

Cayman Islands FATCA Update

July 2, 2015

On July 1, 2015, the Cayman Islands Tax Information Authority (“TIA”) issued Version 2.1 of the Cayman Islands Guidance Notes (see attached release).

Below are some of the key updates contained in Version 2.1 of the Guidance Notes along with KPMG’s observations:

Section	Amendment	KPMG’s Comments
2.2 – Cayman Islands Financial Institution	<p><i>Amendments and additional text:</i></p> <p><i>A dual resident entity (i.e. an entity organised under the laws of the Cayman Islands and also resident for these purposes in another jurisdiction) will need to apply the Cayman Islands Regulations in respect of any Reportable Accounts maintained in the Cayman Islands unless it has actual knowledge that it is undertaking the appropriate reporting in the other jurisdiction.</i></p>	<p>This clarifies the exception to dual reporting and makes it clear that it applies to all Cayman Islands Financial Institutions (“Cayman Islands FIs”) that meet the requirements.</p>



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	<p><i>A Financial Institution will have actual knowledge where it holds written confirmation that the Reportable Accounts have been reported for FATCA purposes or under an agreement equivalent to the UK Agreement.</i></p> <p><i>There may be other situations involving related or unrelated entities where the reporting requirements are being met elsewhere and duplication of reporting can be avoided. In these circumstances responsibility rests with a Financial Institution to satisfy itself that the reporting requirements are being met.</i></p>		 <p>Bo Blocher</p> <p>Manager</p> <p>+1 345 914 4445</p> <p>rblocher@kpmg.ky</p> <p>KPMG Cayman FATCA Website</p> <p>Contact the KPMG Cayman FATCA Team</p>
<p>2.8.1 - Cayman Branches Reporting to the IRS via Form 1099 – US Agreement only</p>	<p><i>New section added:</i></p> <p><i>Where all US reportable accounts of a Cayman branch of a US banking institution are already being reported to the IRS on Form 1099 annually, the Cayman branch is not required to file a report locally.</i></p> <p><i>A Cayman branch of a U.S. or foreign banking institution that meets this criterion is required to comply with the notification requirements in the regulations and complete the Cayman AEOI portal notification. Additionally, the Cayman branch must record and retain documentary evidence of the</i></p>	<p>This removes the dual reporting requirement that was affecting a number of Cayman branches and is a step that was highly sought after by industry.</p>	

	<p><i>US reporting, and the decision not to file a return locally, to be made available to the Competent Authority when required.</i></p>	
<p>6.7</p> <p>Information to be reported – trusts as Investment Entities</p>	<p><i>Amendments and additional text:</i></p> <p><i>A loan made to a trust which is an Investment Entity is a Financial Account because the lender holds a Debt Interest in that Investment Entity. Provided the lender is not itself a Financial Institution the loan would be reportable whether or not it is made by a settlor or beneficiary.</i></p> <p><i>Where a loan has been made to a settlor or beneficiary, the outstanding loan is considered a debt due to the Trustees for the benefit of the Trust. The debt due is an asset of the Trust, and no distribution arises. If and when the loan is written off, then there is a distribution of that amount (written off) to the debtor, which should be reported.</i></p>	<p>This amendment clarifies what needs to be reported on loans to beneficiaries.</p>
<p>6.14 -</p> <p>Private Trust Company</p>	<p><i>Amended text:</i></p> <p><i>A Private Trust Company (PTC) which is registered, or a similar trust company which is licensed, and conducting business in or from within the Islands, may be considered a</i></p>	<p>The amendment slightly narrows how a PTC will be viewed for FATCA purposes. In particular a PTC cannot “opt” to be a FI.</p>

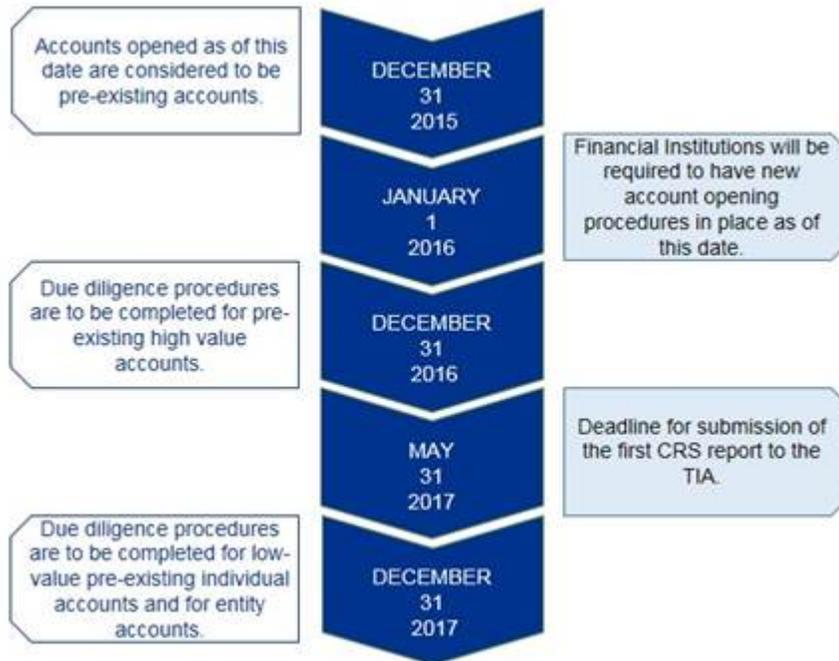
	<p><i>Financial Institution for these purposes.</i></p> <p><i>In the case of a trust of which a PTC is the trustee and the trust has all its income derived from financial assets, under the definitions of Investment Entity outlined in Section 2.9, the trust may be a Financial Institution. If the trust is not a Financial Institution, it will be an NFFE, and its activity will determine whether it is a Passive or Active NFFE. If a trust is a Passive NFFE, the Financial Institution where the trust holds Financial Accounts will be required to undertake the necessary due diligence procedures to determine if the account is a Reportable Account.</i></p>	
14.5 - Identification of New Individual Accounts	<i>Deletion of paragraph 4</i>	This removes the ability of FIs to rely on documentary evidence collected as part of the AML/KYC process and requires collection of appropriate self-certifications for new individual accounts.
Appendix 2 - UK Agreement – Specific Elements	<i>Extension of ARR election date in 2015 to 30 September 2015</i>	This provides more time for Cayman Islands FIs to determine if they want to elect to report under the ARR regime.

OECD Common Reporting Standard (“CRS”)

As previously communicated, the TIA is moving forward with the implementation of CRS. Please see [here](#) for the full list of countries. The Cayman Islands has been a signatory to CRS since its release in October 2014.

Financial institutions are advised to begin preparations for compliance with CRS and to begin planning for CRS on-boarding procedures from January 1, 2016 and for the due diligence procedures required in 2016 and 2017. As part of these steps, financial institutions are advised to consider the administrative and technology solutions necessary to be compliant with CRS. The TIA advised that the Cayman Islands regulations will be fully compliant with the CRS and to refer to the CRS issued by the OECD (available [here](#)).

CRS Time Line:



Have Questions?

KPMG in the Cayman Islands has a FATCA Help Desk for any questions you may have. Contact us at fatca@kpmg.ky.

How can we help?

KPMG in the Cayman Islands offers the following services to assist you in your preparations for FATCA:

- We can provide a detailed written summary of FATCA's impact to a Cayman Islands Financial Institution.
- We can review the FATCA policies you have implemented providing recommendations on improvements.
- We can conduct a review to ensure the process implemented remains appropriate in face of changing legislation and upcoming requirements including the OECD Common Reporting Standard ("CRS").

Click [here](#) for more details on KPMG in the Cayman Islands' FATCA services.

KPMG FATCA Team

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