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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAX LAWS AMENDMENT (IMPLEMENTATION OF THE COMMON
REPORTING STANDARD) BILL 2015

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Treasurer, the Hon S. J. Morrison MP)

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ATO	Australian Taxation Office
Commissioner	Commissioner of Taxation
Convention	<i>The Multilateral Convention on Mutual Administrative Assistance in Tax Matters</i>
CRS	Common Reporting Standard
CRS Commentary	<i>Commentaries on the Common Reporting Standard</i>
FATCA	Foreign Account Tax Compliance Act
ICCPR	<i>International Covenant on Civil and Political Rights</i>
MCAA	Multilateral Competent Authority Agreement
OECD	Organisation for Economic Co-operation and Development
TAA 1953	<i>Taxation Administration Act 1953</i>
US	United States of America

General outline and financial impact

Common Reporting Standard

This Bill amends Schedule 1 to the *Taxation Administration Act 1953* to require certain financial institutions in Australia to report information to the Commissioner of Taxation (Commissioner) about financial accounts held by foreign tax residents. In turn, the Commissioner will provide this information to the foreign residents' tax authorities, and in parallel, will receive information on Australian tax residents with financial accounts held overseas.

In order to identify relevant accounts, financial institutions will need to carry out the due diligence procedures outlined in the *Standard for Automatic Exchange of Financial Account Information in Tax Matters*, commonly known as the Common Reporting Standard (CRS).

Date of effect: This Bill applies from 1 July 2017.

Proposal announced: The Government announced on 20 September 2014 that Australia would be committing to implement the CRS following the release of a discussion paper for public consultation on 19 June 2014 seeking stakeholder views on the implementation of the CRS.

Financial impact: The implementation of the CRS is estimated to deliver a small but unquantifiable revenue gain.

Human rights implications: This Bill raises human rights issues. See *Statement of Compatibility with Human Rights* — Chapter 2, paragraphs 2.1 to 2.30.

Compliance cost impact: The estimated compliance costs are \$67.2 million per year. Financial institutions in Australia will need to collect information about their customers that are foreign tax residents and report that information to the Commissioner.

Summary of regulation impact statement

Regulation impact on business

Impact: These amendments will affect certain financial institutions in Australia.

Main Points:

- The CRS is a standardised automatic exchange model that has been developed by the Organisation for Economic Co-operation and Development (OECD) and non-OECD G20 countries, at the request of the G20. As it is a standardised model, the policy options are limited to Australia not implementing the CRS and the timing of implementation.
- The six options are:
 - Option one – Australia does not implement the CRS (status quo).
 - Option two – CRS implementation on 1 January 2016, with the first exchange of information occurring by September 2017;
 - Option three – CRS implementation on 1 January 2017, with the first exchange of information occurring by September 2018;
 - Option four – CRS staged implementation from 1 January 2017. This option permits financial institutions to voluntarily implement the CRS on 1 January 2017 and requires all financial institutions to implement it on 1 January 2018;
 - Option five – CRS implementation on 1 January 2018, with the first exchange of information occurring by September 2019; or
 - Option six – CRS implementation on 1 July 2017, financial institutions report information for the period 1 July 2017 to 31 December 2017 in 2018 and the Australian Taxation Office (ATO) exchanges information with other tax authorities by September 2018.
- Each option is estimated to impose the following compliance costs each year:
 - Option one – there are no compliance costs under this option;
 - Option two – \$76.8 million;

- Option three — \$68.4 million;
 - Option four — \$64.8 million;
 - Option five — \$65.9 million; or
 - Option six — \$67.2 million.
- Option 1 has the lowest compliance costs, however the ATO will not receive CRS information from other tax authorities.
 - Options 3, 4, 5 and 6 have similar compliance costs.

Regulation impact on individuals

Impact: Individuals and entities will be required to provide additional information to financial institutions when opening new accounts after the CRS has been implemented.

Main Points:

- For individuals, they will generally be answering two additional questions on their tax residence and taxpayer identification number.
- For entities, they will generally be providing additional information on their controlling persons' tax residence and their taxpayer identification numbers.
- The expected cost for all of the options, except Option 1 is approximately \$2 million per year.

Chapter 1

Common Reporting Standard

Outline of chapter

1.1 This Bill amends Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953) to require certain financial institutions in Australia to report information to the Commissioner of Taxation (Commissioner) about financial accounts held by foreign tax residents. In turn, the Commissioner will provide this information to the foreign residents' tax authorities, and in parallel, will receive information on Australian tax residents with financial accounts held overseas.

1.2 In order to identify relevant reportable accounts, financial institutions will need to carry out the due diligence procedures outlined in the *Standard for Automatic Exchange of Financial Account Information in Tax Matters*, commonly known as the Common Reporting Standard (CRS).

Context of amendments

1.3 Globalisation and other technological advances have made it easier for individuals to hold investments in financial institutions overseas. Whilst investment income earned by Australian residents in financial institutions in other countries may form part of their Australian assessable income, this income may not be subject to tax if it remains unreported to the Australian Taxation Office (ATO).

1.4 Tax evasion is a global problem and international cooperation and sharing of high quality, predictable information between tax authorities will help them enforce compliance with local tax laws. The CRS is an international framework developed by the Organisation for Economic Co-operation and Development (OECD) and non-OECD G20 countries at the request of the G20 to tackle and deter cross-border tax evasion. It establishes a common international standard for financial institutions to identify the financial accounts of foreign tax residents, report information on those account holders and their financial accounts to their local tax authority and for the authority to exchange that information with the tax authority of the foreign resident.

The Common Reporting Standard

1.5 The CRS sets out the due diligence rules that financial institutions (known as Reporting Financial Institutions) of a Participating Jurisdiction must follow to identify Account Holders who are tax residents of another Participating Jurisdiction and to report the relevant account information to their local tax authority.

1.6 The CRS was endorsed by G20 Leaders at their meeting on 15 and 16 November 2014. To date, over 95 jurisdictions have committed to its implementation.

1.7 The CRS is based on and often mirrors the obligations imposed on financial institutions by the United States of America's (US) Foreign Account Tax Compliance Act (FATCA). These obligations are imposed on Australian financial institutions through the operation of Division 396 of Schedule 1 to the TAA 1953 which, following the passage of the *Tax Laws Amendment (Implementation of the FATCA Agreement) Act 2014*, took effect on 1 July 2014.

1.8 The decision by countries to base the CRS on FATCA was taken to minimise compliance costs for financial institutions and governments. Accordingly, financial institutions in Australia will be subject to similar due diligence and reporting requirements in the CRS as they currently are under FATCA. However, some adjustments have been made to adapt the CRS from a US-specific requirement to an international framework. For example, FATCA uses US citizenship information to determine an account holder's US tax residency, whereas the CRS uses other indicia (that is, it does not use citizenship as an indicium). In addition, the CRS applies to a wider range of financial institutions. For example, financial institutions with only low value accounts or with a local customer base (that do not need to comply with FATCA) are not specifically excluded under the CRS.

1.9 The Global Forum on Transparency and Exchange of Information for Tax Purposes has been requested by the G20 to establish a mechanism to monitor and review the implementation of the CRS. The Global Forum is the premier international body for ensuring the implementation of internationally agreed standards of transparency and exchange of information in the tax area.

The international framework for sharing information

1.10 There are different legal bases for Australia's automatic exchange of information, including Australia's bilateral tax treaties and the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (the Convention). The Convention provides for all forms of

administrative cooperation and contains strict rules on confidentiality and proper use of information. Australia signed the amended Convention in 2011.

1.11 Automatic exchange under the Convention requires an administrative agreement between the ATO and other countries' tax authorities. On 3 June 2015, Australia signed the *Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information* (MCAA), which is based on Article 6 of the Convention. To date, this agreement has been signed by over 70 jurisdictions.

1.12 The MCAA provides a framework for the bilateral exchange of information with other jurisdiction signatories. For example, it includes broad guidelines on how countries should establish confidentiality safeguards, collaborate on compliance and enforcement issues and engage in consultation. However, arrangements relating to the specific timing and manner of the automatic exchange of information between countries that are to exchange CRS information will be made at the administrative level (between the ATO and other countries' tax authorities) and will take effect once each country notifies the OECD.

1.13 To protect the confidentiality of account holders' information, the ATO will not automatically exchange information with the tax authority of another jurisdiction unless it has the legal and administrative capacity to ensure confidentiality. In addition, the ATO will be able to suspend the exchange of information with another jurisdiction's tax authority if it determines that there is or has been significant non-compliance with confidentiality safeguards.

Summary of new law

1.14 These amendments insert a new Subdivision, 'Subdivision 396-C — Common Reporting Standard' into 'Part 5-25 — Record-keeping and other obligations of taxpayers' in Schedule 1 to the TAA 1953.

1.15 To ensure consistency with the CRS, these amendments adopt meanings and concepts used in the CRS. This means the reporting obligations apply to 'Reporting Financial Institutions' in Australia that maintain at least one 'Reportable Account' in a calendar year. However, reporting obligations may also apply to financial institutions in Australia which receive a notice from the Commissioner requiring them to act as if they are a Reporting Financial Institution and to Reporting Financial Institutions which receive a notice from the Commissioner requiring them to report in relation to certain accounts.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>Financial institutions will need to carry out CRS due diligence procedures to identify Reportable Accounts held by foreign tax residents and provide a statement to the Commissioner about those accounts.</p> <p>Financial institutions may also be required to provide a statement to the Commissioner in relation to certain accounts if they receive a notice from the Commissioner requiring them to report.</p>	<p>Financial institutions have similar due diligence obligations to identify and report on accounts held by US citizens or tax residents.</p>
<p>Financial institutions that fail to collect account holder self-certifications about the jurisdiction of residence for tax purposes (and account holders that provide false or misleading self-certifications) may be subject to administrative penalties.</p>	<p>Financial institutions that do not comply with the due diligence requirements including collecting account holder self-certifications in accordance with the FATCA agreement may be subject to a 30 per cent US withholding tax on their US source income.</p>
<p>Financial institutions will need to keep records for at least five years that explain the procedures used for identifying these accounts.</p>	<p>Financial institutions have similar record keeping requirements in relation to their obligations to identify and report on accounts held by US citizens or tax residents.</p>

Detailed explanation of new law

The Common Reporting Standard

1.16 The ‘Common Standard on Reporting and Due Diligence for Financial Account Information’ (the CRS) is contained in Part II.B of the *Standard for Automatic Exchange of Financial Account Information in Tax Matters*, which was approved on 15 July 2014 by the Council of the OECD. [*Schedule 1, item 13, subsection 396-110(1) of Schedule 1 to the TAA 1953*]

1.17 A copy of this document is available on the OECD website (www.oecd.org).

1.18 The CRS is accompanied by the *Commentaries on the Common Reporting Standard* (CRS Commentary) that provides additional information on how financial institutions should apply the due diligence procedures to ensure consistency across jurisdictions. For example, the CRS Commentary provides the type of documentary evidence required in applying the residence address test contained in subparagraph B(1) of Section III of the CRS. In determining their reporting obligations under the CRS, Reporting Financial Institutions should, subject to the specifications as set out in paragraphs 1.27 to 1.54, apply the CRS consistently with the CRS Commentary. *[Schedule 1, item 13, subsection 396-110(2) of Schedule 1 to the TAA 1953]*

Reportable accounts — the reporting obligation

1.19 Reporting Financial Institutions in Australia that maintain at least one Reportable Account (within the meaning of the CRS) at any time during a calendar year will need to give a statement to the Commissioner in relation to each account. This statement will need to contain information that the CRS states the financial institution must report. *[Schedule 1, item 13, subsections 396-105(1) and (2) of Schedule 1 to the TAA 1953]*

1.20 The concept of a Reporting Financial Institution is defined in Section VIII of the CRS. It generally includes banks and other deposit-taking institutions, custodial institutions, brokers that hold financial assets for the account of others, investment entities and arrangements, and insurance companies that issue or make payments to investment-linked life insurance or annuity contracts.

1.21 The Commissioner may require a Financial Institution (within the meaning of the CRS) to act as if it is a Reporting Financial Institution (within the meaning of the CRS) in the circumstances set out in paragraph 1.60. Such Financial Institutions may be required to give a statement to the Commissioner. *[Schedule 1, item 13, subparagraph 396-105(1)(a)(ii) and subsection 396-130(4) of Schedule 1 to the TAA 1953]*

1.22 Implicit in the reporting obligation is the requirement that Reporting Financial Institutions will need to collect the relevant information, although in relation to certain accounts, a Reporting Financial Institution may rely on information it already has on file. Australia's *Privacy Act 1988* generally prohibits the use of personal information for a purpose other than for which it was originally collected but Australian Privacy Principle 6 provides an exception for entities that otherwise use or disclose such personal information to the extent this is required or authorised under an Australian law.

1.23 Whether a financial institution maintains a Reportable Account (within the meaning of the CRS) is determined by the financial institution applying the due diligence procedures described in the CRS consistently with the CRS Commentary. This means financial institutions need to have completed the relevant due diligence procedures, by the time they are required to provide a statement to the Commissioner. *[Schedule 1, item 13, subsection 396-105(3) of Schedule 1 to the TAA 1953 and item 14, table items 2 and 6 of subitem (2)]*

1.24 An account will be treated as a Reportable Account (within the meaning of the CRS) if the account would have been a Reportable Account had the Reporting Financial Institution applied the due diligence procedures described in the CRS (consistently with the CRS Commentary) in relation to that account. A financial institution cannot avoid its reporting obligations by failing to apply the due diligence procedures or applying them incorrectly. *[Schedule 1, item 13, subsection 396-120(5) of Schedule 1 to the TAA 1953]*

1.25 An account will also be treated as a Reportable Account (within the meaning of the CRS) in the circumstances set out in paragraphs 1.55 to 1.57. *[Schedule 1, item 13, subsection 396-130(1) of Schedule 1 to the TAA 1953]*

1.26 A Reporting Financial Institution that does not maintain any Reportable Accounts or accounts which are required to be treated as Reportable Accounts does not need to provide such a statement to the Commissioner.

The due diligence procedures

1.27 The due diligence procedures to be undertaken by a Reporting Financial Institution to identify a Reportable Account are described in Sections II through VII of the CRS. In general, these may require a Reporting Financial Institution to conduct electronic and paper record searches and collect self-certifications from its customers, in which customers declare their jurisdiction of residence for tax purposes. A self-certification will inform a Reporting Financial Institution if a customer's Financial Account is a Reportable Account and a Reporting Financial institution may be liable for an administrative penalty for failing to collect a self-certification (refer paragraph 1.79).

1.28 The CRS also provides that a Reporting Financial Institution cannot rely on a self-certification and documentary evidence if it knows or has reason to know that the self-certification is incorrect or unreliable (paragraph A of Section VII of the CRS). In relation to some accounts, the CRS also requires that a Reporting Financial Institution must treat an account as a Reportable Account if a relationship manager has actual

knowledge that the Account Holder is a Reportable Person (subparagraph C(4) of Section III of the CRS).

1.29 In general, the due diligence rules specified in the CRS differ according to:

- whether the account is held by an individual or another type of entity;
- whether the account is a Preexisting Account or New Account; and
- whether it is classified as a High Value Account or a Lower Value Account.

1.30 Australia is specifying how Reporting Financial Institutions are to apply certain due diligence procedures specified in the CRS and the CRS Commentary. These specifications are designed to give effect to particular matters that the CRS and the CRS Commentary allows implementing jurisdictions to specify in order to minimise the compliance costs for financial institutions. *[Schedule 1, item 13, subsection 396-120(1) of Schedule 1 to the TAA 1953]*

Non-Reporting Financial Institutions

1.31 The definition of a Non- Reporting Financial Institution is provided in paragraph B of Section VIII of the CRS.

1.32 For the purposes of meeting the definition of a Non-Reporting Financial Institution because the Financial Institution is a Qualified Credit Card Issuer, a Financial Institution must implement the relevant policies and procedures, outlined in subparagraph B(8)(b) of Section VIII of the CRS, by 1 July 2017. *[Schedule 1, item 14, table item 8 of subitem (2)]*

1.33 Some government entities, international organisations, Australia's central bank and retirement funds, as set out in Annex II of the FATCA Agreement, will generally be treated as being Non-Reporting Financial Institutions except in relation to some commercial activities. *[Schedule 1, item 13, paragraph 396-115(1)(a) and subsection 396-115(2) of Schedule 1 to the TAA 1953]*

1.34 Such entities do not need to identify if they maintain any Reportable Accounts or provide a statement to the Commissioner.

1.35 To provide flexibility in the future, the Minister may prescribe additional entities by legislative instrument as being Non-Reporting Financial Institutions if such entities present a low risk of being used to evade tax and are similar to a certain Non-Reporting Financial Institution

specified in the CRS. *[Schedule 1, item 13, paragraph 396-115(1)(b) of Schedule 1 to the TAA 1953]*

Excluded Accounts

1.36 The definition of an Excluded Account is provided in subparagraph C(17) of Section VIII of the CRS.

1.37 For the purposes of meeting the definition of an Excluded Account because the account is a certain Depository Account, a Financial Institution must implement the relevant policies and procedures, outlined in subparagraph C(17)(f)(ii) of Section VIII, by 1 July 2017. *[Schedule 1, item 14, table item 11 of subitem (2)]*

1.38 Retirement and pension accounts and some non-retirement savings accounts, as set out in Annex II of the FATCA Agreement, will generally be treated as being Excluded Accounts (and therefore excluded under the CRS from being Reportable Accounts). *[Schedule 1, item 13, paragraph 396-115(3)(a) of Schedule 1 to the TAA 1953]*

1.39 To provide ongoing flexibility, the Minister may also prescribe additional Excluded Accounts by legislative instrument if such accounts present a low risk of being used to evade tax and are similar to certain Excluded Accounts specified in the CRS. *[Schedule 1, item 13, paragraph 396-115(3)(b) of Schedule 1 to the TAA 1953]*

Preexisting Accounts and New Accounts

1.40 Generally, all accounts opened by financial institutions on or after 1 July 2017 will be treated as New Accounts; all other accounts (that is, those accounts maintained by financial institutions on 30 June 2017) will be treated as Preexisting Accounts. *[Schedule 1, item 13, subsections 396-120(6) and (7) of Schedule 1 to the TAA 1953].*

1.41 However, in certain circumstances, financial institutions may treat accounts of pre-existing customers opened on or after 1 July 2017 as Preexisting Accounts. *[Schedule 1, item 13, paragraph 396-115(5)(b) of Schedule 1 to the TAA 1953]*

1.42 When applying the due diligence procedures for Preexisting Accounts:

- the period from 1 January 2017 to 30 June 2017 is taken to be a separate calendar year from the period 1 July 2017 to 31 December 2017 (this ensures that the standard CRS rules, which are designed to apply on a calendar year basis, operate as intended for the first six month period (refer paragraphs 1.86 and 1.87)); and

- the following dates need to be read into the CRS.
 - For the purposes of determining whether a Preexisting Individual Account is a High Value Account, the test date to be read into subparagraphs C(6) of Section III and C(15) of Section VIII of the CRS is 30 June 2017.
 - For the purposes of determining whether a Preexisting Individual Account is a Lower Value Account, the test date to be read into subparagraph C(14) of Section VIII of the CRS is 30 June 2017.
 - The deadline for completing reviews of Preexisting Individual Accounts, in relation to Lower Value Accounts, to be read into paragraph D of Section III of the CRS is 31 July 2019.
 - The deadline for completing reviews of Preexisting Individual Accounts, in relation to High Value Accounts to be read into paragraph D of Section III of the CRS is 31 July 2018.
 - For the purposes of determining whether a Preexisting Entity Account has an aggregate account balance or value that does not exceed USD \$250,000, the test date to be read into paragraphs A and B of Section V of the CRS is 30 June 2017.
 - For the purposes of determining whether a Preexisting Entity Account has an aggregate account balance or value that exceeds USD \$250,000, the test date to be read into subparagraphs E(1) and E(2) of Section V of the CRS is 30 June 2017.
 - The deadline for completing reviews of Preexisting Entity Accounts with a balance exceeding USD \$250,000 to be read into subparagraph E(1) of Section V of the CRS is 31 July 2019.

[Schedule 1, item 14, table items 1 to 7 and 9 to 10 of subitem (2) and subitem (3)]

1.43 It is not necessary to specify a date for the purposes of subparagraph C(10) of Section VIII of the CRS, as ‘New Account’ is defined by reference to the concept of a Preexisting Account (see paragraph 1.40). Paragraphs 1.32 and 1.37 outline other dates that should be read into the CRS.

'Look through' due diligence procedures

1.44 A Reporting Financial Institution must apply the due diligence procedures set out in subparagraph D(2) of Section V and subparagraph A(2) of Section VI of the CRS to identify Passive NFE (Non-Financial Entity) accounts with respect to which reporting is required ('look through' due diligence procedures). That is, the Reporting Financial Institution must look through, among other entities, certain investment entities that are not Participating Jurisdiction Financial Institutions to identify Controlling Persons who are Reportable Persons (see paragraph C of Section V, subparagraph D(2) of Section V and subparagraph D(8) of Section VIII of the CRS).

1.45 For the purposes of these rules, a Participating Jurisdiction is a jurisdiction with which an agreement is in place pursuant to which it will automatically exchange information on Reportable Accounts with Australia and is identified on a published list (subparagraph D(5) of Section VIII of the CRS).

1.46 The Commissioner is expected to provide guidance regarding a list of Participating Jurisdictions to assist Reporting Financial Institutions to determine whether they have an obligation to apply the 'look through' due diligence procedures to certain accounts. Of note, specific transitional arrangements will be in place until 31 December 2019, which will also assist Reporting Financial Institutions in this regard (refer to paragraphs 1.88 to 1.90).

Elections by financial institutions

1.47 Unless otherwise specified, a financial institution may make any of the elections permitted in the CRS (including elections that follow as a consequence of choices Australia has made) in determining its obligations under the CRS. These include, for example;

- using third party service providers to fulfil their obligations;
- applying the due diligence procedures for New Accounts to Preexisting Accounts;
- applying the due diligence procedures for High Value Accounts to Lower Value Accounts;
- applying the residence address test for Lower Value Accounts;
- excluding Preexisting Entity Accounts with an aggregate value or balance of USD \$250,000 or less from its due diligence procedures;

- applying alternative documentation procedure for certain employer sponsored group insurance contracts or annuity contracts (refer to paragraph 1.54 below);
- making use of existing standardised industry coding systems for the due diligence process;
- using a single currency translation rule (discussed at paragraphs 1.49 to 1.50 below);
- applying the expanded definition of Preexisting Account (refer to paragraph 1.41 above);
- applying the expanded definition of Related Entity (refer to paragraph 1.41 above); and
- aligning the reporting obligations for trusts that are Passive NFEs with trusts that are Financial Institutions.

[Schedule 1, item 13, subsection 396-115(4) of Schedule 1 to the TAA 1953]

Reportable Jurisdictions

1.48 All jurisdictions (other than Australia) are to be treated as being Reportable Jurisdictions for the purpose of identifying Reportable Accounts. This requires Australian financial institutions to apply the due diligence rules to identify all of its customers that are foreign tax residents. *[Schedule 1, item 13, subsection 396-120(3) of Schedule 1 to the TAA 1953]*

Dollar amounts

1.49 Financial institutions may apply the dollar amounts specified in the CRS in Australian dollars (rather than as US dollars). This means financial institutions do not need to undertake currency conversion procedures to determine the balance or value of accounts in US dollars. *[Schedule 1, item 13, subsection 396-120(8) of Schedule 1 to the TAA 1953]*

1.50 For example, an account will be a High Value Account if it has a balance exceeding USD \$1,00,000 as of 30 June 2017 or, if a financial institution chooses to apply the dollar threshold in Australian dollars, AUD \$1,000,000 as of 30 June 2017.

Other modifications

1.51 Also, in determining its reporting obligations, a financial institution:

- will need to treat Australia as being a Participating Jurisdiction;
- will need to disregard the requirements in paragraph F of Section 1 of the CRS; and
- may apply the inclusion in paragraph 13 of the CRS Commentary on Section VII (Special Due Diligence Rules).

[Schedule 1, item 13, paragraph 396-115(5)(a) and subsections 396-120(2) and (4) of Schedule 1 to the TAA 1953]

1.52 Specifying that Australia is a Participating Jurisdiction for the purposes of the CRS ensures that financial institutions in Australia satisfy the definition of a Reporting Financial Institution in subparagraph A(1) of Section VIII of the CRS.

1.53 Disregarding the requirements in paragraph F of Section 1 of the CRS means that financial institutions must report about gross proceeds from the sale or redemption of certain Financial Assets (as described in subparagraph A(5)(b) of Section I of the CRS) in accordance with the due dates for a statement to the Commissioner outlined in paragraph 1.65.

1.54 Paragraph 13 of the CRS Commentary on Section VII provides an alternative due diligence procedure for certain employer-sponsored group insurance contracts or annuity contracts that simplifies the due diligence procedures otherwise applicable.

Anti-avoidance measures

Commissioner may require an account to be treated as a Reportable Account

1.55 If the Commissioner reasonably believes that a Reporting Financial Institution or an Account Holder has made a transaction or entered into an arrangement with the dominant purpose of avoiding the financial institution from identifying the account as being a Reportable Account (within the meaning of the CRS), then the Commissioner may serve a notice on the financial institution requiring it to treat the account as a Reportable Account. *[Schedule 1, item 13, subsections 396-130(1) and (2) of Schedule 1 to the TAA 1953]*

1.56 For example, if the ATO were to audit a random sample of foreign resident Preexisting Entity Accounts of a Reporting Financial Institution and discovered transfers to, and from, offshore accounts just before and after the end of a calendar year so that the account balances fluctuate below reporting thresholds at the time the thresholds are to be applied, then, in the absence of an apparent commercial or private administration reason for these transfers, it would be reasonable for the Commissioner to believe that the year-end account balances were manipulated to avoid the reporting of the accounts.

1.57 Similarly, if a Reporting Financial Institution did not create any electronic records for a Lower Value Account (such that an electronic record search would not yield any results) or maintains computerised systems artificially dissociated (to avoid the entity account aggregation rules) then, in the absence of a commercial reason for these arrangements, it would be reasonable for the Commissioner to believe these arrangements were entered into to avoid the relevant accounts from being reported.

1.58 A financial institution may object to a decision by the Commissioner to issue such a notice. *[Schedule 1, item 13, subsection 396-130(3) of Schedule 1 to the TAA 1953]*

1.59 A financial institution that receives a notice from the Commissioner may wish to advise the account holder of this.

Commissioner may require a Financial Institution to act as a Reporting Financial Institution

1.60 If the Commissioner reasonably believes that a Financial Institution undertook a transaction or entered into an arrangement with the dominant purpose of causing the Financial Institution not to be a Reporting Financial Institution (within the meaning of the CRS), then the Commissioner may serve a notice on the institution requiring it to act as a Reporting Financial Institution. *[Schedule 1, item 13, subsections 396-130(4) and (5) of Schedule 1 to the TAA 1953]*

1.61 The Financial Institution may object to a decision by the Commissioner to issue such a notice. *[Schedule 1, item 13, subsection 396-130(6) of Schedule 1 to the TAA 1953]*

1.62 These rules complement the rule described at paragraph 1.24, which is designed to prevent financial institutions from circumventing their reporting obligations.

Reportable Accounts — statements to the Commissioner

1.63 Reporting Financial Institutions must give the statement to the Commissioner in the ‘approved form’. The concept of approved forms is used in the taxation laws to provide the Commissioner with administrative flexibility to specify the form of information required and the manner of providing it. The ATO has committed to the early development and publication of guidance material and it is expected that the ATO will develop the approved form in consultation with financial institutions. *[Schedule 1, item 13, subsections 396-105(4) and (5) of Schedule 1 to the TAA 1953]*

1.64 Section 388-50 of Schedule 1 to the TAA 1953 provides the legislative basis for the use of approved forms. Subsection 388-50(2) allows the Commissioner to combine more than one statement in the one approved form and paragraph 388-50(1)(c) allows the Commissioner to require any necessary additional information.

1.65 Each statement is due to the Commissioner by 31 July of the year following the year to which the information relates. Of note, transitional arrangements that apply in 2017, require a statement that relates to a Reportable Account that is either a Lower Value Account or a Preexisting Entity Account be given to the Commissioner by 31 July 2019 *[Schedule 1, item 13, subsection 396-105(6) of Schedule 1 to the TAA 1953 and item 15, subitems (3) and (4)]*. However, section 388-55 of Schedule 1 to the TAA 1953 allows the Commissioner to defer the time that entities must lodge a statement in the approved form. This means Reporting Financial Institutions may lodge these statements by a later date where that has been approved by the Commissioner.

1.66 The due date for providing a statement to the Commissioner depends on the calendar year in which an account is maintained. It is not contingent on when a Reporting Financial Institution carries out the due diligence to identify the account as a Reportable Account. See paragraph 1.23 for discussion of when due diligence must be completed. *[Schedule 1, item 13, paragraph 396-105(1)(c) and subsections 396-105(2), (3) and (6) of Schedule 1 to the TAA 1953]*

Consequences of not complying

1.67 Australia’s domestic tax laws contain a range of sanctions that may be applied to Reporting Financial Institutions that do not comply with their reporting obligations. Specifically:

- Division 284 of Schedule 1 to the TAA 1953 sets out the penalties that apply to entities that make false or misleading statements about tax-related matters; and

- Division 286 of Schedule 1 to the TAA 1953 sets out the penalties that apply to entities that fail to lodge statements on tax-related matters in time.

1.68 This means, for example, that:

- a Reporting Financial Institution that makes a false or misleading statement because of an intentional disregard of the taxation laws may be liable to an administrative penalty of 60 penalty units — per table item 3A of subsection 284-90(1) of Schedule 1 to the TAA 1953;
- a Reporting Financial Institution that makes a false or misleading statement through recklessness as to the operation of the taxation laws may be liable to an administrative penalty of 40 penalty units — per table item 3B of subsection 284-90(1); or
- a Reporting Financial Institution that makes a false or misleading statement because of a failure to take reasonable care to comply with the taxation laws may be liable to a penalty of 20 penalty units — per table item 3C of subsection 284-90(1).

1.69 Similarly, a Reporting Financial Institution that fails to provide a statement on time, or in the approved form, may be liable under subsection 286-80(2) of Schedule 1 to the TAA 1953 to a base administrative penalty of one penalty unit for each period of up to 28 days from when the document was due, up to a maximum of five penalty units (subsections 286-80(3) and (4) of Schedule 1 to the TAA 1953 increase these penalty amounts for some entities).

1.70 Section 4AA of the *Crimes Act 1914* provides the value of a penalty unit. The current value is \$180 (this value will be subject to future indexing in accordance with subsection 4AA(3) of the *Crimes Act 1914*).

1.71 A Reporting Financial Institution that fails to comply with the due diligence procedures in identifying any Reportable Accounts is unlikely to be able to provide complete and accurate information to the Commissioner. For example, a Reporting Financial Institution that fails to collect a customer's self-certification upon account opening would have difficulty in identifying and reporting on that account holder's jurisdiction of residence for tax purposes.

1.72 Accordingly, a Reporting Financial Institution that does not collect an account holder's self-certification may be subject to:

- an administrative penalty for providing a false or misleading statement to the Commissioner (particularly if the Commissioner requests information in the approved form about whether the institution has collected a self-certification as required by the CRS); or
- an administrative penalty for failing to lodge a statement with the Commissioner.

1.73 In addition, financial institutions that fail to collect a self-certification as required by the CRS may be liable to an additional administrative penalty. Further information about this penalty is in paragraphs 1.79 to 1.81.

The requirement to keep records of relevant procedures

1.74 Similar to Australia's income tax regime and FATCA-related reporting obligations on a financial institution, the CRS reporting obligations on a Reporting Financial Institution will operate on a self-assessment basis. Under self-assessment, a taxpayer typically performs certain functions and exercises some responsibilities that might otherwise be undertaken by the tax authority. One consequence of a self-assessment approach is that whilst the Commissioner may initially accept an entity's statement at face value, the Commissioner may subsequently seek to verify the accuracy of that statement, particularly if there are potential compliance risks.

1.75 Accordingly, reporting entities will need to keep adequate records about the procedures they used in preparing the relevant statement to ensure the Commissioner can properly assess whether they have, in fact, complied with their reporting obligations. This record-keeping obligation is similar to other record keeping provisions in Australia's other domestic taxation laws.

1.76 Specifically, a Reporting Financial Institution that provides a statement to the Commissioner will need to keep records for five years (from the date of providing that statement to the Commissioner) that:

- correctly records the procedures by which it determined what information to include in the statement; and
- are in English, or are readily accessible and easily convertible into English.

[Schedule 1, item 13, subsection 396-125(1) and paragraph 396-125(2)(a) of Schedule 1 to the TAA 1953]

1.77 A Reporting Financial Institution that does not provide a statement to the Commissioner in a particular year will need to keep records until 31 July of the sixth year after that year that correctly record the procedures by which it determined that it did not need to provide a statement to the Commissioner. *[Schedule 1, item 13, paragraph 396-125(2)(b) of Schedule 1 to the TAA 1953]*

1.78 Section 288-25 of Schedule 1 to the TAA 1953 provides that an entity that fails to keep or retain records as required by the taxation laws is liable to an administrative penalty of 20 penalty units.

Penalties relating to self-certifications

Failure to collect self-certification

1.79 A Reporting Financial Institution that is required to obtain a self-certification when applying the CRS due diligence procedures may be liable to an administrative penalty of 1 penalty unit if it has not collected the self-certification by the time it is required to provide a statement to the Commissioner (see paragraph 1.65) or would be required to provide such a statement to the Commissioner if the account was a Reportable Account. *[Schedule 1, item 2, section 288-85 of Schedule 1 to the TAA 1953]*

1.80 This administrative penalty complements the due diligence requirements contained in the CRS to collect specific self-certifications at the time the financial account is opened and supplements the due diligence requirements described in paragraph 1.23. Furthermore, a Reporting Financial Institution that does not collect an account holder's self-certification may be subject to the administrative penalties discussed at paragraphs 1.71 to 1.72.

1.81 In practice, a Reporting Financial Institution would need to collect a self-certification for each new Financial Account opened on or after 1 July 2017.

False or misleading self-certification

1.82 A customer that provides a self-certification (as permitted by the CRS) to a Reporting Financial Institution that is false or misleading in a material particular may be subject to an administrative penalty under subsection 284-75(4) of Schedule 1 to the TAA 1953. *[Schedule 1, item 13, section 396-135 of Schedule 1 to the TAA 1953]*

Consequential amendments

1.83 This Schedule makes consequential amendments to define the ‘CRS’ and ‘CRS Commentary’ in section 995-1 of the *Income Tax Assessment Act 1997*. [Schedule 1, item 1]

1.84 These amendments include guide material for Subdivision 396-C. [Schedule 1, item 13, section 396-100 of Schedule 1 to the TAA 1953]

1.85 Minor amendments have been made to Subdivision 396-A of Schedule 1 to the TAA 1953 to ensure consistency between that Subdivision and these amendments and some additional amendments, contingent on the *Tax and Superannuation Laws Amendment (2015 Measures No. 5) Act 2015*, are made to Division 396 more generally. [Schedule 1, items 3 to 12 and 16 to 19]

Application and transitional provisions

1.86 These amendments apply to the period 1 July 2017 to 31 December 2017, as if the period were a calendar year, and to later calendar years. [Schedule 1, item 14]

1.87 This commencement date provides a balance between minimising compliance costs for financial institutions in Australia and ensuring that Australia’s CRS implementation is consistent with its commitment at the G20 Leaders’ Meeting in November 2014 to exchange information by the end of 2018.

Transitional arrangements for ‘look through’ due diligence procedures

1.88 Certain entities are considered to not be Passive NFEs for a transition period for the purposes of triggering the ‘look through’ due diligence procedures set out in subparagraph D(2) of Section V and subparagraph A(2) of Section VI of the CRS. This arrangement applies for an Investment Entity described in subparagraph A(6)(b) of Section VIII of the CRS that is not a Participating Jurisdiction Financial Institution but would be a Participating Jurisdiction Financial Institution if the jurisdictions declared to be committed jurisdictions by the Commissioner were Participating Jurisdictions. The Commissioner may, by legislative instrument, declare one or more jurisdictions to be committed jurisdictions. This arrangement will apply until 31 December 2019. [Schedule 1, item 15, subitems (1) and (2)]

1.89 To date, over 95 jurisdictions have committed to implement the CRS and it is expected that 2017 to 2020 will be transitional years for operationalising all of these commitments and putting in place information exchanges between such jurisdictions. This presents operational challenges for financial institutions that would otherwise need to determine whether they need to apply the ‘look through’ due diligence procedures to the accounts of such Investment Entities on the basis of whether an Investment Entity’s jurisdiction is a Participating Jurisdiction.

1.90 Instead, this transitional rule allows a Reporting Financial Institution to make this determination based on whether the Investment Entity’s jurisdiction is one the Commissioner has declared to be a committed jurisdiction. This removes the need for a Reporting Financial Institution to adjust its processes in response to changes to a jurisdiction’s status from a committed jurisdiction to a Participating Jurisdiction. See paragraphs 1.44 to 1.46 for arrangements that apply from 1 January 2020.

Chapter 2

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

2.1 This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

Background

2.2 The Common Reporting Standard (CRS) is an international framework developed by the Organisation for Economic Co-operation and Development (OECD) with the G20 countries and European Union. It aims to develop a global, standardised model for the information to be reported by financial institutions and exchanged between jurisdictions as part of the international response to tax evasion.

2.3 The objective of the CRS is to establish a consistent standard of information to be exchanged between jurisdictions to combat international tax evasion. Exchanging information on foreign resident account holders will help the Australian Taxation Office (ATO) and other tax authorities to ensure that account holders are complying with their tax obligations.

Human rights implications

2.4 This Bill engages the right to protection from arbitrary or unlawful interference with privacy under Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR).

2.5 Section 396-105 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953) requires Reporting Financial Institutions to carry out due diligence procedures to identify account holders that are foreign tax residents. Reporting Financial Institutions must then report certain personal and account information about these foreign resident account holders (including their name, address, Tax Identification Number and date of birth) to the Commissioner of Taxation (Commissioner). This information may be provided to other jurisdictions if a relevant information-sharing agreement is in place.

2.6 The United Nations Human Rights Committee has stated, in their General Comment No. 16, that:

- ‘unlawful means that no interference can take place except in cases envisaged by the law. Interference authorized by States can only take place on the basis of law, which must itself comply with the provisions, aims and objectives of the [ICCPR]’; and
- ‘the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the [ICCPR] and should be, in any event, reasonable in the particular circumstances’.¹

Compatibility with human rights

Legitimate objective

2.7 This Bill’s engagement with the right to privacy is in the furtherance of a legitimate objective. The principal objective of these amendments is to improve tax compliance and enhance the integrity of the Australian tax system by improving reciprocal tax information-sharing arrangements between Australia and other jurisdictions.

2.8 Globalisation and technological advances have made it easier for taxpayers to hold investments in financial institutions outside of their country of residence. The ability to exchange taxpayer information between jurisdictions’ tax authorities is critical to combating tax evasion at the international level. The CRS tackles and deters cross-border tax evasion by establishing a common international standard for financial institutions to identify and report information about the financial accounts of foreign tax residents to their local tax authority and for tax authorities to exchange this information.

2.9 Australia is a long-standing supporter of international cooperation to prevent tax evasion. Currently, the ATO provides taxpayer information to more than 40 of Australia’s tax treaty partners.

2.10 The CRS builds on the Foreign Account Tax Compliance Act (FATCA) reporting regime, extending these reporting obligations to

1 United Nations Human Rights Committee, *CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 8 April 1988, available at: <http://www.refworld.org/docid/453883f922.html>.

reporting about financial accounts held by other foreign tax residents. On 28 April 2014 Australia concluded an intergovernmental agreement with the United States of America (US) to provide for the implementation of FATCA, based on domestic reporting and reciprocal automatic information exchange. FATCA was enacted by the US Congress in March 2010 to improve compliance with US tax laws by imposing due diligence and reporting obligations on foreign (non-US) financial institutions, including Australian institutions.

2.11 Australia introduced the *Tax Laws Amendment (Implementation of the FATCA Agreement) Act 2014* to give effect to its obligations under the intergovernmental agreement. This Act requires Australian financial institutions to report information to the Commissioner about financial accounts held by US citizens and tax residents.

2.12 This Bill continues to further Australia's support for international tax transparency and cooperation between tax authorities to help prevent tax evasion and improve tax compliance. As other jurisdictions also implement the CRS and supporting tax information-sharing arrangements with these jurisdictions are made, Australia expects to improve its access to consistent information on Australian taxpayers with overseas accounts from a wide range of jurisdictions. Such improvements in the scope and quality of information available to the ATO enhance its administration of Australia's tax laws.

2.13 Improving tax compliance and enhancing the integrity of the Australian tax system are legitimate objectives.

Reasonable and necessary

2.14 This Bill's engagement of the right to privacy constitutes a reasonable and necessary measure in pursuit of its legitimate objective. To be reasonable and necessary, there must be a rational connection between the measure and the legitimate objective outlined above.

2.15 Under these amendments, certain financial institutions in Australia are required to collect information on their account holders and report personal information on foreign tax residents, such as the person's name, address, date of birth, Tax Identification Number, account number, investment income and account balance to the Commissioner.

2.16 The CRS' due diligence procedures require Reporting Financial Institutions to identify account holders who may be foreign residents for tax purposes.

2.17 Collecting and exchanging such information assists in facilitating tax compliance by enabling the ATO and other tax authorities to enhance existing data-matching programs to verify income reported by taxpayers.

Proportionate means of achieving a legitimate objective

2.18 This Bill's engagement of the right to privacy is a proportionate means of achieving its legitimate objective.

2.19 The objective of facilitating tax compliance is sufficiently important to justify this Bill's engagement of the right to privacy. Collecting personal information under this Bill would assist in effectively tackling cross-border tax evasion and represents the least intrusive means of achieving this objective.

2.20 The type of personal information that is to be reported under the CRS due diligence procedures — a person's name, address, date of birth, Tax Identification Number, account number, investment income and account balance — is relatively narrow for determining a person's potential tax obligations.

2.21 These reporting obligations are compatible with the prohibition, as they are neither arbitrary nor unlawful. Additionally, they are aimed at a legitimate objective and are an effective and proportionate means of achieving that objective.

Safeguards

2.22 This Bill relies on existing legal frameworks to ensure the confidentiality of exchanged tax information and limit its use to appropriate purposes.

2.23 In Australia, the main protection for taxpayer confidentiality is provided by a general prohibition on the disclosure of taxpayer information by ATO officers (see Subdivision 355-B of Schedule 1 to the TAA 1953). The disclosure of taxpayer information to other countries' tax authorities is allowed by section 355-50 of Schedule 1 to TAA 1953, which provides an exception to the general prohibition.

2.24 Information exchanges are subject to strict treaty confidentiality rules which are consistent with Australia's domestic tax secrecy rules. Confidentiality rules are set out in Article 22 of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (the

Convention), as well as in the equivalent of the standard OECD Model Article 26² in Australia's bilateral tax treaties. These rules limit the circumstances in which taxpayer information can be disclosed to third parties and the purposes for which it can be used. In general, this means that taxpayer information Australia shares with other countries' tax authorities can only be used for tax administration purposes and may only be disclosed to persons (including courts and administrative bodies) concerned with the assessment, collection, administration or enforcement of, or with litigation with respect to the country's taxes.

2.25 Australia's tax authority (the ATO) and another jurisdiction's tax authority can enter into a Competent Authority Agreement (CAA) under the bilateral tax treaties and the Convention. The CAA sets out operational requirements such as the content, confidentiality and data safeguards and manner and timing of automatic information exchanges between members. Tax authorities can also enter into a Multilateral Competent Authority Agreement (MCAA). Australia signed the CRS MCAA on 3 June 2015.

2.26 Although over 70 jurisdictions, to date, have signed the CRS MCAA, Australia will not automatically exchange CRS information with another country's tax authority unless that tax authority has the legal and administrative capacity to ensure confidentiality of taxpayer information. The ATO will also be able to suspend the exchange of information with another country's tax authority if it determines that there is or has been significant non-compliance with confidentiality safeguards (see section 7 of the MCAA).

Remedies available if privacy right is infringed

2.27 Under Australia's privacy laws, a person can make a complaint about the handling of their personal information by Australian government agencies and private sector organisations covered by the *Privacy Act 1988*.

2.28 The Office of the Australian Information Commissioner is responsible for the enforcement of Australia's privacy laws. The Information Commissioner has the power to investigate instances of non-compliance by agencies and organisations and to prescribe remedies to redress non-compliance. Depending on the particular complaint, some possible resolutions could include compensation for financial or non-financial loss, or change to the respondent's practices.

2 OECD (2012), 'Article 26. Exchange of Information', in *Model Tax Convention on Income and on Capital 2010 (Full Version)*, OECD Publishing.

Conclusion

2.29 This Bill is consistent with Article 17 of the ICCPR on the basis that its engagement of the right to privacy will neither be unlawful (including by virtue of the amendments to Australia's taxation legislation set out in this Bill) nor arbitrary. To this extent, this Bill complies with the provisions, aims and objectives of the ICCPR.

2.30 In light of the above, this Bill is compatible with human rights. To the extent that it may limit human rights, these limitations are reasonable, necessary and proportionate.

Chapter 3

Regulation impact statement

Implementation of the Common Reporting Standard for the automatic exchange of financial account information

Problem to be addressed

Addressing tax evasion - undisclosed foreign sourced income

3.1 Globalisation has made it easier for taxpayers to make, hold and manage investments in and through financial institutions outside of their country of residence, which creates opportunities for tax evasion. Investment income earned by Australian residents in offshore financial institutions may form part of their Australian assessable income and this income may not be subject to tax if it remains unreported to the Australian Taxation Office (ATO). People that do not comply with their Australian tax obligations undermine the integrity of the tax system. Community trust in the fairness and integrity of Australia's tax system is needed to maintain its effectiveness and efficiency.

3.2 The exchange of taxpayer information between tax authorities is critical to combating tax evasion at the international level. Australia, along with many other countries, currently shares information through automatic exchange, spontaneous exchange, and exchange on request.³ This is facilitated through a network of tax treaties and tax information exchange agreements, and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Multilateral Convention).

3 Exchange of information on request is when a tax authority asks for particular information from another tax authority. Typically, the information requested relates to an examination, inquiry or investigation of a taxpayer's tax liability for specified tax years. Exchange of information on request does not assist in the detection of cases of non-compliance when tax administrations have had no previous indication of non-compliance, because they need to have reasonable grounds to request information on a person or entity from another tax authority. Spontaneous exchange of information is the provision of information from one tax authority to another that is foreseeably relevant and that has not been previously requested. The automatic exchange of information between tax authorities involves the systematic and periodic transmission of bulk taxpayer information from the source country where the income was earned to the country of residence of the taxpayers.

3.3 Automatic exchange of information is the most advanced form of exchange of information. One of its largest benefits is that it enables tax authorities to receive information on individuals who have no previous indication of non-compliance. When the ATO receives automatic tax information, it undertakes identity matching with the information and uses a risk-based approach to income match selected cases against tax returns. If there are discrepancies then the ATO can clarify the information with the specific taxpayer, and any undeclared income can result in taxable income adjustments and penalties and interest.

ATO's receipt of automatic information

3.4 The ATO's collection of tax from current automatic exchange arrangements is very small compared to the amount collected from on request and spontaneous exchanges. In 2013-14, the ATO collected \$10.2 million of adjusted tax, penalties and interest as a result of other countries sending automatic tax information to Australia. In 2012-13, on request and spontaneous exchanges of information with treaty partners contributed approximately \$450 million of adjusted tax, penalties and interest, in 2013-14 contributed approximately \$250 million, and in 2014-15 approximately \$255 million.

3.5 The ATO is one of the leading tax authorities in sending automatic tax information to other tax authorities. It sends the information to approximately 40 countries' tax authorities. It uses information on foreign residents collected for domestic reporting purposes when it sends the information. The ATO receives automatic information from approximately 20 countries.

3.6 The effectiveness of the automatic tax information that the ATO receives is reduced by two main factors: the limited network of countries from which it receives automatic information and the quality of the information it receives from other tax authorities.

3.7 The ATO does not receive automatic information from the countries that are often referred to as tax secrecy jurisdictions. The use of tax secrecy jurisdictions by Australians for tax evasion purposes is unable to be quantified as there is often legitimate business activities conducted within these jurisdictions. However, such use is known to be significant. For example, Project Wickenby which was established in 2006 to prevent people from promoting or participating in the abusive use of tax secrecy jurisdictions yielded \$2.2 billion in liabilities until it finished this year, as well as increased tax collections from improved compliance behaviour following interventions. The enforcement activities under Project Wickenby have identified the use of evasive structures and transactions through tax secrecy jurisdictions. As a result of the Project, over 4,500 audits were undertaken by the ATO and there were over 45 criminal convictions.

3.8 The Government has subsequently established the Serious Financial Crime Taskforce to build on the work of Project Wickenby. One of the Taskforce's initial operational priorities is international tax evasion. The Government is providing \$127.6 million over four years for the Taskforce's investigations and prosecutions that will address superannuation and investment fraud, identity crime and tax evasion.

3.9 In addition, the ATO's offshore disclosure initiative, Project DO IT: disclosure offshore income today, has provided detailed data and intelligence about taxpayers and advisers who engage in offshore tax evasion. Under the Project, more than 5,800 Australians have brought \$600 million in offshore income and \$5.4 billion in assets back into the Australian economy and the ATO has raised more than \$235 million in additional tax liabilities.

3.10 Tax secrecy jurisdictions provide corporations and individuals with opportunities to avoid tax. They do this by not effectively undertaking exchange of information, coupled with the lack of transparency in the ownership of companies and the tax authority being unable to identify financial account information of individuals.

3.11 Australians' deposits in offshore banks are approximately \$68.8 billion. Although almost half of deposits are in financial institutions in the UK and US, there are substantial deposits in the jurisdictions of Guernsey, Hong Kong, Isle of Man, Jersey, Luxembourg, Netherlands and Switzerland.

<i>Country</i>	<i>Cross-border liabilities to non-banks in Australia by reporting country⁴, as of end-March 2014</i> <i>US\$ (in millions)</i>
Guernsey	209
Isle of Man	2,445
Jersey	942
Luxembourg	139
Switzerland	1,275
United Kingdom	16,489
United States	16,148
All reporting countries	68,810

Source: Bank for International Settlements.

4 Australians' deposits in Hong Kong financial institutions are substantial, however there is a restriction on this amount being detailed.

3.12 The second factor is that the automatic tax information on Australian residents received by the ATO from other national tax authorities often lacks sufficient information on the identity of the account holder. This makes it difficult for the ATO to match it to Australian taxpayers with sufficient confidence. From 2008 to 2013, gross income of around \$14.4 billion in automatic exchange of information records received by the ATO was not matched to an Australian taxpayer or matched with a low level of confidence. This information is unable to be used.

Improving the automatic exchange of tax information

3.13 On 5 and 6 September 2013, the G20 Leaders committed to automatic exchange of information as the new global standard for exchange of information and supported the OECD work, with G20 countries, to develop a common reporting standard in 2014.

3.14 At the G20 Leaders' Meeting in Brisbane in November 2014, Leaders endorsed the Common Reporting Standard (CRS) for the automatic exchange of information and committed to begin to exchange information automatically with each other and other countries by 2017 or end-2018, subject to completing necessary legislative procedures.

3.15 The CRS provides a single global standard for the collection of financial account information by financial institutions on account holders who are foreign tax residents, the reporting of that information to the jurisdictions' tax authorities, and the exchange of that information with the foreign residents' home tax authorities.

3.16 The CRS draws extensively on the United States' Foreign Account Tax Compliance Act (FATCA) intergovernmental regime. FATCA requires foreign (non-US) financial institutions that have US customers, to identify and disclose information on their US account holders to the US Internal Revenue Service. If a financial institution fails to comply with the requirements it will be subject to a 30 per cent withholding tax on its US-based operations' investment income and its sales proceeds from instruments which yield revenues from US sources. This withholding tax operates as an international enforcement mechanism for financial institutions to meet their FATCA reporting requirements.

3.17 Other similar reporting requirements for financial institutions to the CRS and FATCA include the ATO's Annual Investment Income Report (AIIR), and Anti-Money Laundering (AML)/Counter Terrorism Financing (CTF) regime. Information collection and reporting under the CRS would build on these existing requirements but would operate as an additional reporting regime.

3.18 Although, FATCA, the ATO's AIIR and AML/CTF are different information collection and reporting regimes, they will help to minimise financial institutions' compliance costs as the CRS builds on existing processes. Further, the ongoing compliance costs of the CRS are not expected to be significant.

3.19 The CRS is intended to discourage countries enacting their own unilateral schemes to obtain information on their tax residents in other countries, similar to FATCA. A proliferation of different schemes would cause significantly higher compliance costs for financial institutions, compared to a consistent international standard.

Objectives of government action

Objectives of the CRS

3.20 Offshore tax evasion is a problem faced by jurisdictions all over the world. To assist in addressing tax evasion, the CRS is a single global standard for the automatic exchange of financial institutions' financial account information. It will enable tax authorities to be more effective in matching the identity of taxpayers and checking this information against tax returns.

3.21 Under Australia's G20 Presidency, in November 2014, G20 Leaders' endorsed the CRS and committed to begin to exchange information automatically with other jurisdictions by 2017 or end-2018.

Benefits of the CRS: better information exchanged

3.22 The CRS has been designed with the requirements of the tax compliance of an individual's jurisdiction of residence rather than as a by-product of a financial institution's domestic reporting requirements. One of its key elements is sufficient information to identify an account holder for data matching purposes (for example, through the requirement to collect tax identification numbers and dates of birth). It has also been designed to limit the opportunities for continued tax evasion, so it is comprehensive in the scope of:

- financial information to be reported. It includes different types of investment income, such as interest, dividends, and income from certain insurance contracts, and account balances and sales proceeds from financial assets.

- account holders subject to reporting. It includes individuals and controlling persons (beneficial owners) of companies, partnerships and trusts.
- financial institutions required to report. It includes banks and other deposit taking institutions, custodial institutions, investment entities, brokers that hold financial assets for the account of others, and insurance companies that issue or make payments to investment-linked life insurance or annuity contracts.

3.23 As a single global standard, the global implementation of the CRS will result in a large increase in the amount, accuracy and comprehensiveness of financial account information exchanged between national tax authorities. This will improve tax authorities' identity matching accuracy and enable them to better detect unreported foreign income and ensure compliance with tax laws in their jurisdiction, helping to reduce tax evasion and provide a further deterrence to engage in it.

Benefits of the CRS: more countries automatically exchanging information

3.24 The overall effectiveness of the CRS depends on the number of jurisdictions that implement it and the way in which it is implemented. Countries are being encouraged to adopt the CRS by the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes. The Global Forum is the premier international body for ensuring the implementation of the internationally agreed standards of transparency and exchange of information in the tax area. It has 129 member jurisdictions that are both developed and developing jurisdictions.

3.25 Over 95 jurisdictions have committed to implement it, with over 55 jurisdictions committing to implement it from 1 January 2016 and first exchange information in 2017. The jurisdictions include Luxembourg, the Seychelles, and the UK's Crown Dependencies of Isle of Man, Guernsey and Jersey, and the UK's Overseas Territories of Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Montserrat, and the Turks and Caicos Islands.

3.26 Almost 40 jurisdictions have committed to implement the CRS from 1 January 2017 and first exchange information in 2018. The jurisdictions include Aruba, The Bahamas, Hong Kong, Singapore and Switzerland.

3.27 Most former tax secrecy jurisdictions have committed to implement the CRS. The jurisdictions of Bahrain and Vanuatu have not yet made this commitment, however if Australians moved their deposits to banks in these jurisdictions there is increased risk for their deposits.

3.28 The Global Forum has also launched a process to monitor and review jurisdictions' implementation of the CRS. It involves all Global Forum members that are committed to implementing the CRS providing regular updates on their progress on implementation and from 2016 monitoring of this implementation. The G20 has also requested the Global Forum to create a mechanism for comprehensive reviews of CRS implementation.

3.29 The CRS does not include a withholding tax similar to FATCA's, however its international enforcement mechanism includes other jurisdictions suspending the exchange of information. This includes if there is or has been significant non-compliance with the CRS by a tax authority or if the status of entities as Non-Reporting Financial Institutions or accounts as Excluded Accounts are defined in a manner that frustrates the purposes of the CRS.

3.30 The CRS also imposes requirements on financial institutions from participating jurisdictions to document the beneficial owners of certain financial institutions from non-participating jurisdictions. This is also a form of global enforcement as it increases the cost of doing business for financial institutions in non-participating jurisdictions.

3.31 It is also expected that in the future that developed countries and former tax secrecy jurisdictions that do not implement the CRS or are reviewed by the Global Forum and are found to not be compliant with its requirements will be subject to taxation measures from other jurisdictions, similar to exchange of information on request. These taxation measures (or "tougher incentives") are outlined in *OECD Secretary-General Report to G20 Finance Ministers with its annexes (Reports on "Possible Tougher Incentives for the countries that fail to comply with the Global Forum standards on exchange of information on request" and "SMEs and Taxation")*, September 2015. Generally, these measures increase the cost of business for financial institutions and entities and for financial institutions dealing with them. They include special withholding tax rules and increased information reporting requirements for entities with operations in these jurisdictions.

Revenue gains from implementing the CRS

3.32 Australia's exchange of information under the CRS with other jurisdictions will enable Australia to receive significantly more information on offshore financial accounts held by Australian residents than it does under existing arrangements, especially from former tax secrecy jurisdictions, and significant trade and investment partners that do not automatically exchange at present.

3.33 The amount of Australian residents' offshore income not reported to the ATO is inherently unknown. The implementation of the CRS in Australia is estimated to deliver a small but unquantifiable revenue gain (\$0 to \$10 million per annum) over the forward estimates period, with larger unquantifiable gains (\$10 to \$100 million per annum) beyond this, as more jurisdictions implement the CRS.

3.34 The revenue gain is unquantifiable due to lack of reliable data. As more countries implement the CRS and the ATO undertakes more compliance activity, it is expected that the revenue gain will increase over time.

3.35 Although the revenue gain is unquantifiable, it is important to note that the automatic reporting of foreign financial accounts of Australian residents to the ATO will act as a strong deterrent against the concealment of foreign source income by such residents. This will drive substantial improvements in voluntary compliance and increase community confidence and willingness to participate in the tax system.

3.36 An indication of the revenue gain to Australia is provided by the UK's estimate from implementing the CRS, however the revenue gain is expected to be smaller in Australia given the UK's proximity to former tax secrecy jurisdictions in Europe and the higher number of high net worth individuals in the UK.

<i>Exchequer impact (£m)</i>	<i>2015-16</i>	<i>2016-17</i>	<i>2017-18</i>	<i>2018-19</i>	<i>2019-20</i>
	-5	+90	+270	+75	+130

The Common Reporting Standard

3.37 The CRS will require financial institutions in Australia to collect and report information about the financial accounts of foreign tax residents to the ATO, unless the financial institutions are specifically exempt.

Financial Institutions required to report under the CRS

3.38 Financial institutions required to report under the CRS include banks and other deposit taking institutions, custodial institutions, investment entities, and insurance companies that issue or make payments to investment linked life insurance or annuity contracts.

3.39 This covers a broad range of the Australian financial sector, including banks, building societies and credit unions, life insurance companies that offer insurance products that include an investment component, private equity funds, managed funds, exchange traded funds and brokers that hold financial assets for the account of others.

3.40 Financial institutions subject to the CRS are referred to as Reporting Financial Institutions and exempt financial institutions are referred to as Non-Reporting Financial Institutions.

3.41 Non-Reporting Financial Institutions are considered to be a low risk for use by foreign residents for evading tax. The most significant Non-Reporting Financial Institutions are:

1. Governmental entities, international organisations or central banks;
2. Broad or narrow participation retirement funds, or Qualified Credit Card Issuers; and
3. Any other entities that present a low risk of being used to evade tax, have substantially similar characteristics to any of the entities described above in points 1 or 2, and are defined in Australia's implementing legislation for the CRS as a Non-Reporting Financial Institution, provided that the status as a Non-Reporting Financial Institution does not frustrate the purposes of the CRS.

3.42 Points 2 and 3 provide a basis for exempting Australia's retail and industry superannuation funds and self-managed retirement funds from the CRS.

Financial accounts subject to reporting under the CRS

3.43 Under the CRS, Reporting Financial Institutions will be required to collect and report to the ATO financial account information for accounts and insurance policies that they identify as being owned or controlled by foreign tax residents (unless the accounts or policies are explicitly exempt). These accounts are known as 'Reportable Accounts'.

3.44 Reportable Accounts may be held by foreign tax resident individuals or entities, including companies, trusts and foundations.

3.45 The CRS' due diligence procedures require financial institutions to look through certain entities (passive non-financial entities (NFEs)) to report on accounts that have Controlling Persons who are foreign tax residents. This requirement to look through passive NFEs is intended to

limit opportunities for taxpayers to circumvent reporting by using interposed legal entities or arrangements.

3.46 The Controlling Persons are the natural persons who exercise control over an entity. The term ‘Controlling Persons’ corresponds to the ‘beneficial owners’ as described in Recommendation 10 of the Financial Action Task Force (FATF) Recommendations. FATF is the inter-governmental body responsible for developing and promoting policies to combat money laundering and terrorist financing.

3.47 Some financial accounts are not subject to reporting as they are considered a low risk for evading tax (referred to as Excluded Accounts). The most significant Excluded Accounts are:

- Superannuation and other retirement accounts;
- Non-superannuation tax favoured accounts (for example First Home Savers Accounts);
- Life insurance contracts with a coverage period that will end before the insured individual attains age 90;
- Accounts held solely by an estate if the documentation for such an account includes a copy of the deceased’s will or death certificate; and
- Accounts that present a low risk of being used to evade tax, have substantially similar characteristics to any of the specified Excluded Accounts, and are defined in domestic law as an Excluded Account, provided that the status of that account as an Excluded Account does not frustrate the purposes of the CRS.

Due diligence to identify foreign tax residents

3.48 Reporting Financial Institutions are required to undertake due diligence procedures to identify financial accounts that have a foreign tax resident account holder from a Reportable Jurisdiction. A ‘Reportable Jurisdiction’ is a jurisdiction with which Australia has an agreement in place that enables automatic exchange of information.

3.49 There are different legal bases for the automatic exchange of information, including Australia’s bilateral tax treaties and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Convention). The Convention provides for all forms of administrative cooperation and contains strict rules on confidentiality and proper use of information. Australia signed amended Convention in 2011.

3.50 Automatic exchange under the Convention also requires an administrative agreement between the ATO and other countries' tax authorities. On 3 June 2015, Australia signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (MCAA), which is based on Article 6 of the Convention. To date, the MCAA has been signed by over 70 jurisdictions.

3.51 The CRS due diligence requirements vary depending on whether the account is held by an individual or an entity, and whether the account is a Preexisting or New Account. This recognises that it is more difficult and costly for financial institutions to collect information from existing account holders than it is to request the information from new account holders when an account is opened.

3.52 For a New Account, Reporting Financial Institutions are required to collect and report jurisdiction(s) of residence for tax purposes. For Preexisting Accounts, jurisdiction(s) of residence are used as a proxy for jurisdiction of residence for tax purposes.

Preexisting Individual Accounts

3.53 For Preexisting Individual Accounts, the requirements distinguish between Higher and Lower Value Accounts. Unlike FATCA, there is no minimum threshold for account balances.

3.54 Lower Value Accounts: for account balances less than \$1,000,000 the residence of the account holder is determined using either a current residence address test based on documentary evidence or alternatively a search of electronic records. If the search of electronic records is undertaken and no information is found which indicates the account holder is a foreign resident, financial institutions will not be required to report the account to the ATO. If the search indicates the Account Holder is a foreign resident the account will be a Reportable Account, unless financial institutions elect to apply additional 'curing' procedures. The curing procedure generally involves reviewing or obtaining a self-certification and/or documentary evidence from the account holder. A self-certification is a statement from the account holder that enables the Reporting Financial Institutions to determine the Account Holder(s) residence(s) for tax purposes.

3.55 Higher Value Accounts: for account balances greater than \$1,000,000 enhanced due diligence procedures apply, including a paper record search and an actual knowledge test by the relationship manager.

New Individual Accounts

3.56 New Individual Accounts require self-certification of the account holder's jurisdiction of residence *for tax purposes* and confirmation by the Reporting Financial Institution of the reasonableness of this self-certification.

3.57 A Reporting Financial Institution is considered to have confirmed the 'reasonableness' of a self-certification if, upon receipt of the self-certification and review of the information obtained in connection with the opening of the account (including any documentation collected pursuant to Australia's Anti-Money Laundering (AML) and its associated Customer Due Diligence (CDD) requirements), it does not know or have reason to know that the self-certification is incorrect or unreliable.

Preexisting Entity Accounts

3.58 For Preexisting Entity Accounts, Reporting Financial Institutions are required to determine:

- whether the entity itself is a Reportable Person, which can generally be done on the basis of available information (such as AML and CDD requirements) and if not, a self-certification; and
- whether the entity is a passive NFE and, if so, whether it has any Controlling Persons that are foreign tax residents. For a number of account holders the active/passive assessment should be straight forward and can be made on the basis of available information, for others this may require self-certification. Preexisting Entity Accounts below \$250,000 are not subject to review.

New entity accounts

3.59 New Entity Accounts require self-certification of the account holder's jurisdiction of residence for tax purposes, unless for Passive NFEs the Reporting Financial Institution has information in its possession or that is publicly available based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution (other than a non-participating professionally managed investment entity). Reporting Financial Institutions are to also confirm the reasonableness of this self-certification.

3.60 For New Entity Accounts the \$250,000 threshold does not apply.

Optional CRS provisions

3.61 There are a number of optional provisions in CRS and its Commentary to provide greater flexibility for financial institutions, thereby reducing their compliance costs. The optional provisions include:

- using third party service providers to fulfil their obligations;
- applying the due diligence procedures for New Accounts to Preexisting Accounts;
- applying the due diligence procedures for High Value Accounts to Lower Value Accounts;
- applying the residence address test for Lower Value Accounts;
- excluding Preexisting Entity Accounts with an aggregate value or balance of \$250,000 or less from its due diligence procedures;
- making use of existing standardised industry coding systems for the due diligence process;
- using a single currency translation rule; and
- diligence procedures for all residents of foreign jurisdictions regardless of whether those countries have implemented the CRS, rather than residents of jurisdictions that have a CRS information exchange agreement with Australia at the time the due diligence procedures are performed.

Information to be reported

3.62 Under the CRS, Reporting Financial Institutions are to report the following information with respect to each Reportable Account:

- for accounts held by an individual: their name, address, jurisdiction(s) of residence, Taxpayer Identification Number(s) (TIN(s)) and date and place of birth of the individual;
- for accounts held by an entity: its name, address, jurisdiction(s) of residence and TIN(s);

- for accounts held by an entity that is a passive NFE, and is identified as having one or more foreign resident Controlling Persons:
 - the name, address, jurisdiction(s) of residence and TIN(s) of the entity; and
 - the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth of each foreign resident Controlling Person;
- the account number (or functional equivalent in the absence of an account number);
- the name and identifying number (if any) of the Reporting Financial Institution; and
- the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account.
- for a Custodial Account:
 - the total gross amount of interest paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period;
 - the total gross amount of dividends paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period;
 - the total gross amount of other income generated with respect to the assets held in the account paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and
 - the total gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder.

- for a Depository Account: the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period.
- for any other account, such as equity or debt interests in certain Investment Entities and investment linked insurance or annuity contracts: the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period, with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

3.63 The CRS recognises that some of the above information will not always be readily available to financial institutions or easily obtainable from existing account holders, and provides certain exceptions to these information requirements. For example, for existing account holders, the TIN and date of birth are not required to be reported if they are not in the records of the financial institution or are not required to be collected under the financial institution's domestic law. However, financial institutions will be required to employ reasonable efforts to obtain that data within a certain period of time.

3.64 Financial institutions in Australia will not be required to report a place of birth.

3.65 The TIN requirements refer to the TIN issued by the account holder's jurisdiction of residence for tax purposes, and not the TIN issued by the jurisdiction where the account is held. The CRS recognises that for Australia an individual cannot be required to report their Australian Tax File Number (TFN).

Method of reporting

3.66 The ATO is continuing to consult with financial institutions on their preference for the reporting arrangements. The feedback received was that there is a preference by most Reporting Financial Institutions for the OECD CRS XML schema, which is based on the reporting arrangements for FATCA, and for a fit-for-purpose solution for smaller volume reporters.

Consultation

3.67 As a global initiative, consultation on the CRS has been a continuous process at both the international and domestic level. At the international level, the OECD sought written submissions from governments and business to inform the development of the CRS and its Commentary. These submissions were considered by Australia and the OECD's Working Party 10 on the Exchange of Information and Tax Compliance. Governments and businesses were also given the opportunity to discuss their submissions with the Working Party. Participating governments, including the Australian Government, engaged closely with business and the OECD as the CRS and its Commentary were developed.

3.68 Participating governments consulted domestically, which informed the OECD's process. In Australia, Treasury and the ATO targeted consultation towards those directly affected by the CRS, with a focus on minimising compliance costs and developing a feasible implementation timeframe. This consultation included meetings and ongoing discussions with industry representatives⁵.

3.69 In June 2014, Treasury consulted publicly through a discussion paper that sought submissions on:

- timing of implementation;
- financial institutions' potential implementation and compliance costs; and
- suggestions on how to minimise the implementation and compliance costs.

3.70 In early 2015, Treasury and the ATO undertook targeted consultation with financial institutions and peak industry bodies on a proposed list of Non-Reporting Financial Institutions and Excluded Accounts, the identification of foreign residents and the domestic reporting mechanism. The consultation paper on the identification of foreign residents sought submissions on whether financial institutions should be able to identify all foreign residents when undertaking due diligence rather than only those residents of jurisdictions that have a CRS information exchange agreement with Australia and whether it should be mandatory or optional.

5 Stakeholders consulted include the Australian Bankers' Association, Customer Owned Banking Association, Financial Services Council, Stockbrokers Association of Australia, and the Self-Managed Superannuation Fund Professionals' Association of Australia, as well as individual financial institutions.

3.71 From 18 September to 9 October 2015, consultation was also undertaken on draft legislation to implement the CRS.

Outcomes from consultation

3.72 The analysis of compliance costs within this RIS was informed by the information sought and received during consultation.

Compliance Costs

3.73 Financial institutions raised concerns about the compliance costs of implementing the CRS. Different types of institutions expect to incur different levels of compliance costs.

3.74 Banking institutions provided most of the compliance cost information. Cost estimates between banks varied significantly. The reasons given for this variance include:

- the complexity of existing banking systems;
- competing IT priorities (e.g. core banking system upgrades);
- whether they intend to use manual or automatic processes;
- the number of foreign resident customers; and
- the size of the bank.

3.75 Larger banks estimated their individual total compliance costs are between \$20 million and \$100 million. Smaller banks had much lower compliance costs.

Timing

3.76 Financial institutions did not agree on when Australia should implement the CRS, but did indicate that 2017 was the earliest achievable timeline.

3.77 Some banks preferred implementation on 1 January 2017, which would allow them to leverage their current FATCA expertise and reduce costs, and others prefer implementation on 1 January 2018 to better sequence systems changes and other regulatory changes. The effect of adopting different timelines on compliance costs can be seen in the comparison of the different options outlined below.

3.78 Following feedback on the timing of implementation in the draft legislation, and in particular one major bank indicating that it preferred implementation on 1 July 2017, Treasury undertook consultations with some financial institutions and peak industry bodies on CRS implementation on 1 July 2017. As part of implementation on 1 July 2017, financial institutions would collect CRS information from 1 July to 31 December 2017, report the information to the ATO by mid-2018 and the ATO would exchange information by late-September 2018.

3.79 The consultations indicated that it is possible and that compliance costs would be similar to allowing financial institutions to implement it on 1 January 2017 (for exchange in 2018) or 1 January 2018 (for exchange in 2019).

Other issues

3.80 Financial institutions also raised the following issues:

- The reporting mechanism: different reporting mechanisms are supported by different sectors of the finance industry.
 - The ATO is working with the industry and intends to be flexible on the reporting solution.
- Certainty around CRS requirements: financial institutions require certainty on the details of the CRS before they can begin implementation.
 - Draft legislation has been released, and the OECD CRS Commentaries, CRS Implementation Handbook and some CRS Frequently Asked Questions have been publicly released.
- Alignment between the CRS and FATCA.
 - The OECD, Treasury and ATO have consulted with financial institutions on alignment and any differences are generally related to the multilateral context of the CRS.
- Global uniformity of approach: global uniformity will help financial institutions that have operations outside Australia.
 - The CRS Commentary, CRS Implementation Handbook and CRS Frequently Asked Questions are intended to ensure consistent application across jurisdictions.

- The use of residential address as a proxy for tax residence: this will reduce compliance costs for some financial institutions, although others would prefer global uniformity.
 - Treasury raised this issue at an OECD CRS meeting and a large number of other countries considered the proposal to be inconsistent with the explicit requirements of the CRS and undermine its effectiveness. Therefore, Australia is not implementing this approach.
- Financial institutions identifying all residents regardless of whether those countries have implemented the CRS and to report this information to the ATO.
 - This is reflected in the legislation.
- The transitional arrangements for Investment Entities that are not Participating Jurisdiction Financial Institutions should be specified. Specifically, the Commissioner should publish a “Committed Jurisdiction” list and financial institutions should be able to use their existing information to identify controlling persons for these financial institutions.
 - The Commissioner will declare by legislative instrument a list of committed jurisdictions for the due diligence of Investment Entities that are not Participating Jurisdiction Financial Institutions.
- The Government should review the reporting requirements under third party reporting, FATCA and CRS holistically, and design a comprehensive data collection and reporting framework that will achieve the objectives of all three regimes in the most efficient and practical manner possible.
 - Treasury and the ATO have reviewed the Third Party Reporting, FATCA and CRS reporting requirements. Third Party Reporting and the CRS (and FATCA) require reporting of different information on different customers.
- The CRS should leverage the ATO’s existing information, allow alternative methods of satisfying it and be principle based.
 - CRS information is being exchanged between a large number of jurisdictions and has been standardised so

as to benefit the maximum number. If the ATO does not provide the information required by the CRS, other tax authorities are able to suspend their information provision to the ATO.

- Clarification of implementation and review dates in draft legislation.
 - The dates will be clarified in the legislation.
- Listed investment entities will have difficulty in obtaining a self-certification upon account opening.
 - Treasury and the ATO are working with the industry to resolve this issue.

Policy options

3.81 The CRS is a standardised automatic exchange model and has been developed by the OECD and non-OECD G20 countries, at the request of the G20. The CRS sets out the due diligence rules for financial institutions to follow to collect and then report the information. It includes an enforcement mechanism of a tax authority suspending or terminating CRS information exchange with another tax authority if there is or has been significant non-compliance with the CRS. As it is a standardised model, the policy options are limited to Australia not implementing the CRS and the timing of implementation.

3.82 The six options are:

1. Australia does not implement the CRS (status quo).
2. CRS implementation on 1 January 2016, with the first exchange of information occurring by September 2017.
3. CRS implementation on 1 January 2017, with the first exchange of information occurring by September 2018.
4. CRS staged implementation CRS from 1 January 2017, with the first exchange of information by September 2018. This option permits financial institutions to voluntarily implement the CRS on 1 January 2017 and requires all financial institutions to implement it on 1 January 2018.
5. CRS implementation on 1 January 2018, with the first exchange of information occurring by September 2019.

6. CRS implementation on 1 July 2017, financial institutions report information for the period 1 July 2017 to 31 December 2017 in 2018 and the ATO exchanges information with other tax authorities by September 2019.

Option 1 – Australia does not implement the CRS (status quo)

3.83 This option involves Australia not implementing the CRS.

Impact on financial institutions

3.84 Financial institutions in Australia would not incur compliance costs from implementing the CRS. However, financial institutions that have operations in countries that implement the CRS will be required to comply with the CRS in those countries and therefore incur some compliance costs. Certain Australian financial institutions would face increased costs of engaging in international business as they would be required to document their investors to financial institutions in countries that have implemented the CRS under the CRS's 'non-participating jurisdiction investment entity trace-through' requirements.

Impact on Government

3.85 There are risks for Australia in not implementing the CRS.

- If Australia does not implement the CRS, tax authorities in other jurisdictions would not exchange CRS information with the ATO. The CRS is estimated to deliver a small but unquantifiable revenue gain over the forward estimates period (\$0 to \$10 million per annum to 2017-18), with larger unquantifiable gains beyond this (\$10 to \$100 million), as more jurisdictions implement the CRS, and assuming full implementation by jurisdictions.
- The effectiveness of the global work to bring former tax secrecy jurisdictions into the automatic exchange of information network would be reduced.

3.86 Australia is likely to be criticised by other countries, civil society, and the Global Forum on Transparency and Exchange of Information for Tax Purposes, especially as G20 Finance Ministers and Central Bank Governors, including the Treasurer and the Prime Minister have endorsed the CRS.

Option 2 – CRS implementation on 1 January 2016

3.87 This option involves implementing the CRS on 1 January 2016, financial institutions reporting information to the ATO on the 2016 calendar year in mid-2017 and the ATO exchanging information with other jurisdictions' tax authorities by September 2017.

Impact on financial institutions in Australia

3.88 Australian financial institutions have indicated that this option would involve very high compliance costs, especially as it is less than two months to 1 January 2016, legislation has not been enacted and financial institutions have indicated that 18 months is the minimum amount of time needed to undertake the system changes and testing.

3.89 The overall compliance costs for option 2 are \$76.8 million per year. Option 2 has the highest compliance costs of the options to implement the CRS due to the rushed timeframe for implementation.

Impact on the Government

3.90 Under this option, the ATO will receive CRS information from other tax authorities in 2017 and can undertake compliance activity in 2017-18. However, the ATO would have to make systems changes in a short amount of time to receive the data from financial institutions in Australia and exchange it with other tax authorities.

3.91 Australia first exchanging information in 2017 would be consistent with the timeframe of exchanging with other countries by 2017 or end-2018 that Australia committed to at the G20 Leaders' meeting in Brisbane in November 2014.

3.92 The CRS is estimated to deliver a small but unquantifiable revenue gain over the forward estimates period (\$0 to \$10 million per annum to 2017-18), with larger unquantifiable gains beyond this (\$10 to \$100 million).

Option 3 – CRS implementation on 1 January 2017

3.93 This option involves implementing the CRS on 1 January 2017, financial institutions reporting information to the ATO on the 2017 calendar year in mid-2018 and the ATO exchanging information with other jurisdictions' tax authorities by September 2018.

Impact on financial institutions in Australia

3.94 Several financial institutions prefer implementation on 1 January 2017 rather than later as it allows them to transition resources, including employees and their expertise, from similar regulatory compliance projects, such as FATCA, to the CRS.

3.95 Some other financial institutions have indicated that this is generally an achievable timeline.

3.96 However, for a number of financial institutions a 1 January 2017 start date would impose increased compliance costs and may be difficult to achieve as resources would have to be diverted from other IT and regulatory compliance projects to meet this timeline.

3.97 The overall compliance costs for option 3 are \$68.4 million per year.

Impact on the Government

3.98 Under this option, the ATO will receive CRS information from other tax authorities in 2018 and can undertake compliance activity in 2018-19. Australia first exchanging information in 2018 would be consistent with the timeframe of exchanging with other countries by 2017 or end-2018 that Australia committed to at the G20 Leaders' meeting in Brisbane in November 2014.

3.99 The CRS is estimated to deliver a small but unquantifiable revenue gain over the forward estimates period (\$0 to \$10 million per annum to 2017-18), with larger unquantifiable gains beyond this (\$10 million to \$100 million).

Option 4 – CRS staged implementation CRS from 1 January 2017

3.100 This option involves allows financial institutions to voluntarily implement the CRS on 1 January 2017 and requires mandatory implementation by financial institutions on 1 January 2018. Financial institutions implementing the CRS on 1 January 2017 would report information to the ATO for the 2017 calendar year in mid-2018 and financial institutions implementing the CRS on 1 January 2018 would report information to the ATO for the 2018 calendar year in mid-2019. The ATO would then exchange the information with other jurisdictions' tax authorities.

Impact on financial institutions in Australia

3.101 Staging implementation would reduce compliance costs for some financial institutions by enabling them to flexibly allocate their resources across competing obligations, and reducing operation and project risks for their system upgrades and testing procedures. However, legislation would be required well in advance to enable those financial institutions who want to leverage off their existing FATCA resources to do so, minimising their compliance costs.

3.102 The overall compliance costs for option 4 are \$64.8 million per year.

Impact on the Government

3.103 The ATO might not receive information from other tax authorities until 2019, when they consider that Australia has implemented the CRS. Other countries might also consider that Australia's implementation is outside the timeframe of exchanging with other countries committed to at the G20 Leaders' Meeting in November 2014. It could also encourage other jurisdictions to delay their implementation, especially former tax secrecy jurisdictions.

3.104 The CRS is estimated to deliver a small but unquantifiable revenue gain over the forward estimates period (\$0 to \$10 million per annum to 2017-18), with larger unquantifiable gains beyond this (\$10 million to \$100 million).

Option 5 – CRS implementation on 1 January 2018

3.105 This option involves implementing the CRS on 1 January 2018, financial institutions reporting information to the ATO on the 2018 calendar year in mid-2019 and the ATO exchanging information with other jurisdictions' tax authorities by September 2019.

Impact on financial institutions in Australia

3.106 Some financial institutions prefer 1 January 2018 as it reduces compliance costs by enabling them to have flexibility in their allocation of resources across competing obligations, and reducing operation and project risks for their system upgrades and testing procedures.

3.107 Other financial institutions have stated that a 1 January 2018 implementation date would cost more than a 1 January 2017 implementation date as they will not be able to transition resources, including employees and their associated expertise, from similar regulatory compliance projects, such as FATCA, to the CRS.

3.108 The overall compliance costs for option 5 are \$65.9 million per year.

Impact on the Government

3.109 The ATO will not receive CRS information from other tax authorities until 2019.

3.110 Australia's implementation will also be outside the timeframe of exchanging with other countries by 2017 or end-2108 that Australia committed to at the G20 Leaders' meeting in November 2014. It could also encourage other jurisdictions to delay their implementation, especially former tax secrecy jurisdictions.

3.111 The CRS is estimated to deliver a small but unquantifiable revenue gain over the forward estimates period (\$0 to \$10 million per annum to 2017-18), with larger unquantifiable gains beyond this (\$10 million to \$100 million).

Option 6 – CRS implementation on 1 July 2017

3.112 This option involves implementing the CRS on 1 July 2017, financial institutions reporting information to the ATO for the period 1 July 2017 to 31 December 2017 in mid-2018 and the ATO exchanging information with other jurisdictions' tax authorities by September 2018.

Impact on financial institutions in Australia

3.113 Financial institutions have indicated that this is an achievable timeline, as it allows for 18 months between the enactment of legislation and implementation if the legislation is passed by Parliament by early 2016.

3.114 The overall compliance costs for option 6 are \$67.2 million per year.

Impact on the Government

3.115 Under this option, the ATO will receive CRS information from other tax authorities in 2018. It will also ensure that Australia's CRS implementation is consistent with its commitment at the G20 Leaders' Meeting in November 2014 to exchange information by end-2018 and that Australia is less likely to be criticised for delaying its CRS implementation.

3.116 The CRS is estimated to deliver a small but unquantifiable revenue gain over the forward estimates period (\$0 to \$10 million per annum to 2017-18), with larger unquantifiable gains beyond this (\$10 million to \$100 million).

Compliance costs

Costs for financial institutions

Methodology for determining compliance costs

3.117 Treasury consulted peak industry bodies and individual financial institutions to obtain information on the compliance costs of the CRS⁶.

3.118 Treasury's estimates of the compliance costs resulting from each of the five implementation options are detailed below. These estimates are the sum of:

- the expected costs of individual financial institutions, where those were provided;
- an estimate of the costs of the remaining financial institutions which may be affected; and
- an estimate of consumers' compliance costs from the additional time to complete the account opening process.

3.119 In general, the estimates provided by financial institutions were not disaggregated into categories or activities, limiting Treasury's ability to provide a detailed costing.

3.120 Treasury could not obtain data on expected compliance costs from all the financial institutions which may be affected by the CRS. The costs of these financial institutions were determined by:

- using the CRS cost estimate provided by similar financial institutions; and/or

6 Peak industry bodies consulted included the Australian Bankers' Association, the Customer Owned Banking Association, the Financial Services Council, the Property Council of Australia, the Australian Custodial Services Association and the Australian Financial Markets Association. Additional compliance cost information was provided by individual financial institutions on a confidential basis.

- using FATCA cost estimates, provided in CRS consultation or in the compliance costs estimates used in the Regulation Impact Statement on the Implementation of the United States Foreign Account Tax Compliance Act in Australia⁷.

3.121 As discussed above, the CRS is based on FATCA and the compliance cost impact is expected to be very similar. Where necessary, FATCA cost estimates were scaled to provide an approximation of CRS cost estimates for a proportion of financial institutions.

Regulatory Burden and Cost Offset (RBCO) Estimate Tables

<i>Option 1 – Australia does not implement the CRS (status quo): Average Annual Regulatory Costs</i>				
Change in costs (\$million)	Business	Community Organisations	Individuals	Total change in cost
Total, by sector	\$0	\$0	\$0	\$0
Cost offset (\$ million)	Business	Community organisations	Individuals	Total, by source
Agency	\$0	\$0	\$0	\$0
Are all new costs offset? <input checked="" type="checkbox"/> Yes, costs are offset <input type="checkbox"/> No, costs are not offset <input type="checkbox"/> Deregulatory—no offsets required				
Total (Change in costs – Cost offset) (\$million) \$0				

⁷ <http://ris.dpmc.gov.au/2014/05/15/implementation-of-the-united-states-foreign-account-tax-compliance-act-in-australia-regulation-impact-statement-department-of-the-treasury/>

Option 2 – CRS implementation on 1 January 2016: Average Annual Regulatory Costs				
Change in costs (\$million)	Business	Community Organisations	Individuals	Total change in cost
Total, by sector	\$74.6	\$0	\$2.2	\$76.8
Cost offset (\$ million)	Business	Community organisations	Individuals	Total, by source
Agency	\$74.6	\$0	\$2.2	\$76.8
Are all new costs offset? <input checked="" type="checkbox"/> Yes, costs are offset <input type="checkbox"/> No, costs are not offset <input type="checkbox"/> Deregulatory—no offsets required				
Total (Change in costs – Cost offset) (\$million) \$0				

Option 3 – CRS implementation on 1 January 2017: Average Annual Regulatory Costs				
Change in costs (\$million)	Business	Community Organisations	Individuals	Total change in cost
Total, by sector	\$66.1	\$0	\$2.3	\$68.4
Cost offset (\$ million)	Business	Community organisations	Individuals	Total, by source
Agency	\$66.1	\$0	\$2.3	\$68.4
Are all new costs offset? <input checked="" type="checkbox"/> Yes, costs are offset <input type="checkbox"/> No, costs are not offset <input type="checkbox"/> Deregulatory—no offsets required				
Total (Change in costs – Cost offset) (\$million) \$0				

Option 4 – CRS staged implementation from 1 January 2017: Average Annual Regulatory Costs				
Change in costs (\$million)	Business	Community Organisations	Individuals	Total change in cost
Total, by sector	\$62.4	\$0	\$2.3	\$64.8
Cost offset (\$ million)	Business	Community organisations	Individuals	Total, by source
Agency	\$62.4	\$0	\$2.3	\$64.8
Are all new costs offset? <input checked="" type="checkbox"/> Yes, costs are offset <input type="checkbox"/> No, costs are not offset <input type="checkbox"/> Deregulatory—no offsets required				
Total (Change in costs – Cost offset) (\$million) \$0				

Option 5 – CRS implementation on 1 January 2018: Average Annual Regulatory Costs				
Change in costs (\$million)	Business	Community Organisations	Individuals	Total change in cost
Total, by sector	\$63.5	\$0	\$2.3	\$65.9
Cost offset (\$ million)	Business	Community organisations	Individuals	Total, by source
Agency	\$63.5	\$0	\$2.3	\$65.9
Are all new costs offset? <input checked="" type="checkbox"/> Yes, costs are offset <input type="checkbox"/> No, costs are not offset <input type="checkbox"/> Deregulatory—no offsets required				
Total (Change in costs – Cost offset) (\$million) \$0				

Option 6 – CRS implementation on 1 July 2017: Average Annual Regulatory Costs				
Change in costs (\$million)	Business	Community Organisations	Individuals	Total change in cost
Total, by sector	\$65.1	\$0	\$2.2	\$67.2
Cost offset (\$ million)	Business	Community organisations	Individuals	Total, by source
Agency	\$65.1	\$0	\$2.2	\$67.2
Are all new costs offset? <input checked="" type="checkbox"/> Yes, costs are offset <input type="checkbox"/> No, costs are not offset <input type="checkbox"/> Deregulatory—no offsets required				
Total (Change in costs – Cost offset) (\$million) \$0				

Comparison of compliance costs

3.122 Option 1 has the lowest compliance costs, however the ATO will not receive CRS information from other tax authorities, Australia will be criticised by other countries and in the future is likely to be subject to measures from other jurisdictions that will increase the costs of business for financial institutions and entities.

3.123 Options 3, 4, 5 and 6 have similar compliance costs.

Option 1 – Australia does not adopt the CRS (status quo)

3.124 There are no compliance costs under this option.

Option 2 – Implement the CRS on 1 January 2016

3.125 The compliance costs are highest under this option.

3.126 Financial institutions estimate the minimum upfront implementation costs in total are \$63.9 million per year.

3.127 Ongoing compliance costs for both financial institutions and individuals are estimated to total \$12.9 million per year.

3.128 Collectively, the annualised yearly costs for this option of both the start-up and recurring costs is \$76.8 million per year.

Option 3 – Implement the CRS on 1 January 2017

3.129 Option 3 compliance costs are higher than those under options 4, 5 and 6, but significantly lower than costs under option 2.

3.130 Financial institutions estimate the minimum upfront implementation costs in total are \$55.6 million per year.

3.131 Ongoing compliance costs for both financial institutions and individuals are estimated to total \$12.8 million per year.

3.132 Collectively, the annualised yearly costs for this option of both the start-up and recurring costs is \$68.4 million per year.

Option 4 – Staged implementation from 1 January 2017

3.133 This is the lowest cost option of the options to implement the CRS.

3.134 Financial institutions estimate the minimum upfront implementation costs in total are \$51.9 million per year.

3.135 Ongoing compliance costs for both financial institutions and individuals are estimated to total \$12.8 million per year.

3.136 Collectively, the annualised yearly costs for this option of both the start-up and recurring costs is \$64.8 million per year.

Option 5 – Implement the CRS on 1 January 2018

3.137 This is the second lowest cost option of the options to implement the CRS.

3.138 Financial institutions estimate the minimum upfront implementation costs in total are \$53.0 million per year.

3.139 Ongoing compliance costs for both financial institutions and individuals are estimated to total \$12.9 million per year.

3.140 Collectively, the annualised yearly costs for this option of both the start-up and recurring costs is \$65.9 million per year.

Option 6 – Implement the CRS on 1 July 2017

3.141 This is the third cost option of the options to implement the CRS.

3.142 Financial institutions estimate the minimum upfront implementation costs in total are \$54.5 million per year.

3.143 Ongoing compliance costs for both financial institutions and individuals are estimated to total \$12.7 million per year.

3.144 Collectively, the annualised yearly costs for this option of both the start-up and recurring costs is \$67.2 million per year.

Costs for the general public

3.145 Individuals and entities will be required to provide additional information to financial institutions when opening new accounts after the CRS has been implemented. For individuals, this compliance cost is expected to be negligible per individual as they will generally be answering two additional questions. These are questions on their tax residence and taxpayer identification number from other jurisdictions.

3.146 Entities may incur similar additional costs to individuals as they also will be providing additional information in determining the tax residence of their controlling persons. Individuals and entities are estimated to take an additional one minute to provide this information to financial institutions. Other information that is used to estimate the compliance costs for individuals includes the number of financial institutions' new account holders per year, and the average weekly earnings, adjusted to include income tax.

3.147 The annual yearly costs for the general public are approximately \$2 million per year. This is based on new account openings per year multiplied by one minute of the average hourly rate.

Distribution of compliance costs

3.148 The compliance costs for the CRS will predominantly fall on the financial and insurance services sector. The sector employs approximately 390,000 people⁸ and contributed \$138.6 billion to the economy in 2014-15 by gross value added⁹.

8 ABS data – Labour Force, Australia, Detailed, Quarterly, August 2015 (6291.0.55.003).

9 5206.0 Australian National Accounts: National Income, Expenditure and Product, Industry Gross Value Added, Chain volume measures, Annual.

3.149 The CRS is expected to affect over 184 financial institutions¹⁰. This is estimated to be around 101 small, 50 medium and 33 large financial institutions. The types of financial institutions include:

- Authorised Deposit-taking Institutions (ADIs), which at March 2014 comprised 70 banks (\$3,251.8 billion in assets), nine building societies (\$23.3 billion in assets) and 85 credit unions (\$41.0 billion in assets);
- Some non-ADIs, in particular securitisers (total non-ADI assets are \$127.5 billion); and
- Some insurers and fund managers, excluding superannuation entities and general insurance companies (total insurer and fund manager assets are \$514.8 billion, excluding superannuation entities).¹¹

3.150 Within the financial and insurance services sector, the majority of costs will be incurred by larger institutions with complex IT systems and a larger proportion of foreign tax resident and entity customers.

Nature of compliance costs

3.151 For financial institutions, the start-up and ongoing compliance costs to implement the CRS are expected to be similar to the FATCA compliance costs. Some large financial institutions have identified the start-up costs relate to:

- professional legal services;
- business systems design and development;
- development of staff training and education;
- internal compliance assurance; and
- other costs (including management of global conglomerates, project governance and administration costs).

10 This is based on the estimated number of financial institutions used in the FATCA Regulation Impact Statement which captured members of the FSC and the ABA. In addition to this, the members of the COBA have also been included for the CRS.

11 <http://www.rba.gov.au/fin-stability/fin-inst/> .

3.152 For some businesses, the business system design and development costs account for 70 per cent to 80 per cent of the of the start-up costs due to the complexity of the existing IT systems.

3.153 The nature of the ongoing costs generally relate to:

- ongoing operation of business systems (i.e. classification of new accounts and monitoring systems);
- delivery of ongoing staff training and education; and
- reporting.

3.154 Operation of business systems makes up the highest proportion of ongoing costs - 50 per cent of ongoing costs for some financial institutions.

3.155 Financial institutions have advised that their compliance costs to implement the CRS are expected to be borne by Australian consumers of financial services in the form of higher fees and charges and/or higher interest rates, rather than being borne by the owners of the financial institutions. This is a result of financial institutions' cost of capital being set in international capital markets, especially for foreign owners, and if the compliance costs were borne by these owners it would lower their return, possibly leading to disinvestment.

Offsets

3.156 The costs associated with the implementation of the CRS under option 6 will be offset against the cost savings from transfer pricing record keeping simplification. These savings are within the Treasury portfolio.

Other considerations

Australian privacy laws

3.157 The implementation of the CRS in Australia would engage the right to protection from arbitrary or unlawful interference with privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR).

3.158 This engagement with the right to privacy is in the furtherance of a legitimate objective and is reasonable and necessary. The principal objective of these amendments is to improve tax compliance and enhance the integrity of the Australian and other jurisdictions' tax systems by improving reciprocal tax information-sharing arrangements between Australia and other jurisdictions.

3.159 The exchange of CRS information by the ATO with other jurisdictions' tax authorities relies on existing legal frameworks to ensure the confidentiality of exchanged tax information and limit its use to appropriate purposes. The main protection for taxpayer confidentiality is provided by a general prohibition on the disclosure of taxpayer information by ATO officers (see subdivision 355-B of Schedule 1 to the *Tax Administration Act 1953* (TAA 1953)). The disclosure of taxpayer information to other countries' tax authorities is allowed by section 355-50 of Schedule 1 to the TAA 1953.

3.160 Information exchanges are subject to strict treaty confidentiality rules which are consistent with Australia's domestic tax secrecy rules. Confidentiality rules are set out in Article 22 of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as well as in the equivalent of the standard OECD Model Article 26 in Australia's bilateral tax treaties. These rules limit the circumstances in which taxpayer information can be disclosed to third parties and the purposes for which it can be used. In general, this means that taxpayer information Australia shares with other countries' tax authorities can only be used for tax administration purposes and may only be disclosed to persons (including courts and administrative bodies) concerned with the assessment, collection, administration or enforcement of, or with litigation with respect to the country's taxes.

3.161 Although over 60 jurisdictions have signed the CRS Multilateral Competent Authority Agreement (MCAA), Australia will not automatically exchange CRS information with another country's tax authority unless that tax authority has the legal and administrative capacity to ensure confidentiality of taxpayer information. The ATO will also be able to suspend the exchange of information with another country's tax authority if it determines that there is or has been significant non-compliance with confidentiality safeguards (section 7 of the MCAA).

Australian anti-discrimination laws

3.162 The CRS does not raise issues of unlawful discrimination under the *Racial Discrimination Act 1975* as 'nationality' is not a ground of discrimination prohibited under the Act.

Regulation Impact Statement Early Assessment

3.163 A Regulation Impact Statement (RIS) for Early Assessment of CRS implementation was submitted to the Office of Best Practice Regulation (OBPR) on 3 September 2015, before the former Treasurer, the Hon Joe Hockey MP, announced on 20 September 2015 that Australia was to implement the CRS from 2017.

3.164 OBPR assessed the RIS as meeting best practice at that stage of the policy development process.

Conclusion

3.165 The preferred option for implementing the CRS in Australia is to implement it on 1 July 2017. Australia not implementing the CRS will subject it to international criticism and likely measures in the future that will increase the cost of business for financial institutions. Implementation also improves the integrity of the tax system and helps to engender confidence in the community that taxes are not being evaded, encouraging greater voluntary compliance.

3.166 Implementation by staged implementation from 1 January 2017, or on 1 January 2018 or 1 July 2017 have similar compliance costs, however implementation on 1 July 2017 results in the ATO receiving financial account on Australian residents in other jurisdictions in 2018, enabling it to undertake compliance activity in 2018-19. Implementation by staged implementation from 1 January 2017 or on 1 January 2018 is expected to result in the ATO receiving financial account on Australian residents in other jurisdictions in 2019-20, which would delay its compliance activity. Further, it is expected under these options that Australia would be subject to public criticism from other countries and the OECD from exchanging information later than its commitment to the G20.

3.167 The revenue gain from the compliance activity is expected to be significant — an unquantifiable revenue gain of between \$10 million to \$100 million per year beyond the forward estimates — even though the revenue estimate from implementing the CRS is unquantifiable.

3.168 The revenue gain will be dependent on the number of jurisdictions implementing the CRS — to date over 95 jurisdictions have committed to implement it, including all major former tax secrecy jurisdictions — and the number of jurisdictions that agree to exchange information with Australia. It is expected that Australia will exchange information with most, if not all jurisdictions, that implement the CRS,

subject to the jurisdictions having the legal framework and administrative capacity and processes in place to ensure the confidentiality of the information received and that such information is only used for agreed purposes. Over 70 jurisdictions have taken the step of signing the Multilateral Competent Authority Agreement to automatically exchange information under the CRS, which specifies the details of what information will be exchanged and when.

Implementation and evaluation

3.169 Legislation is required to implement the CRS and the Bill implementing it is expected to be introduced into Parliament in late 2015.

3.170 Australia's later implementation of the CRS compared to some other jurisdictions is expected to enable Australia to address any problems identified in early implementation in these jurisdictions before it commences in Australia.

3.171 The ATO will administer the CRS and is well placed to evaluate financial institutions' implementation.

3.172 The Treasury and ATO are continuing to consult with financial institutions on CRS implementation and the ATO intends to release guidance in early 2016. The Treasury and the ATO are also continuing to engage the OECD's Working Party 10 and the Global Forum on CRS implementation.

3.173 The Working Party has agreed to review the CRS reporting format late in 2017 for jurisdictions exchanging in that year and to recommend any revisions in early 2018 for exchanges in 2020.

3.174 The Working Party has also agreed to carry out a comprehensive substantive review of the CRS, based on the experience of jurisdictions first exchanging in 2017 and 2018 and their use of the information. This review is to cover the CRS, the CRS Commentary and the reporting format and is expected to occur after a number of exchanges by jurisdictions first exchanging in 2017 and 2018. To enable Australia to effectively contribute to the Working Party review a domestic review of implementation will be undertaken, which will include consultations with financial institutions and the ATO.

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