ICAEW
REPRESENTATION 50/24

CRYPTOASSET REPORTING FRAMEWORK, COMMON REPORTING STANDARD AMENDMENTS, AND SEEKING VIEWS ON EXTENSION TO DOMESTIC REPORTING

Issued 29 May 2024

ICAEW welcomes the opportunity to comment on the Cryptoasset Reporting Framework, Common Reporting Standard amendments, and seeking views on extension to domestic reporting published by HM Revenue & Customs on 6 March 2024, a copy of which is available from this link.

This response of 29 May 2024 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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GENERAL POINTS

1. Our response to the consultation is relatively brief and is primarily focussed on the impact of the proposals on the UK tax system. We believe we will have more to input on once the XML schema for reporting under the CARF has been published. We recommend that the schema is released as soon as possible to give software providers and exchanges sufficient time to prepare for the new reporting obligations.
2. Given that different jurisdictions have signed up to CARF compared to CRS, there is a concern that confusion may arise for reporting entities that have a reporting requirement under both. Care will be needed to ensure that there is not an inadvertent data breach by sharing information with HMRC for a jurisdiction that is out of scope for CARF or CRS.
3. HMRC should take the opportunity to review any lessons learned from the implementation of other OECD-led reporting regimes, such as the model reporting rules for digital platforms (MRDP) to avoid any difficulties identified in implementing those regimes.
4. One of the major issues that exchanges will encounter is confirming the identity and residence status of cryptoasset holders using their tax reference number. There is no single tax identification number for all taxpayers in the UK. Individuals are generally identified using their national insurance number (NINO) but these are not always easy to obtain, such as for those who have migrated to the UK.
5. For this reason, we recommend that HMRC invests sufficient resources in manning helplines and sources of information to assist taxpayers in obtaining the tax reference numbers they need to provide to exchanges. HMRC may also want to consider streamlining the process for individuals to acquire a certificate of residence for this purpose.
6. We also recommend that a wide range of tax identification numbers are accepted for this purpose to assist exchanges in fulfilling their obligations under the CARF regime. This is an issue we identified in our response (question 6) to HMRC's consultation on the implementation of the OECD reporting rules for digital platforms.
7. We believe that the penalty regimes for CARF and CRS should be as simple as possible. We also believe that the regime applicable to MRDP should be simplified.
8. We support the extension of the CARF and CRS regimes to domestic reporting in the UK if this prevents other regimes to collect the same information from being introduced.
9. We also recommend that HMRC makes cryptoasset holders aware of the introduction of CARF and the information that exchanges will be asking for in advance of the implementation of the regime. This could be through publishing guidance notes on HMRC's website and/or other means, such as posting on social media. We would be happy to direct our members to such guidance through articles on our own website.

Answers to specific questions

10. We have restricted our response to answer only those questions on which we have a view to express.

Cryptoasset Reporting Framework

Question 2: Are there any areas where additional guidance would be helpful on the nexus criteria?

11. The way the nexus criteria are explained in section I of Part 2 of the Cryptoasset Reporting Framework is very convoluted and could be explained more clearly in HMRC guidance. The principle of defaulting to the jurisdiction with the strongest link is clearly explained in the consultation document and could form the basis of HMRC's guidance, perhaps

supplemented with some of the examples included at the Cryptoassets Tax Professionals Roundtable.

12. Applying CARF nexus rules to the cryptoasset sector could prove problematic in certain circumstances. Identifying the nexus will be particularly difficult where decentralisation is either present or an ultimate objective for a platform. For example, a decentralised exchange (DEX) may not meet conditions such as being tax resident or incorporated in a jurisdiction. This could ultimately require the nexus to be identified by where the entity is managed or if the entity (or individual) has a regular place of business. The management of a DEX may not follow conventional thinking as to what demonstrates control. To provide certainty, we would welcome additional guidance from HMRC that offers examples of these real-world activities and structures and how they consider the CARF nexus rules to apply.

Question 4: Do you agree with the government's proposal to align the timeframe with CRS reporting requirements?

13. We do not see any reason why a different timeframe should be adopted. Having consistency between reporting under CARF and CRS would help to maintain the simplicity of the tax system as a whole and make it easier for agents assisting reporting entities to remember when those reports are due.

Question 5: Are there any areas where additional guidance would be helpful on the due diligence rules?

14. It would be useful if more examples were given at paragraph 9 of the commentary on Section III in determining the "reasonableness" of a self-certification. The subsequent commentary does refer to other instances where self-certification cannot be relied upon, but a checklist or expanded list of examples would be useful to refer to.

Question 6: Do you agree that, in principle, penalties relating to CARF obligations should be consistent with structure set out above?

15. We refer to our response to the consultation on implementation of the MRDP in the UK, specifically question 14, which deals with the penalty regime for MRDP. We continue to believe that this penalty regime is unnecessarily complex and could be confusing for CASPs. In particular, we believe it is unnecessary to include penalties for failure to keep records, given that penalties for failure to provide information to HMRC would already be in force.
16. We also believe that no penalties should apply in cases where the exchange has taken all reasonable steps to ensure that the information it is reporting is correct but inaccuracies exist in any event as a result of incorrect information provided by exchange users. This could occur, for example, in relation to obtaining valid self-certifications. The purpose of the penalty regime should be to incentivise compliant behaviour, rather than to apply financial sanctions in cases where the exchange has taken reasonable care.
17. In addition, as raising revenue from penalties is not an HMRC objective, the ability to be flexible with the RCASP is important. We do not consider that flat rate penalties for non-compliance will be effective. This is due to the difficulty of establishing an appropriate amount that is suitable punitive as RCASPs vary greatly in size.
18. We refer also to our response to the recent call for evidence on the Tax Administration Framework Review. We believe that the existing penalty regimes in UK tax law are in urgent need of simplification. The introduction of another complicated penalty regime for CARF would not assist with simplifying the tax code.

Question 8: What additional strong measures would be appropriate to ensure valid self-certifications are always collected for Crypto-Users and Controlling Persons?

19. One of the challenges that CASPs may encounter is slow or otherwise poor adherence to the requirement by users to provide self-certifications. Some of the options considered at paragraph 20 of the commentary on section 5 of the CARF for encouraging such adherence include:
    - ensuring crypto transactions are conditional on the receipt of a valid self-certification;
    - imposing penalties on crypto asset users and controlling persons;
    - a withholding tax on all transactions conducted in the absence of a valid self-certification; and
    - sanctions for signing a false or materially incorrect self-certification.

20. We do not believe that the first of these options could be effective once the transaction has been commenced as the blockchain does not provide the ability to cancel a transaction. The other options may provide effective sanction where an invalid self certification has been provided.

Amendments to the Common Reporting Standard

Question 10: Do you agree with the government's approach to Qualified Non-Profit Entities?

21. Yes, we agree that Qualified Non-Profit Entities should be designated as Non-Reporting Financial Institutions, provided they can be verified as non-profit by HMRC. This could include checking that the entity is registered with the Charities Commission, for example.

Question 11: Do you agree with the proposal to have an election to ignore the switch-off and report under both regimes?

22. Our concern with the switch-off election is that, if a transaction is reported under both the CRS and CARF, the relevant tax authority may consider that the two separate disclosures relate to different transactions, potentially leading to unnecessary enquiries or other compliance action. We would prefer that all financial institutions operate on the same basis, with the CARF taking precedence.

Question 13: Do you agree with government's proposal to introduce a mandatory registration requirement?

23. We would appreciate further explanation as to how requiring every reporting financial institution to register with the AEOI service will enable HMRC to gain assurance that CRS due diligence rules are being correctly applied, especially if nil returns are not required.
24. Some entities might be checking every year whether they have reportable account holders and therefore whether they need to register. Other entities might have registered but are failing to disclose reportable account holders.
25. We are not convinced that this amendment would improve HMRC's ability to fulfil its international obligations.

Question 14: Do you agree that, in principle, penalties relating to CRS obligations should be consistent with those set out above?

26. As set out in our response to question 6, we believe that penalty regimes should be consistent across as many parts of the tax code as possible and made as simple as possible.

We believe that the penalty regime for MRDP is too complex and so we do not support aligning other regimes to this model. HMRC should instead look at penalties in the round through the TAFR consultation and consider how they can be simplified as a whole.

Impact on extending to domestic reporting

Question 18: What are your views on extending CARF by including the UK as a reportable jurisdiction? What impacts would this have on RCASPs in scope? Are there other issues, regulatory or legal, that will need further discussion?

Question 19: What are your views on extending CRS by including the UK as a reportable jurisdiction? What impacts would this have on reporting entities in scope? Are there other issues, regulatory or legal, that will need further discussion?

Question 20: If the UK were to decide to introduce domestic CARF and CRS reporting, what are your views on implementing to the same timeline as the international CARF/CRS2 package (information collected in 2026, exchange in 2027)?

27. In principle, we support HMRC having powers to obtain information from intermediaries on transactions and other arrangements for the purposes of the collection of tax.
28. As set out in our multiple responses to consultations on improving the data HMRC collects from its customers (including ICAEW Rep 43/24) we believe that any information required by HMRC should be restricted to that relevant for the purposes of the collection or management of the taxes listed in s1 Taxes Management Act 1970.
29. We also believe that any information gathering powers granted to HMRC should contain sufficient safeguards to ensure that complying with any information notices is not unduly onerous to the recipient or associated taxpayers.
30. We believe that the international framework underpinning both the CRS and CARF regimes would ensure that these safeguards are in place were they to be extended to domestic reporting in the UK. For that reason, we support such an extension, provided that no further regimes are introduced under which the same information is collected.
31. In answering question 20, we see no rationale for domestic reporting to be implemented to a different timeline to that for the International CARF/CRS2 package.
32. However, extension of the CRS and CARF regimes to domestic reporting provides further evidence that the UK's tax year end of 5 April is outdated.
33. For example, if an intermediary provides information relating to transactions carried out by a user in the calendar year 2026, while this gives HMRC an idea of the tax liability arising in that calendar year, it doesn't tell HMRC whether that liability arises in the tax year ended 5 April 2026 or 2027 (or a combination of the two). Moving the tax year end to 31 December would give HMRC a more accurate picture of the timing of tax liabilities arising in relation to the transactions reported.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99.