



CRS and The British Virgin Islands: Understanding the OECD's New Global Standard for Financial Institutions

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Introduction

A new global standard known as the CRS, or Common Reporting Standard, endorsed by the Organisation for Economic Co-operation and Development along with G20 countries and others, signals the beginning of a systemic transformation for financial institutions that are subject to its reporting obligations.

Fifty-eight countries, including the British Virgin Islands, have formally committed to *early adoption*. BVI legislation, which came into force on 1 January 2016, now requires the domestic implementation of the CRS, and specifically sets out the obligations of Reporting Financial Institutions under the Mutual Legal Assistance (Tax Matters) (Amendment) (No. 2) Act, 2015. This article offers a detailed overview of the CRS and highlights its implementation in the BVI. We also invite you to contact us directly, should you require further information or assistance.

What is CRS?

In September 2013, the Organisation for Economic Co-operation and Development (OECD), in conjunction with G20 countries, endorsed a global standard for the automatic exchange of financial account information in tax matters, known as the Common Reporting Standard (CRS). The CRS contains reporting and due diligence guidelines regarding the exchange of account information between tax authorities in various jurisdictions. It builds on the framework developed in the Intergovernmental Agreements (IGAs) designed to implement the United States' Foreign Account Tax Compliance Act (FATCA). In light of this, the CRS has

commonly been referred to as the global FATCA, given that it aims to facilitate a wider and more uniform basis for information exchange among tax authorities across the world. However, an important difference from FATCA is that CRS reporting obligations flow from an individual's tax residency, as opposed to citizenship.

How does CRS work?

The implementation of CRS within a given jurisdiction, which includes the Reciprocal Automatic Exchange Framework, involves two key legal requirements.

- 1) **Translating the reporting and due diligence rules into domestic law.** CRS implementation necessitates the passage of jurisdictional legislation that requires financial institutions to collect and report specified information to their local tax administration. This information is then reciprocally exchanged between tax authorities in various jurisdictions via a secure IT platform.
- 2) **Selecting a legal basis for the automatic exchange of information with foreign countries.** A bilateral or multilateral agreement between exchanging countries is also necessary, often referred to as a Competent Authority Agreement. These agreements would provide relevant protections in relation to data safeguards and confidentiality.

Steps toward CRS implementation in the BVI

Domestic Legislation Implementing CRS.

In December 2015, the BVI passed legislation required for the domestic implementation of CRS. The Mutual Legal Assistance (Tax Matters) (Amendment) (No. 2) Act, 2015 (the MLA Amendment) was enacted on December 29, 2015 and came into force on January 1, 2016. It incorporates the CRS into domestic law and sets out the obligations of Reporting Financial Institutions under the Act. These obligations are discussed in greater detail below.

The BVI as an Early Adopter of CRS: Key Dates.

In 2014, the BVI committed to early adoption of the CRS along with a number of other jurisdictions, collectively known as Early Adopters. These Early Adopters have released a number of joint statements that outline their proposed timeline for the implementation of CRS. This timeline is reproduced below and incorporates key dates which have been outlined in the BVI's MLA Amendment.

- 31 December 2015: Accounts opened on or prior to this date will be treated as 'pre-existing accounts'.
- 1 January 2016: New account opening procedures to record tax residence must be in place from this date as accounts opened on or after this date will be treated as 'new accounts'.
- 31 December 2016: Deadline for the completion of due diligence procedures for identifying *high-value*, pre-existing individual accounts.
- 30 April 2017: Deadline for Reporting Financial Institutions in the BVI to provide notification to the BVI International Tax Authority (ITA) that it has reporting obligations under CRS.
- 31 May 2017: Reporting Financial Institutions in the BVI must make their first report to the ITA in respect of all Reportable Accounts maintained in 2016
- 30 September 2017: The first exchange of information between countries relating to new accounts and pre-existing individual high-value accounts is to take place by this date.
- 31 December 2017: Deadline for the completion of due diligence procedures for identifying *low-value*, pre-existing individual accounts and entity accounts.

The BVI as a Signatory to the Multilateral Competent Authority Agreement.

As noted above, the implementation of CRS requires international agreements between states, which dictate the precise terms on which information exchange will take place. The CRS refers to these agreements as Competent Authority Agreements. In October 2014, the BVI signed on

to the Multilateral Competent Authority Agreement (MCAA), which provides a common framework for the implementation of CRS among all signatories. Exchange may begin between any two signatories upon notification stating that they wish to exchange with each other.

Signatories to the MCAA include Australia, Canada, India, the United Kingdom, and most European Union Member States. The potential scope of account information that will need to be reported and exchanged is therefore very broad. The BVI may also enter into bilateral exchange agreements with other states who are not party to the MCAA, thereby further expanding the scope of reportable accounts.

Who needs to Report?

Under the CRS, entities obligated to collect and report account information are those defined as Reporting Financial Institutions. These include:

- 1) *Depository Institutions*. Savings banks, commercial banks, loan associations and credit unions.
- 2) *Custodial Institutions*. Custodian banks, brokers and central securities depositories.
- 3) *Investment Entities*. Entities investing, reinvesting or trading in financial instruments, portfolio management or investing, or managing financial assets.
- 4) *Specified Insurance Companies*. Generally, this includes most life insurance companies.

Pursuant to the MLA Amendment, Reporting Financial Institutions in the BVI have the following obligations:

- To establish and maintain an arrangement designed to identify Reportable Accounts
- To identify each jurisdiction in which an Account Holder is resident for tax purposes
- To apply the due diligence procedures set out in the CRS

- To ensure that any information obtained in accordance with the Act in respect of a Financial Account is kept for six years from the end of the year to which the information relates
- To notify the ITA of its reporting obligations by 30 April 2017
- To make the first report to the ITA on Reportable Accounts it has maintained during 2016 by 31 May 2017

The scope of 'Reportable Accounts'

As noted above, Reporting Financial Institutions are under an obligation to review all Financial Accounts that they maintain in order to identify whether any of these are Reportable Accounts. Financial Accounts are included and defined in the CRS as follows:

- (1) **Depository Accounts.** Includes any commercial, checking savings, time, or thrift account, or an account evidenced by a certificate of deposit.
- (2) **Custodial Accounts.** Any account (other than an Insurance Contract or Annuity Contract) for the benefit of another person that holds one or more financial assets.
- (3) **Equity and Debt Interests.** Includes interests in partnerships and trusts.
- (4) **Cash Value Insurance Contracts and Annuity Contracts.** Includes contracts insuring against mortality, morbidity, accident, liability, or property risk that has a cash value.

The CRS also identifies certain low-risk accounts which do not need to be reviewed and are therefore deemed Excluded Accounts. These include:

- Retirement and pension accounts
- Non-retirement tax-favoured accounts
- Term Life Insurance Contracts
- Estate accounts
- Escrow accounts

All Financial Accounts which are not considered Excluded Accounts must be reviewed in order to determine whether they are Reportable. The following definitions are crucial in determining which accounts should be the object of reporting.

Reportable Account	An account held by one or more Reportable Persons or by a Passive Non-Financial Entity (NFE) with one or more Controlling Persons that is a Reportable Person.
Reportable Person	<p>An individual or entity that is resident in a Reportable Jurisdiction under the tax laws of such jurisdiction, or a decedent's estate that was a resident of a Reportable Jurisdiction.</p> <p>The term Reportable Person excludes: (i) a corporation with stock regularly traded on an established securities market (ii) a governmental entity (iii) an international organisation (iv) a central bank (v) a financial institution.</p>
Reportable Jurisdiction	A jurisdiction (i) with which an agreement is in place for the automatic exchange of information and (ii) which is identified in a published list.
Controlling Persons	The natural persons who exercise control over an entity. In the case of a trust, such term includes the settlor, trustees, beneficiaries, and any other natural person exercising ultimate effective control over the trust.
Passive NFE	All NFEs not included in the specified list of Active NFEs; includes most trusts set up for wealth protection.

As these definitions reveal, whether an account is Reportable will depend on which jurisdictions have made agreements with the BVI and are included in the country's published list of Reportable Jurisdictions. Under the MLA Amendment, the BVI ITA is required to publish a list of Participating Jurisdictions at least once per year.

The information to be Reported and Exchanged

In respect of Reportable Accounts, the following information must be reported and ultimately exchanged under the CRS.

- (a) The name, address, Tax Identification Number (TIN), date and place of birth of each Reportable Person that is an Account Holder;
- (b) The account number;
- (c) The name and identifying number (if any) of the Reporting Financial Institution; and,
- (d) The account balance or value as of the end of the relevant reporting period.
- (e) In the case of Custodial Accounts, the total gross amount of interest, dividends, or other income generated with respect to the assets held in the account.
- (f) In the case of Depository Accounts, the total gross amount of interest paid, or credited to the account during the relevant reporting period.

Conclusion

Given the recent enactment of the MLA Amendment, Reporting Financial Institutions must now make arrangements in order to ensure full compliance with the Act. This includes updating account opening and client in-take procedures, where necessary, in order to ensure that all information required to identify tax residency is at hand. Reporting Financial Institutions are



also required to register with the ITA, notifying them of the nature of their reporting obligation under the CRS. The scope of information which will ultimately be subject to reporting obligations will be determined by which jurisdictions have established a system of reciprocal exchange with the BVI and are included in the jurisdiction's published list. It is therefore also crucial for Reporting Financial Institutions to keep abreast of any changes to the published list of jurisdictions with which information exchange is required.

We trust this overview has been helpful in obtaining a basic understanding of what is required under the CRS in the BVI. If you need further information or assistance, please contact

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