

Draft new public notice: Common Reporting Standard (CRS) incidences of non-compliance subject to administrative non-compliance penalty under section 210(2) of the Tax Administration Act, 2011, released for public comment

A new notice, to be published under section 210(2) of the Tax Administration Act, 2011, (TA Act), listing the incidences of non-compliance in respect of the OECD Standard of Automatic Exchange of Financial Account Information in Tax Matters (the “AEOI Standard”, which encompasses the CRS), published in Regulations under paragraph (a) of the definition of “international tax standard” read with section 257 of the TA Act, that are subject to an administrative non-compliance penalty under Chapter 15 of the TA Act, is hereby released for public comment.

Legislative background

Section 210(2) of Chapter 15 of the TA Act provides that non-compliance is failure to comply with an obligation that is imposed by or under a tax Act (including secondary legislation issued under these Acts) and is listed in a public notice issued by the Commissioner. This means that where SARS is satisfied that non-compliance by a person referred to in section 210(2) read with the public notice exists, SARS must impose the appropriate administrative non-compliance penalty in accordance with section 211 of the Act.

The AEOI Standard provides that a CRS implementing jurisdiction is expected to have an effective administrative compliance framework and administrative procedures in place to ensure effective implementation of, and compliance with, the CRS. This is critical to ensure a level playing field between the CRS partner jurisdictions, the latter being the main purpose for peer reviews.

Consequently, the Commissioner issued Public Notice 193 under section 210(2) of the TA Act, in Government Gazette No. 40660 of 3 March 2017 (“the current CRS penalty notice”), listing the incidences of non-compliance with an obligation under the CRS Regulations that will trigger the imposition of a fixed amount non-compliance penalty, which penalty escalates by the same amount monthly up to 36 months until the non-compliance is remedied. This notice will be repealed by the new notice.

The current CRS penalty notice requires certain changes in order to make it stricter given the continuing low compliance with the CRS as highlighted by an analysis of CRS data obtained by SARS as well as, significantly, by the assessment team during the 2023 and 2025 AEOI Effective Implementation Peer Review by the OECD Global Forum. For the 2023 peer review South Africa only got a *partially compliant* rating, and the rating for the 2025 peer review will only be available in July 2025.

Proposed new notice

The current CRS penalty notice requires SARS to first give prior notice to defaulting Financial Institutions (FIs) of non-compliance with a due diligence requirement when detected by SARS, subsequent to which the FIs has 60 business days to remedy the non-compliance failing which the administrative penalty will be imposed.

It has been pointed out during the OECD APRG 2023 and 2025 AEOI Peer Reviews, that this penalty means an FI need not be compliant until it is advised by SARS of non-compliance detected by SARS and then have 60 days to remedy the non-compliance without incurring any penalty. Consequently, an FI need not be compliant until advised by SARS that it has detected non-compliance and can also avoid the sanction by remedying the non-compliance. According to the 2023 AEOI Peer Review, this does not amount to an effective deterrent at all. In any event, this prior notice and remedial period was only intended to assist FIs to comply with the AEOI Standard during the initial years of CRS implementation, given its complexity and consequent compliance burden on FIs.

During both the 2023 and 2025 AEOI Effective Implementation peer review, the assessment team advised that South Africa needs to ensure that its approach to enforcement in relation to non-compliance with the CRS provides an appropriate deterrent to non-compliance. The intention underlying the new penalty notice is to achieve this by removing the prior notice and remedial period in order to ensure that administrative non-compliance penalties will be imposed upon default, similar to the framework for the imposition of most other administrative penalties under the TAA, whilst still allowing for remittance requests or objection and appeal.

Due date for comments

Comments must be submitted by Friday, 27 June 2025, to acollins@sars.gov.za.