Japan Securities Dealers Association
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April 28, 2022

The International Co-operation and Tax Administration Division
Centre for Tax Policy and Administration
Organisation for Economic Co-operation and Development (OECD)
2, rue André Pascal 75016
Paris, France

Comments on "Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard"

Dear Sir/Madam:

The Japan Securities Dealers Association (JSDA[1]) appreciates the opportunity to comment on the Crypto-Asset Reporting Framework (CARF) and Amendments to the Common Reporting Standard (CRS).

While we strongly recognize the importance of tax transparency and the proposed frameworks, we believe it is important to strike a balance achieving the goal of the frameworks and maintaining an environment conducive to the nurturing of innovative technologies and a vibrant capital market, which will contribute significantly to the remarkable development of each jurisdiction.

In order to achieve this balance, we request that the following points be considered as much as possible when discussing the proposed CARF and CRS as our general remarks:

(A) Make the scope of the CRS and CARF mutually exclusive to eliminate the duplicated application of the CRS and CARF
(B) Make the procedures and definitions between the CRS and CARF as consistent
(C) Make the procedures and definitions efficient, essential and less complicated

[1] The Japan Securities Dealers Association (JSDA) is an association that functions as both a self-regulatory organization and as an interlocutor between market participants and various stakeholders, including government authorities. Its legal status is a Financial Instruments Firms Association authorized by the Prime Minister. Both functions operate independently. The JSDA has approximately 270 regular members that are Financial Instruments Firms conducting the Type I Financial Instruments Businesses (e.g. securities firms) in Japan. The regular member list can be seen in the following website. https://www.jsda.or.jp/en/about/members-list/

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<CARF>

Crypto-Assets in scope

1. Does the CARF cover the appropriate scope of Crypto-Assets? Do you see a need to either widen or restrict the scope of Crypto-Assets and, if so, why?

(Comment)

Although the public consultation document implies security token as an example of crypto-assets, we suggest that financial assets' digital representations maintained at financial accounts of reporting financial institutions (FIs) under the CRS be explicitly excluded from the definition of the crypto-assets despite its usage of a cryptographically secured distributed ledger or a similar technology. There are three reasons behind this suggestion.

First, we consider that the case above does not link to the concerns outlined in the consultation document, which states "…Crypto-Assets, which can be transferred and held without interacting with traditional financial intermediaries and without any central administrator having full visibility on either the transactions carried out, or the location of Crypto-Asset holdings." (page3), "are frequently offered by actors that are not covered by the Common Reporting Standard (CRS). Against this background, the OECD is advancing…" (page3) and "The definition of Crypto-Assets thereby targets those assets that can be held and transferred in a decentralised manner, without the intervention of traditional financial intermediaries" (page5). In other words, financial assets' digital representations maintained at financial accounts of reporting FIs under CRS are not within the scope of the CARF's objective.

Second, the CARF and CRS seek to be consistent with the FATF recommendations, whose "Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers" defines the relevant assets describing "Virtual assets do not include digital representations of fiat currencies, securities, and other financial assets that are already covered elsewhere in the FATF Recommendations" (item 44) and "That is, they should be applied based on the basic characteristics of the asset or the service, not the technology it employs." (item 47) Thus, our suggestion is considered to be consistent with the FATF recommendations.

Third, in the case where the financial assets we mentioned are classified as crypto-assets, the establishment and implementation of relevant due diligence procedures will be complicated for both customers and reporting FIs and, thus, will not be effective and efficient, because reporting FIs will need to deal with the differences between the definitions under the CARF, CRS and FATCA (e.g. Active Entity & Excluded Person in CARF vs Active NFE & Reportable Person in CRS vs Active NFFE and Reportable Person in FATCA, etc.) , including explaining the differences to the customers who trade both the traditional financial assets and crypto-assets and asking for self-certifications

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hoping that the customers understood the complex definitions.

Therefore, we would like to suggest excluding financial assets' digital representations maintained at financial accounts of reporting FIs under the CRS from the definition of crypto-assets despite its usage of a cryptographically secured distributed ledger or a similar technology, from the viewpoints of the CARF's objective, consistency with the FATF Recommendations, effectiveness and efficiency.

3. Are you aware of existing types of Crypto-Assets, other than Closed-Loop Crypto Assets or Central Bank Digital Currencies that present a low risk from a tax compliance perspective and should therefore be excluded from the scope?

(Comment)

If the financial assets' digital representations maintained at financial accounts of reporting FIs under the CRS, which we commented on regarding the question 1, cannot be excluded from the definition of crypto-assets, we would appreciate it if you could consider excluding from the crypto-assets the financial assets' digital representations (e.g., security tokens) that meet all of the following requirements, because such assets present a low risk from a tax compliance perspective under the CARF.

(A) The assets are subject to the CRS so that Reporting FIs comply with the due-diligence and reporting obligations,

(B) Customers cannot exchange and transfer the assets without interacting with reporting FIs and

(C) The reporting FIs have full visibility on the transactions and holdings of the assets at the FIs' financial accounts

Reporting requirements

7. Information pursuant to the CARF is to be reported on an annual basis. What is the earliest date by which information on the preceding year could be reported by Reporting Crypto-Asset Service Providers?

(Comment)

When reporting FIs handle crypto-assets, the reporting FIs are required to comply with both the CRS and CARF. Since the consistency between the CRS and CARF would be ideal for them, we suggest that the reporting timing under the CARF be the same as that under the CRS.

Due diligence procedures

1. The due diligence procedures of the CARF are in large part based on the CRS. Accordingly, the

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CARF requires Reporting Crypto-Asset Service Providers to determine whether their Entity Crypto-Asset Users are Active Entities (corresponding largely to the definition of Active NFE in the CRS) and, on that basis, identify the Controlling Persons of Entities other than Active Entities. Would it be preferable for Reporting Crypto-Asset Service Providers to instead document the Controlling Persons of all Entity Crypto-Asset Users, other than Excluded Persons? Are there other elements of the CRS due diligence procedures that should be included in the CARF to ensure that Reporting Financial Institutions that are also Reporting Crypto-Asset Service Providers can apply efficient and consistent due diligence procedures?

(Comment)

[Document the Controlling Persons of All Entity Crypto-Asset Users]

No, it is not preferable "to instead document the Controlling Persons of all Entity Crypto-Asset Users, other than Excluded Persons" due to its excessive burden on reporting FIs and crypto-asset service provider (CASPs).

[Due Diligence under CARF for reporting FIs]

We propose that reporting FIs can rely on the outcomes of CRS due diligence to determine customer's tax residency for purposes of the CARF in the case where the reporting FIs have already specified their tax residency under the CRS and the customers also trade crypto-assets, so that we can eliminate duplicated applications of the procedures.

In the case above, since the CRS is already in effect, reporting FIs are supposed to have already obtained customers' self-certifications and identified their tax residency. The goal to collect self-certifications is same between CARF and CRS. Therefore, it would be rational and efficient not to require reporting FIs to collect self-certifications again from the same customers under the CARF.

[Inconsistency between CRS and CARF]

Given the administrative burden of the CARF itself and the burden to comply with both the CARF and CRS, we believe that it is ideal to make the due diligence procedures under the CARF and CRS consistent as much as possible from the viewpoint of effective and efficient implementation. Such consistency includes (but is not limited to) the following aspects:

● Due Diligence for Preexisting customers

We consider that the due diligence for preexisting customers under the CARF would become more effective and ideal if CASPs could have other options than self-certifications in order to specify reportable persons in the same manner as the CRS, especially considering that there are different sizes and types of service providers and we cannot necessarily assume that coping with preexisting

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customers for the crypto-assets is easier than for traditional financial assets.

●Obligation to have self-certifications checked by customers once every 36 months

Unlike the CRS, the CARF requires customers to confirm the content of self-certifications once every 36 months (36 month tests). However, we would like the OECD to consider deleting this provision, because the goal of this provision, which is to ensure the validity of the self-certifications, can be achieved in a CRS-consistent manner without impacting the current business practices.

For example, there is a case where, on top of the obligations for reporting FIs to obtain self-certifications from their customers regarding a change in circumstances, customers are legally required to report the change in the contents of their self-certifications within 90 days to their reporting FIs under CRS. In addition to this, there is also a case where custodial institutions make with customers the agreements that the customers report the change of their information to the custodial institutions to comply with a variety of legal obligations.

These examples indicate that the mechanism to ensure the validity of self-certifications each time the contents are to be updated already exists, which can accomplish the goal of the 36 months test. Therefore, we would suggest deleting this provision and making the framework consistent with the CRS. If the 36 months test cannot be deleted, we would also suggest that the 36 months test may be deemed compliant in jurisdictions where the mechanism to ensure the validity of self-certifications each time the contents are to be updated exists.

●Rejection of transactions with customers

This provision does not exist in the CRS and we are concerned about its impact, which will be described in detail below.

4. Section III.D enumerates effective implementation requirements in instances where a Reporting Crypto-Asset Service Provider cannot obtain a self-certification from a Crypto-Asset User or Controlling Person. Notably, these requirements specify that the Reporting Crypto-Asset Service Provider must refuse to effectuate any Relevant Transactions on behalf of the Crypto-Asset User until such self-certification is obtained and its reasonableness is confirmed. Are there potential alternative effective implementation measures to those listed in Section III.D? If so, what are the alternative or additional effective implementation measures and which persons or Entities would be best-placed to enforce such measures?

(Comment)

We would like the OECD to consider deleting the provision that the Reporting Crypto-Asset Service Provider must refuse to effectuate any Relevant Transactions on behalf of the Crypto-Asset User

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until such self-certification is obtained and its reasonableness is confirmed, because, presumably, such restrictions undertaken by a private company may lead to suspicion of infringement of property rights in some jurisdictions.
Since the CRS has not taken such measures either, we request that careful consideration be given to whether or not the introduction of such measures is appropriate.

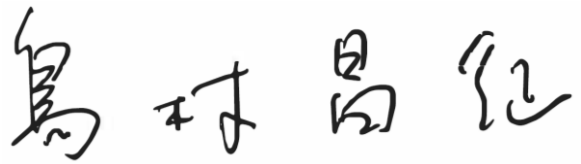
<CRS>

Other comments

2. Comments are also welcomed on all other aspects of amendments to the CRS.

(Comment)
The Commentary includes the content previously expressed in the FAQ, which states, "11bis. A self-certification is otherwise positively affirmed if the person making the self-certification provides the Financial Institution with an unambiguous acknowledgement that they agree with the representations made through the self-certification. In all cases, the positive affirmation is expected to be captured by the Financial Institution in a manner such that it can credibly demonstrate that the self-certification was positively affirmed (e.g., voice recording, digital footprint, etc.)." (page 74 of the consultation document).
We would like the OECD to provide examples or case studies of "digital footprint", as a reference for reporting FIs that have not utilized and instead rely on paper-based signatures due to a concern about its interpretation.

Sincerely yours,



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