

Global Tax Transparency

In 2010, Kenya joined the Global Forum on Transparency and Exchange of Information for tax purposes and Ratified the Convention on Mutual Administrative Assistance in Tax Matters in 2020, which convention came into force in January 2021. This Convention enables Kenya to start the implementation of the Automatic Exchange of Information (AEOI)/ Common Reporting Standard (CRS).

In order to implement this Convention, Kenya, in February 2023, gazetted the Tax Procedures (Common Reporting Standards) Regulation 2023 ("CRS Regulations") which aim to guide the implementation of CRS through enabling the systematic and periodic transmission of taxpayer information regarding the various categories of income/money held offshore.

Under Section 6B (3) of the Tax Procedure Act 2015 as read with the Regulation 4(3) of the CRS Regulations, Reporting Financial Institutions are required to report the details of foreign account holders to KRA.

The CRS Regulations define a Financial Institution as a Custodial Institution, a Depository Institution, an Investment Entity or a specified Insurance Company.

The test for identifying whether an entity is a Reporting Financial Institution includes determining whether:

1. The Entity is in a participating Jurisdiction? Kenya is a Participating Jurisdiction.
2. The Entity is a Financial Institution?
3. The Entity is a non-Reporting Financial Institution?

This said, an entity is a Financial Institution if it is:

- a. Depository Institution: These are generally savings banks, commercial banks, savings and loan associations and credit unions.
- b. Custodial Institution: These include custodial banks, brokers and central securities depositories.
- c. Investment entities: These are entities investing, reinvesting or trading in financial instruments, portfolio management or investing, administering or managing financial assets.
- d. Specified Insurance Companies: These generally include most life insurance companies.

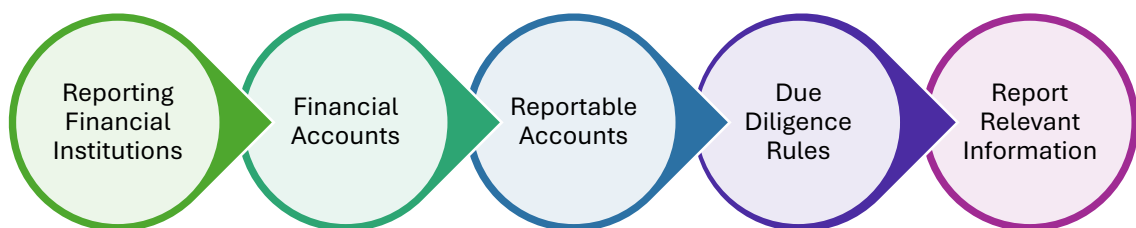
On the other hand, Non-Reporting Financial Institutions under the CRS Rules include:

- a. Government Entities
- b. International Organisations

- c. Central Banks
- d. Certain Retirement Funds
- e. Qualified Credit card issuers
- f. Exempt Collective Investment Entities
- g. Trustee Documents Trusts
- h. Other low risk Financial Institutions.

Where an Entity determines it or any of its branches falls under the above categories of Reporting Financial Institutions its next steps will include:

1. Determining and reviewing their financial accounts
2. Identifying which of its financial accounts are reportable or non-reportable
3. Undertaking due diligence on the pre-existing and new accounts, and
4. Reporting to the Commissioner of Domestic Taxes using the predetermined format.



The Commissioner is expected to deploy the liaison mechanisms to enable qualifying reporting financial institutions to report relevant details of their account holder to Kenya Revenue Authority (KRA) by the new deadline of 31 August 2024 for the year ended 31 December 2023.

In the meantime, the reporting financial institutions should have collected the reportable due diligence data including name, address, date and place of birth for individuals, tax residence, tax registration number of their account holders and account balance in readiness for the first reporting cycle.

Once KRA receives the CRS data, it may either on request of another tax jurisdiction or pursuant to an exchange of information agreement share the relevant data to that other participating jurisdiction to aid in tax administration.

The overarching objective of these disclosures is to enable revenue authorities identify and appropriately tax incomes that would otherwise be difficult to trace. Ultimately, the revenue authorities hope to reduce tax evasion and shore up the much-needed revenues even as citizens globally demand value for their taxes.

Christine Nderitu is a Regulatory and Tax Advisor with Ichiban Tax & Business Advisory LLP (cnderitu@ichiban.co.ke). The views and opinions are those of the authors and do not necessarily represent the views and opinions of Ichiban.