



# FOCUS

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## Amended Cayman CRS Regulations issued

The Tax Information Authority (International Tax Compliance) (Common Reporting Standard) (Amendment) Regulations, 2016 (“Amended Cayman CRS Regulations”) were issued in December 2016 amending The Tax Information Authority (International Tax Compliance) (Common Reporting Standard) Regulations, 2015.

A number of changes appear in the Amended Cayman CRS Regulations, including: new references to a Cayman Financial Institution and Cayman Reporting Financial Institution; the requirement to file a nil return; and the introduction of various penalties and offences.

### **Cayman Financial Institution**

A Cayman Financial Institution is defined in the Amended Cayman CRS Regulations as: (i) a Financial Institution resident in the Cayman Islands other than any of the institution’s branches outside the Cayman Islands; and (ii) a branch in the Cayman Islands of a Financial Institution which is not resident in the Cayman Islands. For the purpose of this definition, the term “resident in the Cayman Islands” means incorporated or established in the Cayman Islands or having in the Cayman Islands a place of effective management as defined under the OECD commentary, or being subject to financial supervision in the

Cayman Islands.

### **Notification Obligations of Cayman Financial Institutions**

Each Cayman Financial Institution, other than an exempted body (exempted bodies include: the Cayman Islands Monetary Authority (“CIMA”); a Governmental Entity; or a Pension Fund of either CIMA or a Governmental Entity), is required to file with the Cayman Islands Tax Information Authority (the “Cayman TIA”):

- a notice (an “information notice”) containing the required information about the institution on or before 30th April 2017 (or if an entity becomes a Cayman Financial Institution after that date, the next 30th April after the entity became a Cayman Financial Institution); and
- if any of the required information contained in the information notice changes, a notice stating details of the change (a “change notice”).

Such required information includes:

- the institution’s name and any number given to it by the Cayman TIA as a Financial Institution
- whether the institution is a Cayman Reporting Financial Institution or a Non-Reporting Financial Institution

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- if the institution is a Cayman Reporting Financial Institution, its type or types under the Amended Cayman CRS Regulations
- if the institution is a Non-Reporting Financial Institution, its classification under the Amended Cayman CRS Regulations
- the full name, address, business entity, position and contact details (including an electronic address) of an individual the institution has authorised to be its principal point of contact and an individual the institution has authorised to give change notices for its principal point of contact.

An information notice or change notice is delivered electronically to an official website. A change notice for a Cayman Financial Institution's principal point of contact can only be given by the individual the institution has authorised for that purpose under its most recent information notice or change notice.

#### **Policies and Procedures to be Adopted by Cayman Reporting Financial Institutions**

Under the Amended Cayman CRS Regulations, each Cayman Reporting Financial Institution must implement, maintain and comply with certain written policies and procedures.

Such policies and procedures must identify each jurisdiction in which an Account Holder or a Controlling Person is

resident for income tax or corporation tax purposes.

An Account Holder may provide a form of self-certification to the Cayman Reporting Financial Institution to confirm the Account Holder's tax residence. Under the Amended Cayman CRS Regulations, however, a Cayman Reporting Financial Institution should make an effort to corroborate the self-certification and must not ignore warning signs that suggest the self-certification may be incorrect. This is important because, if the institution knows, or has reason to believe, that the self-certification or documentary evidence (the "instrument") is inaccurate in a material way, and it makes a return that relies on the instrument's accuracy, it will be deemed to be contravening its policies and procedures.

#### **Reporting Obligations of Cayman Reporting Financial Institutions**

Each Cayman Reporting Financial Institution shall, for each calendar year from and including 2016, make a return to the Cayman TIA for each Reportable Account the institution maintained during the year. If the institution did not maintain any Reportable Account during the year, it must file a nil return. This new nil return filing requirement is a concern for some institutions as it adds to the time to be spent by Cayman Reporting Financial Institutions on each Account Holder and increases administrative and operational expenses.

Each Cayman Financial Reporting Institution must file the above return with the Cayman TIA on or before 31 May of the year following the calendar year to which the return relates. The first return must be filed with the Cayman TIA on or before 31 May 2017.

#### **Penalties & Offences**

Where a Cayman Financial Institution provides materially inaccurate information to the Cayman TIA, it may be liable for an offence under the Amended Cayman CRS Regulations. This will be the case where the Cayman Financial Institution knew of the inaccuracy when the information was provided to the Cayman TIA. Directors, partners or trustees of the relevant Cayman Financial Institution may also be deemed to be committing an offence under certain circumstances if the Cayman Financial Institution has committed an offence. Fines for such offences may, in some cases, fall in the region of USD 24,000.

Cayman Financial Institutions must now take greater care in the handling and reporting of information under the Amended Cayman CRS Regulations to avoid potential liability and penalties. In some cases this may mean delegating the performance of required tasks to a third party who can focus on compliance with the institution's mandatory policies and procedures. 



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