NEW ZEALAND LAW SOCIETY

NZLS EST 1869

PRACTICE BRIEFING

Automatic Exchange of Information and Common Reporting Standard ('AEOI/CRS')

The purpose of this Practice Briefing is to provide a brief introduction to the AEOI/CRS regime and its key concepts. The new regime has significant implications for lawyers, both in terms of their own practices as 'entities' captured under CRS, and in their advisory capacity. This briefing highlights areas of relevance for lawyers including the implications for solicitors' trust accounts.

It is not intended as a substitute for legal advice or familiarity with IRD's guidance and the CRS. The Law Society intends providing further guidance to lawyers about specific AEOI/CRS issues, as needed.

INTRODUCTION

The OECD has developed a Common Reporting Standard (CRS) for the Automatic Exchange of Information (AEOI) in tax matters between participating jurisdictions. The regulatory imperative is to assist with the detection and deterrence of offshore tax evasion. Over 100 jurisdictions have committed to implementing AEOI/CRS so far.

The IRD's website *http://www.ird.govt.nz/international/exchange/crs/important-aeoi-crs-documents/* provides important information about the implementation of AEOI/CRS. This includes the IRD's ***Guidance on the Automatic Exchange of Information*** (Guidance) which is the primary source of information in this briefing. The Guidance is lengthy, comprising almost 200 pages.

This practice briefing covers:

- What is the AEOI/CRS regime?
- Legislation and time frames;
- Financial Institutions and Account Holders;
- CRS- the 'wider approach';
- What does customer due diligence involve?
- What is collectable and reportable information?
- Lawyers and AEOI/CRS (including the position of solicitors' trust accounts and trusts);
- AEOI/CRS and FATCA comparison;

» Penalties and anti-avoidance procedures;

At the end of this practice briefing, there is a list of key resources referred to and some practical next steps for lawyers.

WHAT IS THE AEOI/CRS REGIME?

AEOI is an information collection and reporting regime. Information about foreign tax residents is collected in New Zealand and provided to IRD. IRD can then exchange the information with New Zealand's AEOI exchange partners in order to fulfil international obligations. The scope and format of the information to be collected and shared is known as the Common Reporting Standard (CRS).

Under CRS, certain Financial Institutions (FIs), referred to as Reporting Financial Institutions (Reporting FIs) are required to conduct due diligence of financial accounts to identify reportable accounts. The Reporting FI is then required to report relevant information about foreign tax residents to IRD, in order for IRD to exchange this information with New Zealand's international partners. The meaning of the term "Financial Institution" is discussed below.

CRS builds off a similar bilateral framework to that which applies in respect of FATCA. However, CRS is multilateral and there are some key differences between the regimes (referred to below). The Law Society has also produced a practice briefing about FATCA.

Under CRS, New Zealand will provide information to certain countries known as 'reportable jurisdictions'. There are currently 58 Reportable Jurisdictions. Other jurisdictions, known as 'Participating Jurisdictions', will provide information to New Zealand without any reciprocity by New Zealand.

Lawyers may wish to refer to the Law Society's Practice Briefing on FATCA available at : *https://www.lawsociety.org.nz/practice-resources/practice-briefings/FATCA-and-New-Zealand-Law-Firms_Oct-2016.pdf* and there is also information about FATCA on the IRD's website.

LEGISLATION AND TIME FRAMES

The legislation implementing AEOI/CRS was given the Royal assent on 21 February 2017. Lawyers should refer to the IRD's CRS implementation timeline at the link at the end of this section.

New Zealand is committed to commencing CRS obligations from **1 July 2017**. Part 11B of the Tax Administration Act 1994 now incorporates FATCA and CRS obligations, and the Income Tax Act 2007 has also been updated to accommodate the new regimes.

IRD has produced the New Zealand CRS Applied Standard, which sets out in detail the modifications which have been made to CRS in respect of the reporting and due diligence requirements which will apply to New Zealand-based Financial Institutions. It also outlines defined terms (see reference at 'Further Resources' below).

Different due diligence and reporting deadlines apply for separate categories of Financial Accounts. These categories are also relevant to the level of due diligence required (referred to further below).

For Pre-existing Individual Higher Value Accounts (accounts which have an aggregate balance or value which exceeds $1 million as at 30 June 2017 and at 31 March each year thereafter) due diligence and reporting must be completed by **30 June 2018**. The deadline for Pre-existing Individual Lower Value Accounts is by **30 June 2019**.

Due diligence and reporting for Pre-existing Entity Higher Value Accounts (accounts which have an aggregate balance or value which exceeds $250,000 as at 30 June 2017) must be completed by **30 June 2019**. Pre-existing Entity Accounts which reach an aggregate balance or value of $250,000 as at 31 March of any subsequent year, must complete due diligence and reporting by **31 March** of the year following that year.

No due diligence or reporting is required for pre-existing Entity accounts with an aggregate balance or value of less than $250,000 (there are specific rules about aggregation which lawyers should be familiar with). A Reporting FI can choose not to adopt this exclusion threshold.

The New Zealand CRS Applied Standard allows Reporting FIs to elect whether they apply the dollar values given in CRS in USD or NZD. The election must be applied consistently across all CRS due diligence and reporting.

The New Zealand CRS Applied Standard provides that the reporting requirement for Reporting FIs is annually on 31 March, in line with the tax year.

Lawyers should refer to the IRD's website for further information about the CRS implementation timetable in New Zealand. *http://www.ird.govt.nz/international/exchange/crs/key-crs-dates/* and IRD's Guidance and New Zealand CRS Applied Standard in relation to categorisation of Financial Accounts, and Due Diligence requirements.

FINANCIAL INSTITUTIONS AND ACCOUNT HOLDERS

The AEOI/CRS regime applies to 'Entities'. Under CRS, the concept of 'Entity' is broad and means "a legal person or a legal arrangement", such as a corporation, partnership, trust or foundation. Importantly, an 'Entity' for AEOI/CRS will be broader than the concept of a legal person under common law or for tax purposes.

An 'Entity' for the purposes of CRS will be either a:

1. **Financial Institution (FI); or**
2. **Non-Financial Entity (NFE – either Active or Passive).**

An FI means a *custodial institution, depository institution, an investment entity or a specified insurance company* (these terms are all defined in the New Zealand CRS Applied Standard). An FI will be either a Reporting or a Non-Reporting FI. Reporting FIs have **due diligence, information collection and reporting** obligations.

Lawyers will need to determine whether their firm is a FI or a NFE. It is expected that most law firms will be Active NFEs, i.e. with no reporting obligations. Reporting New Zealand FIs must register with IRD.

Lawyers are not required to make an election in relation to status, as is required under FATCA. The impact of CRS on lawyers and the position of solicitor's trust accounts is discussed further

below.

"Account Holder" means the person listed or identified as the holder of a Financial Account by the Reporting FI that 'maintains' the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of CRS. There are additional definitions of Account Holder in the New Zealand CRS Applied Standard for certain types of accounts, such as Cash Value Insurance Contracts and Annuity Contracts, but it is not expected that these types of accounts will be particularly relevant to lawyers in their daily practise.

Account Holders will be **subject to due diligence** procedures carried out by the relevant FI. An Account Holder will have **obligations to provide information** to the Reporting FI holding their account(s) if the Account Holder or its 'controlling persons' (in the case of Passive NFEs) are foreign tax residents.

A 'Reportable Account' means an account held by one or more Reportable Persons, or by a Passive NFE with one or more 'Controlling Persons' that is a Reportable Person. A Reportable Person means generally an Individual or Entity that is resident in a Reportable Jurisdiction under the tax laws of such jurisdiction.

A Reporting FI will be required to further ascertain whether the Account Holder is an Active or Passive NFE. If the account holder is a Passive NFE, the Reporting FI will then need to determine whether any of the Controlling Persons are relevant tax residents. The definition of 'Controlling Person' is wide and departs from traditional legal concepts. 'Controlling Persons' means the natural persons who exercise control over an Entity. In the case of a trust, the term means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions.

Lawyers should refer to the New Zealand CRS Applied Standard and the IRD's Guidance in relation to the specific definitions of 'Financial Institution' and 'Account Holder' and 'Active and Passive' NFEs and 'Controlling Persons'.

Excluded Accounts and Entities

There are a very limited number of New Zealand FIs which will be exempt from CRS obligations. A New Zealand FI that is not exempt will be a Reporting New Zealand FI.

The CRS explicitly defines 'Excluded Accounts'. An Excluded Account is not a Financial Account for CRS purposes and is therefore not subject to CRS obligations (examples of 'excluded accounts' include retirement and pension, escrow and deceased estate accounts). Under CRS, jurisdictions may exclude further entities provided strict criteria are met. Any exclusion is made by determination of the Commissioner of Inland Revenue and will be published in a list on the IRD's website which is updated regularly. This list does not include those entities excluded automatically in the CRS.

Lawyers should refer to the New Zealand CRS Applied Standard and IRD's Guidance in relation to Excluded Entities and Accounts.

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CRS – THE 'WIDER APPROACH'

What is known as the 'wider approach' extends the list of jurisdictions to which CRS obligations will apply. The wider approach must be adopted in respect of due diligence. It may be adopted in relation to reporting obligations.

The 'wider approach' means identifying and reporting on foreign tax residents irrespective of whether they come from a Reportable Jurisdiction.

The compulsory wider approach to **due diligence** requires Reporting Financial Institutions to identify all non-resident Account Holders (and controlling persons of Passive NFEs). The optional wider approach to **reporting** requires Reporting FIs to report any non-resident Account Holder or Controlling Person identified as being non-residents of New Zealand.

Reporting FIs which adopt the wider approach to reporting will essentially shift the responsibility to IRD to sort non-resident data. This is a potential compliance costs saving measure and can minimise the risk of non-compliance for Reporting FIs through error in identifying reportable persons. It is expected that the number of Participating Jurisdictions and Reportable Jurisdictions is likely to increase over time.

WHAT DOES CUSTOMER DUE DILIGENCE INVOLVE?

Due diligence is the pathway for identifying Reportable Accounts and Persons.

The due diligence requirements are set out in detail in the New Zealand CRS Applied Standard and IRD's Guidance. However, at a high level:

1. **For Pre-existing Lower Value Individual Accounts:** Reporting FIs must adopt a residential address test or search for foreign indicia set out in the New Zealand CRS Applied Standard for accounts held as at 30 June 2017;
2. **For New Lower Value Individual Accounts:** The FI will need to obtain a self-certification for accounts opened on or after 1 July 2017 and cross check the reasonableness of the certification (this is known as the "validating' process) against other information obtained in connection with opening the account (including AML/KYC information);
3. **For Pre-existing Higher Value Individual Accounts:** The Reporting FI must review electronically searchable data maintained by the Reporting FI for certain foreign indicia set out in the New Zealand CRS Applied Standard. If the electronic data maintained by the Reporting FI does not include certain defined information about the Account Holder, the Reporting FI must conduct a paper record search for that information. If the relationship manager of the account has actual knowledge that the Account Holder is a Reportable Person, the Reporting FI must treat the account as a Reportable Account;
4. **For New Higher Value Individual Accounts:** The Reporting FI will need to obtain a self-certification for accounts opened on or after 1 July 2017 and cross check the reasonableness of the certification (this is known as the "validating' process) against other information obtained in connection with opening the account (including AML/KYC information);
5. **For Pre-existing Lower Value Entity Accounts:** Accounts with an aggregate balance or

value of less than $250,000 as at 30 June 2017 are not required to be reviewed or reported as Reportable Accounts;

6. **For Pre-existing Higher Value Entity Accounts:** Accounts with an aggregate balance or value of greater than $250,000 as at 30 June 2017 are subject to review. The Reporting FI must:
   (a) Determine the residence of the Entity;
   (b) Determine if the Entity is a Passive NFE;
   (c) Determine the Controlling Persons of a Passive NFE; and
   (d) Determine the residence of the Controlling Persons (if a Passive NFE).
7. **For New Entity Accounts (Higher and Lower Value):** The Reporting FI must:
   (a) Determine the residence of the Entity;
   (b) Determine if the Entity is a Passive NFE;
   (c) Determine the Controlling Persons of a Passive NFE; and
   (d) Determine the residence of the Controlling Persons (if a Passive NFE).

There will be strict time limits in relation to opening new accounts. Self-certifications are required on day one and the OECD has contemplated that validation can be completed on day two. If a Reporting FI does not obtain a relevant self-certification it must not open an account. This may have a flow on effect for lawyers who have been unable to obtain the required self-certification for clients whose funds need to be placed on IBD.

A Reporting FI cannot rely on a self-certification, documentary evidence or other information to determine the CRS status of an account if they know or have reason to know that it is incorrect or unreliable (i.e. potentially because of a change of circumstances that calls the certification into question).

It is important to remember that due diligence requirements are on-going in nature. CRS requires Reporting FIs to have in place procedures which ensure that a change in circumstances is identified that may affect the classification of a Financial Account (e.g. a change in residence).

The New Zealand CRS Applied Standard sets out due diligence requirements in specific detail and should be carefully reviewed and understood by lawyers.

WHAT IS COLLECTABLE AND REPORTABLE INFORMATION?

A Reporting FI will be required to provide prescribed **identity** and **financial** account information to IRD about an account it maintains when:

- It has identified that an account is held (or 'controlled' if a Passive NFE) by a Reportable Person from a Reportable Jurisdiction; or
- The Reporting FI has decided to adopt a wider approach to reporting and has identified that the account is held (or 'controlled' if a Passive NFE) by a relevant foreign tax resident.

The Reporting FI must report:

1. Identity information about the Account Holders or Controlling Persons (if a Passive NFE)- including name, address, jurisdiction of residence, the account number (or functional equivalent) date of birth, Tax Information Number (TIN) or equivalent.
2. Financial Account information- including the account balance or value, the amount of dividends and income paid or credits to the account, the amount of interest paid or credited to the account, and payments made to the account holder. If an account is closed during the reporting period, the closure must be reported (there is no reporting of account balance unlike FATCA which requires reporting of the balance immediately prior to closure).

The online IRD reporting portal and information on CRS will be located in the same place on the IRD website as FATCA for user ease.

Reporting FIs will also be required to report to IRD certain accounts where they have been unable to determine the residency of an account holder. These are known as 'undocumented accounts'.

Reporting FIs also have record keeping obligations under section 22(2) of the Tax Administration Act 1994 (reflecting the expectations in CRS). These obligations require Reporting FIs to document specific steps taken and evidence relied on in complying with CRS. This includes a record of any failure to obtain a self-certification and steps taken and evidence relied on in meeting obligations relating to CRS.

Storing documents electronically in accordance with the Electronic Transactions Reporting Act 2002 and Electronic Transactions Regulations 2003 (schedule 1 refers to legal requirements) is an option. A paper copy must be able to be produced to the Commissioner of Inland Revenue if requested, and the retention period for information is in line with the FATCA requirements (7 years from end of reporting period). The requirement to keep records includes any failure to obtain a self-certification. Lawyers should be familiar with these requirements and refer to the CRS.

LAWYERS AND AEOI/CRS

AEOI/CRS has significant implications for lawyers both in operating their practices and their advisory capacity. As mentioned above, law firms will themselves be Entities for CRS purposes. It is expected that most law firms will be Active NFEs (i.e. those with no reporting obligations).

However, lawyers acting in other capacities, such as trustees, will meet the CRS definition of Entity (which includes a legal arrangement) and will have to review their status under the New Zealand CRS Applied Standard, and any resulting obligations, carefully.

An NFE is defined as any Entity which is not a Financial Institution. Lawyers should review the various limb so of the definition of FI in the New Zealand CRS Applied Standard. The Law Society considers it unlikely that many law firms will meet any of the relevant definitions to become a Financial Institution. Broadly, the definitions require a high level of an Entity's income be derived from holding assets for third parties, or from investment services; or that an Entity accepts deposits in the ordinary course of a banking or similar business.

If an Entity is not an FI it is an NFE. An Active NFE is an NFE which meets one of a number

of specified criteria which are set out in the New Zealand CRS Applied Standard, and which lawyers should carefully review. These criteria generally concern the purpose of an Entity, the type of business an Entity conducts, and the proportion of that Entity's income which is derived from the Entity performing particular activities.

It is expected that most law firms will meet the first definition of an Active NFE, being an Entity which meets the following criteria:

- less than 50% of the Entity's gross income is derived from passive income; and
- less than 50% of the Entity's assets which were held during the preceding calendar year are assets that produce passive income.

Lawyers should review the definitions of 'FI' and NFE's-Active and passive in the New Zealand CRS Applied Standard to determine how they apply to their practice. Lawyers will also need to be familiar with the impact that CRS may have on their individual and corporate clients. For example, lawyers advising or acting as trustees will need to be aware of CRS obligations in respect of trusts.

Solicitors' Trust Accounts

The IRD's Guidance provides that a Reporting FI that maintains a law firm's general trust account may take the following approach where funds are not designated in the name of the client (i.e. not on IBD):

- The funds are held on a 'pooled' basis;
- The only person identified to the bank is the law firm;
- The law firm is not required to disclose or pass to the bank information about the underlying clients;
- The bank is required to undertake due diligence only in respect of the law firm.

For CRS, the relevant trust account bank will need to determine the tax residency and CRS status of the law firm (most commonly as an Active NFE).

However, each IBD account should be treated as a depository account directly made by the client and standard due diligence procedures, as set out above, will apply. Accordingly, a law firm must ensure that the required due diligence information (including self-certifications) is provided to the bank before the IBD is opened.

If an IBD account cannot be opened because of immediate unavailability of a self-certification (or issues around validation) this could raise an issue for lawyers under section 114 of the Lawyers and Conveyancers Act 2006 and the obligation to earn interest for clients. Lawyers will need to take a view on how this situation will be dealt with, should it arise in the course of their practise.

Some accounts held on IBD may in fact be Excluded Accounts for CRS purposes (see for example the escrow and deceased estate exclusions). Excluded Accounts are excluded from the definition of Financial Account, and accordingly no due diligence or reporting obligations arise in respect of them.

The position of trusts

Trusts are treated under CRS in a way that significantly departs from established New Zealand trust law principles.

For the purposes of CRS, a New Zealand trust is an 'Entity'. It will either be an FI or an NFE and it may have both reporting obligations and be subject to due diligence from another Reporting FI.

Commonly used trusts including family trusts may be Reporting FIs under the CRS regime. The most common category of Reporting FI trust is as an 'Investment Entity'. This is as either an 'in business' Investment Entity or a 'managed' Investment Entity.

A trust will be **'in business'** if it *primarily* conducts certain specified investment activities for customers. Examples include Unit Trusts, a collective investment vehicle constituted as a trust or a managed investment vehicle (under FMA Act) constituted as a trust.

A trust will be a **'managed'** investment entity if it:

- Derives its income **primarily** (50% or +) from investing, reinvesting, trading in financial assets; **and**
- It is managed by an FI (other than a managed Investment Entity).

An Entity will be **'managed'** by another FI if the Reporting FI has *discretionary authority* to manage the Entity's assets (in whole or part). A financial trustee will generally manage a trust, in this regard. If the Reporting FI simply provides advice to the Entity this is not sufficient to cause the trust to be a managed Investment Entity – it is the discretionary authority to manage the Entity's assets (either in part or whole) which is key.

If the trust falls within the Investment Entity limb of the definition of FI, then it will be a 'New Zealand' FI if one or more of the trustees is a New Zealand tax resident. The exception to this is if the trust is tax resident in another participating Jurisdiction and discharges all its reporting obligations under CRS through that jurisdiction (known as a 'trustee documented trust'). It will be a Reporting New Zealand FI unless it falls within one of the very limited exceptions (eg. a trust where the trustee is a Reporting FI which meets all of its reporting obligations concerning the trust, a pension or a retirement fund).

Obligations for Trusts as FIs

If the Trust is a Reporting FI it has obligations to:

- Carry out due diligence to identify accounts held (or, in the case of Passive NFEs, controlled) by relevant foreign tax residents;
- Report certain information to IRD about reportable and undocumented accounts.

The reporting trust's Financial Accounts will include debt and equity interests (so include a beneficiary's current account and a settlor's equity interests).

A discretionary beneficiary or person in a class of beneficiaries will have an equity interest if they receive a distribution.

Obligations for Trusts as Account Holders

Under CRS it is clear that a trust is the Account Holder (not the trustees). However, in practice, it will be the trustees who perform the duties of the trust.

The Reporting FI must carry out due diligence on a trust Account Holder to determine;

- If it is a relevant foreign tax resident;
- If it is a Passive NFE;
- If it is a Passive NFE, identifying the trust's controlling persons and determining whether any of those persons are relevant foreign tax residents).

The trust (and persons connected with the trust) may have obligations to provide self-certifications and other information to assist the reporting FI in carrying out due diligence. There are penalties related to a failure to provide information.

If the Reporting FI determines the trust is a Passive NFE, it will then need to identify the trust's Controlling Persons to ascertain whether any are foreign tax residents. Generally, the Controlling Persons of a trust means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust.

Reporting FIs will need to obtain sufficient information concerning beneficiaries designated by class or characteristic to satisfy themselves that they will be able to establish the identity of the beneficiary at the time of distribution or when they intend to exercise vested rights, as those occasions would constitute a change of circumstances triggering reporting obligations.

A Reporting FI has the option of only treating a discretionary beneficiary as a Controlling Person if the beneficiary receives a distribution in the Reporting Period. For convenience and operational reasons a Reporting FI may choose to treat all beneficiaries as Controlling Persons – this avoids the need to have extra safeguards in place to flag when a distribution has occurred as this would otherwise be a reportable 'change in circumstances'.

The CRS is clear that once a beneficiary has received a distribution they will continue to be considered an Account Holder (irrespective of any future distribution) unless excluded from the trust.

Lawyers should refer to chapter 11 of IRD's Guidance for further information about the position of trusts including specific provisions for charitable and foreign trusts.

PENALTIES AND ANTI-AVOIDANCE PROVISIONS

The New Zealand legislation has incorporated civil and criminal penalties in the Tax Administration Act 1994 to deter and address non-compliance. There is no 'withholding tax' sanction comparable to that which exists under FATCA.

Financial penalties under new section 142H of the Tax Administration Act 1994 will apply to Reporting FIs who fail to undertake due diligence or fail to report the requisite information or who provide inaccurate or false information. The penalties for individual offences begin at $300, but can be up to $40,000 for failing to take reasonable care to meet a CRS requirement.

Anyone who is required to provide information to Reporting FIs (under s185P of the Tax Administration Act 1994) may be subject to civil or criminal penalty for failing to provide the required information or providing false information.

As advisors, lawyers must also be aware of the 'anti-avoidance' provisions of the legislation. There is an anti-avoidance rule in s185R of the Tax Administration Act 1994 with application for both CRS and FATCA. In general terms, if **"a"** main purpose of entering into an arrangement is to avoid a requirement under that part of the Act, the arrangement will have no effect in relation to the person's obligations under that part of the Act. 'Arrangement' has a very broad meaning.

AEOI/CRS AND FATCA

AEOI/CRS and FATCA are closely aligned. Law firms will be able to leverage some of the work already undertaken for FATCA. However, there are some differences in approach.

The key differences include:

- No withholding tax under CRS.
- No minimum thresholds for individual accounts under CRS.
- There are more FIs captured under CRS regime due to a more restrictive approach to defining Non-Reporting FIs.
- Alternative due diligence for Pre-existing Individual Lower Value Accounts based on the residential address of the account holder. This difference in treatment is due to the USA taxing on basis of residence or citizenship, unlike the residential basis employed by most jurisdictions.

FURTHER RESOURCES AND NEXT STEPS FOR LAWYERS

It is vital that lawyers are well on the way to preparing for AEOI/CRS ready for **1 July 2017**.

The IRD's website contains general information about AEOI/CRS and FATCA. The IRD's Guidance also provides a comprehensive summary of CRS obligations and its practical application.

The New Zealand CRS Applied Standard is also available on the IRD's website *http://www.ird.govt.nz/resources/d/9/d99f167c-2f4b-4b87-bef3-ac56d08d8ee0/nz-crs-applied-std.pdf*

The IRD has produced a factsheet for Account Holders – IR 1033 (*http://www.ird.govt.nz/resources/f/2/f231e7fb-a118-4ff3-bbcd-5102b320f595/ir1033.pdf*).

IRD intends producing further brochurised targeted guidance including about the position of trusts.

The Law Society has produced FATCA/CRS self-certification form templates – available at: *http://www.lawsociety.org.nz/news-and-communications/latest-news/news/nzls-provides-suggested-fatca-and-aeoi-self-certification-forms*.

The OECD's AEOI portal provides general information and a useful FAQ guide on the practical

application of CRS. (*http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/CRS-related-FAQs.pdf*)

Practical preparation steps for lawyers include:

- Ensuring familiarity with the IRD's guidance and the New Zealand CRS Applied Standard. Watch for any changes to the guidance and publication of further resources by IRD too;
- Advising clients about the implementation of the CRS regime. This may include providing clients with a copy of IR1033;
- Consider using the FATCA/CRS self-certification templates on NZLS' website. Law firms should also contact the Bank holding the firm's trust account to establish the Bank's CRS requirements. The Bank may require use of its own self-certification template;
- Review work already undertaken for FATCA and in train for AML/KYC to see what work can be leveraged to ensure the correct CRS processes are in place for firms. This could include review of the due diligence processes already in place and adapting AML forms to cover CRS/FATCA requirements;
- Consider amending terms of engagement to reflect the requirement to obtain and disclose client information under the AML/FATCA and CRS regimes. Law firms may also wish to remind clients of the need to notify the firm of any relevant change in circumstances which may affect their status under CRS.
- Lawyers acting as trustees or advising trustees should ensure they are familiar with the CRS and IRD's guidance in respect of the position of trusts.

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