



# Briefing Note

June 2016

## Common Reporting Standard in the Cayman Islands - Application to Investment Entities (Revisited)

### What is CRS?

The Common Reporting Standard (**CRS**) was developed by the Organisation for Economic Co-operation and Development (OECD) to establish a model for the automatic exchange of information on financial accounts among participating countries in order to combat tax evasion globally.

The CRS became effective in the Cayman Islands from 1 January 2016. Under the CRS, Cayman Islands' Reporting Financial Institutions (including Cayman Islands domiciled investment funds) are required (i) to establish arrangements (i.e. policies and procedures) to identify, and apply due diligence procedures to, an Account Holder<sup>1</sup> or Controlling Person<sup>2</sup> that is tax resident in a CRS Participating Jurisdiction; (ii) to secure that due diligence information, and a record of the procedures taken to comply, must be retained for six years from



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<sup>1</sup> The term "Account Holder" means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of the Common Reporting Standard, and such other person is treated as holding the account. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.

the end of the year the information was obtained or the procedures were carried out; (iii) to collect information and documentation from Account Holders about their tax residence status and to report certain personal and financial information<sup>3</sup> to the Cayman Islands' Tax Information Authority (**TIA**) which is the Cayman Islands Competent Authority for the purposes of the CRS.

The delegated functions of the TIA are carried out by the Director and staff of the Department for International Tax Cooperation (**DITC**) which is the government department responsible for the operation of all mechanisms for the exchange of information for tax purposes. Under the Tax Information Authority (International Tax Compliance) (Common Reporting Standard) Regulations, 2015 as amended (**CRS Regulations**), Reporting Financial Institutions are required to report specified financial account information<sup>4</sup> required under the CRS to the TIA via the Cayman AEOI Portal, accessible at [www.ditc.gov.ky](http://www.ditc.gov.ky). The TIA will then automatically exchange that information with partner jurisdictions on an annual basis. The TIA has published a [list of participating jurisdictions](#) for the purposes of the CRS. In order to facilitate the collection of personal and financial information, the DITC has published [entity self-certification form](#) and [individual self-certification form](#). These self-certification forms can be used to collect the information required under the CRS from individual and entity investors in Cayman Islands investment funds.

The principles under the CRS Regulations are very similar to U.S. FATCA and the Cayman Islands Regulations which implemented U.S. FATCA into domestic law.

## Application to Investment Entities

A Reporting Financial Institution under the CRS includes a “Financial Institution” that is resident in a CRS Participating Jurisdiction (e.g. the Cayman Islands) and is not a Non-Reporting Financial

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<sup>2</sup> The term “Controlling Persons” means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term “Controlling Persons” must be interpreted in a manner consistent with the Financial Action Task Force Recommendations.

<sup>3</sup> For details of the personal and financial information, see section 1 of Schedule I to The Tax Information Authority (International Tax Compliance) (Common Reporting Standard) Regulations, 2015 as amended

[http://tia.gov.ky/pdf/Tax\\_Information\\_Authority\\_\(International\\_Tax\\_Compliance\)\\_\(Common\\_Reporting\\_Standard\)\\_Regulations,\\_2015.pdf](http://tia.gov.ky/pdf/Tax_Information_Authority_(International_Tax_Compliance)_(Common_Reporting_Standard)_Regulations,_2015.pdf)

<sup>4</sup> For details of the financial account information, see section 1 of Schedule I to The Tax Information Authority (International Tax Compliance) (Common Reporting Standard) Regulations, 2015 as amended

[http://tia.gov.ky/pdf/Tax\\_Information\\_Authority\\_\(International\\_Tax\\_Compliance\)\\_\(Common\\_Reporting\\_Standard\)\\_Regulations,\\_2015.pdf](http://tia.gov.ky/pdf/Tax_Information_Authority_(International_Tax_Compliance)_(Common_Reporting_Standard)_Regulations,_2015.pdf)

Institution<sup>5</sup>. A “Financial Institution” for the CRS purposes is defined under the Cayman Islands law and regulations<sup>6</sup> which implemented the CRS into Cayman Islands domestic law as including an “**Investment Entity**” which means any Entity:

- a. that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:
  - i. trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
  - ii. individual and collective portfolio management; or
  - iii. otherwise investing, administering, or managing Financial Assets<sup>7</sup> or money on behalf of other persons; or
- b. the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity.



In practice, when applying this definition, an entity that is professionally managed will generally be an Investment Entity, by virtue of the managing entity being an Investment Entity.

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<sup>5</sup> The term “Non-Reporting Financial Institution” means any Financial Institution that is: a) a Governmental Entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution; b) a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; a Pension Fund of a Governmental Entity, International Organisation or Central Bank; or a Qualified Credit Card Issuer; c) any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described in subparagraphs B(1)(a) and (b), and is defined in domestic law as a Non-Reporting Financial Institution, provided that the status of such Entity as a Non-Reporting Financial Institution does not frustrate the purposes of the Common Reporting Standard; d) an Exempt Collective Investment Vehicle; or e) a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to Section I with respect to all Reportable Accounts of the trust.

<sup>6</sup> The Tax Information Authority Law (As revised) and The Tax Information Authority (International Tax Compliance) (Common Reporting Standard) Regulations, 2015 as amended.

<sup>7</sup> The term “**Financial Asset**” includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract. The term “Financial Asset” does not include a non-debt, direct interest in real property.

## Notification under the CRS

Notifications for the CRS are due to the TIA by 30 April of the year following each reportable year. **The first reportable year for the CRS is 1 January 2016 – 31 December 2016 and therefore the deadline by which a Financial Institution is required to make notifications as to its CRS reporting status to the TIA is 30 April 2017.** The CRS requires notification of:



- i. the name of the Reporting Financial Institution;
- ii. categorization of the Reporting Financial Institutions (i.e. reporting status); and
- iii. full name, address, designation and contact details of the individual authorized by the Reporting Financial Institution to be the Reporting Financial Institution's principal point of contact.

Notifications and reporting for the CRS is conducted through the Cayman AEOI Portal. Notification is a one-off process and does not need to be repeated annually. Changes to notification details must, however, be advised to the TIA via the Cayman AEOI Portal.

Under the CRS Regulations, Reporting Financial Institutions may rely on a third party service provider to fulfill due diligence and reporting obligations under the CRS Regulations. However, the Reporting Financial Institution remains ultimately responsible for fulfilling these obligations and any failures on the part of the service provider are imputed to the Reporting Financial Institution.

## Reporting under the CRS

Each Reporting Financial Institution is required to make a return to the TIA via the Cayman AEOI Portal setting out the information required to be reported under the CRS in respect of each Reportable Account<sup>8</sup> maintained by the Reporting Financial Institution at any time during that year.

If during the relevant calendar year the Reporting Financial Institution maintains no Reportable Accounts, the Reporting Financial Institution is not required to file a return but may, at its own option, do so.

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<sup>8</sup> The term "Reportable Account" means an account held by one or more Reportable Persons or by a Passive NFE (i.e. (i) any Entity that is not a Financial Institution and is not categorized as an Active NFE, or (ii) an Investment Entity that is not a Financial Institution) with one or more Controlling Persons that is a Reportable Person, provided it has been identified as such pursuant to the due diligence procedures established in compliance with the CRS Regulations. The term "Reportable Person" means a Reportable Jurisdiction Person other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a Related Entity of a corporation described in clause (i); (iii) a Governmental Entity; (iv) an International Organisation; (v) a Central Bank; or (vi) a Financial Institution. The term "Reportable Jurisdiction Person" means an individual or Entity that is resident in a Reportable Jurisdiction under the tax laws of such jurisdiction, or an estate of a decedent that was a resident of a Reportable Jurisdiction. For this purpose, an Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated.

Reporting for the CRS are due to the TIA by 31 May of the year following each reportable period. **The first reportable period for the CRS terminates on 31 December 2016 and therefore deadline by which a Reporting Financial Institution is required to report to the TIA is 31 May 2017.** Reporting is an annual event.

**The first exchanges of information by the TIA to partner jurisdictions will occur on or before 30 September 2017.**

## U.S FATCA

The United States is a non-participating jurisdiction for the CRS purposes. The United States has indicated that it will continue to undertake automatic information exchanges pursuant to U.S. FATCA. The U.S. FATCA legislative framework in the Cayman Islands will therefore continue to operate as normal, in parallel with the CRS regime<sup>9</sup>.



## UK CDOT

UK FATCA or the UK's intergovernmental agreements with its Crown Dependency and Overseas Territories (**UK CDOT**) which includes the Cayman Islands, BVI and Bermuda will transition to the CRS by 2017.

Reporting under the UK CDOT arrangement will begin in 2016 for the years 2014 and 2015.

In 2017, the UK and all of the Crown Dependencies and Overseas Territories will adopt the CRS and there will be a period of transition in that year.

There are items that would be reportable under the UK CDOT arrangement for 2017 which are not within the CRS, and terms within the CRS which would lead to more reporting than under the UK CDOT arrangement. The UK tax authority, Her Majesty's Revenue and Customs, has stated that the aim is to ensure that, while there is overlap in the period covered by UK CDOT and the CRS, there is no need for duplicate reporting. The UK tax authority has provided guidance which states that the rule to follow will be that wherever UK CDOT or the CRS requires more reporting in the transition year of 2017, then the "more" should be reported.<sup>10</sup>

From 2018 onwards, UK CDOT reporting is purely under the CRS.

<sup>9</sup> *Cayman Islands CRS Guidance Notes, page 9*

<sup>10</sup> *Cayman Islands CRS Guidance Notes, page 10*

## Deadline for Notification and Reporting for U.S. FATCA and CDOT for 2016

The TIA has indicated that it will take a “soft approach to enforcement of notification and reporting due dates under UK CDOT and U.S. FATCA for 2016.”<sup>11</sup>

The revised deadlines are:

- ❖ UK CDOT notifications can be submitted **by June 10, 2016** (previously April 30, 2016);
- ❖ U.S. FATCA notifications for entities established in 2015 can be submitted **by June 10, 2016** (previously April 30, 2016);
- ❖ 2014 and 2015 UK CDOT and 2015 U.S. FATCA returns can be submitted by **July 8, 2016** (previously May 31, 2016).

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<sup>11</sup> Industry Advisory dated 8 April 2016 published by the Tax Information Authority.





## Serving Clients Globally

This Briefing Note provides a brief overview and general guidance only and is not intended to be a substitute for specific legal advice. For specific advice on U.S. FATCA, UK CDOT, and the CRS as they relate to Cayman Islands entities, please contact any of:

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