



Impact of the Organisation for Economic Co-Operation and Development's Common Reporting Standards on Cayman Islands Entities



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This publication provides a brief overview of the common reporting standards (“CRS”) issued by The Organisation for Economic Co-Operation and Development (“OECD”) and its expected impact on entities incorporated in the Cayman Islands.

1. Background

On 16 June 2015, the Department of International Tax Cooperation of the Cayman Islands (the “DITC”) announced that it would be implementing the CRS into local legislation. The draft *Tax Information Authority (International Tax Compliance) (Common Reporting Standard) Regulations, 2015* are currently under review and it is expected that these regulations will, once in final form, be passed into local legislation in October 2015.

The Cayman Islands became a signatory to The Multilateral Convention of Mutual Administrative Assistance in Tax Matters on 29 October 2014 (the “Convention”) which permits participating countries to enter into agreements that provide for the automatic exchange of information (“AEOI”) with respect to certain tax matters. Through the operation of the Convention, the Cayman Islands, along with over 60 other countries, have signed a Multilateral Competent Authority Agreement providing the legal basis through which countries can agree to the CRS. In order to implement the CRS domestically, the Cayman Islands will, as noted above, pass legislation in October 2015.

The Cayman Islands is one of the first countries to agree to implement the AEOI under the CRS by September 2017 (referred to as the “Early Adopter Group”). It is noted that the United States is, although an OECD member, currently not part of the Early Adopter Group and will instead continue to rely on FATCA and related agreements in the exchange of information in relation to tax matters.

The CRS represents a significant step towards the AEOI for tax purposes and there are, as at 23 July 2015, more than 90 countries (for the list of countries see [link](#) here) that have committed to its implementation.

2. What is the CRS and how does it work in relation to the Cayman Islands?

As the world continues to move towards tax transparency and exchange of information, similar to FATCA (for further information of FATCA please see the [link](#) to our publication), the CRS is an information exchange regime being created to facilitate and standardize the AEOI on resident’s assets and income between certain adopting jurisdictions globally. Again, similar to FATCA, the CRS will require certain financial institutions (“FIs”) to identify the tax residency of their customers and then to report certain information on such customers (i.e.



Reportable Accounts which includes accounts held by individuals and entities (which includes trusts and Foundations)), and the standard includes a requirement to look through passive entities to report on the individuals that ultimately control these entities.

The overall identification process under the CRS is similar to that of FATCA however there are some key differences; the key of which is that the CRS is based on tax residency rather than citizenship. The CRS will likely capture a greater number of FIs than FATCA due to the narrower exemptions.

Unlike FATCA which imposes a 30% withholding tax on US source income and other US related payments of a foreign financial institution, the CRS does not implement a similar penalty for non-compliance and penalties for non-compliance will instead be specified in local legislation in the various adopting jurisdictions.

3. What are the key dates for Cayman FIs?

- 1 January 2016 – *Pre-Existing Accounts* are those open on 31 December 2015, with *New Accounts* being those opened on 1 January 2016 onwards. Reporting Cayman FIs will be required to self-certify tax residency of account holders from this date;
- 31 December 2016 – Due diligence procedures for *identifying High-Value, Pre-Existing Individual Accounts* must be completed;
- 31 March 2017 – Deadline by which reporting Cayman FIs are required to make certain notifications as to their CRS reporting status to the DITC;
- 31 May 2017 – First reporting date deadline to the DITC in respect of *Reportable Accounts*;
- 30 September 2017 – The first CRS exchange of information in relation to *New Accounts* and *Pre-Existing Individual High-Value Accounts* will take place;
- 31 December 2017 – Due diligence procedures for identifying *Pre-Existing Individual Low-Value Accounts* and for *Entity Accounts* must be completed; and
- 30 September 2017/ 30 September 2018 – Information about *Pre-Existing Individual Low-Value Accounts* and *Entity Accounts* will either first be exchanged by 30 September 2017, or 30 September 2018 (depending on when Cayman FIs identify such accounts as *Reportable Accounts*).

4. What steps do Cayman FIs need to take?

Again similar to FATCA, Cayman FIs will need to adopt onboarding procedures for new investors in order to capture the requisite information that needs to be reported in order to be compliant with the CRS (i.e. due diligence procedures should capture the tax residency of account holders, so for instance, new account holders should be provided with self-certification forms and in the case of an investment fund, the constitutional documents, offering documents and subscription documents should be updated to incorporate CRS requirements). As noted above, with effect from 1 January 2016, Cayman FIs will need to determine the tax residency of their account holders and the CRS reporting will commence on 31 May 2017. Reporting will need to be made on an annual basis thereafter.

5. What information needs to be reported?

- The name, address, jurisdiction(s) of residence, tax-information-number(s), date and place of birth of account holders (as well as *Controlling Persons*, as applicable);
- Account details;



- Name and identifying number of the reporting entity; and
- Certain financial information (e.g. account balance(s)/value(s) and income/sale or redemption proceeds).

6. Reporting Information

The requisite reporting by Cayman FIs, as is the case with FATCA, will be done by Cayman FIs through the Cayman Automatic Exchange of Information Portal (the “AEOI Portal”). The AEOI Portal, which is now fully operational for FATCA reporting, will be upgraded to enable CRS reporting in due course. Information provided by a Cayman FI to the DITC via the AEOI Portal will be exchanged automatically by the DITC to the various participating overseas tax authorities.

7. Further Guidance

For further guidance on the CRS please contact us.

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