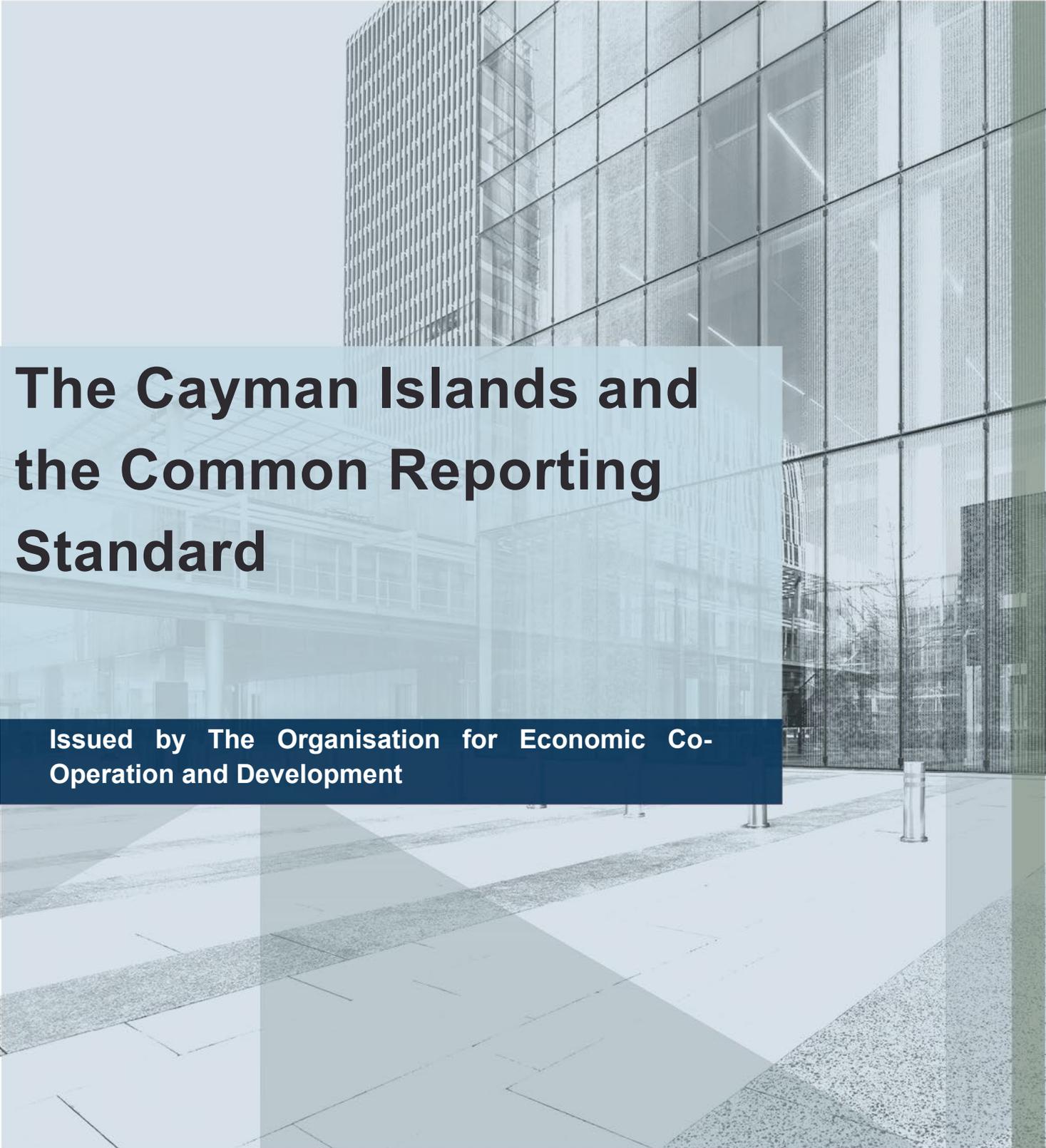


# CONYERS



## **The Cayman Islands and the Common Reporting Standard**

**Issued by The Organisation for Economic Co-  
Operation and Development**

## Preface

This publication has been prepared to provide an overview of the common reporting standard issued by the Organisation for Economic Co-Operation and Development (“**OECD**”). It deals in broad terms with the implementation of the common reporting standard in the Cayman Islands. It is not intended to be exhaustive, or to be a substitute for legal advice or a legal opinion, but merely to provide brief details and information which we hope will be of use to our clients. We recommend that our clients and prospective clients seek legal advice in the Cayman Islands on their specific proposals before taking steps to implement them.

Persons are also advised to consult their tax, legal and other professional advisers in their respective jurisdictions as necessary.

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## 1. INTRODUCTION

The OECD Standard for Automatic Exchange of Financial Account Information (commonly known as the Common Reporting Standard or “**CRS**”) is a global information exchange regime developed to facilitate and standardise the automatic exchange of information (“**AEOI**”) on residents’ assets and income between participating jurisdictions on an annual basis.

The Cayman Islands have implemented the CRS into local legislation through The Tax Information Authority (International Tax Compliance) (Common Reporting Standard) Regulations (2021 Revision) pursuant to The Tax Information Authority Act (2021 Revision) (the “**TIA Act**”).

The Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the “**Convention**”) was extended to the Cayman Islands by the United Kingdom with effect from 1 January 2014 and permits participating countries to enter into agreements that provide for the AEOI with respect to certain tax matters. Through the operation of the Convention, the Cayman Islands, along with more than 100 other countries, have signed or committed to sign a Multilateral Competent Authority Agreement providing the legal basis through which countries can agree to the CRS.

The Cayman Islands was one of the first countries to agree to implement the AEOI under the CRS (referred to as the “**Early Adopter Group**”), with the first exchanges of information between competent authorities of participating jurisdictions having taken place on 30 September 2017. The United States (“**U.S.**”), although an OECD member, is not part of the Early Adopter Group and will instead continue to rely on the provisions of the U.S. Internal Revenue Code commonly known as the Foreign Account Tax Compliance Act (“**FATCA**”) and related intergovernmental agreements regarding the AEOI in relation to tax matters. The list of 2022 CRS reportable jurisdictions was published on 31 January 2022.

## 2. HOW DOES THE CRS AFFECT CAYMAN ISLANDS ENTITIES?

Similarly to FATCA, the CRS requires certain Cayman Islands reporting financial institutions (“**Cayman Islands Reporting FIs**”) to identify the tax residency of their account holders and then to report certain information on Reportable Accounts maintained for such account holders, being both new and pre-existing accounts held by individuals and entities (which includes trusts and foundations). For the CRS, certain requirements also fall on Non-Reporting Financial Institutions (“**Non-Reporting FIs**”). In the case of any non-individual account holder that is a “passive non-financial entity” (“**Passive NFE**”), a Cayman Islands Reporting FI is also required to gather information and report on the individuals that ultimately control or beneficially own such entities (i.e. “**controlling persons**”)¹.

“**Financial Institution**” is a broad concept and covers “custodial institutions”, “depository institutions”, “specified insurance companies” and “investment entities”. The latter category includes entities whose income is primarily attributable to (re)investing or trading in financial assets, if the relevant entity is “managed by” another Financial Institution (a “**Managed Investment Entity**”). In some cases, organisations that have been unaffected by FATCA may find they are required to comply with the CRS. Cayman Islands entities should therefore determine their CRS classification. In particular, some of the

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¹ The threshold for a “controlling person” in respect of a legal person is direct or indirect ownership or control of 10% or more of the shares or voting rights in the legal person as specified in the Anti-Money Laundering Regulations (2020 Revision) (as amended).

specific exemptions to Cayman Islands Reporting FI status for certain low-risk entities under FATCA do not appear in the CRS.

The overall identification and reporting process under the CRS is therefore similar to that under FATCA. However there are some key differences. In particular:

- **The CRS is based on tax residency.** The CRS is based on tax residency rather than citizenship, to reflect the fact that the US is unusual in taxing its citizens on a world-wide basis.
- **More Cayman Islands entities are treated as Cayman Islands Reporting FIs under the CRS.** The narrower scope of exemptions under CRS is expected to result in a greater number of Cayman Islands entities being treated as Cayman Islands Reporting FIs than under FATCA.
- **The volume of reportable data for Cayman Islands Reporting FIs increased under the CRS.** Prior to the introduction of the CRS, the impact of FATCA on entities with little or no nexus with the US or UK may have been relatively light. However, due to the number of participating jurisdictions under the CRS, for many Cayman Islands Reporting FIs, the CRS resulted in an increased compliance burden requiring preparation and management.
- **The thresholds for *de minimis* Financial Accounts are significantly reduced under the CRS, compared to FATCA.** Cayman Islands Reporting FIs may be able to leverage information obtained under existing AML/CDD procedures in the case of pre-existing accounts (those in existence as at 31 December 2015). Pre-existing entity accounts with an aggregate balance of US\$250,000 or less are exempted as *de minimis* – although if that threshold is exceeded in future years, the account will become reportable. For new accounts (for individuals or entities), there are no *de minimis* thresholds, so every new entity or individual account opened on or after 1 January 2016 will require self-certification to be obtained (and validated against the Cayman Islands Reporting FI's records).
- **The CRS does not impose withholding tax.** Unlike FATCA, which imposes a 30% withholding tax on US-source income and other US-related payments made to or by a non-participating foreign financial institution in the event of non-compliance, the CRS does not impose a back-up withholding tax regime. Instead, penalties for non-compliance are specified under the TIA Act.

### 3. KEY DATES FOR CAYMAN ISLANDS REPORTING FIS AND NON-REPORTING FIS

Cayman Islands FIs (reporting and non-reporting) should complete their initial registration and notify the Tax Information Authority (the “TIA”) on or before **30 April** in the year following the year that the entity became a Cayman Islands FI;

Cayman Islands Reporting FIs must complete their annual reporting and the filing of a CRS Declaration via the Department for International Tax Cooperation (“DITC”) Portal (the “DITC Portal”) by **31 July** in each year. It is necessary for Cayman Islands Reporting FIs to provide a NIL report where they have

no Reportable Accounts<sup>2</sup>. Cayman Islands Reporting FIs must also complete and file a CRS Compliance Form annually by **15 September**. It should be noted that the TIA is responsible for financial services and that delegated functions of the TIA are carried out by the DITC.

#### 4. WHAT STEPS DO CAYMAN ISLANDS REPORTING FIS NEED TO TAKE?

All Cayman companies, partnerships and trusts and their directors or equivalent fiduciaries must ensure that correct CRS and FATCA classifications have been made. It should be noted that the DITC will match CRS and FATCA notification data against other data sources such as economic substance notifications, Cayman licenses/registrations, General Registry notices of business classifications and the IRS GIIN registration list.

Cayman Islands Reporting FIs are required to establish and maintain written policies and procedures to comply with and apply the CRS<sup>3</sup>. Again, similarly to FATCA, Cayman Islands Reporting FIs will need to adapt their onboarding procedures for new investors in order to capture the requisite information that needs to be reported in order to be compliant with the CRS<sup>4</sup>.

The TIA has issued tax self-certification forms to assist Cayman Islands Reporting FIs with their reporting requirements. Cayman Islands Reporting FIs should have all new and existing clients complete self-certification forms.

#### 5. WHAT INFORMATION NEEDS TO BE NOTIFIED TO THE TIA?

A Cayman Islands FI, being either a Cayman Islands Reporting FI or a Non-Reporting FI, is required to notify (register with) the TIA no later than **30 April** in the first calendar year in which the Cayman Islands FI is required to comply with the reporting obligations with the following information<sup>5</sup>:

- (a) The institution's legal name and any number given to it by the TIA as an FI (this will be automatically generated by the Portal);
- (b) General Registry number;
- (c) Whether the institution is a Cayman Islands Reporting FI or a Non-Reporting FI;
- (d) GIIN (if applicable);
- (e) Reporting obligations: classification of the entity and whether Reporting or Non-Reporting FI;

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<sup>2</sup> Regulation 9(1) requires Cayman Islands Reporting FIs to report to the TIA even where there is NIL Report. This requirement differs to reporting under FATCA.

<sup>3</sup> See Regulation 7.

<sup>4</sup> Due diligence procedures should capture the tax residency of account holders – so for instance, new account holders may be provided with self-certification forms; and, in the case of funds and other collective investment vehicles, for example, the constitutional documents, offering documents and subscription documents may be updated to incorporate the CRS requirements to obtain self-certification and generally to ensure that the relevant entity is able to comply with the CRS.

<sup>5</sup> Thereafter, notifications are required to be made no later than 30 April in the first calendar year for which the Cayman Reporting FI is required to comply with the reporting obligations.

- (f) The full name, address, business entity, position and contact details (including electronic address) of (i) a person the institution has authorized to be its principal point of contact (“**PPoC**”) for CRS compliance; and (ii) except in circumstances specified by the TIA, a person the institution has authorized to give change notices for its PPoC (authorising person “**AP**”);
- (g) Letter of authorisation (unless the FI has an institutional user as its AP or PPoC).

The Cayman Islands FI must notify the TIA immediately of any change to the information provided.

## 6. WHAT INFORMATION NEEDS TO BE REPORTED TO THE TIA?

On or before **31 July**<sup>6</sup> in each year, a Cayman Islands Reporting FI will be required to report the following information to the TIA via the DITC Portal in respect of each “reportable account”:

- (a) The name, address, jurisdiction(s) of tax residence, tax identification number(s), date and place of birth of each account holder that is a “reportable person” (and each of its Controlling Persons, in the case of an account holder that is a Passive NFE);
- (b) Account number (or functional equivalent);
- (c) Name and identifying number (if any) of the Cayman Islands Reporting FI;
- (d) Certain financial information (e.g. account balance or value and certain gross amounts paid or credited to the account during the relevant reporting period); and
- (e) Any information reasonably required by the Authority to ensure effective implementation of, and compliance with, the reporting and due diligence procedures under the CRS

## 7. REPORTING INFORMATION

The requisite reporting by Cayman Islands Reporting FIs, as is the case with FATCA, is done by Cayman Islands Reporting FIs through the Cayman Islands DITC Portal. Information provided by a Cayman Islands Reporting FI to the TIA via the DITC Portal is exchanged automatically by the TIA with the relevant tax authorities in each participating jurisdiction. The TIA is required to publish periodically a list of jurisdictions to be treated as participating jurisdictions for the purposes of the CRS. All information exchanged is required to be subject to confidentiality and other data safeguards.

## 8. OFFENCES

In the event that the TIA Act and Regulations are contravened, Cayman Islands FIs and their directors or equivalent fiduciaries, as applicable, risk committing various offences. The range of offences is extensive and the penalties and fines associated with breach are significant. It should be noted that a person commits an offence if a person makes a self-certification that is false. For this purpose it does not matter if the self-certification was made outside of the Cayman Islands, the person did not know, or

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<sup>6</sup> Subject to any extensions granted by the TIA.

had no reason to know that the self-certification was false or that the self-certification was given to the institution by someone else.

Further, a Cayman Islands FI commits an offence *inter alia* if (i) in purported compliance with Part 2 of the Regulations (dealing with application of the CRS), the institution gives the TIA information that is materially inaccurate (the “act”) and (i) the institution knew of the inaccuracy when the act was done, (ii) in doing the act behaved fraudulently, intentionally, negligently or recklessly; (iii) in doing the act, contravened its policies and procedures under Regulation 7; or (iv) discovered the inaccuracy after doing the act, but did not notify the TIA about the inaccuracy as soon as practicable after making the discovery.

If a Cayman Islands FI commits an offence, all directors, managers and secretaries and other similar officers to any such office whatever called, are also guilty of the offence.

When deciding whether to impose a penalty or an amount of a fine, the TIA is required to consider the following criteria in the following order of importance:

- (a) The need to ensure strict compliance with, and to penalize and deter contravention of, the Regulations;
- (b) The nature, seriousness and consequences of the contravention;
- (c) The apparent degree of the party’s inadvertence, intent or negligence in committing the contravention;
- (d) The party’s conduct after becoming aware of the contravention; and
- (e) The party’s history of compliance.

Further, the TIA may also consider other matters as it considers relevant.

The TIA has issued detailed enforcement guidelines (Version 1.0 dated March 2022) which provide guiding principles for the application of the administrative penalty regime to persons that are potentially subject to enforcement action.

## **9. FURTHER GUIDANCE**

For further guidance please contact your usual Conyers contact.

*This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.*

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