

## Client Memorandum

### The Cayman Islands Implements the Common Reporting Standard effective 1 January 2016

10 December 2015

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#### Overview

On 7 December 2015 the Cayman Islands Tax Information Authority (the “**TIA**”) published a list of 95 participating jurisdictions (see Schedule below) pursuant to *The Tax Information Authority (International Tax Compliance) (Common Reporting Standard) Regulations, 2015* (the “**Regulations**”) and the Cayman Islands FATCA/CRS Working Group (the “**Working Group**”) distributed self-certification forms for individuals and entities.

The publication of the participating jurisdictions and the distribution of the self-certification forms were the final steps in the implementation of the OECD Standard for Automatic Exchange of Financial Account Information – Common Reporting Standard (the “**CRS**”) in the Cayman Islands which comes into effect from 1 January 2016.

#### What is the CRS?

The CRS is an information exchange regime that has been created by the OECD to facilitate and standardize the cross border automatic exchange of information (“**AEOI**”) on residents’ assets and income, for taxation purposes, between numerous jurisdictions around the world. At present there are 95 participating jurisdictions but this number is expected to rise over time as further jurisdictions are persuaded to comply. Notably, the United States is a non-participating jurisdiction.

#### Does the CRS apply to my organization?

The notification and reporting obligations under the CRS apply to all reporting financial institutions (“**RFIs**”). A financial institution is defined as a custodial institution, a depository institution, an investment entity (which will capture most Cayman Islands investment funds and managers) or a specified insurance company.

All financial institutions are treated as RFIs other than a limited category of governmental entities, international organisations, central banks and certain types of retirement funds, pension funds, trusts and exempt collective investment vehicles which are treated as non-reporting financial institutions and are outside the scope of the CRS.

The categories of non-reporting financial institutions are very narrow in scope and are unlikely to apply to most commercial enterprises.

#### What does my organization need to do?

Similar to the US and UK FATCA regimes, though with a more global reach, the CRS requires RFIs to notify the TIA of their reporting obligation, to identify the tax residency of their clients (including investors, shareholders and account holders) and to then report certain information on such reportable accounts on an annual basis to the TIA. While the overall identification process under the CRS is similar to the US and

UK FATCA regimes, there are some key differences – in particular that the CRS is based on the tax residency of the client.

Generally speaking, and depending on the type of RFI, in order to comply with the CRS a RFI will need to:

- notify the TIA through the Cayman Islands AEOI Notification Portal of their status as a RFI and include in that notification (i) the name of the RFI; (ii) the classification category of the RFI; and (iii) the full name, address, designation and contact details of the individual authorized by the RFI to be the RFI's principal point of contact for the purposes of complying with the CRS;
- engage in certain due diligence procedures in respect of their clients to identify reportable accounts held by (i) tax residents of any participating jurisdiction; or (ii) certain passive entities that have controlling persons (as defined for AML/KYC purposes) that are resident for tax purposes in any participating jurisdiction; and
- report those reportable accounts on an annual basis, along with financial information about those accounts, to the TIA through the Cayman Islands AEOI Reporting Portal for exchange with relevant participating jurisdictions.

The CRS reporting obligations will capture a significantly greater number of reportable accounts as compared to the US and UK FATCA regimes given (i) the possibility that a person or entity could have tax residency in multiple jurisdictions; (ii) the narrower scope of the CRS exemptions; and (iii) the growing number of participating jurisdictions.

Unlike the US FATCA regime which may impose a 30% withholding tax on US source income and other US related payments to a non-compliant foreign financial institution, the CRS does not impose a similar withholding regime for non-compliance. Instead, penalties for non-compliance will be detailed in further regulations which are expected to be released in Q1 of 2016.

### **What information needs to be collected and reported?**

Generally speaking, at a minimum, each RFI will have to collect and report the following information in respect of each reportable account:

- the name, address, jurisdiction(s) of residence and tax information number(s) (“**TIN**”) of each reportable person that is an account holder(s) of the reportable account;
- in the case of an individual that is an account holder, their date and place of birth;
- in the case of any entity that is an account holder that is identified as having one or more controlling persons that is a reportable person, the name, address, jurisdiction(s) of residence and TIN(s) of the entity and the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth of each reportable person;
- the account number (or functional equivalent in the absence of an account number);
- the name and identifying number (if any) of the RFI; and
- the account balance or value as of the end of the relevant calendar year or other appropriate reporting period.

Depending on the type of reportable account, certain financial information must also be reported such as the total gross amount of interest paid or credited, the total gross amount of dividends, the total gross amount of other income generated with respect to the assets held in the account, the total gross proceeds from the sale or redemption of financial assets paid or credited to the account and/or the total gross amount paid or credited to the account holder including the aggregate amount of any redemption payments with respect to the account during the calendar year or other appropriate reporting period.

RFIs must retain for six years records of any information obtained for the purposes of complying with the CRS.

### **What is the timing for collecting and reporting this information?**

RFIs need to have updated on-boarding procedures to determine the CRS status of new account holders from 1 January 2016. The CRS also requires classification of pre-existing accounts with a phased in timetable to allow remediation of accounts opened prior to 1 January 2016.

The Cayman Islands Ministry of Financial Services, Commerce & Environment has indicated through an Industry Advisory that if it is not possible to obtain a self-certification on 'day one' of the account opening procedures, such self-certification should be obtained and validated as quickly as possible and in any event, no later than 90 days after the account has been opened. It remains to be seen whether this grace period will be effective on an ongoing basis or only for the 90 day period immediately following implementation of the CRS on 1 January 2016.

If a RFI fails to obtain a self-certification within 90 days, it must report the account to the Cayman Islands Department of International Tax Cooperation ("DITC") as undocumented. RFIs with a disproportionate number of undocumented accounts may be subject to DITC compliance reviews once the review regime has been developed.

The first CRS reports (which would relate to the 2016 year) must be filed with the TIA on or before 31 May 2017.

### **Can my organization outsource the CRS notification and reporting obligations?**

Much like the US and UK FATCA regimes, the Regulations allow for the appointment of third parties to carry out the duties and obligations imposed on the RFI by the Regulations and the CRS. In relation to open and closed ended funds under the US and UK FATCA regimes we have historically seen the administrator take on such roles (given it is generally already undertaking the KYC requirements) but another third party service provider could also be appointed.

If the RFI does appoint such a third party the RFI must ensure that it has access to and is able to produce to the TIA records and documentary evidence used to identify and report on reportable accounts.

While the appointment of a third party may alleviate much of the administrative burden of the CRS, any such appointment does not absolve the RFI of its obligations under the CRS as the RFI is responsible for any failure of the third party to satisfy the RFI's obligations under the Regulations and the CRS. Any services agreements with such third parties should be carefully reviewed to ensure suitability of the scope of services and information access rights and to ensure risk is properly apportioned between the RFI and the third party service provider.

### **Do the US and UK FATCA regimes still apply?**

As noted above, the US is a non-participating jurisdiction for the purposes of the CRS and therefore the US FATCA regime in the Cayman Islands continues to operate independently of the CRS.

The UK is a participating jurisdiction for the purposes of the CRS and in transitioning to the CRS the UK has indicated that for 2016 both the UK FATCA regime and the CRS will be operational for all Overseas Territories and Crown Dependencies. In order to comply with both regimes, RFIs 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 UK FATCA regime. It is anticipated that the UK FATCA regime will be phased out by 2017 as it will be subsumed by the CRS by that time.

## **Will there be any specific industry guidance for the Cayman Islands?**

The Cayman Islands Ministry of Financial Services, Commerce & Environment anticipates that Cayman Islands specific CRS guidance notes will be published in early 2016, following consultation with the Working Group. The Working Group is currently considering issues related to the CRS implementation, and its guidance notes will be limited to practical aspects of the CRS that are specific to the Cayman Islands.

General CRS issues are addressed in the [OECD CRS Commentary and Frequently Asked Questions](#), which can be found on the [OECD's comprehensive Automatic Exchange Portal](#).

## **My organization is an investment entity – what should we do to prepare for the CRS?**

RFIs that are investment entities should contact their administrator or other third party service provider to confirm that suitable arrangements are in place to comply with the CRS – in addition to the US and UK FATCA regimes.

We generally recommend that the self-certification forms prepared by the Working Group for individuals and entities that cover each of the CRS and the US and UK FATCA regimes should be assessed for immediate use in connection with all new account openings and appropriate due diligence should be undertaken on all existing accounts to comply with the timeline below.

Any offering documents and subscription materials should be reviewed and updated as necessary to confirm suitability of disclosures and overall compliance with the CRS and the US and UK FATCA regimes.

In addition, notifications as to RFI status will also need to be provided to the TIA on or before 30 April 2017.

## **What are the key dates for the CRS?**

The Cayman Islands government has implemented an aggressive timeline for the implementation of the CRS in order to meet certain international obligations and the key dates are as follows:

- **31 December 2015** – Pre-existing accounts are those open as of 31 December 2015, whereas new accounts are those opened by a RFI on or after 1 January 2016.
- **1 January 2016** – The CRS comes into effect in the Cayman Islands and 2016 is the first reporting year for RFIs. Procedures should be in place for complying with the CRS. Subject to the 90 day grace period noted above, RFIs will be required to source self-certification forms for new account holders from this date.
- **31 December 2016** – Deadline for completing due diligence on pre-existing high value individual accounts (being a pre-existing individual account with an aggregate balance or value that exceeds USD 1,000,000 as of 31 December 2015 or 31 December of any subsequent year).
- **30 April 2017** – Deadline for a RFI to submit notification of its status as a RFI via the [Cayman Islands AEOI Notification Portal](#).
- **31 May 2017** – Deadline for RFIs to submit their first CRS return via the [Cayman Islands AEOI Reporting Portal](#) as it relates to the 2016 year.
- **31 December 2017** – Deadline for completing due diligence procedures on pre-existing lower value individual accounts (being a pre-existing individual account with an aggregate balance or value as of 31 December 2015 that does not exceed USD 1,000,000).

**Anthony Travers**

Senior Partner, Cayman Islands

Tel: +1 345 949 0699

Fax: +1 345 949 8171

[atravers@traversthorpalberga.com](mailto:atravers@traversthorpalberga.com)

**Richard Mansi**

Partner, Cayman Islands

Tel: +1 345 949 0699

Fax: +1 345 949 8171

[rmansi@traversthorpalberga.com](mailto:rmansi@traversthorpalberga.com)

**Louise Freestone**

Partner, Cayman Islands

Tel: +1 345 949 0699

Fax: +1 345 949 8171

[lfreestone@traversthorpalberga.com](mailto:lfreestone@traversthorpalberga.com)

**Jonathan Turnham**

Senior Associate, Cayman Islands

Tel: +1 345 949 0699

Fax: +1 345 949 8171

[jturnham@traversthorpalberga.com](mailto:jturnham@traversthorpalberga.com)

[www.traversthorpalberga.com](http://www.traversthorpalberga.com)

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## Schedule

### Participating Jurisdictions as at 8 December 2015

1. Albania
2. Andorra
3. Anguilla
4. Antigua and Barbuda
5. Argentina
6. Aruba
7. Australia
8. Austria
9. Barbados
10. Belgium
11. Belize
12. Bermuda
13. Brazil
14. British Virgin Islands
15. Brunei Darussalam
16. Bulgaria
17. Canada
18. Chile
19. China
20. Colombia
21. Cook Islands
22. Costa Rica
23. Croatia
24. Curaçao
25. Cyprus
26. Czech Republic
27. Denmark
28. Dominica
29. Estonia
30. Faroe Islands
31. Finland
32. France
33. Germany
34. Ghana
35. Gibraltar
36. Greece
37. Greenland
38. Grenada
39. Guernsey
40. Hong Kong (China)
41. Hungary
42. Iceland
43. India
44. Indonesia
45. Ireland
46. Isle of Man
47. Israel
48. Italy
49. Japan
50. Jersey
51. Korea
52. Latvia
53. Liechtenstein
54. Lithuania
55. Luxembourg
56. Macao (China)
57. Malaysia
58. Malta
59. Marshall Islands
60. Mauritius
61. Mexico
62. Monaco
63. Montserrat
64. Netherlands
65. New Zealand
66. Niue
67. Norway
68. Panama
69. Poland
70. Portugal
71. Qatar
72. Romania
73. Russia
74. Saint Kitts and Nevis
75. Saint Lucia
76. Saint Vincent and the  
Grenadines
77. Samoa
78. San Marino
79. Saudi Arabia
80. Seychelles
81. Singapore
82. Sint Maarten
83. Slovak Republic
84. Slovenia
85. South Africa
86. Spain
87. Sweden
88. Switzerland
89. The Bahamas
90. Trinidad and Tobago
91. Turkey
92. Turks and Caicos  
Islands
93. United Arab Emirates
94. United Kingdom
95. Uruguay