Response by TISA to Cryptoasset Reporting Framework and Common Reporting Standard Consultation

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About TISA

The Investing and Saving Alliance (TISA) is a unique, rapidly growing membership organisation for UK financial services.

Our ambition is to improve the financial wellbeing of all UK consumers. We do this by convening the power of our broad industry membership base around the key issues to deliver practical solutions and devise innovative, evidence-based strategic proposals for government, policy makers and regulators that address major consumer issues.

TISA membership is representative of **all sectors of the financial services industry.** We have **over 200-member firms involved in the supply and distribution of savings, investment products and associated services**, including the UK's major investment managers, retail banks, online platforms, insurance companies, pension providers, distributors, building societies, wealth managers, third party administrators, fintech businesses, financial consultants, financial advisers, industry infrastructure providers and stockbrokers.

As consumers, the financial services industry and the economy react to and recover from the effects of the pandemic, the importance of the three key pillars of work that TISA prioritises has never been more apparent:

- **Strategic policy initiatives that influence policymakers** regarding the financial wellbeing of UK consumers & thereby enhancing the environment within which the industry operates in the key areas of **financial inclusion, consumer guidance, retirement planning, later lifetime lending, vulnerable customers, financial education, savings and investments**.
- TISA is recognised for the **expert technical support provided to members** on a range of operational and regulatory issues targeted at improving infrastructure and processes, establishing standards of good practice and the interpretation and implementation of new rules and regulations covering **Governance, Conduct and Culture, Consumer Duty**, **MiFID II, CASS, ESG/RSI, Operational Resilience, Financial Crime Prevention,** and a range of other areas.
- **Digital transformation initiatives** that are driving ground-breaking innovation and the development of industry infrastructure for greater operational effectiveness and revenue promoting opportunity for firms. TISA has become a major industry delivery organisation for consumer focused, digital industry infrastructure initiatives – **TISAtech** (a digital marketplace that brings together Financial Institutions and fintechs for greater collaboration and innovation) and **TURN** (TISA Universal Reporting Network – a digital platform providing a secure data exchange for financial services using blockchain technology) – alongside projects **Digital ID** and **Open Savings, Investments & Pensions**. This reflects TISA's commitment to open standards and independent governance.

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Introduction and Summary of Recommendations

The introduction of the Automatic Exchange of Information regimes into the UK with firstly the Foreign Account Tax Compliance Act (''FATCA'') and subsequently the Common Reporting Standard (''CRS'') has led to a lot of changes being implemented by impacted Financial Institutions, the Third Parties they engage to run some or all the Operational Processes, such as onboarding, change in circumstances etc., and the Investor population, for example being required to respond to enhanced requests for information.

It is understood that the introduction of the automatic exchange of information regimes has led to greater transparency and less tax evasion, which in turn has seen a significant increase in additional revenues raised. This success is also leading to more countries adopting the CRS.

To maintain the effectiveness of the CRS, the introduction of Cryptoasset Reporting Framework ("CARF") and CRS2 are considered necessary and across the globe, these updates will be implemented in the coming years.

TISA and its members have considered the consultation and have provided our responses in this consultation response. At a high level, we would like to draw out the following themes that underpin our responses.

TISA supports the need for greater standardisation and simplification of the UK's tax regime, notably in respect of its application to consumers. CARF, along with other recent developments in respect of the tax treatment of cryptoassets, are likely to have real impacts on consumers, including consumers who have never directly interacted with HMRC. When implementing its policy proposal, it is vital that HMRC has a communication plan that can reach consumers and make it clear what is expected of them, when. In respect of CARF, it will be particularly important to reach consumers who hold their cryptoassets off-exchange, as they will be responsible for self-reporting. Information and guidance needs to be accessible, approachable and simple enough for consumers to understand.

TISA would also like to draw out the importance of data clarity and the confidentiality of data transmission. Fraudsters continue to deploy increasingly advanced technologies and techniques. In light of this, information security should be at the forefront of HMRC's policymaking and policy implementation, in order to minimise the risk of consumer data being hacked and getting into the wrong hands. New technologies and initiatives, such as Digital IDs, can greatly enhance security, enabling government services to be accessed instantly and securely.

We encourage HMRC to consider these policy proposals holistically, alongside the Government's overarching objectives. There are aspects of these proposals that seem to conflict with the aims to make the UK an innovative financial centre for fintech and crypto technologies and to incentivise investment in UK public listed companies. We also note that there are significant ongoing changes in the operational taxes sphere including *inter alia* Lifetime Allowance abolishment, Pensions Digital Relief at Source, ISA digital reporting, the UK ISA, CRS2 and FASTER. We recommend that HMRC allows a period of time for these changes to be implemented; for there to be a degree of policy stability. This would allow time for HMRC to consider their policy proposals holistically and formulate a strategic plan with clear overarching policy objectives from which underpinning policy proposals can be formulated and pursued. This joined-up approach would build transparency and trust in the tax system and would enable consumers and firms to make informed planning and financial decisions.

We would like to thank HMRC for the opportunity to comment on their proposals and we would be more than happy to discuss any of our responses. We look forward to working with HMRC in implementing these changes in the coming years.

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Responses to Consultation Questions

Question 1: Do you consider the scope of, and definitions contained within, the OECD CARF rules to be sufficiently clear? Are there any areas where additional guidance would be helpful?

Currently, TISA members do not offer many crypto products, but CARF may become more relevant for members in future. TISA member organisations already operate many UK Reporting Financial Institutions, so the impact of offering crypto assets to our investors in future should not have as big an impact as when CRS was firstly introduced, because they have already established the processes, procedures and controls to comply with the CRS requirements.

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

Close alignment with CRS principles would be beneficial, especially for those Financial Institutions that are already Reporting Financial Institutions under CRS. In addition, given the current CRS approach is established and working well, we see no reason to adopt an alternative approach here.

In particular, it is important to ensure that the definition of RCASPs and their jurisdictional nexus ensures that duplicate reporting is avoided and that tax authorities are consistent in their approach, interpretation and application of any jurisdictional nexus rules.

This is particularly important for RCASPs as they already face the challenge of being unfamiliar with the CRS requirements, so to prevent over-burdening these firms, it is essential that the hierarchy of nexus criteria is clearly defined, and also consistently and uniformly applied by tax authorities.

The reportable investor base may well be different depending on tax residency of the RCASPs. For example, a fund may be listed in the UK but have a Singaporean residence. What is important is that it is clear there is only one possible nexus which is confirmed by the relevant tax authority/authorities. This mechanism is already available and working relatively efficiently under the current CRS framework. It is important that this is expanded to apply here too. Otherwise, part of the investor population might be reported more than once, which could lead to an inflated investment amount being expected to be reported by relevant tax authorities. This could mean that tax authorities could perceive that an individual investor has received multiple profits, because of duplicate reporting. This would then place an unnecessary and unfair burden on investors to prove that this is actually a duplication. Ensuring that the jurisdiction nexus is clearly defined and consistently applied across jurisdictions by tax authorities will prevent consumers (i.e. individual investors) from suffering the stress and burden that duplicate reporting could cause.

It would be helpful for there to be guidance providing a waterfall and example scenarios that clarify where a UK nexus exists, setting out key criteria and how different variations in the criteria may impact the end result. The guidance should include less clear-cut scenarios, including how to treat a firm that does not disclose where it is headquartered (as is the case for Binance[1]).

Ultimately it will be vital for there to be international coordination and cooperation between tax authorities so that definitions and guidance is applied in a uniform and consistent manner.

Question 3: Are there any areas where additional guidance would be helpful on reportable information?

[1] New Binance chief refuses to disclose global headquarters' location (ft.com)

Close alignment with CRS principles would be helpful because this would mean that for existing reporting Financial Institutions, there would be limited changes and challenges, meaning policy implementation is more likely to be smooth and successful.

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

It is understood that because of the changes to CRS there will be separate reporting submitted from a FATCA and CRS perspective. Separate reporting would presumably be required to be submitted from a CARF perspective as well.

If our understanding is correct, we do not agree with HMRC's proposal to align reporting timelines. We think it would be better to have different deadlines to prevent bottlenecks, particularly in respect of data collation, review and validation stages. Operationally, having different deadlines is more manageable, particularly when one considers the reliance on third parties which can already often lead to squeezed timelines.

Our alternative proposal would be to stagger each report over month ends, for example, from May - July. This would leave ample time for HMRC validation and would reduce operational burdens and pressure that is placed on firms and in turn HMRC staff and processes.

This staggered approach has been successfully adopted by other jurisdictions, such as Hong Kong.

In relation to the timing of reporting, it is also worth mentioning that if the general policy direction is to have consistent approaches internationally, the UK is an outlier in that it operates a tax year that is different to most other jurisdictions around the world. Data relating to a calendar year must be adjusted to reflect the UK tax year ending per 5 April annually. We would like to take the opportunity to call on HMRC to align the tax year with the recognised international standard approach.

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

Again, it would be very helpful to have alignment with the CRS principles. This would mean that for existing reporting Financial Institutions, there would be limited changes and challenges, meaning policy implementation is more likely to be smooth and successful.

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

We note that penalties are subject to ongoing peer group reviews and we call for the penalties relating to CARF obligations to take into account and where possible, align with the themes that these reviews identify.

One of the challenges for multinational member firms is the divergence between the application of the same rule set by jurisdictions around the world. In line with the overarching policy aim to improve international consistency, it would be helpful if there was an acceptable OECD standard on appropriate penalty regimes.

To inform any standard, we would note that the ''threat'' of high penalties may lead to firms and individuals being more reluctant to approach tax authorities and risks undermining the policy objective of building transparent and cooperative relationships with tax authorities. We believe HMRC is mindful of this consideration and the approach taken strikes a careful balance which could be helpful for other jurisdictions.

Question 7: Do you think that the penalty amounts in the MRDP are appropriate for the CARF?

As mentioned above, operating consistently applied penalty regimes around the globe would be preferable.

Until an internationally consistent approach to penalty regimes is achieved, we agree with HMRC's proposal to align the penalty amounts to those applied from a MRDP perspective. In particular, we think it would be helpful for the "reasonable excuse" principle that is currently applied under the MRDP should be incorporated into the new CARF regime. This principle has worked well in practice and should be adopted here too.

In addition, we would support HMRC taking a similar, proportionate approach to that undertaken in respect of CRS' introduction, where the priority was to issue penalties where there is clear evidence of a firm not applying best efforts.

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

Given TISA members tend not to offer cryptoasset products, we may not be best placed to provide insights on what additional strong measures could be adopted. We would note however that when considering this, it may be helpful for HMRC to consider the following factors:

- The extent of retail investor base
- Entities with controlling persons will likely be a rarity
- The potential for individuals to self-custody cryptoassets in 'hot' or 'cold wallets'
- The impact of forcing individuals holding cryptoassets in self-custody with no trading to report balances where no or minimal trading or disposals has occurred
- The impact of the High Net Worth Individual threshold implemented by the FCA
- The prominence of digital customer journeys and app-based interactions
- The security opportunities afforded by Digital IDs
- The transparency afforded by blockchain technology
- The price volatility associated with this asset class
- How desirable the UK intends to be as a location for doing crypto-related business and investment
- How best to target the population of crypto-users that HMRC is most concerned about
- The data should be easily ingestible for crypto analysis firms (e.g. Chainalysis) who could assist with tracing suspect transactions.
- How best to identify holders of privacy coins (very likely self-custodied), such as Monery and zCash

Question 9: What additional one-off or regular costs do you expect to incur to comply with the requirements of the CARF? Please provide any information, such as costs, staff time or number of Reportable Persons/RCASPs affected which would help HMRC to quantify the impacts of this measure more precisely.

As mentioned above, currently, the impact is more about monitoring developments internally as well as externally.

There are no direct implementation costs foreseen for TISA member firms on the basis that no or little crypto assets are being offered. If that were to change, it will depend on the size of the organisation, number of crypto products offered and the number of investors into those products.

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

TISA members that are Reporting Financial Institutions tend not to have many challenges with ‘’qualified non-profit entities.’’ Typically, where such an investor is onboarded, validation is undertaken against the Charities Register and we would maintain that record and validate it annually.

From discussion with HMRC, it is understood that this category is more aimed at supporting the ‘Qualified Non-profit Entities’ rather than the Reporting Financial Institutions. TISA members do not consider this new addition to cause too many challenges over and above the existing awareness challenges that already exist with certain investors being unaware of all self-certification requirements.

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

Whilst we understand HMRC’s desire to create flexibility, our preference is for there to be simplification, particularly to avoid unwanted consequences for end consumers. For example, an investor may not only be aligned to one Financial Institution. An investor who has invested in multiple Financial Institutions would need to monitor and track the potentially various approaches taken by each Financial Institution. This flexibility increases the complexity of information that is presented to investors, potentially making it harder to collate, compare and contrast information.

The information that investors receive then informs the individual investor’s tax return and having multiple approaches being taken across Financial Institutions heightens the risk of perceived non-compliance and HMRC spending resources and taxpayers money on challenging these perceived non-compliances.

Whilst a mechanism for investors to defend any challenges from local tax authorities on the basis of the switch off could be established, this adds complexity and cost into the system, which could ultimately be avoided by adopting a policy of grater simplification.

We would also note the overarching government policy aim to make investing in the UK more attractive. The approach outlined is likely to add, rather than remove, incentives to investing in UK Financial Institutions.

Question 12: Do you consider the scope of, and definitions contained within, the rules to be sufficiently clear? Are there any areas where additional guidance would be helpful?

The scope and definitions appear sufficiently clear at this stage but there may be additional clarity/guidance required at some further stage as the implementation projects progress. TISA would urge HMRC to continue working with the industry to incorporate any additional guidance as and when the need arises.

It is worth noting that even after 8 years of the CRS regime, there are still differing views within the wider industry about what is considered a Reporting Financial Institution and whether there is technically an argument that a Financial Institution should register due to the Investment Entity definition being relatively widely drawn. This contrasts with the policy intention behind the FATCA and CRS regimes: i.e. identifying cross border investors and report them annually to the local tax authorities who may share the relevant data with other tax authorities around the world.

An additional example that we would like to draw HMRC’s attention to is the ongoing challenges that some platforms are having in understanding whether their firms are in or out of scope of the MRDP. Currently, MRDP is drafted in a way that is high level and potentially expansive. This leads to uncertainty for firms, as the rules are insufficiently prescriptive to allow them to determine whether their business is in, or out, of scope. Whilst we understand the desirability of principles-based rules that may be far-reaching and purposeful, the question of scope requires precision and careful definition. At present, more could be done

to give firms clarity and certainty. We would welcome further guidance to make this position clear and we would note the importance of ensuring the definitions and scope of CARF are sufficiently clear and understood so that firms may operate with confidence and certainty within (or outside of) the regime.

This CRS and MRDP example highlights the importance of having very clear, precise definitions particularly in respect of scope, and the need for HMRC to continue to resource ongoing guidance as and when queries on scope arise, so that firms can have clarity and certainty that they are complying with relevant regimes.

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

It would be useful for HMRC to elaborate the risk they are seeking to address through this policy proposal, so that TISA can comment on whether it is a suitable intervention.

At present, TISA is not convinced that this proposal will provide HMRC with a complete picture of the reporting population. Certain jurisdictions around the world already have a registration requirement (such as Cayman, Ireland etc.). We would note that whilst Cayman has highest number of registered Financial Institutions, these firms may not be meeting substantive requirements, which suggests that the mandatory registration requirement may not address the desired policy objective. There is a risk that this proposal could be overly burdensome on already compliant firms and individuals, whilst failing to target firms that are non-compliant.

TISA supports HMRC in not mandating a nil reporting requirement. Some TISA members currently finance nil reporting filings in various countries around the world which is an expensive administrative burden, especially for those who are operating across various/many jurisdictions.

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

We welcome the proposal to align the approach to penalties across the different Directives on Administrative Cooperation which underpin some of the regimes such as CRS and MRDP. This simplifies the regime, creates certainty and a level playing field.

The proposed penalties appear proportionate for non-filing of returns for example where these should have been submitted.

In relation to penalties in respect of failure to notify individual reportable persons that the Financial Institution has submitted information about them to HMRC and may be transferred to the government of another territory, typically, this information would be contained in account terms and conditions.

We note that Luxembourg has recently adopted DAC7 which contains a requirement for Reporting Financial Institutions to notify reportable individual investors/controlling persons that they are to be reported to the Luxembourg tax authorities. It is understood Luxembourg is the only European country that has introduced this requirement. It is a requirement under GDPR rather than from a tax perspective. The Luxembourg tax authorities have indicated this requirement will be monitored by the CNPD (the Luxembourg National Data Protection Commission) rather than by them.

We do not think HMRC should adopt the approach taken by Luxembourg because the UK approach already affords this information sufficient prominence. From a consumer's perspective, this information is not decision important to consumers – i.e. it does not determine whether a consumer will or will not buy a particular financial services product or service. Further to this point, this information would be

communicated irrespective of which Financial Institution a consumer decides to do business with: all Financial Institutions adopt this approach. Indeed, it is arguable that consumers would expect their Financial Institution to provide information to relevant tax authorities without being told that this is the case. All of this indicates that the current approach and prominence afforded to this is information is proportionate and adequate.

HMRC should clarify whether this would potentially become a requirement in the UK. It is understood from a previous discussion this was not intended to be introduced in the UK. Currently, there is a requirement to notify investors in advance of any reporting to be submitted about them.

Question 15: Do you think that the penalty amounts in the Model Rules for Digital Platforms are appropriate for the CRS?

As stated previously, it is worth understanding whether these amounts are roughly the same in other jurisdictions and whether the OECD sets expectations on what is deemed an appropriate level of penalties to be imposed. Consistency between the different regimes underpinned by Directives on Administrative Cooperation is welcomed.

Question 16: What additional strong measures would be appropriate to ensure valid self-certifications are always collected where required?

Different countries have adopted various measures in trying to persuade Reporting Financial Institutions to collect self-certification forms and account holders to respond to those requests. Typically, most mechanisms for enforcing the collection of self-certification forms take place at the account opening stage. Post account opening, it tends to be more challenging to obtain updated self-certification forms – firms are ultimately reliant on the end customer being responsive. For example, difficulties may arise where an investor takes out investment products for the longer term and they may only reply to Reporting Financial Institutions requests for self-certification when they would like to cash in the investment.

The vast majority of UK-authorised exchanges and EMI's who facilitate cryptocurrency services already demand confirmation whether the account holder is a HNWI or not and severely restrict investments for investors who not meet this threshold. AML, proof of HNWI status and proof of funds is already being collated from every account holder at on-boarding, in-line with FCA requirements.

Question 17: Do respondents have any comments on the assessment of impacts of these proposals?

There are impacts on individuals because of the potential for their data to be shared by tax authorities around the world. The amount of tax raised following the introduction of the automatic exchange of information regimes is understood to be significant. These amounts would have been collected from the relevant individual taxpayers.

Secondly, the individual taxpayers will be required to complete self-certification forms, respond to requests from their Financial Institutions to validate data and at times be subjected to 'reasonableness tests' as well as engage tax advisers and/or accountants in supporting their tax returns to be completed correctly. Given the recent policy developments in respect of cryptoassets, we suspect this is likely to increase the number of individuals completing tax returns and reporting for the first time.

This highlights the importance of HMRC having a carefully considered, thorough approach to its consumer communications plan, as a part of the implementation of CARF and HMRC's wider cryptoasset policy in so far as it impacts consumers. We think there is a high risk that uninformed consumers are likely to submit incomplete, or incorrect forms, which in turn will lead to extra work and taxpayer money being spent on HMRC dealing with this. To try to avoid this, we think it is vital that HMRC provides information and

guidance that is accessible, approachable and simple enough for consumers to understand. HMRC should also consider what additional types of communications are needed to reach individuals who have never directly interacted with HMRC. As a matter of good faith, HMRC should not solely rely on firms to communicate its new regime to ensure that UK consumers are aware of it. Furthermore, solely relying on Financial Institutions would not reach consumers who hold crypto assets off-exchange (e.g. they have a cold wallet).

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?

If there is going to be a reporting regime requiring reporting on specified crypto assets then a level playing field should be created. For example, in recent times, links have been made between crypto assets and capital gains and currently, capital gains are not typically reported in the hands of UK investors. Investors typically are provided with consolidated tax certificates however these are not issued to HMRC on an annual basis. If there is a move to making crypto asset reporting on UK investors, a level playing should be created – i.e. crypto assets should not be treated differently from other asset classes.

This inconsistency in treatment of crypto assets also seems to contrast against the Government's aim to build a thriving tech ecosystem, that includes an innovative, agile approach to crypto assets[2].

In contrast, it would be strange if no reporting is mandatory on UK investors but non-UK investors are being reported on. There is no current equivalent in the UK requiring Financial Institutions to report on crypto assets. By comparison, CRS (or similar) data is being reported currently through BBSI and OI.

As mentioned above, if the general policy direction is to have consistent approaches internationally, we note that the UK is an outlier in that it operates a tax year that is different to most other jurisdictions around the world. Data relating to a calendar year must be adjusted to reflect the UK tax year ending per 5 April annually.

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?

Whilst some of TISA's members will be familiar with the CRS XML schema, there are still several concerns. As stated above, the UK tax year does not align with tax years in most other jurisdictions so data would need to be adjusted by HMRC.

In addition, there is a concern about the security and confidentiality of data transmission. There are many UK Financial Institutions who hold a vast UK customer base and the precise details of what information would need to be obtained and reported is unclear. It is vital that the transmission of customer data is done in a secure and safe manner that minimises the potential risk of this data getting into the wrong hands. We would welcome a conversation with HMRC to understand the security and infrastructure controls that would need to be in place to safeguard this information and the details of what information would need to be obtained and reported if CRS were extended to domestic reporting.

TISA generally supports tax simplification and expanding one regime but removing two existing reporting regimes would fall into a category of changes that TISA would typically support.

[2]For example see Rishi Sunak, then Chancellor's opening address to London Tech Week - GOV.UK (www.gov.uk)

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)?

TISA considers (especially) domestic CRS reporting as a very significant challenge for its membership. We would strongly urge HMRC to consider a considerably longer implementation deadline of 5 years.

More broadly, we would call on HMRC to take a more holistic approach. There are already significant changes ongoing in the Operational Taxes sphere including Lifetime Allowance abolishment, Pensions Digital Relief at Source, ISA digital reporting, introduction of UK ISA, CRS2 and FASTER. We recommend that HMRC allows a period of time for these changes to be implemented and for there to be a degree of policy stability. This would also allow time for HMRC and its stakeholders to review whether these policies were successful and a more strategic, holistic plan with clear overarching policy objectives and underpinning policy proposals can be formulated and pursued. This more joined-up approach would build transparency and trust in the tax system and would enable consumers and firms to make informed planning and financial decisions.