

## France imposes new reporting of recalcitrant account holders for CRS purposes

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### Executive summary

France has introduced a **new reporting requirement<sup>1</sup> for French Financial Institutions (FIs) with respect to the Common Reporting Standard (CRS) and "recalcitrant account holders"**. Information regarding such accounts **must be reported to the French Tax Authority no later than 31 March 2020**.

FIs should **report all account holders who have not provided the FI with the relevant information regarding their tax residence(s) and, where applicable, the related Tax Identification Number(s) (TIN) of the account holder (or the controlling person, if needed)**. These account holders constitute "**recalcitrant account holders**" for CRS purposes. It is important to note that such concept is different from the "undocumented account."

This new rule seeks to prohibit the opening of a new account without the completion of a self-certification form. Failure to report is subject to **new penalties** applicable as follows:

- ▶ **New penalty for failure by an FI to report** its account holders who have not provided their CRS self-certification (article 1729 C bis of the French Tax Code): Late transmission of the list of account holders who have not provided their self-certification would trigger a tax penalty of €200 per undeclared account holder.

- ▶ **New penalty for client account** holders who do not provide their CRS self-certification (article 1740 C of the French Tax Code): Failure of an account holder to provide the relevant information relating to their tax residence(s) and, if applicable, to their TIN, would trigger a fine amounting to €1,500.

In November 2018, the French Tax Authorities also released guidance defining the process of this new reporting and provide details on the financial account holders subject to this new obligation. The guidance included in BOI-INT-AEA-20-25 was subject to public consultation. These comments can be used by the French Tax Authorities to amend the Decree and/or the guidance.

On 18 September 2019, the French Tax Authorities also released the first draft of reporting requirements for comments.

Given that the new reporting due date for French FIs is **31 March 2020**, reporting FIs should consider the French Tax Authorities latest views and take prompt action as appropriate to ensure that they have identified the list of “recalcitrant account holders” and that they will be able to report in the XML format requested.

This Alert summarizes the key issues of the new reporting requirement to identify the “recalcitrant account holders” for CRS purposes, it also highlights the main areas for FIs to correctly report the “recalcitrant account holders.”

## Detailed discussion

### The status of account holders who can be classified as “recalcitrant account holders” for CRS purposes

**Only “new” account holders** can be defined as “recalcitrant account holders” for CRS purposes and be included in the new reporting, if they meet one of the following cases:

- ▶ **Case 1:** New accounts onboarded between 1 January 2016 and 29 December 2017 and no available information relating to the tax residence(s) and/or, where applicable, the TIN of the account holder (or the controlling person) has not been obtained.

It also covers changes in circumstances that occurred between the accounts’ opening date and 29 December 2017 that would have affected the tax residence(s) and/or the TIN of the account holder (or the controlling person); and no new self-certification has been obtained.

- ▶ **Case 2:** New accounts onboarded after 1 January 2016, when a change of circumstances occurs between 30 December 2017 and 31 October 2018 impacting the account holder’s tax residence(s) and/or TIN of the account holder (or the controlling person); and no new self-certification has been obtained.
- ▶ **Case 3:** New accounts onboarded after 1 January 2016, when a change of circumstances occurs after 1 November 2018 impacting the account holder’s tax residence(s) and/or TIN of the account holder (or the controlling person); and no new self-certification has been obtained.

Therefore, all pre-existing customers and new accounts of pre-existing customers are excluded from this new reporting requirement and cannot be classified as “recalcitrant account holders” for CRS purposes.

### The steps to be undertaken by FIs to correctly complete the reporting of the “recalcitrant account holders” for CRS purposes

FIs must send the complete list of the “recalcitrant account holders” before 31 March 2020 to the French Tax Authorities. This list includes all the accounts holders who have not responded to the second reminder of the FIs within 30 calendar days (article L.102 AG of the French Procedure Code).

The process to be followed is detailed below and should be duly applied by each FI to determine the accurate list of the “recalcitrant account holders”:

1. FIs must ask account holders defined as above to provide the required information to identify their tax residence(s) and/or TIN. This **first request** should be sent by the FIs depending on the respective case as below:
  - **Case 1:** no later than 31 March 2019.
  - **Case 2:** within 30 days following the entry into force of the Decree (i.e., 1 November 2018) and no later than 30 November 2018.
  - **Case 3:** within 30 days of the occurrence of a change in circumstances.
2. The account holders have 60 days, upon receipt of the request, to respond to the FIs.
3. At the end of these 60 days, a **second reminder** must be sent within 30 days.

4. In the absence of complete and accurate information within 30 days upon receipt of the second request by the account holder, FIs must consider the account as reportable in the reporting list (i.e., “recalcitrant account holders”).
5. Account holders will be considered as recalcitrant at 31 December N, the reporting of the “recalcitrant account holders” will be submitted by **31 March N+1** to the French Tax Authorities.
6. If no “recalcitrant account holders” have been identified, FIs can submit a nil return but this submission remains not mandatory.

Requests must be sent by post or e-mail to the account holder’s last known address, but FIs should keep an audit trail of the submission or, where applicable, of the receipt by the account holder.

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## Endnote

1. This new reporting requirement is the result of Decree n°2018-569 published on 3 July 2018 which came into force on 1 November 2018 (the Decree) which sets out the conditions for application of Article L.102 AG of the French Procedure Code based on Article 56 of France’s Amending Finance Bill for 2017 (law n° 2017-1775 dated 28 December 2017).



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