NEW ZEALAND
BANKERS ASSOCIATION

Submission

to the

Inland Revenue Department

on the

Issues Paper: Implementing the global standard on automatic exchange of information

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Submission by the New Zealand Bankers' Association to the Inland Revenue Department on the Issues Paper: Implementing the global standard on automatic exchange of information

About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes that contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.

2. The following fifteen registered banks in New Zealand are members of NZBA:
   - ANZ Bank New Zealand Limited
   - ASB Bank Limited
   - Bank of China (NZ) Limited
   - Bank of New Zealand
   - Bank of Tokyo-Mitsubishi, UFJ
   - Citibank, N.A.
   - The Co-operative Bank Limited
   - Heartland Bank Limited
   - The Hongkong and Shanghai Banking Corporation Limited
   - JPMorgan Chase Bank, N.A.
   - Kiwibank Limited
   - Rabobank New Zealand Limited
   - SBS Bank
   - TSB Bank Limited
   - Westpac New Zealand Limited.

Background

3. NZBA welcomes the opportunity to provide feedback to the Inland Revenue Department (**IRD**) on the officials' issues paper: Implementing the global standard on automatic exchange of information (**Issues Paper**) which seeks feedback on how New Zealand might best implement the Common Reporting Standard (**CRS**).

4. NZBA and its members understand and support the commitment that New Zealand has made to global initiatives for greater tax transparency. We also appreciate the steps taken by IRD to provide consultation opportunities regarding the framework implementation and ongoing consideration to minimise compliance costs for affected Reporting Financial Institutions (**RFIs**) to the extent it does not undermine the policy intent.

5. If you would like to discuss any aspect of the submission further, please contact:

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Executive Summary

6. The below submission sets out the comments, recommendations and considerations on which there is general industry consensus for the development of a framework for the implementation of the Automatic Exchange of Information (**AEOI**). Our members will provide their responses to the specific questions posed in the Issues Paper in their own individual submissions.

7. NZBA and its members:

   a. Support the adoption of the wider approach for CRS due diligence and reporting.

   b. Support alignment of the New Zealand AEOI framework to the CRS and its associated commentaries, the United States Foreign Account Tax Compliance Act (**FATCA**), and the obligations imposed by the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML/CFT Act**).

   c. Recommend that transitional measures and relief are considered when developing the New Zealand AEOI framework.

   d. Recommend allowing for the lengthiest timeframes possible for completion of due diligence activities, and as a minimum, that these timeframes are aligned to those under FATCA.

   e. Recommend IRD adopt a practical approach to enforcement provisions.

   f. Recommend allowing for the United States to be treated as a Participating Jurisdiction with consideration around IGA reciprocity.

   g. Recommend IRD adopt a flexible and consultative approach to framework development, which takes into account the need for clear guidance and certainty when developing technology solutions.

   h. Submit that KiwiSaver, other superannuation schemes, workplace saving schemes and restricted schemes should be exempt from CRS due diligence and reporting obligations.

   i. Recommend that IRD put in place a public education regime to inform the public of their CRS obligations.

Wider Approach

8. NZBA and its members strongly support the adoption of the wider approach for CRS implementation across both due diligence ‘collection’ and ‘reporting’ requirements.

9. NZBA submits that the wider approach should be a significant driver of compliance cost reduction, ensuring consistency across obligations, scope and implementation timing.

10. NZBA submits that the most significant benefit of the wider approach is the reduction of work effort for financial institutions who would be able to undertake due diligence for all foreign tax residents from the CRS inception (rather than a targeted approach i.e. due diligence on accounts aligned to agreed jurisdictions of exchange).

11. Without the ability to complete due diligence and reporting across all jurisdictions, the costs of compliance will likely be considerably higher, because:

    a. Systems and processes would be required to manage complex rules in order to determine the due diligence required by jurisdiction.

    b. Training requirements would increase as due diligence for new customers is most often completed in branches by a large number of staff. It will be difficult to ensure compliance is achieved and the right level of due diligence is completed if branch staff must understand and comply with due diligence rules by jurisdiction.

    c. The customer experience would not be consistent. More information would be required from some customers than others, and this could lead to customer confusion and, potentially, complaints.

    d. Reporting requirements would be more complex.

    e. For our members who are part of a multi-jurisdictional group, compliance at a group level would be difficult to demonstrate/administer.

    f. The requirements to identify participating and non-participating jurisdictions for the purposes of classifying managed investment entities are also complex, and require further guidance.

12. The wider approach also enables one implementation of reporting, rather than ongoing changes to the technology solution to accommodate the introduction of new jurisdictions and their corresponding obligations each time a new jurisdiction agreement comes into force.

Defining the CRS "reporting period"

13. NZBA members will provide feedback on their preferred annual CRS reporting period in their own individual submissions.

Alignment to CRS/FATCA/AML

14. To the maximum extent possible, NZBA and its members strongly support alignment of the New Zealand AEOI framework to:

    a. the CRS and its associated commentaries, as issued by the Organisation of Economic Co-operation and Development (**OECD**);

    b. FATCA;

    c. the obligations imposed by the AML/CFT Act,

and submit that the framework should follow the approach that other jurisdictions (and in particular the jurisdictions in which the parents of major financial institutions reside – for example, Australia) are taking, so as to minimise compliance costs for financial institutions.

15. Such alignment would be consistent with the IRD's stated aim of facilitating a pragmatic implementation and should limit both implementation and ongoing compliance burdens imposed on financial institutions. We envisage that such alignment would include:

    a. Alignment of definitional content to the CRS and where possible to FATCA.

    b. Implementation of the CRS Standard schema (without variation).

    c. Allowing implementation of optional provisions in such a way to maximise flexibility without frustrating the intent of the CRS (for example, use of Standard Industry Coding System, expanded pre-existing definition, etc.).

    d. Developing industry/jurisdictional self-certifications forms that address all obligations under the tax regimes (for example FATCA/CRS).

16. Furthermore, excluded accounts and exemptions should mirror exclusions and exemptions under FATCA. For example, the following accounts are currently excluded under FATCA, but would be included under CRS unless specifically excluded:

    a. KiwiSaver and other superannuation scheme accounts (please see paragraphs 34-36 below for further details).

    b. Debt interests issued by a financial institution which is not solely an Investment entity (for example MTN, covered bonds, ECP).

    c. IGA tax pooling accounts.

17. The treatment of trusts under AEOI and any relevant trust guidance should also be defined early, as this is an area that has proved complex during the implementation of FATCA. NZBA and its members submit that any trust guidance should be aligned with both FATCA and AML/CFT legislation.

Transitional Measures, Good Faith and Relief

18. To provide flexibility and minimise compliance costs, we recommend that transitional measures and relief are considered when developing the New Zealand AEOI framework.

19. Specifically, we submit that in a similar manner to the IRS FATCA treatment, such relief permits the IRD to take into account the extent to which financial institutions are making good faith efforts to comply with the CRS and the burden of making the necessary modifications to existing due diligence and reporting obligations for the first two years (by applying a 'light touch' approach). Such an approach would also duly acknowledge the anticipated higher volumes under the CRS.

20. NZBA and its members recommend a phasing-in of the compliance regime with a soft-landing start: i.e. warnings provided, suitable time to comply, options to extend time limits and wording around reasonable efforts to fulfil reporting obligations.

21. NZBA and its members submit that such transitional measures, good faith and relief are particularly appropriate as the AEOI compliance timeframe has been shortened.

Implementation Timeframes

22. To avoid imposing an undue compliance burden, NZBA and its members recommend allowing for the lengthiest timeframes possible for completion of due diligence activities, and as a minimum, that these timeframes are aligned to those under FATCA.

23. Given the expected volumes of information to be exchanged under AEOI, it is expected that completing the implementation and due diligence activities will require the full period and possibly transitional relief as well. There is, of course, a risk that a shorter timeframe could result in a lower quality approach to due diligence.

24. IRD has previously indicated that Regulations defining the more detailed rules around the implementation of CRS would be released after the enactment of the relevant legislation. NZBA and its members urge the IRD to release the Regulations (at least in draft form) as soon as possible, in order to minimise the risk, and associated cost, of rework required in the event of unexpected requirements arising from these Regulations.

Practical Approach to Enforcement Provisions

25. NZBA and its members strongly recommend that:

    a. All available CRS 'options' be allowed for in the implementation, to provide the fullest flexibility for compliance; and

    b. IRD allows for an account holder grace period of 90 days in which to provide a self-certification. This will ensure that financial institutions do not lose business by having to apply onerous procedures to certain accounts. NZBA and its members believe a practical enforcement regime can be achieved in conjunction with a grace period by imposing appropriate penalties (for example, for providing false and misleading information or for non-provision).

26. NZBA and its members submit that there should be no penalty for minor, inconsequential failures to comply with due diligence and reporting obligations. Rather, penalties on financial institutions should be restricted to wilful failure to reasonably attempt to implement the requirements of the CRS.

27. NZBA and its members submit that penalties should be imposed at the financial institution level only, and not be imposed individually on officers or employees.

28. NZBA and its members submit that account holders should also be responsible for informing their financial institution on a timely basis about material changes in

circumstances regarding their account that will change their tax status. Such a requirement should be enshrined in legislation to obviate the need to change all customer terms and conditions. Please see paragraphs 37-38 below for further related suggestions.

Participating Jurisdiction Scope

29. NZBA and its members recommend allowing for the United States to be treated as a Participating Jurisdiction with consideration around IGA reciprocity. This would reduce 'look through' requirements for certain entities/controlling persons (such as managed investment entities).

Framework Development

30. Where possible, NZBA and its members recommend that certain aspects of AEOI that are likely to change from time to time (for example, lists of Excluded Accounts, lists of Non-Reporting Financial Institutions etc.) are included in schedules and guidance rather than amendments to the relevant Regulations, or are able to be prescribed by the Commissioner in a determination, rather than coded into the Tax Administration Act 1994.

31. The ability to update these without having to go through the full legislative process should afford the IRD with greater capacity and flexibility to keep its framework for AEOI current and aligned with ongoing global developments.

32. We also seek confirmation that impacted industry will be given the opportunity to comment on any draft CRS legislation or local guidance. As affected Financial Institutions expect to outlay significant budget to enable CRS implementation, the opportunity to provide input ensures consideration of practical approaches to achieve compliance and cost reduction where possible.

33. It is also important that clear guidance and certainty are provided before the necessary technology solutions are developed. Revised guidance issued during the implementation phase is inefficient and can render initial work to achieve compliance as outdated, inapplicable or irrelevant, adding to overall implementation costs.

Kiwisaver and Superannuation Schemes

34. NZBA and its members submit that KiwiSaver, other superannuation schemes, workplace saving schemes and restricted schemes should be exempt from CRS due diligence and reporting obligations as these schemes are not vehicles that facilitate or are used for tax avoidance.

35. KiwiSaver is similar to a retirement fund and is New Zealand specific. The majority of KiwiSaver members are New Zealand residents and there is accordingly, in our view, a low risk of KiwiSaver-related tax evasion.

36. Other superannuation schemes, workplace saving schemes and restricted schemes should also be excluded as these have limited withdrawal rights, which in our view make them low risk vehicles for tax evasion.

Public Education

37. NZBA and its members strongly recommend that IRD put in place a public education regime to inform the public of their CRS obligations.

38. Such a regime could take the form of a high-profile communications strategy aimed at the general public to inform them about their foreign tax obligations (i.e. both FATCA and CRS).