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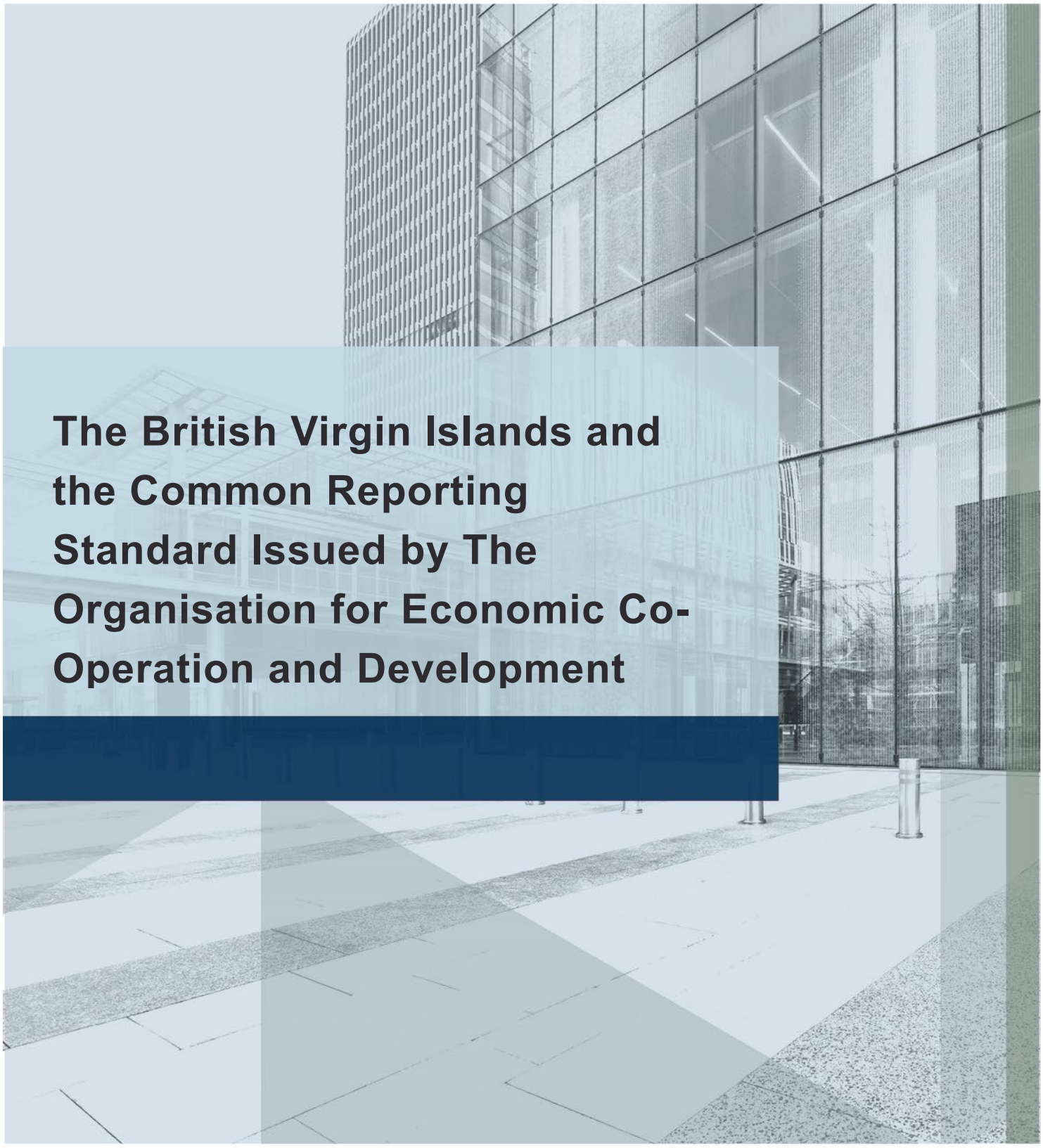

# The British Virgin Islands and the Common Reporting Standard Issued by The Organisation for Economic Co-Operation and Development

# 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 British Virgin 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 British Virgin Islands on their specific proposals before taking steps to implement them.

This publication supplements our previous publication entitled "Impact of FATCA on BVI entities".

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

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# TABLE OF CONTENTS

## 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 British Virgin Islands have implemented the CRS into local legislation through The Mutual Legal Assistance (Tax Matters) Act, 2003, as amended by the Mutual Legal Assistance (Tax Matters ) (Amendment) (No. 2) Act, 2015 and the Mutual Legal Assistance (Tax Matters) (Amendment) Act, 2018 (together, the "**MLAT**").

The Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the "**Convention**") was extended to the British Virgin Islands by the United Kingdom with effect from 1 March 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 British Virgin 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 British Virgin 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 undertaken from 30 September 2017. It is noted that the United States, although an OECD member, was 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 CRS represents a significant step towards the AEOI for tax purposes and there were, as at March 2018, more than 100 countries (for an updated list of countries please go to link) that have committed to its implementation.

## 2. HOW DOES THE CRS AFFECT BRITISH VIRGIN ISLANDS ENTITIES?

Similarly to FATCA, CRS (as implemented by the MLAT) requires all British Virgin Islands financial institutions ("**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) or, if they have no Reportable Accounts in respect of the previous calendar year, to file a nil return. In the case of any non-individual account holder that is a "passive non-financial entity" ("**Passive NFE**"), an FI is also required to gather information and report on the individuals that ultimately control or beneficially own such entities (i.e. "**controlling persons**").

"**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. BVI entities should therefore check their CRS classification.

Pre-Existing Accounts are those maintained by an FI as of 31 December 2015, with New Accounts being those maintained by an FI opened on or after 1 January 2016.

As noted above, 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 U.S. is unusual in taxing the worldwide income of its citizens.
- **More British Virgin Islands entities will be treated as Reporting FIs under CRS.** The narrower scope of exemptions under CRS is expected to result in a greater number of British Virgin Islands entities being treated as FIs than as reporting FIs under FATCA.
- **The volume of reportable data for BVI FIs is also likely to increase substantially under the CRS.** To date, the impact of FATCA on entities with little or no nexus with the US may have been relatively light. However, the expected number of participating jurisdictions under CRS means that, for many FIs, the CRS will result in an increased compliance burden requiring preparation and management.
- **The thresholds for de minimis Financial Accounts are significantly reduced under CRS, compared to FATCA.** There are no *de minimis* thresholds applicable to any individual accounts under the CRS, whether pre-existing or new. However, FIs may be able to leverage information obtained under existing AML/CDD procedures in the case of pre-existing accounts. 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 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 MLAT.

## 3. KEY DATES FOR BRITISH VIRGIN ISLANDS FIs

- **1 January 2016** – FIs must obtain and validate self-certifications to determine the tax residency of account holders in the case of any New Accounts opened on or after this date;
- **31 December 2016** – Due diligence procedures for identifying Pre-Existing High Value Individual Accounts (with an aggregate balance or value that exceeds US$1 million) completed by this date;

- **30 April 2017** – Deadline by which FIs were required to make certain notifications as to their CRS reporting status to the British Virgin Islands International Tax Authority (the "**ITA**"), as the jurisdiction's competent authority for CRS purposes;

- **31 May 2017** – First reporting date deadline to the ITA in respect of Reportable Accounts for reporting year 2016;

- **30 September 2017** – The date by which the first CRS exchange of information in relation to New Accounts and Pre-Existing Individual High Value Accounts was to have taken place with participating jurisdictions;

- **31 December 2017** – Due diligence procedures for identifying Pre-Existing Lower Value Individual Accounts (with an aggregate balance or value that does not exceed US$1 million), and for Pre-Existing Entity Accounts (with an aggregate balance or value that exceeds US$250,000, in each case as of 31 December 2015) completed by this date.[1] **30 September 2017 / 30 September 2018** – Information about Pre-Existing Lower Value Individual Accounts and Entity Accounts were either first exchanged by 30 September 2017, or by 30 September 2018 (depending on when FIs identify such accounts as Reportable Accounts); and

- **30 April 2019** – All existing FIs who have not done so yet are required to register with the ITA. All FIs established after 18 September 2018 must register by 30 April of the first calendar year following the year they became an FI.

## 4. WHAT STEPS DO BRITISH VIRGIN ISLANDS FIs NEED TO TAKE?

Again, similarly to FATCA, 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.[2]

As noted above, with effect from 1 January 2016, FIs have been required to determine the tax residency of both new and pre-existing account holders in order to meet the first CRS reporting deadline of 31 May 2017 and subsequent reporting deadlines of 31 May of each year.

## 5. WHAT INFORMATION NEEDS TO BE REPORTED?

Broadly, an FI will be required to report the following information to the ITA in respect of each "**Reportable Account**":

- 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"[3] (and each of its Controlling Persons[4], in the case of an account holder that is a Passive NFE);

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[1] Note that the review of any Pre-Existing Entity Account with an aggregate balance or value that did not exceed US$250,000 as of 31 December 2015 but which exceeds such amount as of 31 December in any subsequent year must be conducted within the calendar year following the year in which such amount was exceeded

[2] 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 CRS requirements to obtain self-certification and generally to ensure that the relevant entity is able to comply with CRS.

- Account number (or functional equivalent);
- Name and identifying number (if any) of the FI; and
- Certain financial information (e.g. account balance or value and certain gross amounts paid or credited to the account during the relevant reporting period).

FIs which do not maintain "Reportable Accounts" are required to file a nil return with the ITA.

## 6. REPORTING INFORMATION

The requisite reporting by FIs, as is the case with FATCA, is done by FIs through the British Virgin Islands Financial Account Reporting System ("**BVIFARS**"). Information provided by a FI to the ITA via BVIFARS will be exchanged automatically by the ITA to the relevant tax authorities in each participating jurisdiction. The ITA is required to publish periodically a list of jurisdictions to be treated as participating jurisdictions for the purposes of CRS. All information exchanged is required to be subject to confidentiality and other data safeguards.

## 7. FURTHER GUIDANCE

For further guidance on the CRS please contact us or your primary tax advisers.



[3] A Reportable Person means a Reportable Jurisdiction Person (i.e. an individual or person that is resident in a Reportable Jurisdiction, being a jurisdiction identified on the list of Reportable Jurisdictions issued by the ITA by Gazette).

[4] Revised guidance notes published by the ITA on 19 February 2019 clarify that all FIs must apply a 10% ownership threshold when determining the Controlling Person of an account holder that is a Passive NFE. This is aligned to the BVI's anti-money laundering laws.