

# Legal Update

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OECD Common Reporting Standard

# Guidance Note

## OECD Common Reporting Standard

### Introduction

The Cayman Islands Tax Information Authority (International Tax Compliance) (Common Reporting Standard) Regulations, 2015 (the “**CRS Regulations**”) were brought into effect on 16 October 2015.

### Implementation of the OECD Common Reporting Standard in the Cayman Islands

On 16 October 2015, the Cayman Islands Tax Information Authority (International Tax Compliance) (Common Reporting Standard) Regulations, 2015 (the “**CRS Regulations**”) were brought into effect. The CRS Regulations are the means by which the OECD Common Reporting Standard (the “**CRS**”), being due diligence and reporting standards for the global automatic exchange of information for tax purposes (“**AEOI**”), are to be implemented in the Cayman Islands.

It is anticipated that the CRS Regulations will shortly be followed by further regulations which will deal primarily with enforcement of the CRS and penalties for non-compliance.

### Background to CRS

The Cayman Islands and over 90 other jurisdictions have committed to the implementation of the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. Of these jurisdictions, more than 74 have signed a Multilateral Competent Authority Agreement which permits participating countries to enter into agreements that, amongst others, provide for AEOI.

One notable absentee from the list of jurisdictions that have chosen to adopt and implement the CRS is the United States (“**US**”). The US has chosen to continue to rely on FATCA and the various intergovernmental agreements entered into in connection with it (including with the Cayman Islands) in order to achieve AEOI. One of the key drivers for this is that, unlike most other jurisdictions, the US and its FATCA regime focuses on citizenship and residency whilst CRS only concerns tax residency.

UK FATCA was implemented in Cayman in accordance with the Cayman-UK IGA signed in November 2013; and The Tax Information Authority (International Tax Compliance) (United Kingdom) Regulations, published in July 2014. The Ministry of Financial Services in the Cayman Islands has advised that, in transitioning to the CRS, the UK has indicated that for 2016, both the UK IGA and CRS will be operational for all Overseas Territories and Crown Dependencies. In order to comply with both, Cayman Islands financial institutions will need to file returns under the CRS, with supplementary information on pre-existing low-value individual accounts, and pre-existing entity accounts, to satisfy the UK IGA. It is anticipated that the UK FATCA IGA, regulations and guidance notes will be phased out by 2017. This will essentially leave Cayman Islands FIs with two reporting requirements, one for US FATCA and one for the CRS. Time will tell if the US will sign up to the CRS.

The first group of jurisdictions participating in the implementation of the CRS (the “**Participating Jurisdictions**”) can expect to receive financial account information (as required by CRS) from the Cayman Islands by September 2017. The Tax Information Authority (“**TIA**”) has published a list of Participating Jurisdictions pursuant to the CRS Regulations.

## Which entities does the CRS apply to?

Cayman's In many ways, the obligations under the CRS Regulations apply in the same manner as FATCA and, specifically, to Reporting Financial Institutions ("Reporting FIs").

A Depository Institution, Custodial Institution, Specified Insurance Company and an Investment Entity are all considered FIs for the purposes of the CRS Regulations and, again, the relevant definitions largely mirror those used in FATCA.

Reporting FIs are defined as FIs that are not Non-Reporting FIs. Non-Reporting FIs include:

1. governmental entities, international organisations or central banks, save where involved in certain commercial financial activity;
2. broad or narrow participation retirement fund, a pension fund for a governmental entity, international organisation or central bank, or a qualified credit card issuer;
3. other entities identified as being low risk for tax evasion purposes, which have substantially similar characteristics to those listed under (a) and (b) above and are specifically defined under Cayman Islands law as Non-Reporting FIs (limited life debt investment entities are currently being considered for inclusion on this list);
4. an exempt collective investment vehicle; and
5. a trust whose trustee is a Reporting FI that reports all Reportable Accounts of the trust.

The list of Non-Reporting FIs included in the CRS Regulations is not as extensive as it is under FATCA. One notable and important difference is with regard to investment managers/advisers. Under FATCA and UK FATCA, Cayman Islands investment managers/advisers were generally classified as Non-Reporting FIs (provided that the funds of the customers to whom a manager/adviser provided investment advice or managed portfolios on behalf of were deposited with another Financial Institution) and therefore not required to register with the IRS nor make any filings with TIA. The CRS does not contain a similar exclusion for investment manager/advisers and such entities may therefore be considered Reporting FIs for CRS purposes to the extent they fall within the definition of Investment Entity .

## Summary of the CRS Regulations' requirements

The requirements of the CRS Regulations are also similar to FATCA. They require:

1. the establishment by Reporting FIs of policies and procedures designed to identify an Account Holder or Controlling Person that is tax resident in a Participating Jurisdiction and to apply the due diligence procedures set out in the CRS (commencing 1 January 2016);
2. that due diligence information, and a record of the procedures taken to comply, must be retained for six years from the end of the year the information was obtained or the procedures were carried out;
3. a Reporting FI with reporting obligations to electronically notify the TIA (through the TIA's online AEOI portal before 30 April of the first year the Reporting FI is required to comply with the reporting obligations) of the name and categorisation of the Reporting FI and the name, address designation and contact details of an individual authorised to be the principal point of contact of the Reporting FI; and
4. a Reporting FI to electronically file a return (report) of Reportable Accounts with the TIA through the AEOI portal before 31 May of the year following the calendar year to which the report relates.



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Accordingly, the first reporting year under the CRS Regulations is 2016 with reports due by 31 May 2017. There is no obligation under the CRS Regulations to make nil returns where there are no Reportable Accounts, although a Reporting FI can elect to do so, as it can in relation to FATCA.

A Reportable Account shall include an account that is held by an individual or entity that is tax resident in any one or more Participating Jurisdiction(s), and, as with FATCA, there is a requirement to look through Passive non-financial foreign entities to report on their ultimate Controlling Persons. It is important that a Reporting FI ensures that its systems can identify account holders (and their 'know your client' information) in each of the Participating Jurisdictions from 1 January 2016. In this regard, the Ministry of Financial Services has published self-certification forms that the industry may use which were developed by the FATCA/CRS Working Group, for compliance with the CRS, and US and UK FATCA. They may be used as is, or modified, as necessary. Please let us know if you require a copy of these self-certification forms.

The Ministry of Financial Services has advised that Self-certifications should be obtained and validated as part of financial institutions' account opening procedures. If it is not possible to obtain a self-certification on 'day one' of the account opening procedures, it should be obtained and validated as quickly as possible and in any event, no later than 90 days after the account has been opened. If a financial institution fails to obtain a self-certification within 90 days, it must report the account to the Cayman Islands Department for International Tax Cooperation ("DITC") as undocumented. Financial institutions with a disproportionate number of undocumented accounts may be subject to DITC compliance reviews, once the review regime has been developed.

In practice, it is expected that FIs will seek to obtain information on all of its account holders and not just those who are tax resident in a Participating Jurisdiction. Each Reporting FI should also have its own documented set of policies and procedures for international tax compliance. We recommend that such Reporting FIs update their existing FATCA policies and procedures manuals to include the CRS by 1 January 2016. If you require assistance in preparing a policies and procedures manual please let us know.

## What is the proposed timetable for implementation?

Some of the key dates for the implementation of the CRS are as follows:

1. pre-existing Accounts are those that are open on **31 December 2015**, with New Accounts being those opened on or after **1 January 2016**;
2. FIs will be expected to have account opening procedures in place by **1 January 2016** to identify the tax residence of account holders of New Accounts;
3. due diligence procedures for identifying high-value pre-existing individual accounts must be completed by **31 December 2016**;
4. each Reporting FI that has reporting obligations for the 2016 calendar year will need to register with the TIA no later than **30 April 2017**;
5. the first report to the TIA of Reportable Accounts is required by **31 May 2017** in respect of financial accounts held during 2016; and
6. due diligence procedures for identifying lower-value pre-existing individual accounts and entity accounts shall be completed by **31 December 2017**.



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## Further information

The OECD has published official commentary on the CRS, which the CRS Regulations acknowledge is an integral part of the CRS and accordingly applies for the purposes of the AEOI under the CRS Regulations. In addition, the OECD has published a CRS Implementation Handbook which, although not part of the CRS, provides a practical guide to implementing the CRS to both government officials and FIs and includes a comparison between the CRS and FATCA. The commentary and CRS Implementation Handbook can be found on the OECD website ([www.oecd.org/tax/automatic-exchange/](http://www.oecd.org/tax/automatic-exchange/)).

The Ministry of Financial Services anticipates that CRS Guidance Notes will be published in Q1 2016, following consultation with the FATCA/CRS Working Group. The Working Group is currently considering issues related to CRS implementation, and its guidance notes will be limited to practical aspects of the CRS that are specific to Cayman.



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## Contact

This publication is for general guidance and is not intended to be a substitute for specific legal advice. Specialist advice should be sought about specific circumstances. If you would like further information, please contact:

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