-end. Alternatively, RFIs may use the spot rate in accordance with domestic tax rules".	The Commentary states that the spot rate to be used is that of the last day of calendar year: there may not be any spot rate on December 31 on certain markets / for certain currencies etc. RFIs should also be allowed to use the spot rate in accordance with domestic tax rules as they are already allowed to determine amounts and characterization of payments in accordance with the principles of their tax laws.
I	25-26	17	Definition of "Records"	Change the comment in second bullet point as follows: "the TIN or date of birth is in the electronically searchable records of the Reporting Financial Institution (whether or not there is an obligation to have it in the records); or"	It would be extremely burdensome for Fis to manually search in paper files for TINs and Date of Birth. It is proposed to limit the burden on electronically searchable information.

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I	28	17	Effects on Reasonable Efforts	Clarify consequence of unsuccessful reasonable efforts.	The Draft Commentary does not provide any consequences when an FI was not able to retrieve relevant information and when it applied reasonable efforts within the two years. We would welcome a clarification eg. Fis required to classify and report according to available information (or as undocumented accounts?).
I	30	18	Reporting of TIN	Clarification that if no TIN is obtained, the RFI does not have to report it and clarification that when a country starts issuing a TIN, the RFI are not required to request the TIN (only to report it if obtained). Add after the last sentence: “However, the Reporting FI is not required to request the newly issued TIN. In addition, if the Reportable Person does not provide its TIN, the Reporting Financial Institution is not required to report the TIN”.	For clarity purposes add after the last sentence : “However, if the Reportable Person does not provide its TIN, the Reporting Financial Institution is not required to report the TIN”. In addition, we should only be obliged to request the information that is available at that time. Information that becomes available later does not have to requested specifically. If a Reportable Jurisdiction starts issuing TINs the FI does not have to ask for the TIN, but it only must use the TIN once it is obtained via a self-certification form or otherwise. If such proposal is not followed, at least reference should be made to reference to "reasonable efforts" as applied elsewhere which could be used in this section as well.
I	33	18-19	Information to be reported: Place of Birth	Add as a last sentence in paragraph 33 the following: "Notwithstanding the foregoing, the Place of Birth is not required to be obtained and reported by the Reporting Financial Institution, unless domestic law of the FI requires it with respect to all individuals.”	If Place of Birth is maintained as an item to be reported, amend requirement so that FIs are only required to obtain it if domestic law requires it with respect to all individuals. There may indeed be cases where domestic law only requires Place of Birth for certain categories of clients. A requirement to obtain Place of Birth in those situations should be avoided as it would entail too much burden for FIs, it would lead to inconsistencies accross jurisdictions and would lead to partial information for tax authorities.

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I	34	19	Definition of "similar files"	Clarify definition of "similar files"	What is meant by similar files? We recommend introducing an example.
I	35	19	Phased approach	Introduce a phased approach for implementation of CRS. Amend last sentence accordingly: "(…) jurisdictions will introduce the reporting of such gross proceeds gradually and consistently".	We note that FATCA implementation proves that a phased approach is necessary. Governments should not leave this phased approach as an option but should instead recognize it.
II	1-9	20-22	Client Self Certification	Introduce the possibility of pre-populating self-certifications.	Commentary should clarify that a self-certification may be pre-populated by the RFI (except client's signature). Can a self cert form be pre-populated by the FI?
II	2	20	Negative balances	Delete reference to "negative balances".	We do not consider it appropriate to include negative balances as there is no taxable event and the reporting of negative balances would distort the balances reported as these would be net. If the intention is to ensure that an account with a negative balance is to ensure that the account is not regarded as closed, then this should be addressed under the definition of closed accounts ("even if the account balance or value is equal to zero **or that is negative**" Page 20 – Para 2).

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III	2	23	Reinstatement of de minimis thresholds	Re-instate de minimis thresholds for Pre-existing Low Value Accounts	De minimis thresholds should be re-instated for Individuals Low Value Accounts (Accounts with balance not exceeding 50.000 $ in accordance with the FATCA rule) for proportionality reasons. Under certain constitutional frameworks, in particular the EU one, certain requirements of the CRS may be viewed as lacking proportionality with respect the general objective pursued (fight against tax evasion). We refer to the recent decision of the Grand Chamber of the Court of Justice of the European Union (CJEU) on 8 April 2014 which has led to the invalidation of the so-called “Data retention Directive” on the basis of the European Charter on Fundamental Right. Limitations on the exercise of the rights recognised by this Charter are subject to the principle of proportionality. According to the CJEU, “the principle of proportionality requires that acts of the EU institutions be appropriate for attaining the legitimate objectives pursued by the legislation at issue and do not exceed the limits of what is appropriate and necessary in order to achieve those objectives”. The directive covered, in a generalised manner, all persons and all means of electronic communication as well as all traffic data without any differentiation, limitation or exception being made in the light of the objective of fighting against serious crime. In addition, the directive applied even to persons for whom there is no evidence capable of suggesting that their conduct might have a link, even an indirect or remote one, with serious crime.

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III	3	23	Applicable local law	Clarify status of "EU passporting".	Where the applicable law does not prohibit Reporting Financial Institutions from selling insurance or annuity contracts outright, but requires them to fulfil certain conditions prior to being able to sell such contracts to residents of the Reportable Jurisdiction (such as obtaining a license and registering the contracts), a Reporting Financial Institution that has not fulfilled the required conditions under the applicable law will be considered to be "effectively prevented by law" from selling such contracts to residents of such Reportable Jurisdiction. We would appreciate if it could be clarified/specified whether this applies in the context of "EU passporting".
III	5	23	Option between "B1" and "B2" procedures	Delete the option for jurisdictions to allow or not option between "B1" and "B2" procedure: Delete "jurisdictions may allow"	According to the CRS text itself, RFIs should have the choice to apply the B1 or B2 procedure rather than a jurisdictional basis, based on what the tax authorities allow. i.e. FIs need consistency to apply this on a global basis, and it would be preferable to maintain consistency with the model IGA approach. There is also a risk of competitive distorsions between FIs.
III	7 to13	24 to 27	B1 procedure	Add language to clarify that "B1 Procedure" does accomodate certain specific procedures such as Experion, Evid …	The Commentary should clarify that the "B1 Procedure" may be relied upon in cases where due diligence and identification of the Customer have been carried in certain specific ways: eg. Experion, i.e., electronic, checks that institutions do which would not involve any documentation that FIs would have on file, other than a document confirming that the online check was done by the 3rd party. "B1 Procedure" must be allowed also when there is reliance on a third party provider. Issues are particularly in the UK and Australia. -i.e. EVid.

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III	8	24	Indicia: "in care of" or "post box" addresses	Clarify that special circumstances where "in care of" or "post box" addresses are only meant to accomodate situations where there is no "physical address" available.	This rule needs to be clearly limited due to the potential for lack of consistency in respect of in care of addresses. It should only concern very limited cases eg. for Middle East countries or countries where no "physical address" available.
III	9	24	General: Dormant Accounts	Clarify the definition of Dormant Account and clarify that 2 definitions may apply alternatively: the "CRS definition" or the "domestic definition". To avoid confusion, delete the words "In addition" and replace with the following: "Alternatively, an account (other than a Cash Value …) may also be considered as dormant under laws or regulations or the normal operating procedures ….".	The rule is confused. It is difficult to see how rules 1 and 2 interact as different time periods and we believe that it should be clarified that the 2 definitions of Dormant Accounts - CRS and "domestic law" apply alternatively. Further the conditions laid out in the CRS may conflict with the domestic law provisions. While it currently reads "An account (other than a Cash Value Insurance Contract or Annuity Contract) is a 'dormant account' if (i) the Account Holder has not initiated a transaction with regard to the account or any other account held by the Account Holder with the Reporting Financial Institution in the past three years", we believe that this should say "any other known and associated account" throughout paragraph 9. We also believe that the FIs policies and procedures should be sufficient regarding transactions within "the past 3 years" and where it occurs in "the past 6 years" rather than requiring individual documentation account by account. (Page 24 - Para 9). Besides, the words "In addition" are confusing as it may be read as the CRS definition of dormancy being cumulative with the domestic definition. It should be made clear that it is either the definition of the CRS OR the domestic one that applies to define dormancy. DELETE "In addition" and replace with the following "An account (other than a Cash Value …) may also be considered as dormant under laws or regulations or the normal operating procedures ….".

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III	10	25	Reporting: Conditions for accepting declaration under penalties of perjury under B1 Procedure	Amend the Comments for item (i) as follows: "The Reporting Financial Institution has been collecting it under its normal operating procedures". Also Amend language relating to "Declaration under penalty of perjury" for the third requirement when the Government-issued Documentary Evidence does not contain a recent address or does not contain an address at all: delete "under penalty of perjury" or insert language to suggest that wrongful declarations punishable under local law are acceptable.	There are references to a declaration "under penalty of perjury" – this should also make reference to equivalent wording commonly used in local jurisdictions such as "I certify to the best of my knowledge and belief". When penalty of perjury is refered to, the term "confirmation" should be used at least. As financial institutions strive to apply one self-certification method in all locations, there should be no need to distinguish whether or not local (penal!) law would consider incorrect information a "perjury". It should be sufficient that instances where incorrect information is supplied may (depending on the circumstances and the local law) be punishable an offense. We are also concerned by "**A declaration of the individual Account Holder under penalty of perjury is acceptable only if (i) the Reporting Financial Institution has been required to collect it under domestic law for a number of years"** (emphasis added). We suggest that the underlined words should be deleted. (Page 25/para 10, page 26/para 11). In addition, this condition is too restrictive and should be deleted. Even for QI, FIs are not "required under domestic law" to do anything. At least replace (i) with the following: "the Reporting Financial Institution has been collecting it for a number of years under its operating procedures".

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III	20	28-30	Indicia for Electronic search ("B2 Procedure")	Delete "poorer" indicia: we acknowledge that residence and mailing address are "strong" indicia. Therefore, we suggest only keeping the "strong" indicia and omitting the less clear indicia which in most cases would only produce false positives.	We strongly suggest to delete the "poorer indicia" for a number of reasons described below as well as for proportionality reasons. Under certain constitutional frameworks, in particular the EU one, certain requirements of the CRS may be viewed as lacking proportionality with respect the general objective pursued (fight against tax evasion). We refer to the above-mentioned recent decision of the Grand Chamber of the Court of Justice of the European Union (CJEU) on 8 April 2014 which has led to the invalidation of the so-called "Data retention Directive" on the basis of the European Charter on Fundamental Right.
III	20	28-30	Indicia for Electronic search ("B2 Procedure")	Delete "poorer" indicia: we acknowledge that residence and mailing address are "strong" indicia. Therefore, we suggest only keeping the "strong" indicia and omitting the less clear indicia which in most cases would only produce false positives.	Should the electronic record search for some clients be adhered to, the relevant indicia should be as narrow as possible so that the number of false positives remains manageable. The Inclusion of telephone numbers would lead to unnecessary complexity and costs since some international telephone prefixes are not clearly assignable to a specific country. Likewise, the possession of a foreign telephone number is not a strong indicium for a certain tax residence given the evolution in telecommunications. Further, the inclusion of telephone numbers would be inconsistent with prevailing AML/KYC obligations as our banks are not obliged to keep documentation in this regard. As a practical issue, one further needs to be aware of the low data quality in this respect. Telephone numbers are often not (or not in electronically searchable form) recorded in the CRM systems. They are rather put down in the relationship managers filing.

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III	20	28-30	Indicia for Electronic search ("B2 Procedure")	Delete "poorer" indicia: we acknowledge that residence and mailing address are "strong" indicia. Therefore, we suggest only keeping the "strong" indicia and omitting the less clear indicia which in most cases would only produce false positives.	A Power of Attorney ("POA") granted to a person in another country or standing instructions are not effective indicia either. As long as the determination of the beneficial ownership according to AML/KYC procedures was done properly, there is no argument that the residence address of a POA holder or the destination countries related to standing instructions should be taken into consideration, It should be noted that our banks are not obliged to clarify the domicile of a POA holder according to AML/KYC rules.
III	35	31	Populated fields	Delete "unequivocally" in the CRS commentary	We do not believe that the use of the term "unequivocally" would allow FIs the discretion to rely on a blank field where the policies and procedures of the organisation should ensure that the presence of a blank field indicates that the information is not held.
III	38-42 - Subparagraph C(4)	32	Relationship manager inquiry	Include language to describe tasks or actions to be performed by the Relationship Manager.	Looking to the CRS document itself under Subparagraph (c)(4) – the Relationship manager inquiry – we believe that this section of the CRS should include the tasks or actions that an FI must perform to establish actual knowledge from a relationship manager (e.g form of certification and frequency). At the very least, the Commentary must deal with this omission in a consistent manner.

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III	41	32	Identification	Agregation by RM. Amend last sentence to make clear that the RM aggregation only takes place once the 1M$ threshold is reached (other than by the RM's knowledge).	There seems to be a circular definition here. This seems to depart from the UK Guidance solution (see example 1 page 109 of UK Guidance: RM aggregation applies only if 1M$ threshold is first met. This sentence should therefore be amended (or a sentence should be added) so as to make clear that the RM aggregation only takes place once the 1M$ threshold is reached (other than by the RM's knowledge).
III	48	34	Reasonableness check	Clarify language of comments to make clear that a RM does not have to confirm on an account-by-account basis as a Reportable or non-Reportable Person, but may do this once holistically per flagging the account holder.	The added comments seem to explain that the relationship manager must flag every High Value Account that he knows or suspects to be an account held by a Reportable Person, but that he is not required to confirm on an account-by-account basis that every other account is not a Reportable Account. Please confirm.
IV	5	36/37	Client Self Certification	Amend example 1 by introducing the fact that there is no tax convention (to show that this is a rare situation). Add language to say it is up to client and tax authorities to determine tax residency.	As the objective is to avoid such instance of multi tax residency, this example should be amended to say that there is no tax convention in this case to solve the double tax residence. This example should make it clear that it reflects a rare case.
IV	7	37	Requirement for validity of self-certification	Local jurisdictions must refrain from adding additional items to those listed under a) to e).	It should be clarified that the requirements for validity laid out in Section 7 are exclusive and that local jurisidictions should refrain from adding requirements as that would impede a universal implementation within large financial groups.

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IV	7	37	Client Self Certification	Amend Commentary so as not to treat always the absence of date as a cause for invalid self-certification.	The Commentary states that a form is only valid when "dated and signed (...) by the account holder". A self-certification obtained independently would be invalidated without a date. EBF considers that a failure to provide a date should not invalidate the self-certification and should just be an inconsequential error that could be remedied by the FI date-stamping the self-certification on receipt. This could be addressed by moving the words "and dated" to after the brackets and adding the word "by the account holder or on receipt by the FI".
IV	9	38	General	Amend wording relating to provision of a "hard copy" of SC as follows: "and must be capable of providing **upon request a hard copy to domestic tax authorities"**	Specify "capable of providing upon request a hard copy to domestic tax authorities". This needs to be a legal requirement towards the tax authorities only, we should not leave the door open to providing hard copies to clients outside a legal requirement – it would be an operational nightmare.
IV	10	38	Validity of SC	Add an example of first New Account opening with client identifying himself with country X passport (he is a national of country X) and declaring he is a tax resident of country Y. Clarify that if client confirms he is resident in Y then the SC is valid.	Examples of valid self-certification should be expanded so as to address some usual cases where a client will present a passport issued by / with an address in country X. The client will self-certify that he is a resident in country Y eg. Because he works there. SC should be valid if client confirms that he is a tax resident of country Y. At least, expand the examples of "reasonable explanantions" (eg. cros-border workers). See comments below.

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IV	12	38	Reasonableness check of SC	Add examples of situations of acceptable "reasonable explanation".	Change of circumstance allows for a "reasonable explanation" to support the self-certification. Other than the diplomat example provided it would be helpful for guidance to provide additional examples. Cases of "Reasonable explanation" should not be left open if not, it will be impossible for commercial and front office staff to evaluate whether an explanation is "reasonable". This is already doing tax analysis whereas the Commentary says on page 41 that it is not expected that FIs carry out a tax analysis. We strongly recommend to limit the cases of "Reasonable explanations" to a number of defined situations: diplomats, civil servants, students, teachers, cross-border workers. UK FATCA guidance may include useful examples.
IV	12	38	Reasonableness check of SC	With respect to "know or reason to know that …. Is incorrect or unreliable", correct reference to paragraph 16 of the Commentary which should read instead as follows: "see paragraphs 13 and 16 of the Commentary in Section III ….".	It is necessary to amend the reference made in order to tie up fully with the useful examples of paragraph 10 of Section VII page 54.
IV	24	41	Reasonableness check	Amend Example 1 as follows: "The **jurisdiction of the residence address** contained in the self-certification conflicts with that contained in the documentation collected pursuant to AML/KYC Procedures". Amend example to include language suggesting that the SC is valid if the account holder confirms that he is a tax resident of country of the SC.	For clarity purposes, amend example 2 as follows: "The jurisdiction of the residence address contained in the self-certification conflicts with that contained in the documentation collected pursuant to AML/KYC Procedures". Amend Example 2 as follows: "The jurisdiction of the residence address contained in the self-certification conflicts with that contained in the documentation collected pursuant to AML/KYC Procedures". Amend example to include language suggesting that the SC is valid if the account holder confirms that he is a tax resident of country of the SC. See our comments above. Or expand examples of "reasonable explanation" with cases where SC is acceptable (eg. cross-border workers).

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V	3	42	General	Remove the option for jurisdictions to allow 250,000$ threshold or not. It should be allowed by all jurisdictions as prescriptive.	If jurisdictions have the choice to allow or not the threshold, this will create inconsistencies across different countries.
V	10	43	General	Clarify how to identify and report tax residency of branches - as needs to be consistent and clear to all.	The situations of branches remains unclear. With respect to local branches of foreign clients, FIs are likely to have in their systems the "local" tax residency. Eg. An FI in a country applying a "territorial" approach maintains an account for a local branch of a foreign company. Due to local territorial tax rules of the FI, it should have in its systems a local tax residency for the local branch of the foreign company. This rule is likely to create problems due to the divergence between territorial and worldwide tax systems….
V	14	44	Client Self Certification	Amend language to clarify with respect to SC that an FI does not need to ask for information it already holds when asking for the self certification and/or it can use this information to pre-fill a self certification form, that blank fields will be acceptable and that an individual SC can be used by individuals and controlling persons.	
V	16	45	General: information on determination of Entity Status	Amend comments in last sentence to make it clear that Governments and tax authorities must provide information to Entities with respect to this complex determination "Active versus Passive status".	This is a very complex determination. It is up to Governments to set the rules and explain them and to provide the relevant information e.g. on the tax authorities' websites. This is putting too much responsibility on FIs.

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V	22	46	Client Self Certification	Amend comments to allow the Passive NFE to sign on behalf of its Controlling Persons.	Highly unlikely that a signature or positive affirmation for passive NFFE and controlling person would be possible on the same form. It should therefore be allowed that the entity account holder can provide the Controlling Person data if it holds it and do so on a single form and to allow the Passive NFE to sign on behalf of the Controlling Persons. Comments should be added to ensure that the SC contains enough information to match the Controlling Persons with the approriate entity.
VI	18	51	Identification	Add details on "publicly available information" in this paragraph which includes Standardized industry codes.	Add here the same wording as no 12 page 44 on industry codes: "publicly available information includes any publicly accessible classification with respect to the Account Holder that was determined based on a standardized industry coding system and that was assigned e.g. by a trade organization or a chamber of commerce, consistent with normal business practices".
VII	3	52	Reasonableness check	Amend comments to introduce a workable "reasonable check" only based on the "strong indicia". Delete the RM knowledge and amend it to tie it up with presence of "strong indicia" as for Low Value Accounts.	The added wording between brackets would mean a serious administrative burden.
VII	5	53	Reasonableness check	Add comments to clarify what to do when the Documentary Evidence is correct but AML/KYC data is incorrect or out of date.	What about if the Documentary Evidence is actually correct but AML/KYC data is incorrect or out of date? What is the cure? This is potentially circular, a deeming rule may be provided. In addition, examples including cases of cross-border workers or holiday homes would be very useful to avoid these circular situations.

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VII	10	54	Reasonableness check	Modify example 2 in the last sentence : "… does NOT constitute a reason to know that the original self-certification…"	Presumably an error in example 2 which should read at the end: "DOES NOT CONSTITUTE a reason to know …".
VII	10	54	General	Add examples to avoid "circular situations"	Add Examples in particular to avoid "circular situations" where SC and Documentary Evidence will NEVER match by nature (e.g. person lives in Itay and declared that tax resident in Spain). Examples including cases of cross-border workers or holiday homes would be very useful to avoid these circular situations.
VII	18	56	General	Revise wording of Example 1 to indicate that entity U is a Passive NFE since RM aggregation does not apply to Active NFEs.	We understand that the example does not state whether FI is dealing with an Active or Passive entity - it is an example to demonstrate the threshold as it applies to entitites. The example needs to be amended to indicate that Entity U is a Passive NFE - if Active, the RM aggregation does not apply.
VII	19	57	General	Expand Example 1	Example 1 seems to assume certain facts that are not set out in the example. Whilst this is factually correct, in practice it is unlikely the RM or A would know N was going to be a Controlling Person of T. Unless N discloses its links with T to RM, as systems would not necessarily match. However there will be situations where the RM knows and hence the accounts would need to be aggregated. Where no link and therefore no aggregation occurs there may be no RM in place within the definition. The example is very limited but but this and the next example seem to rely on the association by either systems or the RM.

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VII	19	57	General	Expand example 2	As above, we believe that example 2 should be expanded. How would they know it's the same underlying person? The RM needs to see the self certs? If this doesn't happen then the accounts are not "associated by an RM" so wording must be interpreted like this.
VII	19	57	Threshold and aggregation rules for Entities	Expand examples 1 and 2	Examples 1 and 2 As appears from the examples individual accounts would have to be aggregated with entity accounts to determine whether a preexisting individual account is a High Value Account. This does not agree with the definition of High Value Account, which is "a Preexisting Individual Account with a balance or value that exceeds $1,000,000". An entity account is not an individual account.
VIII	17	62	Client Self Certification	Amend comments to align definitions between CRS and FATCA for Entities.	The second type of Investment Entities is not in line with the FATCA rules. Issue 1: Client has to declare two status one for FATCA and one for CRS. Issue 2: How does the government jurisdiction know what kind of entity is an Investement Entity and possibly inform that kind of entity of its reporting responsibility? We understand from the amended comments that any passive NFE that asks a bank to do discretionary portfolio management, even for only part of its assets, thereby becomes an FI. That would mean that the reporting falls on that possibly small entity. We doubt such entities have the resources to deal with CRS requirements, in particular reporting requirements. In the FATCA world, such an entity is still qualified as a passive NFE. This should work better in practice, as the reporting is then done by the large FI, rather than the small "FI". Alignment with FATCA rules is crucial here.

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VIII	19	62	Term "Investment Entity"	Examples of cases described for Active Entities which are not Investment Entities should be broadened: in brackets should be examples and the list may not be limited. Change in the bracket the abbreviation "i.e." to "e.g." and/or refer to No. 124. on page 88 ("Active NFE criteria").	19. The term "Investment Entity", as defined in subparagraph A(6), does not include an Entity that is an Active NFE because it meets any of the criteria in subparagraphs D(9)(d) through (g) (i.e., holding NFEs and treasury centres that are members of a non financial group; start-up NFEs; and NFEs that are liquidating or emerging from bankruptcy). The cases described in brackets should be examples and the list may not be limited. We suggest to change the abbreviation in brackets "i.e." to "e.g." and/or refer to No. 124. on page 88 ("Active NFE criteria").
VIII	82	78	On-boarding New client (first New Account)	However, when implementing the Common Reporting Standard, jurisdictions are free to modify subparagraph C(9) in order to also include certain new accounts of preexisting customers.' - DELETE the option for jurisdictions to modify subparagraph C(9) in order to avoid inconsistencies between countries and FIs.	We note that specific language has been added in order to allow jurisdictions to clarify when a "New Account" is NOT to be treated as such for a Pre-existing Customer, subject to certain conditions (under items a) and b) (i) to (iv)). This needs to be a prescriptive rule as an option would leave to much leeway for inconsistencies between jurisdictions. It would prevent FIs operating globally to work on a global solution and would in addition lead to competitive distorsions between FIs around the world.

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VIII	82 a) and b)	78	On-boarding New client (first New Account)	DELETE requirement under VIII.no 82 b) (iv) OR failing that, AMEND it as follows: "*the opening of the Financial Account does not require the provision of new, additional or amended customer information by the Account Holder for purposes other than AML/KYC purposes and other than CRS purposes".*	We note that specific language has been added in order to clarify when a "New Account" is NOT to be treated as such for a Pre-existing Customer, subject to conditions (under items a) and b) (i) to (iv)). We continue to believe that the "FATCA rule" for New Accounts of Pre-existing Customers should be followed as it significantly reduces the burden on FIs while still providing assurance for Governments that Pre-existing Accounts are periodically reviewed under the usual AML/KYC rules already in place. These existing AML/KYCrequirements should be sufficient to address concerns under the CRS as it was under FATCA after much deliberation by Treasury and the IRS. There should be no requirement for additional CRS documentation in cases where new, additional or amended customer information will be obtained only because of the "product", since the customer was already onboarded according to AML/KYC provisions, which should be considered sufficient. We kindly suggest to delete this subchapter. Therefore, we urge Governments to accepts the "FATCA rule" and to delete condition b) (iv) ("the opening of the Financial Account does not required the provision of new, additional or amended customer information by the Account Holder ....."). Failing that, we would urge to clarify this condition b) (iv): as currently drafted, we struggle to see what would fall outside of "CRS purposes". This requirement would still require New Account due diligence for a large number of accounts that we would not otherwise due diligence. We strongly recommend that if requirement under b) (iv) is kept, it is then modified as follows to make it workable for FIs: "the opening of the Financial Account does not require the provision of new, additional or amended customer information by the Account Holder for purposes other than for AML/KYC purposes and other than CRS purposes".

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VIII	82 b) (iv)	78	On-boarding New client (first New Account)	If item b) (iv) is maintained, clarify the example in brackets as follows: "*(as the Account Holder would often be required to provide information with respect to its risk profile, a Self-certification would be requested upon the opening of this new Custodial Account. A change of the risk-profile of the Customer would however not entail the provision of a new Self-Certification except if a Change of Circumstance as defined for CRS purposes arises)".*	We note the specific language which has been added under item b) (iv) which we urge to delete (see preceding comment). Should this requirement be maintained, we would recommend to clarify the example in brackets to make clear that a self-certification would be required only once even if the risk-profile of the customer changes again (ie for "non-tax" reasons) with respect to a specific account: "(as the Account Holder would often be required to provide information with respect to its risk profile, a Self-certification would be requested upon the opening of this new Custodial Account. A change of the risk-profile of the Customer would however not entail the provision of a new Self-Certification except if a Change of Circumstance as defined for CRS purposes arises)".
VIII	92	80	Estate accounts	Add a comment to clarify that "Estate Accounts" relate to accounts of deceased persons which should be "Excluded Accounts"	

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VIII	93	81	Escrow accounts	Add comment to tie up with FATCA IGA conditions that may allow to consider as an "Excluded Account" an escrow account defined as such under local law.	93. Subparagraph C(17)(e) generally refers to accounts where money is held by a third party on behalf of transacting parties (i.e., escrow accounts). These accounts can be Excluded Accounts where they are established in connection with any of the following: a) a court order or judgment. b) a sale, exchange, or lease of real or personal property, provided that the account satisfies all the requirements listed in subparagraph C(17)(e)(ii). c) an obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time. d) an obligation of a Financial Institution solely to facilitate the payment of taxes at a later time. We note that according to Annex II of certain FATCA IGAs, escrow accounts may be treated as excluded accounts. However, under those IGAs the conditon for classifying an escrow account as an excluded account may include that the account serves solely with respect to transactions that are required by local law. We would suggest adding such other condition to the Commentary that when escrow accounts are established due to the permission of local law, those accounts may also be considered as excluded accounts under the CRS.

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VIII	103	84	Threshold Dormant accounts	Amend comments so as to treat Dormant Account as "Excluded Accounts" and to require that reporting obligations are imposed on RFIs once the dormancy period ends for accounts with a balance above a $ 10,000 threshold. Preferred solution: Amend example 6 accordingly. At least, as a fallback solution: Raise the threshold limit in Example 6 for Dormant account to a balance of USD 10,000 $. Make the appropriate modifications with section III page 24 paragraph 9.	As already expressed with respect to Dormant Account, the burden involved for FIs to report those accounts is disproportionate to the objective pursued while we do not see how tax evasion would occur in such cases. Dormant accounts should therefore be considered as "Excluded Accounts" as long as the dormancy period goes on. Once this dormancy period ends, the Accounts would become Reportable Accounts if their balance exceeded a $ 10,000 threshold. If this solution is not followed, at the very least, we suggest to inscrease the threshold in Example 6 to $ 10,000. Failing that, the relief for FIs will be very limited.
VIII	117	87	General	Add comment to indicate who will publish the list of Participating Jurisdictions.	
VIII	123	88	Investment Entity	Add comments to clarify status of US and CRS "Pilot" jurisdictions as "Participating Jurisdictions" for the purposes of the "look-through rule" for Investment Entities in non-Participating Jurisdictions.	With respect to an Investment Entity described in subparagraph A(6)(b) that is not a Participating Jurisdiction Financial Institution please confirm that: (i) the United States of America is always regarded as a Participating Jurisdiction, and (ii) all "CRS pilot countries" are regarded as Participating Jurisdictions, even if there is no CAA with the Reportable Jurisdiction.
VIII	132	90	General	Delete amended comments and go back to initial comments of version 1 of Draft Commentary: too much departure from the FATCA IGAs.	We are concerned about these new amendments which seem to go further than what is in the FATCA IGAs. We should stick to the IGAs' wording or at the very least conduct a legal analysis of the modifications proposed. We suggest an in-depth analysis and postpone the inclusion of any further amendments.
VIII	133	91	General	Delete reference to "Senior Managing Official".	How to define the SMO and how will FIs be able to identify these persons? This opens the door for inconsistencies between jurisdictions and goes beyond the FATCA IGAs….

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VIII	150	94	Documentary Evidence	Include in Documentary Evidence domestic tax Reporting or other international tax reportings for which tax residency is already being reported.	Notwithstanding the Residence Address Test, the overriding rule should be to rely on the country to which tax residence related information has been reported by the Reporting Financial Institution for other purposes. Thus, as a general principle, for purposes of determining the AEOI tax residence for an account the Reporting Financial Institutions should be allowed to rely on the country to which tax residence related information has been reported by the Reporting Financial Institution for other purposes (such as the EU Savings Directive or QI).
IX	2	98	General	Amend comments to delete the fact that the classification of an Entity (Entity status) ought to be resolved under the law of its jurisdiction of residence. At least, indicated that this requirement is to be undertaken by the Entity and that it is not a requirement for the RFI.	It is impossible to apply this rule (determine the status of an entity under the law of its jurisdiction) since FIs are not in a position to have knowledge of foreign law of all Participating Jurisdictions in this respect. This is totally in contradiction with the Commentary which states elsewhere that FIs do not have to carry out a tax analysis. The determination of an Entity's status according to the laws of its jurisdiction of residence would imply requesting tax opinions. if such a requirement is maintained, it should be clarified that this is a requirement for the Entity to undertake.
IX	17	100	Change in circumstances	Add comment to indicate that RFIs are not required to actively track changes in circumstances but are only required to take steps if they are informed of such changes.	For entities that used to be exempt this is a change in circumstances, which they have to report to the FIs that maintain their accounts. Please confirm that FIs are not required to actively look for those entities.
IX	18	101	General	Add comment to indicate that penalties for Customers not providing self-certifications will be imposed on Customers.	We recommend that all obligations and penalties are meant to lie with the customers. RFIs cannot be held responsible for a duty which is not theirs and over which they have no control.