

BRIEFING MEMO

US FATCA/CRS REPORTING

Overview

Cayman Islands Financial Institutions are required to complete annual reporting to the Cayman Islands Tax Information Exchange Authority (the **Authority**) via the Cayman Islands Automatic Exchange of Information Portal (**AEOI portal**). The Foreign Account Tax Compliance Act (**FATCA**) and Common Reporting Standard (**CRS**) give rise to the obligation and are given effect by the following laws:

- Tax Information Authority Law (Revision);
- The Tax Information Authority (International Tax Compliance) (Common Reporting Standard) (Amendment) Regulations, 2016; and the
- Tax Information Authority (International Tax Compliance) (United States of America) Regulations, 2014. (together, the **Laws**)

Key Definitions

The Cayman Islands Financial Institutions (the **FFIs**) are generally defined under FATCA and CRS as a legal person or entity who carries on business in the Islands as

- a custodial institution;
- a depository institution;
- an investment entity –which is any entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:

- trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
 - individual and collective portfolio management; or
 - otherwise investing, administering, or managing funds or money on behalf of other persons.
- a specified insurance company.

The FFIs under the Law may be required to disclose certain information about their financial accounts. A financial account is defined as an account maintained by an FFI and includes in the case of FFI, solely because it is an Investment Entity, any equity or debt interest (other than interests that are regularly traded on an established securities market) in the FFI.

The non-reporting Cayman Islands FFIs are any FFIs are not required to make any annual reportings to the Authority. The list of eligible entities includes a deemed- compliant FFI or an exempt beneficial owner. The list of qualifying non reporting FFIs is more narrow under the CRS list than under FATCA, as such particular attention must be paid when classifying these entities under CRS versus FATCA.

Key Requirements

For those entities that fall within the scope of the Law there are certain obligations that must be met to be compliant under the Laws. The burdens of the obligations vary depending on the entity classification and the status of any financial accounts.

Requirements for All FFIs

All FFIs are required to register on the AEOI Portal for entities that are new to the system.

They must:

- identify a Principal Point of Contact (**PPoC**) and an Authorising Person (**AP**) on the AEOI Portal under the appropriate classification;
- submit a notification form of the appointment of the PPoC and AP on the AEOI Portal; and
- establish and maintain policies and procedures designed to identify, monitor and report reportable accounts as defined under the Law. In addition, the policies and procedures must comply with the anti-money laundering regime.

Additional Requirements for Reporting FFIs

Reporting FFIs will be required to disclose references to the balance or value of an account which include a nil balance or value; and references to paying an amount include crediting an amount. If during the calendar year in question the reporting FFI maintains no Reportable Accounts the return will reflect that fact. In the case of US FATCA 0 or nil balances are not reportable whilst under CRS it is. This reporting is completed on the AEOI portal after registration at a date specified by the Authority.

Preparing for Reporting Season

FFIs are encouraged to begin amalgamating all the applicable due diligence from each December year end to ensure timely reporting. It would be considered good practice to develop an efficient system to collect and maintain these records. The due diligence required includes FFI and FFI beneficiaries tax information including TIN/GIIN identification number, tax resident address and account balances, among other information. Where service providers maintain records of accounts, in order for them to complete timely submissions, collection of due diligence ensures compliance with reporting deadlines.

Jacob Law Services

JACOB LAW can assist with all US FATCA and CRS reporting for Cayman Islands entities. This includes assistance with entity classification, AEOI portal reporting and written policies and procedures. For further assistance please contact us at:

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