

Q&A: Common Reporting Standard and your personal or business tax residence

What is the Common reporting Standard (CRS)?

The Dutch government is cooperating with many countries to combat tax evasion. Internationally, members of the Organisation for Economic Cooperation and Development (OECD) have agreed to automatically exchange financial account information. The CRS was developed for this purpose. The CRS is a system designed to identify account holders living or domiciled abroad. It is also designed to annually exchange financial account information among countries that have signed an agreement for this purpose. The Netherlands is a participant in this agreement together with other EU member states (see Automatic Exchange of Information Portal - OECD). The CRS has been incorporated into the Dutch International Assistance (Levying of Taxes) Act (WIB). This act obliges financial institutions in the Netherlands to be aware and register where all account holders, private and commercial customers, reside or are domiciled for tax purposes. In addition, the tax identification number of their country of tax residence must be registered.

Financial institutions were subject to a similar obligation effective from 1 July 2014, but this obligation was limited to determining and registering whether customers are liable to pay tax in the United States. The Ministry of Finance signed a treaty for this purpose with the US government on 18 December 2013. The motivation for this was the American Foreign Account Tax Compliance Act (FATCA). Persons liable to pay tax in the United States, referred to as U.S. Persons in this Act, are required to file a tax return with the US Internal Revenue Service for credit balances maintained outside the United States.

Over 90 countries are participating in the CRS or have promised to participate in the near future. The intent is for all countries throughout the world to participate. The CRS will furthermore replace the European Savings Directive that within the EU provided for the automatic exchange of financial account information among EU member states.

What is the difference between the CRS and FATCA?

The CRS concerns the identification and registration of the personal or business tax residence of all account holders and sometimes also that of the ultimate stakeholders in an organisation. The WIB stipulates that banks must collect the personal details of account holders and to pass this on, together with certain financial information, to the Dutch Tax and Customs Administration. The latter will pass on the information of an account holder who lives or is domiciled in a CRS country to that particular country.

The US is one of the few countries that levies taxes on its residents or those that hold an American passport and who live abroad. The FATCA ensures that banks in all countries throughout the world must determine whether their account holders – and sometimes the beneficial owners of an organisation as well – are liable to pay tax in the US. Banks in the Netherlands are required to only submit the relevant information of American taxpayers / U.S. Persons to the Dutch Tax and Customs Administration. The Dutch Tax and Customs Administration forwards this information to the US Internal Revenue Service.

When will the bank ask you for a declaration?

When you are not yet a customer of a bank and you open a new bank account there.

The bank must then know whether you are a tax resident of the Netherlands or whether (in addition) you also are a tax resident of another country, and for the United States, whether you are a U.S. Person. The bank will then provide you with a self-certification form for you to fill out and sign. Where this option is available, you are also able to do this online.

An account can have multiple account holders, for example in the event of a so-called 'and/or' account. In such cases, each account holder is treated as an individual account holder and the bank must then apply the CRS identification rules to this person.

If you represent an organisation, the bank must know whether your organisation is domiciled in the Netherlands and whether it has a tax residence in another country as well. For the United States, the bank must determine whether the organisation qualifies as a U.S. Person. In certain instances, the details of the Controlling Person(s) must also be provided. The questions on the self-certification form or the online questions guide you to the relevant questions related to your particular situation in the most efficient way.

What are the testing criteria for personal or business tax residence?

Every country has laws that determine whether an organisation is a business tax resident in that country or whether the organisation is a look-through entity and its stakeholders therefore are considered tax residents. These laws and regulations differ by country. The OECD's website contains the best overview of the criteria that apply within each CRS country: see Automatic Exchange of Information Portal – OECD.

The key criteria for the Dutch Tax and Customs Administration are identified below.

Is your personal tax residence solely located in the Netherlands?

In the Netherlands, the Dutch Tax and Customs Administration determines your place of residence for tax purposes on the basis of your personal situation. The key criteria used are as follows:

- Where you live or reside most of the time;
- Where your partner and/or children live;
- Where you work;
- Where your family doctor resides;
- Where your insurance policies are held;
- Where you are a member of clubs/associations;
- Where your children attend school.

Most people live at a single tax address. However, if you have two or more fixed addresses, one or more of which is abroad, then you may be considered to live abroad as well for tax purposes. The tax authorities in that country will establish this on the basis of their own local rules.

Is your organisation's business tax residence solely located in the Netherlands?

In the Netherlands, the Dutch Tax and Customs Administration determines whether your organisation is domiciled in the Netherlands for tax purposes on the basis of the location where the actual management of your organisation is exercised. The key criteria used are as follows:

- Where the key business decisions are made;
- Where the managers work and meet;
- Where the bookkeeping takes place and where the (annual) financial statements are prepared.
- The following circumstances can also provide an indication of the location where actual management is exercised:
 - Where the shareholders live and meet;
 - Where the organisation is registered;
 - Where and in which form the organisation is legally incorporated.

The organisation's legal form plays an important role. For example, in case of a general partnership ('vennootschap onder firma'), the Dutch Tax and Customs Administration looks to the partners. In the Netherlands, the profits earned in a general partnership flow through to the partners for tax purposes. This form of partnership is said to be fiscally transparent.

Whether your organisation (in addition) is also domiciled in another country for tax purposes, depends on the laws in that other country and the different facts, activities and circumstances.

What happens with my information?

Banks will register the information you provide in their administrative systems. All financial institutions in the Netherlands are obliged by law to annually submit the financial information of their account holders to the Dutch Tax and Customs Administration.

If you specified that you have a personal or business tax residence in a CRS country then the Dutch Tax and Customs Administration will pass on your information to that country. If you specified that you have a personal or business tax residence in a country that is not a CRS participant and that furthermore does not have a tax treaty with the Netherlands, then the Dutch Tax and Customs Administration is not permitted to pass on your information to that country.

What about privacy?

Privacy of course remains secure. All of the information exchanged by banks in the context of the CRS remains confidential. Banks discharge a legal obligation when they submit certain information to the Dutch Tax and Customs Administration.

Which financial accounts are subject to this exchange of information?

The 'financial account' is a broad concept within the CRS. It includes:

- Deposit accounts;
- Safekeeping accounts;
- Equity interests in or claims against an investment entity;
- Capital sum insurance policies and annuity insurance policies.

Some accounts are excluded. This exclusively concerns financial accounts with a low risk of being used for evading taxes. No information is passed on to CRS countries for the following accounts maintained in the Netherlands:

- Life-course savings accounts ('levenslooprekening');
- Life-course insurance policies and life-course participation rights;
- Retirement annuities ('oudedagslijfrente');
- Mortgage-linked endowment insurance policies ('kapitaalverzekering eigen woning');
- Tax-efficient blocked savings accounts for mortgage repayment ('spaarrekening eigen woning');
- Tax-efficient blocked investment accounts for mortgage repayment ('beleggingsrecht eigen woning');
- Home construction/improvement accounts ('bouwdepot');
- Maintenance annuities ('alimentatielifrente');
- Golden handshake rights of entitlement to periodic payments ('goudenhanddrukstamrecht');
- Annuities for disabled children ('lijfrente voor invalide kinderen').

What information is passed on for these financial accounts?

On the basis of the CRS identification and reporting directives, banks determine whether there are any account holders with a personal or business tax residence in a CRS country. If a single account holder of an account with multiple account holders has a personal or business tax residence in another country, the bank in principle will have to report this information. The CRS refers to 'reportable account' and to a 'reportable person' or multiple 'reportable persons'. The criteria for this are established by law.

If there exists a reportable financial account and a reportable person, then the following personal information is passed on:

- Name;
- Address;
- Country of tax residence;
- The account holder's tax identification number (TIN);
- The date of birth and the place of birth, if the account holder is a private individual.

In addition:

- The account number or its functional equivalent (for example, a policy number in case of an insurance contract);
- The balance or the value of the account at the relevant year-end;
- Or, if the account was cancelled during the year, the fact that the account was cancelled;
- The total gross amount in interest deposited or credited to the account during the calendar year;
- The total gross amount in dividends received;
- The total gross amount in other income generated in relation to the assets (for example, your securities) in your account during the calendar year;
- The total gross proceeds resulting from the sale, repayment or redemption of financial assets (for example, securities or derivatives) that are deposited or credited to that account during the calendar year.

Note: In case of a joint account, the bank must attribute the full balance or the full value to every reportable account holder in reporting to the Dutch Tax and Customs Administration. The latter must pass on the full amount to the tax authorities of the relevant country. Information concerning Dutch dividend or foreign taxes levied at source are not passed on. In case you do not provide additional information on your tax return submitted in your (other) country of tax residence, this will probably result in an assessment that is higher than it should be in that country.

I already am a customer and I have one or more existing accounts. Do I need to do anything?

No, you do not need to do anything. If necessary, the bank will approach you on this matter.

I want to open one or more new accounts. Do I need to do anything?

Yes, as a new customer, the bank will always give you a self-certification form with certain questions or ask you certain questions online. You must then complete the form or answer the questions presented to you on your own behalf or on behalf of the organisation you represent. If you do not answer the questions properly or neglect to provide any answers, the bank cannot open an account for you.

No, not always if you already are an existing customer. In that case, the bank will verify the information it already has. If there is any doubt about the accuracy of this information or if there are any changed circumstances, then the bank will have to ask you (once again) to submit a self-certification form.

We are not yet customers and we want to jointly open a new account. Are all account holders required to answer the questions?

Yes. The bank is required to collect and register the required information for each account holder and to annually pass it on to the Dutch Tax and Customs Administration.

I have one or more accounts with different banks. Now what?

It is possible that you will have to submit a self-certification form to each bank. If you are an existing customer of a bank, then the bank will regularly verify the information it has about you. If there is any doubt about the accuracy of this information or if there are any changed circumstances, then the bank will have to ask you (once again) to submit a self-certification form. Also, when you open a new account, it is possible that the bank will ask you for a self-certification form.

What if I reside in a non-CRS country?

In this case, when you are a new customer, banks will also ask where you reside for tax purposes. This is to avoid having the bank ask you whether you reside in a new CRS country for tax purposes at a later stage, when your country of tax residence joins the other CRS countries.

If you already are an existing customer, then every bank will decide for itself what is most efficient and consistent with privacy legislation.

If you specified that you have a personal or business tax residence in a non-CRS country, the bank will then pass on your information to the Dutch Tax and Customs Administration as well. However, in that case, the Dutch Tax and Customs Administration is not permitted to pass on your information to the relevant country.

What if I am a tax resident of two or more countries?

If so, you would have specified this fact in the self-certification form you submitted to the bank(s). Your bank will provide your information to the Dutch Tax and Customs Administration with the codes for the relevant countries if, according to the CRS, there is a 'reportable account'.

It is rare for someone to reside in two or more countries at the same time. In general, it is recommended that you contact a tax advisor in that case.