

## CRS – Common Reporting Standard

The Common Reporting Standard (CRS) is an initiative of the Organisation for Economic Cooperation and Development (OECD) for the automatic exchange of financial account information, enacted in the European Union by way of Council Directive 2014/107/EU as regards mandatory automatic exchange of information in the field of taxation and implemented in Romania by way of Law no. 207/2015 on the Tax Procedure Code.

Please see the updated list of participating jurisdictions at:

- <http://www.oecd.org/ctp/exchange-of-tax-information/MCAA-Signatories.pdf>;
- <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/crs-by-jurisdiction/#d.en.345489>.

### *Scope*

The provisions of **CRS** are applicable in Romania as of 01.01.2016 and cover individual Bank clients as well as legal person clients or other legal arrangements (e.g. a partnership, trust or foundation).

### *The impact of CRS on Bank Clients*

As of 01.01.2016, when opening bank accounts, Clients are required to fill out and sign a statement (self-certification) to establish the client's residence for tax purposes and determine whether the client is a *Reportable person* (reportable/non-reportable person status under CRS).

Clients will inform the Bank of any change in the initial information provided.

Taking into consideration that, according to the local legal provisions mentioned above, the Bank is required to apply certain due diligence procedures with respect to pre-existing accounts as at 31.12.2015, the Bank may request clients with accounts opened prior to 01.01.2016 to provide additional information in order to determine their reportable/non-reportable person status under CRS.

### *The impact of CRS on the Bank*

Bank Leumi Romania SA has the obligation to observe the requirements of Law no. 207/2015 on the Tax Procedure Code and will apply the required due diligence procedures to:

- Determine the residence for tax purposes of all account holders;
- Identify all reportable accounts;
- Identify the controlling persons who exercise control over account holders;
- Determine whether account holders (other than natural persons) are Passive Non-Financial Entities (NFE) and whether the controlling persons who exercise control over Passive NFEs are reportable persons;
- Obtain additional documents or information to determine reportable person status;
- Report to the competent tax authority (National Agency for Fiscal Administration (*A.N.A.F.*)) the financial account information of reportable persons subject to the above mentioned legal provisions.

### *Data subject to reporting by the Bank:*

The following information must be reported pursuant to the legal provisions in force:

- a) in the case of an individual that is an account holder and a reportable person: name, address, jurisdiction of residence, Taxpayer Identification Number(s) (TIN), date and place of birth, as appropriate;
- b) in the case of an entity that is an account holder and a reportable person: name, address, jurisdiction of residence and Taxpayer Identification Number(s) (TIN);
- c) in the case of an entity that is an account holder and is identified as having one or more controlling persons that is a reportable person:
  - (i) name, address, jurisdiction of residence and Taxpayer Identification Number(s) (TIN) of the entity; and
  - (ii) names, addresses, jurisdictions of residence and Taxpayer Identification Numbers (TIN) of the reportable persons and the date and place of birth of each reportable person;
- d) the account number;

f) 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, if the account was closed during such year, the closure of the account.

The following information is also subject to reporting:

a) in the case of any custodial account:

(i) the total gross amount of interest paid or credited to the account or with respect to the account during the calendar year;

(ii) the total gross amount of dividends paid or credited to the account or with respect to the account during the calendar year;

(iii) 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; and

(iv) the total gross proceeds from the sale or redemption of financial assets paid or credited to the account during the calendar year with respect to which the reporting financial institution acted as a custodian, broker, nominee, or otherwise as an agent for the account holder.

b) in the case of a depository account, the total gross amount of interest paid or credited to the account during the calendar year;

c) in the case of any account not described in subparagraph a) and b), the total gross amount paid or credited to the account holder with respect to the account during the calendar year 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.

Please take note that:

- the information above will identify the currency in which each amount is denominated;

- the balance /value of an account is determined as of the last day of the reporting period;

- personal data or data subject to privacy requirements must be reported to the National Agency for Fiscal Administration annually, in the calendar year following the year to which the information relates.

#### ***Indicia determining reportable person status:***

The following indicia will be considered at a minimum:

(a) the account holder is a resident of another Member State which is a signatory of the automatic information exchange mechanism (e.g. *in the case of individuals*: a home or residence address in another Member State; *in the case of entities*: a place of incorporation or organisation in another Member State);

(b) current mailing or residence address (including a post office box) in another Member State;

(c) one or more telephone numbers in another Member State and no telephone number in Romania;

(d) standing instructions (other than with respect to a depository account) to transfer funds to an account maintained in another Member State;

(e) a currently effective power of attorney or signatory authority granted to a person with an address in another Member State;

(f) a “hold mail” instruction or “in-care-of” address in another Member State if the Bank does not have any other address on file for the account holder.

(g) the account holder is a *Passive Non-Financial Entity (NFE)* with one or more *controlling persons* (i.e. beneficial owners within the meaning of Law no. 656/2002) who are *reportable persons* (the following indicia will be considered: the current mailing or residence address of the beneficial owner is in another Member State; the beneficial owner is a resident of another Member State; the beneficial owner has one or more telephone numbers in another Member State; the beneficial owner has given power of attorney to a person whose home or residence address is in another Member State).

#### ***Specific terms:***

**Financial asset:** includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), insurance contract or annuity contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, insurance contract, or annuity contract. The term “Financial asset” does not include a non-debt, direct interest in real property.

**Financial account:** an account maintained by a financial institution which includes a depository account and a custodial account, plus any cash value insurance contract and any annuity contract issued or maintained by a financial institution, other than a non-investment-linked, non-transferable immediate life annuity that is issued to an individual and monetises a pension or disability benefit provided under a non-reportable account (Excluded account);

**Depository account:** any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a financial institution in the ordinary course of a banking or similar business.

**Custodial account:** an account (other than an insurance contract or annuity contract) which holds one or more financial assets for the benefit of another person.

**Reportable account:** a financial account that is maintained by a reporting financial institution in Romania and is held by a reportable person.

**Reportable person:** a person showing any of the above mentioned indicia, other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a related entity of a corporation described in clause (i); (iii) a governmental entity; (iv) an international organisation; (v) a central bank; or (vi) a financial institution.

**Controlling persons:** the natural persons who exercise control over an entity. In the case of a trust, that term means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions.

**The term "Controlling persons"** is the equivalent of the "beneficial owner", as defined in art. 4 of Law no. 656/2002 *for the prevention and sanctioning of money laundering and the implementation of some measures to prevent and control terrorist financing, recast, as further amended*, namely: any natural person who ultimately owns or controls the customer and/or the natural person on whose behalf or interest a transaction or activity is being conducted, directly or indirectly.

The term "*beneficial owner*" will include the following at a minimum:

a) in the case of corporate entities:

1. the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership over a sufficient percentage of the shares or voting rights sufficient to ensure control in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards.
2. A percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;
2. the natural person(s) who otherwise exercises control over the management of a legal entity;

b) in the case of legal entities, other than those referred to in para. (a), and other entities or legal arrangements, which administer and distribute funds:

1. The natural person who is the beneficiary of 25 % or more of the property of a legal person or other entities or legal arrangements, where the future beneficiaries have already been determined;
2. Where the natural persons that benefit from the legal person or entity have yet to be determined, the group of persons in whose main interest the legal person, entity or legal arrangement is set up or operates;
3. The natural person(s) who exercises control over 25 % or more of the property of a legal person, entity or legal arrangement.

**Member State person:** an individual that is resident in any other Member State under the tax laws of that other Member State, or an estate of a decedent that was a resident of any other Member State.

**Automatic exchange:** means the systematic communication of predefined information on residents in other Member States to the relevant Member State of residence, without prior request, at pre-established regular intervals.

**Account holder:** the person identified as the holder of a financial account by the financial institution that maintains the account. In the case of a cash value insurance contract or an annuity contract, the Account holder is any person

entitled to access the cash value or change the beneficiary of the contract. If no person can access the cash value or change the beneficiary, the Account holder is any person with a vested entitlement to payment under the terms of the contract.

**Entity:** a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation.

**NFE:** any Entity that is not a Financial Institution.

**Passive NFE:**

- a) NFE that is not an Active NFE; or
- b) an investment entity the gross income of which is primarily attributable to investing, reinvesting, or trading in financial assets, if the entity is managed by another entity that is a depository institution, a custodial institution, a specified insurance company, or an investment entity that is not a Participating Jurisdiction Financial Institution.

**Active NFE:** any NFE that meets any of the following criteria:

- a) less than 50 % of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 % of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
- b) the stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
- c) the NFE is a governmental entity, an international organisation, a central bank, or an entity wholly owned by one or more of the foregoing;
- d) substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- e) the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;
- f) the NFE was not a financial institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- g) the NFE primarily engages in financing and hedging transactions with, or for, related entities that are not financial institutions, and does not provide financing or hedging services to any entity that is not a related entity, provided that the group of any such related entities is primarily engaged in a business other than that of a financial institution; or
- h) the NFE meets all of the following requirements:
  - (i) it is established and operated in its Member State or other jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its Member State or other jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
  - (ii) it is exempt from income tax in its Member State or other jurisdiction of residence;
  - (iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
  - (iv) the applicable laws of the NFE's Member State or other jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and
  - (v) the applicable laws of the NFE's Member State or other jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organisation, or escheat to the government of the NFE's Member State or other jurisdiction of residence or any political subdivision thereof.

**NOTE: *the information in this document is an abbreviated version of the legal provisions concerning the automatic exchange of financial account information for tax purposes and does not comprise the relevant legal provisions in their entirety.***

For further information, please refer to the relevant national laws (i.e. Law no. 207/2015 on the Tax Procedure Code and Order no. 1939/2016 issued by the Minister of Public Finance) and access [www.oecd.org](http://www.oecd.org).