

CAYMAN ISLANDS FUNDS INDUSTRY UPDATE

CHRIS HUMPHRIES, OF STUARTS WALKER HERSANT HUMPHRIES, OUTLINES THE MOST IMPORTANT RECENT DEVELOPMENTS WITHIN THE CAYMAN ISLANDS FUNDS INDUSTRY



Chris Humphries

is the managing director and one of the founding directors of Stuarts. He is a recognised leader in his field by Chambers & Partners and Legal 500. He has registered several hundred mutual funds with the Cayman Islands Monetary Authority and frequently advises on regulatory and compliance issues involving funds, investment managers and fund administrators.

The Cayman Islands remains the offshore jurisdiction of choice for hedge funds and mutual funds. It maintains this prestigious status by continuing to employ innovative legislature and provide a light but sensible regulatory regime in a tax-free environment. Given the momentous success of the Cayman Islands as a fund domicile, it also boasts the existence of refined and qualified service providers who are knowledgeable in the nuances of the fund industry.

Some of the core changes to the funds industry in the Cayman Islands in the last year are set out below.

CRS NOTIFICATION AND REPORTING DATES EXTENDED

In an industry advisory dated 3 March 2017, the Cayman Islands Department for International Tax Cooperation (DITC) announced that it will adopt a ‘soft opening’ for the first year of the Common Reporting Standard (CRS), which essentially provides an extension to the deadlines by when Cayman Islands Financial Institutions (FIs) are required to meet their 2017 notification and reporting obligations under the CRS. Cayman FIs will now have until 30 June 2017 to register with the Cayman Islands Tax Information Authority (TIA) on the AEOI online portal, and until 31 July 2017 to comply with the first reporting obligation regarding accounts held during 2016 (provided the reports are submitted and showing the status of “accepted” on the Cayman AEOI portal by that date) without the TIA considering compliance measures or penalties. This will allow Cayman Financial Institutions a further two months in which to undertake their notification and reporting obligations under the CRS this year.

UK FATCA REPORTING

The advisory also confirmed that reporting FIs will not have notification or reporting obligations regarding UK FATCA this year onwards because those obligations are superseded by the corresponding obligations under CRS (any reporting that would otherwise have been required in respect of account holders and controlling persons who are specified UK persons under UK FATCA must now be made in respect of those persons who are report-

able persons for CRS purposes on the basis of their UK residence).

US FATCA REPORTING

The notification and return deadlines for US FATCA were 30 April 2017 and 31 May 2017 respectively. The DITC confirmed in the advisory that there will be no deferral of these deadlines for US FATCA in 2017.

CRS NEWS AND UPDATES

Version 2.0 of the *Cayman Islands CRS Guidance Notes* was published by the DITC on 13 April 2017 following consultation with industry. The Guidance Notes can be accessed on the DITC website (www.ditc.gov.ky).

Reporting FIs must now adopt and implement written policies and procedures setting out how the Reporting FI will address its obligations under CRS. The Guidance Notes provide that such policies and procedures must be appropriate for the type of institution, and should reflect any delegation to third parties. An FI that has delegated its CRS obligations should still have written policies and procedures which describe:

- What functions have been delegated
- The management/oversight of the delegation
- The performance of any CRS obligations that have not been delegated.

When an FI registers with the TIA, in addition to providing the name and contact details of the individual who has been authorised by that FI to act as the principal point of contact (PPoC), an FI must also provide the TIA with the name and contact details of a separate person who the FI has authorised to give notification to the TIA of a change in the PPoC.

Please note that even if a Cayman FI has no reportable accounts for a reportable jurisdiction, that FI must file a nil return via the AEOI online portal.

KEY DIFFERENCES BETWEEN CRS AND FATCA

While there are strong similarities between the terms and definitions used in US FATCA and CRS, it should not be assumed that a Cayman Islands entity’s classification un-



der CRS will be the same as under US FATCA. Accordingly, each entity should review its classification specifically under CRS to ensure that it meets the requirements imparted upon it by CRS.

In terms of specific differences to be aware of, we would suggest the following are the most noteworthy:

- **No investment manager/investment adviser exemption under CRS:** Under FATCA, most investment managers who are Cayman Islands entities would have been able to take advantage of an exemption so that they were “deemed compliant” and therefore not required to report. However, under CRS, such entities would be Reporting FIs and therefore required to notify and report (although they would be unlikely to have any reportable accounts) and also have written policies and procedures in place.
- **No ‘sponsored entities’:** Under FATCA, an FI could appoint someone as a sponsored entity to complete all of its obligations which would, in turn, mean that the entity itself becomes ‘non-reporting’. However, there is no corresponding provision under CRS.

GROWING USE OF LLCs

Following the eagerly awaited introduction of the Limited Liability Company (LLC) last year, there is a growing use of LLCs in the Cayman Islands. To date, approximately 300 LLCs have been formed and registered in the Cayman Islands. We expect that number to grow,

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and at an increased rate, as US fund professionals become more familiar and comfortable with them.

ANOTHER NEW VEHICLE IN THE CAYMAN ISLANDS?

The Cayman Islands Government has just released draft legislation for the introduction of a Limited Liability Partnership (LLP) vehicle.

An LLP can offer the “best of both worlds” in the sense that they can offer the flexibility and tax transparency of a traditional partnership and yet offer the protection and convenience of having a separate legal personality in the same way as an exempted company. It is anticipated that the LLP will of course be popular with professional services firms but also for private equity fund managers.

We expect the draft legislation to be approved imminently, parliamentary time permitting, with LLP’s being available by the start of Q3 2017.

TRANSPARENCY – A LEVEL PLAYING FIELD?

While the Cayman Islands is rolling out its Beneficial Ownership regime, the Financial Action Task Force (FATF) said that only two of nine assessed FATF member countries since 2012 were found to have a substantial level of effectiveness in preventing the misuse of legal persons and legal arrangements. It has previously stressed that as there is no shortage of international standards designed to improve transparency, the challenge is now in ensuring they are implemented appropriately. It has called on the G-20 members to lead by example. ■



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- Chambers and Partners

Our Investment Funds Team specializes in advising on fund formation, regulation, de-registration, liquidation and providing on-going advice to both investment funds and managers, as well as advising on contentious issues.

To find out how we can assist you or your client(s), please contact:

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