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## How Nigeria's Common Reporting Standard Regulations will affect banks, insurance companies, asset managers, and other financial institutions.

**Financial institutions must take steps to ascertain whether they are 'Reporting Financial Institutions' for CRS purposes and, if so, take further steps to understand their obligations and discharge them timeously, accurately and efficiently. Failure to do this can lead to penalties...**

What do you do as a tax authority if you suspect that tax residents of your country have taxable gains or incomes stashed away offshore? You find a way to locate the stash, and tax it. For not one but 105 tax authorities around the world, the Common Reporting Standard (CRS) is one way they will try to do this. Nigeria's Federal Inland Revenue Service (FIRS) is among this global rank, and has issued the Income Tax (Common Reporting Standard) Regulations ("CRS Regulations") to provide legal backing for CRS implementation in Nigeria. Nigerian financial institutions such as banks, insurance companies, asset/portfolio managers, and investment funds/trusts may have compliance and reporting obligations under the Regulations. Read on to find out how the Regulations affect you if you are a financial institution.

### What is the Common Reporting Standard?

Simply, CRS is a set of rules for automatic exchange of financial account information between the tax authorities of countries that have opted to make such exchanges. To opt in, a country must first sign the Multilateral Competent Authority Agreement for the Automatic Exchange of Financial Account Information ("the MCAA"). The MCAA is an international framework agreement which operationalises information exchange relations already entered into by its signatories. Such relations may exist under bilateral treaties (such as double tax treaties) or multilateral treaties (such as the Convention on Mutual Administrative Assistance in Tax Matters).

### Is CRS different from FATCA?

Yes. FATCA (or the Foreign Account Tax Compliance Act) is a US law requiring due diligence and disclosures similar to those required under CRS. However, FATCA disclosures relate to offshore accounts held by US nationals only whereas the CRS is global. FATCA is in principle the US version of CRS (the US is not a CRS participant) although there are a few significant differences between them.

### What Nigerian financial institutions are affected?

Broadly speaking, financial institutions such as banks, insurance companies, asset/portfolio managers, and investment funds/trusts could have reporting obligations under the CRS.

To determine whether a financial institution has CRS obligations in Nigeria, a 4-step approach can be taken. I have described these steps in broad terms below.

**Step 1**– is the institution an entity? – only non-natural persons and legal arrangements such as companies, partnerships and trusts can be affected. Individuals and sole proprietorships are not covered.

**Step 2**– is the institution in Nigeria? – only Nigerian resident entities and Nigerian branches of foreign-resident entities are affected by the Nigerian rules.

**Step 3**– is it a financial institution? – only institutions that perform key financial functions are affected. They

are defined as Depository Institutions, Custodial Institutions, Investment Entities, and Specified Insurance Companies.

- Depository Institutions are entities that accept deposits in the ordinary course of business – e.g. commercial banks.
- Custodial institutions are businesses that hold financial assets such as equity and debt instruments and other similar financial investments for customers – e.g. custodian banks/asset management companies and brokers. 20% or more of the gross income of the business as at year end or over the last 3 years should be attributable to the custodial services.
- Investment entities are businesses that trade in money markets, provide portfolio management or other investment services, or manage financial assets or cash, on behalf of clients – e.g. asset/portfolio management companies and money market funds.
- Specified Insurance Companies for the purpose of CRS are those that are obligated to make payments under an insurance contract with a cash value or under an annuity contract. This category will generally include most life and composite insurance companies.

### Step 4 – is it a Non-Reporting Financial Institution?

Certain financial institutions are categorized as Non-Reporting Financial Institutions (NRFIs). NRFIs are as follows:

- Government entities, central banks and international organisations, and their pension funds.
- Retirement funds such as Pension Fund Administrators that meet certain criteria.
- Qualified credit card issuers.
- Collective investment vehicles that meet certain exclusion rules.
- Trusts where any of the trustees is itself an RFI that has reported all required information regarding the trust.
- Other low-risk Financial Institutions as may be designated by FIRS.

Only institutions for which the answer is 'yes' at steps 1 to 3 but 'no' at step 4 qualify as RFIs and have reporting obligations.

### What obligations do RFIs have?

RFIs are obligated to perform due diligence to (i) identify Reportable Accounts (RAs), defined broadly as accounts held by tax residents of any jurisdiction with which Nigeria has a CRS exchange relationship; and (ii) collect the financial account information indicated above. Thereafter, RFIs must (iii) report the collected information to the FIRS in an annual information return due on 31 March of the year succeeding the year to which the information relates.

The CRS contains detailed rules on exactly what due diligence obligations RFIs have for new and existing entity and individual accounts.

### What happens if an RFI does not meet its obligation?

Penalties will apply. The CRS Regulations prescribe the following penalties for non-compliance:

- Failure to comply with duty/obligation imposed by the Regulations: ₦10 million in the first instance + ₦1 million/month.

- Failure by RFI to file information return: ₦10 million in the first instance + ₦1 million/month.
- Furnishing false or incorrect information: ₦5 million.
- Failure by RFI or any person to comply with the FIRS' requirement in the exercise of its powers: ₦1 million in the first instance + ₦100,000/month.
- Failure by RFI to keep records: ₦1 million in the first instance + ₦100,000/month.

### What information will be collected under CRS, and how will it be exchanged?

Details of local financial accounts held by persons who are tax resident in a CRS participating jurisdiction will be collected by Nigerian RFIs and sent to the FIRS.

The FIRS will then share this with the tax authority of the participating jurisdiction in which each account holder is tax resident. Details to be collected are as follows:

- Generally (as applicable) – account holder's name, address, tax identification number, date and place of birth, jurisdiction of tax residence, account number, account balance, the name and identification number of the financial institution keeping the account, as well as the total amount paid or credited to the account by the financial institution.
- For custodial accounts – other specifically required details are the total amount of investment income received or credited to the account (e.g. interest and dividend), and the gross proceeds of any asset/investment disposal or redemption received or credited to the account.
- For depository accounts – another specifically required information is the total amount of interest credited to the account.

### What is in it for FIRS? How will all of this affect Nigerian tax residents with accounts abroad?

You will have noticed that all the information to be gathered by Nigerian RFIs is in relation to non-residents and this information will eventually be for the benefit of foreign tax authorities.

In my follow up article, I will go into the details of how the FIRS intends to benefit from the CRS and how Nigerian tax residents with offshore accounts will be affected.

### The takeaway

With the introduction of CRS rules in Nigeria, financial institutions must take steps to ascertain whether they are RFIs for CRS purposes and, if so, take further steps to understand their obligations and discharge them timeously, accurately, and efficiently. RFIs must ensure they implement the proper due diligence procedures required for the different categories of financial accounts, and that they keep sufficient documentation as required.. Failure to do this can lead to penalties, embarrassed clients, and significant reputational damage, all of which can potentially upset investors and other stakeholders.

The FIRS must ensure that reported information is handled with utmost confidentiality and that its IT infrastructure is secure. Otherwise, it will not be able to access information on Nigerian residents' offshore accounts, thereby defeating the purpose and rendering the extra compliance burden placed on RFIs unjustifiable.



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