

Common Reporting Standard Regulations Have Been Issued – What Bermuda Reporting Financial Institutions Need To Know

The Bermuda Government has updated the International Cooperation (Tax Information Exchange Agreements) Act 2005 (**TIEA Act**) and issued the highly anticipated Common Reporting Standard (**CRS**) Regulations setting out the CRS obligations that Bermuda Reporting Financial Institutions must comply with.

The aim of this bulletin is to highlight key changes that Bermuda Reporting Financial Institutions should take note of, as well as provide reminders of existing obligations and outline the next steps for Bermuda Reporting Financial Institutions.

Key Changes

Notification: Bermuda Reporting Financial Institutions (i.e. Custodial Institutions, Depository Institutions, Investment Entities and Specified Insurance Companies that are caught under the CRS) will have to notify the Ministry of their status as a reporting entity (by registering with the Ministry on the Bermuda Electronic Reporting Portal) by 14 July, 2017, including the submission of contact details of a principal point of contact for CRS purposes.

Written policies and procedures: Bermuda Reporting Financial Institutions must establish, implement and comply with written policies and procedures to cover all of their obligations under the CRS. This requirement remains even if the CRS compliance or reporting role has been delegated to a third party service provider.

Maintenance of Records: The TIEA Act includes a requirement for Reporting Financial Institutions to collect, keep and maintain information and records relating to steps undertaken in the performance of their CRS procedures.

Excluded Accounts include Dormant Accounts: The CRS Regulations contain new provisions which state that dormant depository accounts are excluded accounts if they meet certain criteria. These include where the account has a balance of less than \$1,000, is treated as dormant under the Reporting Financial Institution's typical operating procedures, the account holder has not initiated a transaction for the previous three years and has not communicated with the Reporting Financial Institution for the previous six years.

UK FATCA/CDOT: The CRS Regulations include a provision to allow UK FATCA/CDOT reporting on the Electronic Reporting Portal and allow the Ministry of Finance to exchange information received on UK Persons with the UK this year. This should ease the administrative burden on Bermuda Reporting Financial Institutions during this transitional year.

Offences and penalties: The TIEA Act updates and CRS Regulations introduce anti-avoidance measures, various offences and penalties, including for contravention of the Regulations, providing materially inaccurate self-certifications, tampering with information and hindering the Ministry of Finance in its functions, with fines or penalties of up to \$10,000. The Regulations include a reasonable excuse defence but insufficient funds or reliance on an agent are not considered reasonable excuses.

Important Reminders

Nil returns: Bermuda Reporting Financial Institutions are not required to file nil returns but can file nil returns if they wish. Filing a nil return is a good idea as it is a way for a Reporting Financial Institution to confirm that it does not have anything to report for that reporting period. Bermuda Reporting Financial Institutions with no Reportable Accounts will still need to complete the notification/registration requirement via the Bermuda Electronic Reporting Portal.

The 'Wider Approach' to due diligence: Bermuda opted to take the 'Wider Approach' to the due diligence required under the CRS, details of which are found in Appendix 5 of the OECD's CRS book (often referred to as the 'Purple Book'). Under the CRS, there is a distinction between a '*Participating Jurisdiction*' (which the Ministry of Finance has indicated will be all of the jurisdictions that have committed to implement the CRS) and a '*Reportable Jurisdiction*' for which CRS reporting will be required according to a list the Ministry of Finance must publish on an annual basis. The first Reportable Jurisdictions list is due to be published around the end of April 2017 and thereafter it will be published around the end of January of each year. Bermuda Reporting Financial Institutions should ensure that they identify the tax status of all Account Holders or relevant Controlling Persons irrespective of whether they are in Reportable Jurisdictions. This effectively allows Reporting Financial Institutions to 'future proof' their processes so that when new jurisdictions are added to the list of Reportable Jurisdictions the work in identifying where existing customers or clients are resident has already been carried out.

Next Steps for Bermuda Reporting Financial Institutions

Become familiar with Regulations and Guidance: All Bermuda Reporting Financial Institutions should ensure that they are familiar with the CRS Regulations and Guidance.

Ensure written policies and procedures are in place: Bermuda Reporting Financial Institutions should have in place (or put in place as soon as possible) adequate written CRS policies and procedures and ensure their on-boarding procedures are CRS compliant.

Review third party contracts: If Bermuda Reporting Financial Institutions are delegating their CRS due diligence obligations, they should ensure that the relevant service agreement sufficiently states the scope of services and provides for liability for failure to comply with CRS obligations.

Notify/Register on the Electronic Reporting Portal: Bermuda Reporting Financial Institutions should register with the Ministry of Finance via the Electronic Reporting Portal once registration becomes available this summer as the deadline for registration or notification is 14 July, 2017.

File CRS reports or nil returns (if applicable): The first CRS reporting by Bermuda Reporting Financial Institutions is due by 30 August, 2017 and the Ministry of Finance is expected to be exchanging information with its CRS partner jurisdictions by the end of September 2017. In subsequent years, the annual CRS reporting deadline for Bermuda Reporting Financial Institutions will be 31 May.

Complete due diligence on pre-existing entity and low value individual accounts: Bermuda Reporting Financial Institutions should complete due diligence on relevant pre-existing entity and low value (\leq \$1,000,000) individual accounts by 31 December, 2017.

Bermuda Reporting Financial Institutions should speak with their tax and legal advisors if they are uncertain about any of their obligations under the CRS.

This bulletin is intended for informational purposes only and is not a substitute for legal advice. For further information on the matters referred to in this bulletin, please contact Stephanie P. Sanderson or your usual contact at BeesMont Law:



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