



## Cayman Islands AEOI Working Group Circulates Draft CRS Guidance Notes v2.0

### The road continues

**The draft document is open for industry comments until January 27, 2017**

As announced by the Industry Advisory of December 22, 2016 the draft CRS Guidance Notes have been amended to incorporate the due diligence and reporting requirements modified by [The Tax Information Authority \(International Tax Compliance\) \(Common Reporting Standard\) \(Amendment\) Regulations, 2016](#) ("Second Tranche").

Below is a summary of key additions and modifications included in the draft CRS Guidance Notes v2.0:

#### **1. Non-Reporting Financial Institutions: Limited Life Debt Investment Entities**

The Tax Information Authority has designated Limited Life Debt Investment Entities in existence on or before 17 January 2013 to be Low-risk Non-Reporting Financial Institutions for the purposes of the CRS in the Cayman Islands. The [Gazette Notice](#) for CRS Non-Reporting Financial Institutions was published on 4 December 2015.

The OECD Global Forum is currently reviewing whether it is appropriate for the Cayman Islands to treat Limited Life Debt Investment Entity as Non-Reporting Financial Institutions rather than as Cayman Reporting Financial Institutions. The Department of International Tax Cooperation ("DITC") will issue an Industry Advisory to confirm the position once the OECD Global Forum's decision is available.

#### **2. Specific guidance with regards to certain Investment Entities**

##### **a. Financial Accounts of investment managers and advisers**

Investment managers and advisers are considered Investment Entities, Reporting Financial Institutions for CRS purposes. In this sense, the CRS provides that the Equity and Debt Interests of investment managers or advisers will only be treated as a "Financial Account" if the class of interests was established with a purpose of avoiding the reporting obligation and therefore investment managers or advisers will generally be able to satisfy their annual reporting obligation by filing a nil return in respect of all Reportable Jurisdictions.

#### **b. Dormant or liquidating Investment Entities**

An Investment Entity will, so long as it exists, continue to have the obligations which the CRS Regulations impose on it as a Cayman Reporting Financial Institution or a Non-Reporting Financial Institution, as the case may be. Liquidators (or equivalent) must ensure that the Investment Entity continues to satisfy all its obligations under Part 2 of the CRS Regulations.

### **3. Requirement to establish and maintain written policies and procedures**

The draft Guidance Notes clarify that policies and procedures should be appropriate for the type of institution and its Account Holders and should reflect any delegation to third parties. Given the variety of Cayman Reporting Financial Institutions, there will not be one style or approach which fits all institutions.

### **4. Requirement to notify the Tax Information Authority ("TIA")**

Every Cayman Financial Institution – other than an "exempted body" - has an obligation to give the TIA an information notice online via the Cayman AEOI Portal available at [www.ditc.gov.ky](http://www.ditc.gov.ky). This includes Reporting and Non-Reporting Financial Institutions. 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.

The DITC will issue a unique 'FI number' to each Cayman Financial Institution that is not already registered as a Reporting Financial Institution for FATCA/UK CDOT purposes.

### **5. Requirement to notify Trustee Documented Trust ("TDT")**

A Trustee Documented Trust's information notice must include the name and FI number of its Trustee in addition to the name and FI number of the Trustee Documented Trust itself. The trustee will be required to make all CRS reports on behalf of the TDT via the TDT's notification account on the Cayman AEOI Portal using the FI number issued by the DITC to the TDT. The TDT's CRS reports must name the TDT as the "Reporting Financial Institution" and may name the trustee as a "Contact". This is in contrast to the position under FATCA where the trustee of a TDT may use its own notification account and report as a sponsoring entity on behalf of its TDTs.

### **6. Reporting**

The current reporting system that requires Cayman Reporting Financial Institutions to submit a separate return per Reportable Jurisdiction is being reviewed by the DITC to determine whether it is feasible to permit submissions of a single XML file for all Reportable Accounts. Third party service providers will not be able to include reports for multiple Cayman Reporting Financial Institutions in a single XML file.

The filing of nil returns is mandatory for CRS purposes. In this regard, the DITC anticipates that each Cayman Reporting Financial Institution will be able to use a single check box to make a nil return in respect to all Reportable Jurisdictions for which it has no Reportable Accounts under the CRS. In this instance, the submission of XML files or manual entry returns will not be required regarding a nil return.

### **7. Offences and penalties**

The draft Guidance Notes include examples of non-compliance that may result in criminal liability. These include:

- The provision of inaccurate information to the TIA by Cayman Financial Institutions, their representatives or other persons. Cayman Financial Institutions may be liable for the action or inaction of their agents and representatives. Conversely, representatives may be liable for the action or inaction of their Cayman Financial Institution.
- Giving information to the TIA which causes it to breach its statutory duty to keep the information it receives confidential. Example: where a person gains or permits unauthorized access to a Cayman Financial Institution's confidential information on the AEOI Portal.
- Obstructing the TIA in performing a function under the CRS Regulations or section 5 of the TIA Law concerning the CRS. Example: where a person is not responsive to the TIA's requirement to produce information.
- Tampering with information or authorizing, advising or counseling someone else to do so (includes destroying, mutilating, hiding or removing information in a way that causes a person or anyone else to contravene Part 2). Example: where a Cayman Reporting Financial Institution's service provider alters or removes documentary

evidence which the institution must rely upon for the purpose of complying with its due diligence and reporting obligations.

In addition to these, it is an offence for any person to provide a false self-certification to a Cayman Financial Institution. Cayman Financial Institutions and their agents should therefore be aware that a person's false self-certification may give rise to an obligation to make a suspicious activity report pursuant to the Proceeds of Crime Law (2016 Revision).

Court fines may be up to CI\$50,000 for any offence by a body corporate or an unincorporated Cayman Financial Institution or up to CI\$20,000 for an offence by any other person. In addition, the Competent Authority has powers to impose administrative penalties matching these court fines.

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