



MINISTRY OF  
FINANCIAL SERVICES,  
COMMERCE & ENVIRONMENT  
CAYMAN ISLANDS GOVERNMENT

## INDUSTRY ADVISORY

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### Second Tranche of CRS Regulations

The Ministry wishes to advise industry that the Cabinet amended the [Tax Information Authority \(International Tax Compliance\) \(Common Reporting Standard\) Regulations, 2015](#) (“CRS Regulations”) by approving the following on 14 December 2016:

- [The Tax Information Authority \(Amendment\) Law, 2016 \(Commencement\) Order, 2016](#)
- [The Tax Information Authority \(International Tax Compliance\) \(Common Reporting Standard\) \(Amendment\) Regulations, 2016 \(“Second Tranche”\)](#)

The appendix to this industry advisory is a summary of important practical issues that are either addressed by or follow from the Second Tranche. This summary is not exhaustive and is not a substitute for legal or other professional advice on the application of the Second Tranche and the CRS Regulations in any particular case.

**Appendix to Industry Advisory  
on [Second Tranche](#) of [CRS Regulations](#)**

**A. Primary Purpose**

The primary purpose of the Second Tranche is to ensure effective implementation of the [Common Reporting Standard](#) (“CRS”) by the Cayman Islands. This is critically important for the Islands because after 2017 all Participating Jurisdictions in the CRS will be subject to an in-depth peer review process facilitated by the [OECD Global Forum on Transparency and Exchange of Information](#).

It is essential for the Tax Information Authority (“TIA”) to know which Cayman entities are classified as Cayman Financial Institutions (“CFIs”) and, further, what type of Financial Institution each one is for the purposes of the CRS. It is also essential for the TIA to know whom it can contact for information in respect of each CFI. This information is the foundation for effective implementation of the CRS.

**B. Interpretation and Guidance**

Interpretation

Where the context permits, references in this Appendix to “CRS Regulations” means the CRS Regulations as amended by the Second Tranche.

The Second Tranche adds several new definitions to the CRS Regulations to assist with interpretation and also converts these terms used in the CRS (exhibited to the CRS Regulations):

Term in the CRS	Conversion by the Second Tranche
1. A Financial Institution	1. A Cayman Financial Institution
2. A Reporting Financial Institution	2. A Cayman Reporting Financial Institution
3. A reporting period or a calendar year or other appropriate reporting period	3. A calendar year.

Revised CRS Regulations

The Department for International Tax Cooperation (“DITC”) anticipates that the Cayman Islands Law Reform Commission will revise the CRS Regulations so that the amendments made by the Second Tranche are in a single document.

CRS Guidance Notes

The DITC will publish a revised version of the CRS Guidance Notes on the [DITC website](#) in the first quarter of 2017 to reflect the impact of the Second Tranche on the CRS Regulations. This will be done in consultation with industry representatives comprising the Cayman AEOI Working Group.

Cayman AEOI Portal User Guide for the CRS

The DITC will update the [Cayman AEOI Portal](#) User Guide to include the CRS in the first quarter of 2017.

### C. Entity Classification

There are important differences in the entity classification rules under the CRS Regulations on the one hand, and the Tax Information Authority (International Tax Compliance) (United States of America) Regulations, 2014 (“**FATCA**”) on the other hand, although they are broadly similar.

In particular, certain entities classified as either Exempt Beneficial Owners or Non-Reporting Financial Institutions under Annex II of the [US-Cayman IGA](#) regarding FATCA are classified as CRFIs under the CRS and will therefore have reporting and other obligations under the CRS Regulations in addition to the notification obligation. This is because the CRS has a more limited definition of NRFIs in paragraph B1 of Section VIII of Schedule 1 to the CRS Regulations.

Existing Cayman entities should already have determined their own classifications for the purposes of FATCA, UK CDOT and the CRS if they have been required to complete the [Entity Self-Certification form](#).

### D. Notification obligation

#### Required information for every Cayman Financial Institution

Every CFI – whether a Cayman Reporting Financial Institution (“**CRFI**”) or a Non-Reporting Financial Institution (“**NRFI**”) - has an obligation to notify the TIA under the CRS Regulations by 30 April 2017. This will be done on the Cayman AEOI Portal by completing an online notification form. Upon successful submission of the notification form, a unique FI number will be automatically generated for each CFI that has not already notified as a CRFI for FATCA /UK CDOT purposes.

Every CFI must provide the “required information” specified by regulation 8(4) of the CRS Regulations as amended by the Second Tranche.

#### Cayman Reporting Financial Institutions

Notification is mandatory, even for CRFIs with no Reportable Accounts, under the CRS. This differs from the position regarding FATCA and UK CDOT where such notification was optional for CRFIs that had no reportable accounts.

CRFIs that have already notified the TIA of their status as such for FATCA/UK CDOT purposes must update the same to confirm whether they are CRFIs or NRFIs for CRS purposes and to ensure that the “required information” described above is accurate and complete, and, in particular, provide the new required information in subparagraph (e)(ii) of regulation 8(4).

#### Non-Reporting Financial Institutions

Notification is also mandatory for all NRFIs other than “exempted bodies”.

The following exempted bodies do not have a notification obligation for CRS purposes:

1. The Cayman Islands Monetary Authority;
2. Governmental Entities; and
3. pension funds of the above.

The DITC wishes to highlight certain issues for two types of NRFI in particular:

#### *(1) Trustee Documented Trusts*

In accordance with subparagraph B1(e) of Section VIII of Schedule 1 to the CRS Regulations:

- (i) the reporting and due diligence obligations of a trustee documented trust (“TDT”) will be transferred to the trustee;
- (ii) the time and manner of the reporting and due diligence obligations remain the same as if they still were the responsibility of the TDT; and
- (iii) the trustee must report such information as the TDT would have reported and identify the TDT with respect to which it fulfils the reporting and due diligence obligations.

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.

#### *(2) Limited Life Debt Investment Entities*

The OECD Global Forum is currently reviewing whether it is appropriate for the Cayman Islands to treat Limited Life Debt Investment Entities ("LLDIEs") as NRFIs rather than as CRFIs.

### **E. Reporting obligation**

#### Timing of reporting on Reportable Accounts and mandatory nil returns

All CRFIs are required to report for CRS purposes via the Cayman AEOI Portal by 31 May 2017 in respect of any Reportable Accounts and to file a nil return in respect of those Reportable Jurisdictions for which it has no Reportable Accounts.

#### Reporting Procedures

The current system design for the Cayman AEOI Portal follows the [CRS XML schema](#). This requires a CRFI to submit a separate return with respect to each Reportable Jurisdiction for which it has Reportable Accounts under the CRS. The DITC is reviewing whether it is feasible to permit a CRFI to submit a single XML file for all Reportable Accounts for all Reportable Jurisdictions, subject to compatibility and integration with the Cayman AEOI Portal system software.

Third-party service providers should take note that it will not be possible to include reports for multiple CRFIs in a single XML file.

The DITC anticipates that each CRFI 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.

#### Reportable Jurisdictions

All Participating Jurisdictions for the purposes of the CRS are intended exchange partners of the Cayman Islands, subject to satisfactory assessments by the Global Forum AEOI Group and compliance with the conditions in their respective competent authority agreements. Cayman is not yet able to announce a comprehensive list of Reportable Jurisdictions. Timing depends upon international agreements that are still being made between the various Participating Jurisdictions and ongoing assessments of Participating Jurisdictions being made by the OECD. Ultimately, Cayman may not have exactly the same Reportable Jurisdictions as other Participating Jurisdictions because this depends on their respective agreements on the CRS and OECD assessments.

#### UK CDOT

For 2017 onwards, CRFIs will report on UK Reportable Persons pursuant to the CRS Regulations instead of the [Tax Information Authority \(International Tax Compliance\) \(United Kingdom\) Regulations, 2014](#).

### **F. Compliance**

#### Written Policies and Procedures

Each CRFI must establish, implement and comply with written policies and procedures to comply with Part 2 of the CRS Regulations. That is, the policies and procedures must state how the CRFI will address its obligations regarding due diligence, record keeping, notification of the required information and reporting to the TIA via the Cayman AEOI Portal, the appointment of any third parties, and cooperation with the TIA's compliance measures. Whenever the TIA takes any compliance measures or enforcement action the TIA will expect a CRFI

to produce its policies and procedures and will require the CRFI to explain any instances of non-compliance with the same.

#### *Due diligence – the “wider approach”*

Industry is reminded that the Cayman Islands has taken the “wider approach” regarding due diligence under the CRS. This means that CRFIs must identify the tax status of all account holders and relevant controlling persons, not solely those persons that appear to be Reportable Persons. With this information, CRFIs should be able to quickly determine which of their account holders and relevant controlling persons are Reportable Persons once the Cayman Islands announces its Reportable Jurisdictions.

#### *Due Diligence on US trusts that are professionally managed investment entities – self-certifications in respect of Controlling Persons*

The DITC recognises that the CRS requirement to obtain self-certifications on all Controlling Persons of these trusts may be onerous in practice. The OECD is also aware of the issue. As soon as practicable, the DITC will provide clarification on whether any relaxation of the general rule is permissible for these trusts subject to certain conditions.

### **G. Enforcement**

#### *Offences*

Part 3 of the Second Tranche establishes various offences which attach to CFIs or other persons for contravention of the CRS Regulations. A CFI will commit an offence if it contravenes any of its obligations under Part 2 of the CRS Regulations, as amended by the Second Tranche.

It is an offence for any person to provide a false self-certification to a CFI. CFIs 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).

Any person may commit an offence by giving the TIA any information which is materially inaccurate, by causing the TIA’s to breach its obligation to keep the information it receives confidential, or by tampering with information in a way that causes a CFI to breach Part 2.

Any defendant has a defence if he has a reasonable excuse. Insufficient funds and reliance on an agent are not reasonable excuses.

Certain individuals are liable where their CFI commits an offence unless they exercised reasonable diligence to prevent the contravention.

The court may impose a fine of up to \$50,000 for any offence by a body corporate or an unincorporated CFI or up to \$20,000 for an offence by any other person.

#### *Administrative penalties*

Part 4 of the Second Tranche introduces the TIA’s powers to impose administrative penalties matching the court fines described above and the safeguards for them. These sections set out the criteria for deciding penalties, the limitation period, the protection against double jeopardy, the steps required to impose penalties including requirements for breach notices and penalty notices. There are also sections on a party’s right of appeal to the court, the automatic stay of penalties on appeal, the appeal hearing and outcome and interest.

#### *Miscellaneous*

Part 5 includes sections on the conduct and *mens rea* of representatives, the giving of notices by the TIA, and evidentiary provisions.

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