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There has been an ever increasing trend towards global compliance and inter-jurisdictional co-operation against tax evasion in recent years and the Standard for Automatic Exchange of Financial Account Information or the 'Common Reporting Standard' (**CRS**) is a truly cross border tax information exchange regime which cannot be ignored. The CRS is intended to provide uniformity for financial institutions resident in jurisdictions that sign a multilateral competent authority agreement (**MCAA**) committing to the CRS.

The Organisation for Economic Co-operation and Development (**OECD**) has developed the CRS over the past few years in collaboration with the G20 countries and in close co-operation with the EU. In 2014 Bermuda committed to the early adoption of CRS along with various other jurisdictions including the UK. Bermuda is one of the first countries that committed to adoption of the CRS. This means that Bermuda financial institutions (including many Bermuda funds) must be compliant with the CRS due diligence and necessary information requirements starting 1 January, 2016 for any new accounts. As an early adopter jurisdiction, Bermuda intends to participate in the first information exchange with other CRS participating jurisdictions by September 2017.

The CRS draws significantly on the Foreign Account Tax Compliance Act (**US FATCA**) intergovernmental approach and requires regular cross border automatic exchange of information between governments in respect of financial account information reported by financial institutions. The CRS sets out:

1. the financial information required to be reported with respect to reportable accounts including investment income;
2. the financial institutions that are required to report under the CRS;
3. reportable accounts which include accounts held by both individuals and entities (including trusts and foundations) as well as 'look through' provisions for passive entities; and
4. due diligence procedures that must be followed to identify reportable accounts.

FATCA vs the CRS

Although the CRS is similar to US FATCA, there are important differences between the two regimes. The US is currently a non-participating jurisdiction for the purposes of the CRS and the US FATCA regime will continue to run alongside the CRS. It is important to note that the CRS is broader in scope than US FATCA. However, financial institutions should be able to build on existing systems and procedures put in place to comply with US FATCA in order to maximise efficiency and minimise both the compliance burden and implementation costs involved with implementing the CRS.

Some key differences between US FATCA and the CRS are set out in the following table:

	US FATCA	CRS
De Minimis Reporting Threshold	Minimum account value threshold US\$50,000	No de minimis threshold. However, there is a US\$250,000 de minimus threshold with respect to pre-existing entity accounts.
Registration	Yes (IRS)	No
Responsible Officer	Yes	No
Taxation Identification	Based on citizenship (i.e. US persons)	Based on tax residency (tax residents of all jurisdictions that have implemented the CRS)
Indicia	US citizenship and residence based indicia	Residence based indicia similar to UK FATCA/CDOT
Penalties	Domestic law penalties and withholding tax	Domestic law penalties

UK FATCA

UK FATCA (also known as 'CDOT') was implemented in Bermuda in accordance with the Bermuda-UK IGA signed in November 2013. As with US FATCA, there are differences between CRS and UK FATCA, for example the alternative reporting regime for certain United Kingdom reportable accounts is not applicable under the CRS.

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. This means that in order to comply with both regimes, Bermuda financial institutions will need to make relevant filings under the UK IGA in 2016/2017 while simultaneously ensuring that they comply with the requirements of the CRS. It is anticipated that UK FATCA will be phased out in 2017.

How will the CRS affect Bermuda Investment Funds?

Managers of funds resident in Bermuda (or any CRS participating jurisdictions) must be informed on the requirements of CRS. Funds and fund managers will need to re-evaluate their procedures relating to FATCA compliance in order to ensure that the requisite CRS information is also captured.

If a group of funds includes funds that are resident in different CRS-participant jurisdictions, fund managers will need to be aware of any differences in application of the CRS between the jurisdictions.

Under the CRS, pre-existing accounts and new accounts of financial institutions are treated differently. Pre-existing accounts are those in existence on 31 December 2015 and new accounts are those opened from 1 January 2016.

If an account already exists with a Bermuda financial institution (which will typically include an investment in a Bermuda fund) as of 31 December 2015 it should be subsequently reviewed and reported, if applicable. Any account opened on or after 1 January 2016 will be subject to new account opening procedures which will need to record the tax residence of the account holder or investor.

Key Dates

- **October 2014:** Bermuda signed the MCAA and committed to early adoption of the CRS.
- **July 2015:** Bermuda passed relevant amendments to its legislation to adopt the CRS.
- **31 December 2015:** Any accounts in existence on this date will be deemed to be pre-existing accounts.
- **1 January 2016:** Any accounts opened on or after this date will be deemed to be new accounts.
- **September 2017:** The intended date for the first exchange of information between Bermuda and other jurisdictions that committed to undertake the first automatic exchange of financial account information under the CRS by September 2017.

Next Steps

Bermuda financial institutions (including many master funds, feeder funds and other investment fund vehicles) must complete preparations for new account opening procedures that must be in place by 1 January 2016 including the account holder due diligence which will be required under the CRS.

In respect of Bermuda investment funds, fund documents and subscription procedures should be reviewed in light of the CRS requirements. Fund managers should note that any open-ended or closed-end fund located in Bermuda that is in its capital-raising phase must have in place updated subscription procedures requiring investors to provide “self-certifications” in relation to due diligence, the recording of investors’ tax residence and certain other information.

There are offences and associated penalties for non-compliance with the automatic exchange provisions. We would advise that all financial institutions, including funds, become compliant before 1 January 2016. It is incumbent upon the fund to ensure that its investors are properly appraised in advance of international obligations which may impact them.

Jurisdictions

The CRS is continuously being adopted by more and more countries – attached as Appendix A is the current list of countries which have subscribed to the regime as of 3 December 2015 by signing the Multilateral Competent Authority Agreement (MCAA), bringing the total number of jurisdictions to 75.

Useful Links

OECD

<http://www.oecd.org/ctp/exchange-of-tax-information/>

The Common Reporting Standard

<http://www.oecd.org/ctp/exchange-of-tax-information/automatic-exchange-financial-account-information-common-reporting-standard.pdf>

CRS Implementation Handbook

<http://www.oecd.org/ctp/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-information-in-tax-matters.pdf>



This bulletin provides a brief overview and gives general information relating to the law and procedures in relation to the CRS in Bermuda. It is not intended to be comprehensive and nor should it be interpreted as legal or tax advice.

We invite you to contact the following BeesMont Law attorneys to further discuss any of the topics raised in this bulletin:

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APPENDIX A

Signatories of the Multilateral Competent Authority Agreement and Intended First Information Exchange Date (as of 3 December 2015)

1. ALBANIA September 2018
2. ANDORRA September 2018
3. ANGUILLA September 2017
4. ANTIGUA AND BARBUDA September 2018
5. ARGENTINA September 2017
6. ARUBA September 2018
7. AUSTRALIA September 2018
8. AUSTRIA September 2018
9. BARBADOS September 2017
10. BELGIUM September 2017
11. BELIZE September 2018
12. BERMUDA September 2017
13. BRITISH VIRGIN ISLANDS September 2017
14. BULGARIA September 2017
15. CANADA September 2018
16. CAYMAN ISLANDS September 2017
17. CHILE September 2018
18. COLOMBIA September 2017
19. COOK ISLANDS September 2018
20. COSTA RICA September 2018
21. CROATIA September 2017
22. CURAÇAO September 2017
23. CYPRUS September 2017
24. CZECH REPUBLIC September 2017
25. DENMARK September 2017
26. ESTONIA September 2017
27. FAROE ISLANDS September 2017
28. FINLAND September 2017
29. FRANCE September 2017
30. GERMANY September 2017
31. GHANA September 2018
32. GIBRALTAR September 2017
33. GREECE September 2017
34. GRENADA September 2018
35. GUERNSEY September 2017
36. HUNGARY September 2017
37. ICELAND September 2017
38. INDIA September 2017
39. INDONESIA September 2018
40. IRELAND September 2017
41. ISLE OF MAN September 2017
42. ITALY September 2017
43. JAPAN September 2018
44. JERSEY September 2017
45. KOREA September 2017
46. LATVIA September 2017
47. LIECHTENSTEIN September 2017
48. LITHUANIA September 2017
49. LUXEMBOURG September 2017

50. MALTA September 2017
51. MARSHALL ISLANDS September 2018
52. MAURITIUS September 2017
53. MEXICO September 2017
54. MONTSERRAT September 2017
55. NETHERLANDS September 2017
56. NEW ZEALAND September 2018
57. NIUE September 2017
58. NORWAY September 2017
59. POLAND September 2017
60. PORTUGAL September 2017
61. ROMANIA September 2017
62. SAINT LUCIA September 2018
63. SAINT VINCENT AND THE GRENADINES September 2018
64. SAMOA September 2018
65. SAN MARINO September 2017
66. SEYCHELLES September 2017
67. SINT MAARTEN September 2018
68. SLOVAK REPUBLIC September 2017
69. SLOVENIA September 2017
70. SOUTH AFRICA September 2017
71. SPAIN September 2017
72. SWEDEN September 2017
73. SWITZERLAND September 2018
74. TURKS & CAICOS ISLANDS September 2017
75. UNITED KINGDOM September 2017