

ACA – GT CRS

CRS Frequently Asked Questions (FAQs)

This FAQ document seeks to ensure a common understanding of the Luxembourg insurance sector regarding the CRS implementation.

These FAQs are the result of discussions within the CRS working group. This document represents the sole understanding of ACA and its members. This document does not constitute a legal opinion. Neither ACA nor its members can be held responsible for its content. In the event of doubt as to the application of any measure, the professionals concerned are invited to consult a lawyer or jurist specializing in the field.

The document is not intended to be reviewed on a regular basis but may be amended without prior notice to incorporate any new relevant information, ACA would become aware of.

I. SCOPE OF APPLICATION

A. WHO SHOULD BE REPORTED?

1. Individual life insurance contract

a. General principle:

As a preliminary point, it is important to note that a deceased person is no longer reportable for CRS reporting purposes; only a living person is reportable.

b. The policyholder

The policyholder is deemed the account holder and is reportable throughout the duration of the contract.

For contracts with multiple policyholders, each is considered an account holder and must be reported individually.

c. The beneficiary - the recipient of benefits

At the end of the insurance contract, the designated beneficiary, who receives the benefits provided for in the contract, becomes the person subject to CRS reporting.

In the event of total or partial surrender of the insurance contract, the recipient of the funds is always the policyholder, and a declaration must be made for CRS reporting purposes. If there is more than one policyholder, all must be declared.

In the event of the policyholder's death, the designated beneficiaries are reported for CRS reporting purposes at the time of payment.

Exception: in the case of an estate, when payment is made to a notary (who has the obligation to perform the fiscal obligations in the name of the beneficiaries), then the insurer should report in the CRS reporting the beneficiaries designated by the estate and clearly identified.

d. Irrevocable beneficiary

An "irrevocable beneficiary" is a beneficiary named in an insurance policy who cannot be changed by the policyholder without the beneficiary's written consent.

In the context of CRS reporting, when life insurance expires, irrevocable beneficiaries must be reported to the authorities if they are also the recipients of the funds (see point c).

During the lifetime of the contract, only the policyholder is reportable (see point b). However, if an irrevocable beneficiary has the authority to modify the beneficiary of the contract, they should also be considered an account holder and reportable.

e. Surrender beneficiary

The term "Surrender Beneficiary" refers to the person designated to receive the benefits or proceeds of an insurance policy in the event of premature termination of the policy by the policyholder. When an insurance policyholder chooses to terminate the policy before maturity, the amount paid to him or her is generally paid to the "surrender beneficiary", who in most cases is the policyholder. In this case, the tax information relating to the "surrender beneficiary" must be reported to the authorities in accordance with the reporting requirements. (see point b).

f. Pledgee – « bénéficiaire nanti »

The "pledgee" is the person or entity who receives a property or asset as collateral (pledge) in a transaction. In the life insurance context, it is often linked to a specific situation involving a pledge or guarantee associated with an insurance policy.

In CRS reporting, the pledgee is reported only if its rights are exercised, in other words, when it is the recipient of the funds dependently of its CRS status (for example, on the death of the policyholder).

g. Payee

The term "Payee" refers to the person who pays the policy premiums. In the majority of cases, the policyholder is also the premium payer, and is therefore reported at the CRS level as the account holder.

When the "payee" is someone other than the account holder, the account holder is reportable to the CRS level but the payee is not.

h. Insured person

The insured person is not reportable unless they hold another reportable role, such as a policyholder or surrender beneficiary.

i. Intermediary

Intermediaries in life insurance contracts are not reportable under CRS. Intermediaries are all kind of people who could have a relationship with the contract (e.g., custodian, broker, mandataire...)

2. Group life insurance contract

a. Affiliates

Persons eligible for CRS reporting in the context of a group life insurance policy are employees/certificate holders of the group insurance policy whose tax residence is in one of the countries on the list of jurisdictions participating in the automatic exchange of information. This list is updated annually and is available on the Luxembourg tax authorities' website (see point C below).

Please note: Under a complementary pension plan (RCP), a waiting period (when rights are not acquired) may apply, depending on the clauses defined in the insurance contract signed by the employer. During this period, when contract rights have not yet been acquired, no reporting under CRS is required for the employee in question.

Luxembourg's FAQ applies CRS reporting to RCP accounts ([faq-crs.pdf \(public.lu\)](#)). The employee part of a RCP must be considered as the "account holder" throughout the life of the contract, (i.e. also during the phase of accumulation of rights) under the exemption permitted by the law :

- the group insurance contract or group annuity contract is underwritten by an employer and covers at least twenty-five employees/certificate holders (more than 25 employees covered under the plan);
- the employees/certificate holders are entitled to receive any amount linked to their participation in the contract and to designate the beneficiaries of the capital paid on their death;
- the total capital that may be paid to an employee/certificate holder or beneficiary does not exceed an amount denominated in euros equivalent to 1,000,000 USD.

The affiliate must therefore be considered as a reportable person throughout the duration of the contract, with the exception of the probationary period, during which the member is not entitled to any benefits if he leaves the employer.

b. Beneficiaries

In the event of the death of the member of the group insurance contract, the beneficiaries are reported for CRS purposes only at the time of payment.

Exception: in the case of an estate, when payment is made to a notary (who has the obligation to perform the fiscal obligations in the name of the beneficiaries), then the insurer should report in the CRS reporting the beneficiaries designated by the estate and clearly identified. In case the beneficiaries are not identified, then the person receiving the payment should be reportable..

- In the case of a specific event – who need to be reported?

Under a group insurance contract, there are several situations that may lead to the payment of benefits:

- Request to redeem vested rights:

In order for the member to request payment of his or her vested reserves under his or her group insurance contract, he or she must meet one of the following three conditions:

- The amount of the benefit is less than three times the social minimum wage;
- New professional activity, implying that the member is no longer affiliated with the CCSS;
- The member is entitled to a statutory social security retirement pension (or early retirement).

If the member meets one of these 3 criteria, then he/she is entitled to payment of his/her vested savings and becomes reportable under CRS reporting.

- Transfer of vested savings to a “Régime Complémentaire de Pension Agrée”:

When a member leaves the employer's pension scheme and does not meet the legal conditions for payment of vested reserves, the funds are transferred to a contract “Régime Complémentaire de Pension Agrée” (RCPA). Client leaves the RCP and can join a RDA “Régime dûment agréée” (still in the same FI). In this case, the affiliate will be declared for CRS reporting purposes on an annual basis and also when the payment is made if he or she resides in a reportable jurisdiction.

B. WHICH PRODUCTS ARE REPORTABLE?

Non-life and health insurance products are out of the scope of the CRS reporting and are therefore not reportable. In fact, only life insurance products are in the scope of the CRS tax reporting. In life insurance, benefits paid out in respect of risk coverage, covering the death or disability of a person, cannot be reportable for CRS reporting purposes.

1. Life insurance - individual

The following life insurance products are reportable for CRS:

- Life insurance contracts with surrender value;
- Life insurance contracts of the pension savings/old age provision type (example: art. 111bis or equivalent);
- Pure savings-type life insurance contracts (e.g. art. 111);
- Life insurance products with separate account management, such as life insurance contracts used for private investment purposes;
- Annuity life insurance contracts.

The following life insurance products are excluded from CRS reporting:

- Life insurance contracts of the pure protection type, covering only the death of a person;
- Contracts held by an estate.

2. Life insurance – Group

RCP type products are accounts to be considered within the scope of CRS reporting, and members of these insurance contracts must be declared when resident of a reporting jurisdiction.

The same applies to “Régime Complémentaire de Pension pour Indépendant” (RCPI) and “Régime Complémentaire de Pension Agrée” (RCPA) contracts.

With regard to benefits paid in the event of death, the insurance company must distinguish between benefits paid under risk cover (death benefit and/or disability income) and benefits paid under pension cover (retirement benefit and/or retirement income). Wherever possible, the ACA recommends that benefits paid under risk cover, which cannot be carried forward to the CRS level, should be identified separately from pension benefits which must be reportable. In order to do so, ACA recommends that members should take the appropriate technical actions to perform the developments needed.

C. WHICH JURISDICTION ARE REPORTABLE?

Distinction between Partner Jurisdiction and Reportable Jurisdiction:

- According to the law of December 18, 2015, “the expression Partner Jurisdiction means a Member State of the European Union, or a jurisdiction with which Luxembourg has concluded an agreement which provides for that jurisdiction to communicate the information” of the customers concerned.

Partner Jurisdictions include jurisdictions that have concluded an agreement to exchange relevant information on CRS financial accounts with Luxembourg.

- According to the law of December 18, 2015, “Jurisdiction subject to declaration (reportable jurisdiction) means a member state of the European Union, or a jurisdiction with which an agreement has been concluded which provides for Luxembourg to communicate the information of the customers concerned.

The jurisdictions covered by the automatic exchange of information under the law of December 18, 2015 on the Common Reporting Standard (CRS) are available on the Direct Tax Administration website. This list is updated annually. It is therefore advisable to refer to this list in order to determine which countries can be carried forward.

Regulations : [Loi du 18 décembre 2015 concernant l'échange au... - Legilux \(public.lu\)](#)

D. LEGAL PERSONS: WHICH STATUS ARE REPORTABLE UNDER CRS?

Financial institutions (FIs) are generally non-reportable under CRS reporting, except in the case of an investment entity which are reportable if resident in a non-reportable jurisdiction. Professionally managed investment entities that are not located in a reportable jurisdiction should be considered as passive NFEs and reported accordingly.

| Reportable FI | Non reportable FI |
|--|--|
| | Custodial institution |
| | Depository institution |
| Professionally Managed Investment Entity that is not located in a participating jurisdiction must be considered as Passive NFE and reported accordingly. | Investment entity- unless resident in non participating jurisdiction |
| | Specified insurance company |

| Reportable NFE | Non reportable NFE |
|--|---|
| Active NFE/NFFE - For income and asset reasons | Active NFE Regularly traded or Related Entity of such |
| active NFE - Start-up | NFE Government Entity |
| active NFE - Non-profit | NFE Central Bank |
| Active NFE that is liquidating or emerging from bankruptcy | NFE International Organisation |
| Active NFE Non-financial group entity | |
| Passive NFE | |

In the case of a passive Non-Financial Entity (NFE), the persons subject to CRS reporting are the entity itself and the persons holding control of the entity when they reside in a reportable jurisdiction in the automatic exchange of information (see list in point C below). Controlling persons are first the entity's beneficial owners and if non available its senior management.

Where the criteria for reporting (passive NFE and residence in a reportable jurisdiction) are met, the persons to be reportable, both throughout the life of the contract and at the time of payment of benefits, are the persons with control of the entity holding the account.

For “Passive NFE” entities, reporting must also include controlling persons for CRS when they are established in a reportable country other than Luxembourg. The following types of holding are possible:

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| CRS801 = CP of legal person – ownership |
| CRS802 = CP of legal person – other means |
| CRS803 = CP of legal person – senior managing official |

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| CRS804 = CP of legal arrangement – trust – settlor |
| CRS805 = CP of legal arrangement – trust – trustee |
| CRS806 = CP of legal arrangement – trust – protector |
| CRS807 = CP of legal arrangement – trust – beneficiary |
| CRS808 = CP of legal arrangement – trust – other |
| CRS809 = CP of legal arrangement – other – settlor-equivalent |
| CRS810 = CP of legal arrangement – other – trustee-equivalent |
| CRS811 = CP of legal arrangement – other – protector-equivalent |
| CRS812 = CP of legal arrangement – other – beneficiary-equivalent |
| CRS813 = CP of legal arrangement – other – other-equivalent |

II. DOCUMENTATION

A. DO WE CONSIDER THE SELF-CERTIFICATION AS OPTIONAL OR MANDATORY FOR A REPORTABLE INSURANCE CONTRACT OR A REPORTABLE INSURANCE PAYMENT?

The self-certification is a mandatory document at the time of onboarding and at any change of circumstances.

ACA recommends to obtain a valid self-certification for a reportable person (Legal entity or Individual) during the life of a reportable insurance contract and at the time of a reportable insurance payment.

B. WHAT IS THE VALIDITY OF A SELF-CERTIFICATION?

The CRS self-certification form remains valid unless there is a change in circumstances relating to information, such as the account holder's tax status or other mandatory field information, that makes the form incorrect or incomplete. In that case the reportable person must notify the Company and provide an updated self-certification. ACA recommends to limit the validity of the self-certification to 3 years (end of year¹) to ensure a regular verification of the data.

ACA recommends not to automatically request a new form at the end of its validity. Instead, wait for the next transaction or ongoing review to ensure to obtain a valid new self-certification. The certificate should therefore be valid at the time of a transaction or at the time of an ongoing review. Renewal of the form remains mandatory (irrespective of the validity) in case of change of circumstances or detection of indicia (that disregards the existing self-certification) on the reportable person.

C. WHAT ARE THE DATA REQUIRED FOR AN INDIVIDUAL'S SELF-CERTIFICATION?

The following information are required within a Self-certification document dully completed, dated and signed:

- Name;
- Current residence(s) address(es)
- Date of birth
- Place of birth;

¹ A certificate signed on DD/MM/YYYY will be valid until 31/12/YYYY +3Y. As an example: certificate signed 15/04/2024 is valid until 31/12/2027.

- Tax identification number(s) (TIN)
- Possible reason for no TIN
- Tax jurisdiction

As the collect of the above-mentioned information are personal data, it's mandatory to comply with the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC - General Data Protection Regulation (GDPR).

Please refer to the part on Data Protection requirements in section VI of this FAQ.

D. HOW TO CONTROL THE SELF-CERTIFICATION FOR INDIVIDUAL ?

The information in the self-certification must be controlled with the KYC information, including but not limited to:

- Copy of identification document
- Proof of jurisdiction(s) of residence for tax purposes (e.g., copy of water or electricity bills or an official document issued by the national authorities, ...)
- Copy of the TIN for each Reportable Jurisdiction, if applicable.

ACA recommends to verify the TIN structure and syntax if possible with available tools (see controls and useful links).

As the collect of the above-mentioned information are personal data, it's mandatory to comply with the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC - General Data Protection Regulation (GDPR).

Please refer to the part on Data Protection requirements in section VI of this FAQ.

E. WHAT ARE THE DATA REQUIRED FOR AN ENTITY SELF-CERTIFICATION?

The following information are required within a Self-certification document dully completed, dated and signed:

- Name;
- Current residence address
- Date of incorporation or organization
- Tax identification number (TIN)
- Possible reason for no TIN
- Entity Type (type of FI, or NFE...)
- Identification of the Controlling Persons (same information as for an individual)
- Tax jurisdiction

The following information are optional but recommended within a Self-certification document:

- Place of incorporation or organization of the entity
- Mailing address of the entity

F. HOW TO CONTROL CRS STATUS FOR AN ENTITY?

ACA recommends to always compare the FATCA and CRS status as most of the cases are similar. In case of discrepancy, ACA recommends to formalize the reason in the client file. Plausibility test should be performed as well in order to challenge the KYC information. Members should not only rely on GIIN verification to validate the CRS status.

1. **FI with GIIN**

ACA recommends to control the validity of the GIIN on the IRS GIIN check webtool : <https://apps.irs.gov/app/fatcaFfiList/flu.jsf>. Any discrepancy found with this tool may be considered as an indicium that the FI does not comply with the FI obligation.

2. **FI without GIIN**

ACA recommends to monitor the FI without GIIN in order to ensure the validity of the status for CRS. Obtaining the article of law validating the status is considered as a good practice. In case of doubt, ACA recommends to obtain from the reportable person a memo from a tax advisor validating the status.

3. **Professionally Managed Investment Entity (PMIE) that is not located in a participating jurisdiction**

ACA recommends to closely monitor the PMIE located in a non-participating to ensure the correct registration of the controlling person.

4. **Active NFE Start up**

ACA recommends to ensure the obtention of the new self-certification validating the new status 24 months after the date of the entity's incorporation. Without this form, ACA recommend to consider the entity as Passive.

5. **Active NFE Non profit NFE**

ACA recommends to obtain a proof of the entity being considered as nonprofit entity from the authority of entity's residence.

6. **Active NFE liquidating or emerging from bankruptcy**

ACA recommends to obtain the decision of liquidation or bankruptcy certificate as proof of the entity being considered with such status from a competent authority of the entity's residence.

7. **Active NFE non-financial group**

ACA recommends to obtain the financial statements of the entity of the group that should be considered as active for income and asset reason and the relevant organization chart confirming the relationship between the entities. In case of doubt ACA recommends to obtain a memo from a tax advisor to validate the status.

8. **Active NFE for asset and income**

ACA recommends to obtain the financial statements of the entity and verify the ratio of the active income meet the threshold. The obtention and the verification of the financial statement should not be limited to onboarding but updated FS should be obtain at transaction and ongoing review event. In case of doubt on the active income or in case of non-obtention of the updated financial statement, ACA recommend to consider the entity as Passive.

9. **Passive NFE**

ACA recommends to compare the controlling person with the register of beneficial owner. ACA recommends to verify the absence of control by ownership, when "Controlling person by senior managing official or by other means" is selected .

G. WHAT KIND OF INDICIA CAN BE USED?

Reporting Financial Institutions are now required to search for indicia indicating that the Account Holder is resident in a Foreign Jurisdiction and to treat the Account as held by an Account Holder that is resident of each Foreign Jurisdiction for which an indicium is found.

A Reporting Financial Institution must implement procedures to ensure that any change in circumstances of an account will be properly identified.

Individual should be reportable according to its residence (if resident in a reportable jurisdiction for CRS purposes).

If an indicator or combination of indicators in the below list are found, the individual should also be reportable in a reportable jurisdiction other than his country of tax residence):

- Address (post, residence, post-office or care-of) in a CRS jurisdiction;
- Telephone number from a CRS jurisdiction (if that is the only number);
- Standing order to an account maintained in a CRS jurisdiction;
- Power of attorney on an account granted to a person with an address in a CRS jurisdiction (post, residence, post-office or care-of) ;

ACA recommends to use as well other indicia, like for example the use of a bank transfer to an accounts linked to a specific transaction in another country.

Self-certification and/or justificative document should be used to mitigate the analysis performed based on the indicia above.

In the absence of a self-certification, an Insurance Company shall report reportable persons/entities on the basis of the information in its possession (a person may be reportable in several jurisdictions).

H. HOW TO CONTROL RBI AND CBI CASES?

RBI (Residence by Investment): This term refers to programs that allow individuals to obtain residency rights in a country in exchange for a significant financial investment. These programs are often used to attract foreign investors and stimulate the local economy.

CBI (Citizenship by Investment): This term refers to programs that allow individuals to obtain citizenship in a country in exchange for a financial investment. These programs often offer benefits such as freedom of travel, business opportunities, and an improved quality of life.

- Country Risk Assessment: Identify countries that offer CBI and RBI programs and assess the associated country risk based on the presence and volume of such programs.
- Staff Training: Provide regular training for staff on the latest CRS requirements and best practices for handling RBI and CBI cases.
- Detection Training: Train the team to detect indicia such as dual nationalities, source of funds or place of birth that may indicate participation in RBI or CBI programs.
- Visa and Tax Declaration: Obtain copies of visa types and, if possible, the latest tax declaration in the country to corroborate the individual's actual presence in the country.
- Ongoing Monitoring: Implement continuous monitoring of individuals who have obtained residency or citizenship through investment to detect any suspicious activities.

III. DOCUMENTATION CONTROLS AND DATA QUALITY

A. CONTROLS

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| Responsibility for implementing controls | <ul style="list-style-type: none"> - Role of 1st and 2nd lines: controls by the 1st line when entering into a business relationship, in the event of transactions or modifications, and during KYC reviews. Checks by the 2nd line in the event of escalation and during KYC reviews of high-risk customers or monitoring. - Within the limits of available customer information and documents. |
| Control and review frequencies | <ul style="list-style-type: none"> - In the event of a contract transaction or modification - When changing country of residence - According to KYC review frequencies based on customer risk level. |
| Consistency checks on tax residence | Information on the tax self-certification form and KYC information available on the customer: check for the presence of inconsistent or contradictory information on tax residence (e.g. telephone number, correspondence address, account from or to which funds are sent, etc.). |
| Entity status | <ul style="list-style-type: none"> - Information on the tax self-certification form and available documentation on the entity's activity: verification on the basis of an extract from the commercial register, an extract from the register of beneficial owners, information provided by the entity (e.g. shareholding structure) and researches. - Consistency of CRS status with activity: verification on the basis of an extract from the commercial register and/or annual accounts (determining whether the entity is active or passive). |
| Beneficial owners of an entity | <ul style="list-style-type: none"> - Consistency of the information on the tax self-certification form with the documentation available on the entity: extract from the register of companies, extract from the register of beneficial owners. - Beneficial owner identification documents - Country of tax residence and TIN of beneficial owners - Verification of the consistency of beneficial owners: percentage of ownership (e.g.: BE holding 24.9%) or persons exercising control (shareholder with less than 25% but holding control, family group) |
| Data quality | <ul style="list-style-type: none"> - Presence of TIN: if there is no TIN, reason to be obtained - TIN format: number of characters and consistency with country format - Detection of inconsistent TINs (e.g. 1234567 or 00000000): Internal verification tools (e.g. country-specific TIN format blocking) and external verification tools (public sites with country-specific TIN formats) - Action if missing or incorrect TIN format: contact the customer to obtain a TIN (or a justification for its absence) or to correct its format. |

| | |
|---|---|
| Detection of tax crimes indicators | <ul style="list-style-type: none"> - Refusal to provide a tax self-certification form - Refusal to provide TIN - Justification for absence of TIN - Inconsistencies in data provided - Change of residence to a non-participating jurisdiction - Presence of a Golden visa without proof of actual residence provided - Location in a country that may allow dual residency without proof of actual residency provided - Unjustified use of active NFE status |
|---|---|

In the event of suspicion of fictitious residence or tax offence, report to the FIU.

B. 17/650 TAX CRIME SUSPICION AND ACA GUIDANCE- HOW TO DETECT

CSSF Circular 17/650, drawn up jointly with the FIU², situates the criminal provisions set out in the law of December 23, 2016 implementing the 2017 tax reform, which specifically concern the extension of the offence of money laundering to aggravated tax fraud and tax swindling.

ACA has adapted these elements for the insurance sector in a guidance dated April 02, 2020³.

The new predicate tax offences are as follows:

- Simple tax fraud (not considered as predicate tax offense)
- Aggravated tax fraud
- Tax fraud

The professional's duty of care extends to the tax obligations of customers, both resident and non-resident taxpayers.

Financial institutions subject to anti-money laundering and combating the financing of terrorism (hereinafter "AML/CFT") obligations have a new category of serious underlying offences within the offence of money laundering, namely "criminal tax offences relating to direct and indirect taxes".

Financial institutions must take account of the new primary criminal tax offences in their professional obligations, including customer due diligence and cooperation with the authorities.

Professionals must obtain information on the purpose and intended nature of the business relationship, including the origin of the funds involved, to enable them to form a judgment on the prospect's financial

² In a circular dated 31/03/2017, the FIU extended circular 17/650 to all professionals subject to anti-money laundering obligations to combat money laundering and the financing of terrorism, and therefore also to life insurers and insurers operating in the credit/guarantee sector, who must now take into account the new criminal offences in tax matters as part of their professional obligations. These obligations include customer due diligence and cooperation with the authorities.

³ https://www.aca.lu/wp-content/uploads/2022/11/gt_aml_div_annexe-2-liste-d-indicateurs-concernant-aml-ou-escroquerie-fiscale.pdf

situation and to prevent him from abusing the business relationship to commit a money laundering offence in connection with a primary tax offence, committed or attempted, in Luxembourg or abroad.

These obligations apply

- On entering into a business relationship
- Throughout during the life of the contract, at times deemed opportune based on risk assessment

How to detect a primary money laundering offence?

- If an indicator or combination of indicators raises a suspicion, a more detailed examination of the business relationship/transaction is required to verify whether this suspicion is justified in view of the context of the transactions and the professional's knowledge of his customer's situation ("KYC" and "KYT").
If the doubt persists, the professional is obliged to file a suspicious transaction report with the FIU.

C. 17/650 TYPES OF POTENTIAL CASES – INDICIA

In addition to the list of CSSF indicators, other specific indicia should also be examined.

Non-exhaustive list:

- Refusal, omission, non-response by the participant to complete or update the self-certification, the W8 BEN/W9 form or to provide the requested supporting documents.
- The life beneficiary is different from the policyholder
- The person who holds power over the contract (power to change beneficiaries or person who holds the power of partial/full surrender) is different from the policyholder
- Surrender and request for payment in a country other than the policyholder's country of residence for tax purposes (the operation is not accepted, but any such request is an indication)
- Use by the customer of complex structures without economic or asset purposes especially in the case of entity having the possibility to hide or avoid CRS reporting
- The use of companies or legal structures located in a jurisdiction other than the country of the tax residence or place of regular economic or professional interests of the beneficial owner
- Inconsistency in the Register of Beneficial Owners or Register of trust and fiducies
- A copy of the Ultimate Beneficial Owner Register extract cannot be obtained and no appropriate reason is provided for this.

IV. REPORTING

A. WHAT SHOULD BE INCLUDED IN THE CONTENT FOR MAILING NOTIFICATION?

- Reference to information exchange (2015 Act)
- Country of residence of the person reported
- The TIN(s) of the person reported (which may in part be hidden such as a card number - for example: xxxxxxxx7654)
- List of information categories reported (e.g., date and country of birth, address, tax identification number, value of policies at year-end, amount of surrenders during the year, amount of any payments received, etc.).
- What will be done with the reports: the Luxembourg authorities will send them to the authorities of the countries of tax residence.
- GDPR rights + who to contact to exercise rights

The companies should ensure to keep sufficient time to consider a request of data modification before the reporting. ACA recommends to send the letter at the latest end of May. Any request of modification should be considered based on proof of change and be kept for the next reporting years.

B. WHICH INFORMATION SHOULD BE MENTIONED INTO THE REPORTING ?

The following information are mandatory in relation to Individual and Entity:

- Name
- Address
- Jurisdiction(s) of residence
- TIN(s) with jurisdiction related
- The specific code for missing TIN “#NTA001#” if applicable
- The contract number (or functional equivalent)
- The contract value at year end or at closing (closed contract must have a value at 0) with currency
- The closing status if applicable
- Any reportable amount paid during the reporting year with currency
- The type of reportable payment
- Date of birth
- Place of birth

The following information are recommended to be reported in relation to Individual

- Undocumented “flag”
- Dormant “flag”

The dormant “flag” is recommended to be considered by the ACD when the contract is considered as dormant in accordance with the law⁴. Recommendation is to use the “desherence” date and therefore to consider the contract as dormant 2 years after the inactivity.

C. WHAT KIND OF REPORTING FOR WHICH SITUATION?

1. Contract is live end of year with no surrender during the reporting year N

- Case for a life insurance contract:

Reporting of all reportable persons with the value of the contract on 31/12/N

- Case for an RCP

A group insurance contract with cash surrender value is a reportable account at CRS reporting level when the sum is due and during the accumulation period.

2. Contract live end of year with surrender during the year

- Case for a life insurance contract:

Reporting of all reportable persons with the value of the contract on 31/12/N
Reporting of the payment to the reportable person(s) receiving the surrender

⁴ Law of March 30, 22 related to Inactive accounts and escheated contracts
[Loi du 30 mars 2022 relative aux comptes inacti... - Legilux \(public.lu\)](#)

- Case for an RCP

A group insurance contract with cash surrender value is a reportable account at CRS reporting level when the sum is due and during the accumulation period.

Reporting of the payment to the reportable member receiving the surrender.

3. Death of 1/2 Policy Holder during the year

In the case where the contract is still active at year end(no death claim performed) then only the remaining reportable person should be reported. In case the death is known after the end of reporting year but before the reporting is made, it is recommended to consider the death and do not report the deceased (Example death occurs in Jan N+1 and insurer is advised Feb N+1). In case the death is known after the reporting period or near to the reporting period then no correction is required, and the death can be consider for next reporting.

4. Death of all Policy holders during the year

In such case and without any death claim payment made during the reporting year then the account should not be reported.

5. Contract fully surrendered during the reporting year

Reporting of all reportable persons with 0 as value of the contract

Reporting of the payment to the reportable person(s) receiving the surrender.

6. Death claim

Reporting of all reportable persons with 0 as value of the contract

Reporting of the payment to the reportable person(s) (beneficiaries) receiving the death claim.

7. Change of Policy Holder during the life of the contract

Example: Client A holds the contract and decides to give his contract to person B during the year, who becomes the new account holder. The contract is transferred from A to B without closure or payment.

ACA recommend applying the below logic

- A is no longer a party to the contract at end of year but should be reported with a closing status.
- B is reportable as policyholder at the end of the period. A fictive payment should be created and reported with B as recipient.

In order to do so, ACA recommends that members should take the appropriate developments to have the technical possibility to report this specific split (including a fictive payment for the needs of the reporting) in their systems.

8. Minors

Minors are considered like any reportable person. In case of missing TIN (no TIN allocated by the reportable jurisdiction), the minor should be reported with the TIN of the responsible person (parents, tutor...).

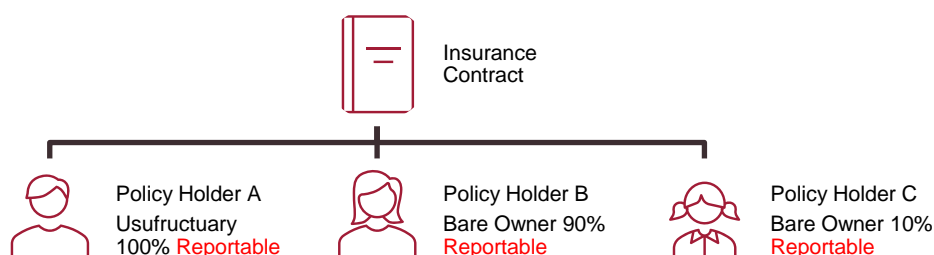
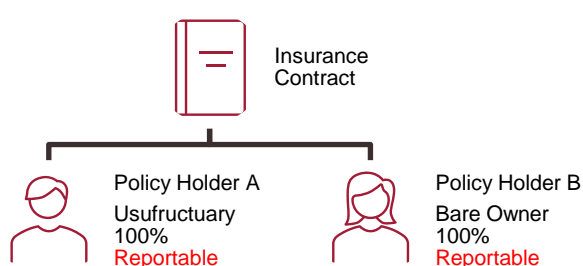
As soon as the minor became major, ACA recommends to obtain a new self-certification at the time of a transaction or during the ongoing review.

9. Reporting for a branch

ACA recommends to considering in most of the cases that the branch should be responsible for the CRS reporting as well as the due diligence requirements of the portfolio. The branch should therefore perform the reporting in the country of his location.

10. Usufruct

Recommendation: Both the bare owner and the Usufructuary holder should be considered as Account Holders notwithstanding the operational implementation of such account within the FI's system.



11. Situation of surrender with multiple reportable persons

In the event of surrender involving multiple reportable persons (e.g., surrender classic or in case of death claim), the entire amount should be reported for each individual. Alternatively, the received amount can be reported for each recipient. The entity must ensure consistency in the chosen approach.

D. CORRECTION REPORTING WHEN AND HOW

| <i>Case</i> | <i>Correction historical N-2 and earlier</i> | <i>Correction Last year N-1</i> | <i>Consideration ongoing N and later</i> |
|--|--|---|--|
| <i>Detection of incorrect data based on wrong data received from the client</i> | Recommendation to correct from the reporting year where the data is not correct | Recommendation to correct from the reporting year where the data is not correct | Mandatory correction |
| <i>Detection of incorrect data based on wrong data registered by the company</i> | Mandatory correction within the technical capacity of the company. strong recommendation for old years | Mandatory correction | Mandatory correction |
| <i>Correction of missing data previously not received from the client</i> | Recommendation to correct from the reporting year where the data is not correct | Recommendation to correct from the reporting year where the data is not correct | Mandatory correction |
| <i>Correction of missing data previously not registered by the company</i> | Mandatory correction within the technical capacity of the company. strong recommendation for old years | Mandatory correction | Mandatory correction |
| <i>Correction on request by client following Foreign tax authorities' question</i> | Mandatory correction of requested years | Mandatory correction of requested year | Mandatory correction |
| <i>Correction on foreign authority request</i> | Mandatory correction of requested years | Mandatory correction of requested year | Mandatory correction |
| <i>Correction on ACD request</i> | Mandatory correction of requested years | Mandatory correction of requested year | Mandatory correction |
| <i>Correction following audit recommendation</i> | Mandatory correction within the technical capacity of the company. | Mandatory correction | Mandatory correction |

E. REPORTING FORMAT

On June 19 2017⁵ ACD published an ECHA circular to enable operators to provide annual reporting to the required standards. This circular must be made available to IT services to ensure the correct reporting format.

⁵ Circulaire ECHA remplacée par la Circulaire n°4 du 10 août 2020 <https://impotsdirects.public.lu/dam-assets/fr/legislation/legi20/2020-08-17-ECHA4-CRS-du-1082020.pdf>

V. GOVERNANCE

A. CRS Compliance program description (policies, controls, procedures and IT SYSTEMS)



B. ACTION REGISTER

Luxembourg reporting financial institutions must put in place policies, controls, procedures and IT systems to ensure compliance with reporting and due diligence obligations. These policies, controls, procedures and IT systems must be proportionate to the nature, particularities and size of Luxembourg reporting financial institutions. This governance includes the action register.

The action register documents the completion of due diligence and reporting procedures.

This concerns all actions carried out for a customer or investor, and in particular (non-exhaustive list) in the year of the reporting concerned:

- Mail sent before the reporting date informing the person that he/she will be reported under the CRS
- Feedback from the person notifying an error or change in the information to be reported, and related changes in the databases
- Change in the due diligence procedure
- Obtaining tax information
- Letter from tax authorities and response from financial institution
- Reporting production date
- Correction production date
- Any launch or improvement in the mailing campaign, data cleaning, etc.
- Any change in reporting infrastructure or infra-system that has an impact on reporting.

Luxembourg reporting financial institutions must keep records of actions taken and evidence used to ensure the fulfillment of their reporting and due diligence obligations. These records must be kept for 10 years from the end of the calendar year in which the Luxembourg reporting financial institutions are required to report.

There is no prescribed form for keeping a register (manual or automated), but it could include the following information (non-exhaustive list):

- Person responsible for keeping the register
- Person in charge of the action mentioned
- Account/contract number and person's role in the contract
- Date action carried out and date recorded and/or closed
- Description of action and impact (on reporting, procedures, etc.)
- The register must not contain any personal data of the persons concerned by the data processing.

C. COMMUNICATION WITH THE REGULATORS

Reporting must be sent to ACD no later than June 30 of each year for data and contracts carried over from calendar year N-1.

Insurance companies must also inform the FIU without delay, on their own initiative, when they know, suspect or have good reason to suspect that the laundering of a primary tax offence is in progress, has taken place or has been attempted.

It is also possible to contact the ACD directly by telephone or email (aeoi-compliance@co.etat.lu) for particular and specific questions. The answers and guidance provided do not constitute official advice from the ACD.

ACA recommend advising the ACD when a correction or the reporting itself require such contact (technical issue, open question, doubt on the process...) but as well when a foreign authority request a correction of reporting.

D. AUDIT EVIDENCE ET AUDIT TRAIL

The insurance company must be able to prove at any time that all the actions recorded in the share register have been carried out (e.g. letter template modified and shared internally, customer history must be kept, as well as any feedback from the customer modifying tax data, etc.). Access to procedure, action register, and evidence of action should be available for any audit (internal or external).

VI. DATA PROTECTION

In accordance to the article 4-7 of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation (GDPR)), reporting Financial institutions and the « Administration des contributions directes » are determining purposes and means of processing activities performed within the frame of their respective activities.

Therefore, they are defined as Independent Data Controllers.

As Data Controllers and in accordance with the obligations of the GDPR, reporting Financial institutions have the following, non-limitative obligations :

A. DATA PROTECTION PRINCIPLES

Process all Personal data in their possession in accordance with the main principles of Article 5 of the GDPR.

- a. Lawfulness, fairness and transparency principle (art. 5-1-a of GDPR)
- b. Purpose limitation principle (art. 5-1-b of GDPR)
- c. Data minimization principle (art. 5-1-c of GDPR)
- d. Accuracy principle (art. 5-1-d of GDPR)
- e. Storage limitation principle (art. 5-1-e of GDPR)
- f. Integrity and Confidentiality principle (art. 5-1-f of GDPR)
- g. Accountability principle (art.5-2 of GDPR)

B. DATA SUBJECT RIGHTS

Ensure that you are giving to the Data Subject the capacity to assert their rights in accordance with the article 12 of the GDPR.

- Right of Information (art. 13 and 14 of the GDPR)
- Right of access (art. 15 of GDPR)
- Right to rectification (art. 16 of GDPR)
- Right to erasure (art. 17 of GDPR)
- Right to restriction of processing (art. 18 of GDPR)
- Right to data portability (art. 20 of GDPR)
- Right to object (art. 21 of GDPR)
- Right to not be part of Automated decision making, including profiling (art. 22 of GDPR)

C. USE OF PROCESSORS

If you are using Processor to process personal data within CRS framework, it's mandatory to ensure that all the requirement of the article 28 of the GDPR is fulfilled.

D. RECORDS OF PROCESSING ACTIVITIES (ROPA)

Ensure that your processing activity is included in your Records of Processing Activities (RoPA). The RoPA is only mandatory for entities having more than 250 employees. For the other entities it's highly recommended by the Regulator.

E. SECURITY OF THE PERSONAL DATA

Refer to Article 32 of the GDPR

F. NOTIFICATION OF A PERSONAL DATA BREACH TO THE SUPERVISORY AUTHORITY

Refer to Article 33 of the GDPR

G. COMMUNICATION OF THE PERSONAL DATA BREACH TO THE DATA SUBJECT

Refer to Article 34 of the GDPR

H. DATA PROTECTION IMPACT ASSESSMENT (ART. 35 OF GDPR)

Refer to Article 35 of the GDPR

I. DIRECTIVE ON ADMINISTRATIVE COOPERATION (DAC 7)

Directive 2011/16/EU on administrative cooperation in the field of taxation has been amended on 22 March 2021 by the Council Directive (EU) 2021/514 ("DAC 7").

DAC 7 has been transposed in Luxembourg Law on 16 May 2023. The Luxembourg Parliament voted the bill of law n. 8029. The Luxembourgish law was applicable the 1st June 2023 (« Lux Law »).

DAC 7's requirement which could impact reporting Financial institution is mostly related to Data Protection. Indeed the article 25 of DAC 7 is implementing a new obligation for reporting Financial Institution to inform on a yearly basis all Data subject where their Personal data will be reported before to perform the report to the « Administration des Contribution directes ».

The notification shall follow the requirements of the article 13 and 14 of the GDPR and must be performed in compliance with the article 25 of the GDPR (Data Protection by Design).

Therefore the reporting Financial institution shall perform the notification within a period allowing the Data subject to assert his rights and for these rights to be applied by the Financial Institution within the period required by Article 12 of the GDPR (1 month). We recommend to notify the Data subject at least 2 months before the performance of the reporting.

VII. USEFUL LINKS

ACD CRS guide

https://impotsdirects.public.lu/fr/echanges_electroniques/CRS_NCD.html

ACD CRS FAQ

<https://impotsdirects.public.lu/dam-assets/fr/echanges-electroniques/ncd/faq-crs.pdf>

List of reportable countries

<https://impotsdirects.public.lu/dam-assets/fr/echanges-electroniques/ncd/NCD-RGDTexe-coordonne.pdf>

List of tax crime indicia

https://www.aca.lu/wp-content/uploads/2022/11/gt_aml_div_annexe-2-liste-d-indicateurs-concernant-aml-ou-escroquerie-fiscale.pdf

TIN structure:

<https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/>

EU tin verification for individual

https://ec.europa.eu/taxation_customs/tin/#/check-tin

USA: GIIN check

<https://apps.irs.gov/app/fatcaFfiList/flu.jsf>

List of IGA

<https://home.treasury.gov/policy-issues/tax-policy/foreign-account-tax-compliance-act>

OECD Golden visa

<https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/residence-citizenship-by-investment/>
