

French Tax Authorities release guidance on new reporting of recalcitrant account holders for CRS purposes

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Executive summary

France has introduced a new reporting requirement, to be filed in 2020, for French Financial Institutions (FIs) with respect to the Common Reporting Standard (CRS) and "recalcitrant account holders."

For background on the new reporting requirements, see EY Global Tax Alerts:

- ▶ [France imposes new reporting of recalcitrant account holders for CRS purposes](#), dated 30 October 2019.
- ▶ [French Tax Authorities release final draft on new reporting of recalcitrant account holders for CRS purposes](#), dated 11 December 2019.

In addition, the French Tax Authorities most recently have:

- ▶ Released guidance on 26 February 2020 (BOI-INT-AEA-20-30) describing the obligations conferred on the account holders and the consequence of failure to provide the self-certification for account holders.
- ▶ Published the reporting requirements together with some examples of the XML format.
- ▶ Posted online an FAQ on "recalcitrant account holders" to help FIs to understand and implement this new French reporting requirements (https://www.impots.gouv.fr/portail/files/media/1_metier/3_partenaire/tiers_declarants/cdc_td_bilateral/faq_auto_certification_l_102_ag_mars_2020.pdf).

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) after the expiration of the period of 30 days following the receipt of the reminder sent by the FI. These defaulting account holders constitute “recalcitrant account holders” for CRS purposes. It is important to note that such concept is different from the “undocumented account.”

The due date of the first reporting of “recalcitrant account holders” is scheduled on 30 March 2020. Nevertheless, the French tax authorities have introduced **a measure of tolerance for the first year of reporting by authorizing the FIs to submit the return on 3 June 2020, at the latest.**

Applicable penalties are:

► **For financial institutions**

- Sanctions from the French regulators ACPR (Autorité de Contrôle Prudentiel et de Supervision) and AMF (Autorité des Marchés Financiers).
- Penalty for failure to report the list of account holders who have not provided their CRS self-certification: €200 per undeclared account (article 1736 of the French Tax Code).
- Penalty for late submission of the list of account holders who have not provided their self-certification: €200 per undeclared account holder (article 1729 C bis of the French Tax Code).

► **For accounts holders**

- Penalty for not providing their CRS self-certification (i.e., relevant information relating to their tax residence(s) and, if applicable, to their Tax Identification Number -TIN): a fine that should not exceed €1,500 (article 1740 C of the French Tax Code).
- Penalty for deliberately providing a wrong tax residence(s) and TIN(s): criminal offense which could be punishable by three years’ imprisonment and a fine of €45,000 (article 441-1 of the French criminal code).

This Alert addresses the new requirements published by the French Tax Authorities to highlight the main areas for FIs to identify and report the “recalcitrant account holders” for CRS purposes.

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 as follow:**

- Case 1: New accounts opened between 1 January 2016 and 29 December 2017
- Case 2: All the new accounts for which a change in circumstances occurred between 1 January 2016 and 31 December 2019

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

► **Only a new account who has not provided the FI with the relevant information regarding the tax residence(s) and, where applicable, the related Tax Identification Number(s) (TIN) (if any) of the account holder (or the controlling person of the Passive Non-Financial Entity, if needed)**

New entity accounts who have not provided the FI with the relevant information regarding their classification status only (Passive or active Non-Financial Entity) are excluded from this new reporting requirement. In this case, the FI must assume that the NFE is passive and must report the controlling persons as “recalcitrant account holders” if no information regarding their tax residence(s) and, where applicable, the related TIN (if any) of the controlling persons are available.

► **Only a new “recalcitrant account holder” located in France or is identified as being tax resident in any of the reportable jurisdictions**

New account holders identified as being tax resident in any of non-reportable jurisdictions (including any account holder located in United States) are excluded from this new reporting requirement and cannot be classified as “recalcitrant account holders” for CRS purposes.

Please note that the list of the reportable jurisdictions has been updated in the article 2 of the decree issued by the French Government on 10 February 2020.

► **Only new opened accounts of “recalcitrant account holders” are in the scope of the 2020 “recalcitrant account holders” reporting campaign**

Closed accounts are included in the reporting of “recalcitrant account holders.” However, this rule is not applied to all the new accounts closed between 1 January 2016 and 26 February 2020.

In practice, for the 2020 “recalcitrant account holders” reporting campaign, all closed accounts are therefore excluded from this new reporting requirement and cannot be classified as “recalcitrant account holders” for CRS purposes.

► **Only one account per “recalcitrant account holder” can be included in the “recalcitrant account holders” return**

As soon as the account holder has not replied to at least one self-certification request, he must be included in the list for this account; it is therefore not necessary to declare all the accounts held by the “recalcitrant account holder.”

The steps to be considered by FIs to correctly complete the reporting of the “recalcitrant account holders” in time

FIs must send the complete list of the “recalcitrant account holders” before 30 March 2020 to the French Tax Authorities. The French tax authorities have introduced **a measure of tolerance for the first year of reporting by authorizing the FIs to submit the return by 3 June 2020, at the latest.**

This list includes all the accounts holders who have not responded to the 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 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 this 60-day period, 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 30 March N+1 to the French Tax Authorities. The return must be filed under an XML format.
6. Account holders who have not provided the FI with the relevant information on 31 December N are included in the return. For information, the financial institution may mention in the return the holders who have provided all the relevant information between 1 January N+1 and 30 March N+1 by mentioning the dates of the answer.
7. 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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