

Cayman Islands Economic Substance, AEOI and Fund Annual Returns for Private Funds

Economic Substance Regime Extended to Partnerships

On 30 June 2021, the Cayman Islands Government published the International Tax Co-operation (Economic Substance) (Amendment of Schedule) Regulations, 2021¹. The main change to the regulations is the addition of partnerships to the definition of a 'relevant entity'. The categories of relevant activities and exempted activities remain unchanged. Please refer to our previous Client Update² for further information on relevant activities. Partnerships formed on and after 30 June 2021 are required to satisfy the economic substance test from the date on which they commence a relevant activity. Partnerships formed prior to 30 June 2021 are required to satisfy the economic substance test from 1 January 2022. All partnerships, irrespective of formation date, will be required to notify the Tax Information Authority on or before January in each year of their operations in the jurisdiction during the prior year.

FATCA and CRS Updates

The Cayman Islands Department for International Tax Cooperation (the "DITC") published an Updates Bulletin³ (the "Bulletin") on 3 June 2021 with respect to FATCA and

CRS (together, "AEOI") compliance confirming that the DITC is not currently planning any extensions to the AEOI reporting deadline of 31 July 2021 for the 2019 and 2020 reporting periods, encouraging Cayman Islands Reporting Financial Institutions ("FIs") to commence their reporting early, and also covering a number of Economic Substance ("ES") related topics.

AEOI Reporting Deadlines

The Cayman Islands DITC Portal ("DITC Portal") is now open for notification and reporting in relation to AEOI. For CRS, the CRS XML Schema Version 2.0 must be used, including for 2019 CRS reports not previously filed by the prior 16 December 2020 deadline. Further details about the new schema can be found in the Bulletin. For FATCA purposes, the DITC is still accepting outstanding 2019 FATCA reports.

There have been no changes to the 2020 FATCA schema, however, the IRS have published a series of codes that may be used to populate the Tax Information Number ("TIN") field in cases where a Foreign Financial Institution ("FFI") has not been able to obtain a TIN from an account holder. Each

¹ International Tax Co-operation (Economic Substance) (Prescribed Dates) (Amendment) Regulations, 2021

² <https://maples.com/en/knowledge-centre/2020/9/cayman-islands-update-economic-substance-guidance-notes-v3-issued>

³ <https://www.ditc.ky/wp-content/uploads/news-updates.pdf>

code will indicate to the IRS the reason why the FFI has not been able to obtain the TIN, however, it does not mean the FFI will not be at risk of penalty for failure to receive and report each required TIN. A link to the codes can be found in the Bulletin.

The table below sets out the registration and AEOI reporting deadlines for the 2019 and 2020 reporting periods:

Reporting Obligation	Deadline
Registration (notification)	30 April 2021
2019 & 2020 CRS Reporting	31 July 2021
2019 & 2020 CRS Filing Declaration	31 July 2021
2019 & 2020 FATCA Reporting	31 July 2021
2019 & 2020 CRS Compliance Form	15 September 2021

Reporting Obligations of Cayman Islands Financial Institutions

By way of reminder, each FI / FFI generally has an obligation to: (a) register on the DITC Portal notifying the DITC of its status as a "Reporting Financial Institution"; (b) establish policies and maintain procedures (which need to be in writing for CRS purposes) to identify whether any of its accounts are considered "Reportable Accounts"; (c) report information on such Reportable Accounts to the DITC, which will then forward the information to the respective foreign fiscal authorities in the relevant jurisdictions; and (d) (only under the CRS) file a CRS Compliance Form with the DITC annually.

"Non-Reporting Financial Institutions" are also required to notify the DITC of their status under the CRS.

The CRS Filing Declaration constitutes a NIL Return, as it indicates the FI has not submitted any Account Reports for that FI. NIL Returns are mandatory under CRS for each Reporting FI and must be submitted annually via the DITC Portal.

FIs are also required to obtain a Global Intermediary Identification Number from the IRS under FATCA.

Filing of CRS Compliance Form

This is a new and additional requirement under the CRS with 2021 being the first year in which FIs have been required to file a CRS Compliance Form. All FIs, including Trustee Documented Trusts, will be required to file a CRS Compliance Form for both the 2019 and 2020 reporting periods on or before 15 September 2021. Failure to do so is an offence.

The CRS Compliance Form collects data on each FIs non-reportable accounts and, requires FIs to confirm a number of items including: (a) the nature of their business; (b) whether they are regulated by the Cayman Islands Monetary Authority ("CIMA") or the reason why not; (c) whether they have prepared audited financial statements; (d) whether they are subject to and in compliance with applicable anti-money laundering regulations; (e) the details of any service provider(s) engaged by the FI to assist it with its CRS compliance obligations; (f) that the FI has established and maintained written policies and procedures in accordance with the CRS; (g) that it has implemented and is in compliance with its CRS policies and procedures; and (h) that it has collected self-

certification forms and documentary evidence that it believes to be accurate.

The CRS Compliance Form can be completed using the online smart form on the DITC Portal or in a bulk CSV upload.

If you require assistance with the CRS Compliance Form, please reach out to your normal Maples Group contact or contact us via our dedicated CRS Compliance Form email address at crsclientqueries@maples.com.

AEOI Compliance Measures

The DITC has announced that it has been, in line with global regulators, conducting compliance measures from April 2021. The DITC urges Cayman Islands entities to ensure they have been correctly classified for AEOI purposes and that they are complying with all applicable obligations. The DITC has advised that it will be comparing FATCA / CRS registrations against other sources, such as ES Notifications, CIMA licenses and registrations, the General Registry nature of business classification, and the IRS GIIN registration list.

The DITC notes in the Bulletin that it is an offence under the AEOI Regulations for FIs to fail to notify the DITC of their correct classification and the DITC will consider appropriate compliance and enforcement action where misclassifications are discovered. If you are unsure as to how an entity should be classified, please reach out to your normal Maples Group contact.

The DITC notes that every FI and its directors, or equivalent fiduciaries, are responsible for compliance with the regulations implementing AEOI and may be liable to administrative

penalties or other sanctions in the event of non-compliance.

Economic Substance Reporting

The Bulletin notes that both the ES Return and the Form for Entity Tax Resident in another Jurisdiction ("TRO Form") are available on both the DITC Portal and PDF versions of these forms are available on the DITC website. The DITC will publish modified forms for partnerships in due course. In relation to the TRO Form, the Bulletin explains that the ability for TRO Forms to be filed for successive reporting periods is not yet available and any successive reporting periods that are received will be rejected. However, the DITC is working toward the Portal having this functionality in the future and stresses that the Practice Points⁴ should be referenced prior to contacting the DITC's ES Team.

Economic Substance Notifications

The Bulletin notes that the 2021 ES Notification window is open; primarily to facilitate entities who wish to submit their ES Notifications in advance of dissolving / winding up / deregistering during the 2021 financial year.

Economic Substance Compliance

As with the AEOI reporting, the DITC stresses the importance of ensuring a correct ES classification on the ES Notification as the DITC will be comparing that against classifications under other regulatory regimes'. By way of illustration, the Bulletin specifically notes, that where an entity is claiming not to be a Relevant Entity on the basis it is an investment fund, that the entity must provide its CIMA / GIIN or FI number. If the entity does not have a CIMA / GIIN or FI number but is an

⁴ <https://www.ditc.ky/wp-content/uploads/ESN-Practice-Points.pdf>

entity that another investment fund directly or indirectly invests or operates through then the entity should check the relevant box on the ES Notification confirming its relationship to such investment fund and input the CIMA, FI or IRS GIIN of that other investment fund.

Extension of First Fund Annual Return (FAR) Filing for Private Funds

Further to its FAQs update dated 22 July 2020 RE: Private Funds Law ("PFL") FAQs Update – 2020 Audit Requirements⁵, the Cayman Islands Monetary Authority ("CIMA") published a notice: RE: Fund Annual Return ("FAR") filings for Private Funds⁶; on 19 April 2021, providing an update regarding the Private Fund FAR form (the "Form").

Due to delays in the release of the Form, the deadline for filing of a Private Fund's audited accounts and the Form has been extended to 30 September 2021. In the interim Private Funds will not be subject to any related penalties for non-compliance with section 13 of the Private Funds Act (2021 Revision).

Further information about the AEOI regimes can be found on our dedicated FATCA and CRS webpage⁷.

If you have any questions relating to the ES Returns, the DITC Portal or ES generally, including accounting and / or filing services for ES Returns for holding companies and partnerships, please reach out to any of the below members of our dedicated Regulatory & Compliance team or your usual Maples Group contact.

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⁵ https://www.cima.ky/upimages/noticedoc/Notice-PrivateFundAuditRequirement_1618858442.pdf

⁶ https://www.cima.ky/upimages/noticedoc/Notice-PrivateFundAuditRequirement_1618858442.pdf

⁷ <https://maples.com/en/services/specialty-services/aeoi>

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