Implementing the Global Standard on Automatic Exchange of Information: Issues Paper

Thank you for the opportunity to submit on the Issues Paper on the Global Standard for Automatic Exchange of Information ("AEOI").

By way of background, the Financial Services Federation ("FSF") is the industry body representing responsible and ethical finance and leasing providers in New Zealand. The FSF has over fifty members and affiliates providing first-class financing, leasing, and credit-related insurance products and services to over 1 million New Zealand consumers and businesses. The FSF's affiliate members include internationally recognised legal and consulting partners. A list of the current membership is attached to this submission as Appendix "A".

As can be seen from the membership list, the majority of financial institutions belonging to the FSF are credit providers who do not take deposits from the public and therefore have nothing to report under the Common Reporting Standard "CRS"). The FSF's therefore strongly submits that it needs to be very clear under the CRS that any financial institution that is involved in lending but not in deposit-taking is outside of the scope of the AEOI.

As can be also seen from the membership list, there are only in fact a small number of deposit-taking institutions belonging to the FSF. Of these, two are so small as to not require a credit rating under the Reserve Bank of New Zealand's previous credit rating exemption which expired on 29 February this year (having a deposit book of less than $20 million). Under the new RBNZ credit rating exemption in place from 1 March of this year until 29 February 2020, Non-Bank Deposit Takers ("NBDTs") with consolidated liabilities of less than $40 million (who maintain a capital ratio of more than 12%) three FSF members are exempt from the need to have a credit rating.

The FSF also strongly submits that any deposit-taking institution that is so small as to not be required by the prudential supervisor (RBNZ in this instance) to have a credit rating is thus so small as to not to be a significant risk of being used by non-New Zealand residents to evade tax in their home jurisdiction.

The FSF would be very concerned if the three small NBDT members were to be required to meet the CRS under AEOI as the cost of compliance to them would be burdensome when the risk of any non-New Zealand residents placing deposits with them to evade paying tax in their home jurisdictions is miniscule to none.

The FSF will answer those questions raised in the Issues Paper as are relevant to their NBDT membership.

2.18: CRS criteria for being New Zealand non-reporting financial institutions

The FSF is extremely disappointed to learn that the definition of an NRFI under the CRS is not the same as that under FATCA. For the sake of consistency and therefore to make it easier for all financial institutions to comply with their obligations it would seem to the FSF to be eminently sensible for the two regimes to use the same definitions.

Having said that, the CRS definition of NRFI allows for New Zealand domestic law to classify as NRFIs those institutions which present a low-risk of being used to evade tax and which would not frustrate the purposes of the CRS.

The FSF submits that small NBDTs which are not required to obtain a credit rating under their licensing requirements by the RBNZ (i.e. their total liabilities are less than NZ$40 million) present an extremely low risk of being used by their non-New Zealand based depositors for the purposes of tax evasion.

The three FSF members who are eligible for the RBNZ's credit rating exemption are small tightly held New Zealand owned and operated companies that do not solicit deposits from non-New Zealand residents. In terms of the quantum of non-resident depositors among their customer bases they report:

- They are mostly New Zealand citizens living overseas;
- One member reports 9 non-New Zealand resident investors with a total of $340,000 invested which represents 2.65% of their total liabilities;
- Of these, they are aware that one is in the process of returning to NZ permanently, expected back in the next month. This will reduce the numbers to 8 investors representing $234,000 total investment and 1.82% of their investment book;
- One other member reports 5 investors based overseas, all of whom are New Zealand citizens;
- The third FSF member reports a small number of overseas-based investors but says that the need for the NBDT to meet their obligations for customer due diligence and identification under the Anti-Money Laundering and Countering the Financing of Terrorism Act 2009, makes the acceptance of non-New Zealand based depositors problematic and has proved a deterrent to them in doing so;

On the basis of the above, the FSF submits that the risk of overseas-based depositors placing their investment in a small New Zealand NBDT for the purpose of tax evasion is negligible to none and these small NBDTs (which would be defined as those who qualify for the RBNZs credit rating exemption by virtue of holding less than NZ$40 million in liabilities) should therefore be classified under New Zealand domestic law as NRFIs for the purposes of the AEOI.

The FSF strongly urges the Inland Revenue Department and Treasury of New Zealand to ensure that New Zealand domestic law includes the classification of NRFIs based on this definition (i.e. if the financial institution qualifies for the RBNZ credit rating exemption they should be classified as being an NRFI for the purposes of the AEOI).

2.26: Financial accounts which are excluded accounts

With respect to the accounts listed in the Issues Paper under paragraph 2.21, the FSF submits that the two NBDT members of the FSF which would not qualify to be NRFIs under the classification outlined in the answer to 2.18 above, would agree with the list in 2.21 and have nothing to add or detract to that.

2.27: Dormant accounts

The FSF would agree that a dormant account with a balance or value that does not exceed NZ$1,000 should be included in the definition of an excluded account.

2.31: Adopting a "wider approach" to CRS due diligence and reporting

For the sake of reducing compliance costs which are already enormously burdensome for all NBDTs due to legislative requirements such as the need to be licensed by the RBNZ, to have a Trustee as supervisor, to comply with AML/CFT obligations and others, the FSF would support New Zealand adopting a "wider approach" to CRS due diligence and reporting as stated in the Issue Paper.

3.10: Phasing in of CRS obligations

The FSF would agree with the proposed timeline for the phasing in of CRS obligations for financial institutions as detailed in paragraph 3.7 of the Issues Paper.

4.4: Conducting AEOI exchanges under the Multilateral Convention

Conducting AEOI exchanges under the Multilateral convention as outlined in Chapter 4 of the Issues Paper does not raise any concerns for the FSF or its members.

4.8: Implementing domestic legislation

- The FSF would suggest that similar anti-avoidance rules as currently apply to FATCA compliance should be implemented to prevent circumvention of CRS reporting and due diligence obligations for financial institutions;
- The FSF believes the current section 22(2)(1c) of the Tax Administration Act 1994 is sufficient to ensure CRS record keeping by relevant "persons";
- The FSF would agree that CRS related records should be retained for the current 7-year statutory period that relates to tax-related records;

- The FSF would suggest that similar penalties and procedures should apply when a New Zealand reporting financial institution has not complied with its due diligence and reporting obligations as those applying to FATCA due diligence and reporting obligations;
- The FSF would expect that New Zealand reporting financial institutions would expect that an account holder should keep them informed on a timely basis about material changes in circumstances regarding the account;
- The FSF submits that as much as possible any domestic legislation with regard to CRS obligations should mirror those put in place to enable reporting and due diligence under FATCA so as to avoid two differing compliance regimes for essentially the same function. Therefore any self-certifications required under CRS should be the same as those required under FATCA (if any);
- The FSF submits that whatever happens in terms of CRS compliance requirements there will be a cost burden imposed on reporting financial institutions. Therefore as much as is possible the requirements for CRS compliance should be the same as those for FATCA.

5.3: Defining the CRS "reporting period"

The FSF agrees that the CRS reporting period should be based on the tax year (year ending 31 March) as that is when all other reporting such as RWT reporting is required by financial institutions.

5.4: Nil Returns

The FSF agrees that Reporting Financial Institutions should be able to file "nil returns" with Inland Revenue.

5.5: Definition of CRS terms

The FSF agrees that terms used in the CRS which do not have a corresponding definition in current New Zealand law should be defined in any CRS enabling domestic legislation.

5.6: Currency translation rules

The FSF submits that domestic law should allow New Zealand reporting financial institutions to treat all dollar amounts in the CRS as being in New Zealand dollars.

5.7: Pre-existing accounts – Tax Identification Numbers and date of birth

The FSF does not support any requirement under domestic law for New Zealand reporting financial institutions to obtain and report TINs and "date of birth" for pre-existing reasonable accounts (beyond making reasonable efforts to obtain that information in the way referred to in the CRS).

5.8: "Place of birth" of individuals

As stated under 5.7 above, the FSF does not support any requirement under domestic law for New Zealand reporting financial institutions that is beyond the requirements of the CRS. It needs to be remembered that New Zealand financial legislation has undergone a massive "once-in-a-lifetime" overhaul as a result of the Global Financial Crisis (including, but not limited to, the introduction of the AML/CFT regime, licensing of NBDTs, the introduction of the Financial Markets Conduct Act 2013 and many others). Whilst the FSF acknowledges that this was necessary to improve confidence in New Zealand's financial and capital markets, the compliance burden and cost on New Zealand financial institutions (and NBDTs in particular) has been substantial in both dollar terms and in time and resources. The FSF would strongly submit that any further compliance burden as a result of the CRS should be kept to the absolute minimum for New Zealand to comply with its obligations under the AEOI.

5.9: Reporting of average monthly balances or values

See comments in 5.8 above regarding keeping compliance cost and obligations to the absolute minimum.

5.10: Certain trades facilitated by brokers

The FSF has no comment to make on this matter as it is irrelevant to its members.

5.11: Service providers

The FSF submits that if New Zealand reporting financial institutions wish to use third party service providers to fulfil their due diligence and reporting obligations, they should be free to do so and legislation should allow this choice.

5.12: New Zealand resident controlling persons as "reportable persons"

The FSF would disagree that New Zealand resident controlling persons of passive NFEs should be treated as reportable persons for domestic CRS purposes.

5.13: Pre-existing entity accounts – using standard industry coding systems

The FSF would support New Zealand reporting financial institutions being able to use as documentary evidence for the purposes of CRS due diligence on pre-existing accounts, any classification in their records with respect to the account holder based on a standard industry coding system if that was their choice.

5.14: Using the "residence address" test for lower value pre-existing individual accounts

The FSF would support New Zealand reporting financial institutions being able to use the "residence address" test for lower value pre-existing individual accounts to identify the tax resident of the account holder.

5.15: "Related entity" definition and related managed investment funds

The FSF has no comment to make on this matter as it is irrelevant to its members.

5.16: Pre-existing entity accounts' threshold

The FSF would strongly support New Zealand reporting financial institutions having the option of excluding from due diligence procedures pre-existing entity accounts with an aggregate account balance or value of US$250,000 or less as at the relevant CRS date. The comments made in 5.8 above are also relevant here.

5.17: Alternative due diligence procedures

See comments made under 5.16 above.

5.18: New accounts opened by pre-existing customers

The FSF would support the CRS definition of "pre-existing account" being expanded to include an additional account opened by a pre-existing customer.

5.19: Group cash value insurance contracts or annuity contracts

The FSF has no comment to make on this matter as it is irrelevant to its members.

5.20: Custodial accounts – reporting of "gross proceeds"

The FSF has no comment to make on this matter as it is irrelevant to its members.

5.21: Trust beneficiaries as controlling persons of passive NFEs

The FSF has no comment to make on this matter as it is irrelevant to its members.

5.22: Grandparenting rule for certain bearer shares for regulated collective investment vehicles

The FSF has no comment to make on this matter as it is irrelevant to its members.

The FSF has no further comment to make with respect to the Issues Paper.

Once again, the FSF is grateful for the opportunity to submit on the Issues Paper on behalf of its members.

Should you wish to discuss the FSF's submission further, please do not hesitate to contact me.

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FINANCIAL SERVICES FEDERATION