



Amendments to the Mutual Legal Assistance Act and the Introduction of CRS in BVI

Introduction

On 1 January 2016, legislation came into force amending the BVI Mutual Legal Assistance (Tax Matters) Act, 2003. This legislation implements in the BVI the Organisation for Economic Co-Operating and Development (“**OECD**”) Common Reporting Standard for the exchange of tax information (“**CRS**”).

Reporting

BVI Financial Institutions (“**FIs**”) are now required to report to the BVI International Tax Authority (the “**ITA**”) certain information on the holders of “Reportable Accounts” which are tax-resident in “Reportable Jurisdictions”. The information that is reported to the ITA will then be passed on to the partnering tax authorities in the home jurisdiction of the account holders where that home jurisdiction is contained in the list of participating jurisdictions (each country being a “**Participating Jurisdiction**”).

Reporting requirement

Many of the CRS requirements are similar to their counterpart obligations imposed by FATCA. Indeed, most FIs will already have registered with the ITA under FATCA. The CRS obligations are intended however to have broader application than those under FATCA. This means that FIs that are not currently required to report under FATCA may be classed as Reporting FIs in respect of CRS. This may trigger the need for these FIs to register with the ITA for the first time.

Information to be included in Reports

The information that should be included in a CRS report is generally the same as that which must be included in a FATCA report. This is the case whether in respect of individuals, corporations, partnerships, trusts, foundations or similar legal arrangements which are resident in a Participating Jurisdiction. The first reports to the ITA are due by 31 May 2017 and are in respect of new accounts opened during 2016.

Action required

Investment funds in the BVI should review their constitutional documents, offering documents and subscription agreements to ensure that the fund is able to request and obtain from new investors the necessary information required by the fund to comply with CRS.

Funds' offering documents should be updated to include additional disclosures that relate to CRS. Subscription documents should be updated to include revised self-certification forms and a waiver of any statutory confidentiality obligations which may apply in a home jurisdiction. Self-certification forms containing the information a fund requires in order to classify and report under CRS (as well as FATCA) are due to be released in January.

In the case of third-party administrators, administration agreements for funds may also need to be updated to reflect an extension to the services provided by the administrator.

Over the course of this year and next, it will be necessary to extend the residency information to be obtained for the purposes of reporting to the ITA to Pre-Existing Accounts (i.e. those accounts existing as at 31 December 2015). There is a minimum threshold for Pre-Existing Entity Accounts of US\$250,000 although Pre-Existing Individual Accounts will need to be reviewed whatever their value. Pre-Existing Entity Accounts under the stated threshold are not required to be reviewed unless their value increases above the threshold. Reporting FIs may, however, choose to ignore the threshold and review all accounts.

Dates to note

There are a number of important dates and deadlines to note.

31 December 2015: Accounts opened on or before this date will be classed as Pre-existing Accounts. Accounts opened after this date will be classed as New Accounts.

During 2016: FI's to request and obtain the required due diligence information on New Accounts opened in 2016 as well as in respect of Pre-existing High Value Individual Accounts (i.e.: aggregate balance or value exceeds USD 1,000,000).

By 30 April 2017: Reporting FIs that have reporting obligations for 2016 must complete the relevant notifications to the ITA.

By 31 May 2017: File with the ITA appropriate reports for all New Accounts and all Pre-existing High Value Individual Accounts in respect of 2016.

During 2017: FI's to request and obtain the required due diligence information on New Accounts opened in that calendar year as well as in respect of Pre-existing Lower Value Individual Accounts (i.e.: aggregate balance or value does not exceed USD 1,000,000) and Pre-existing Entity Accounts.

This alert is intended to be for the general information of the clients and professional contacts of Forbes Hare. It is not intended to be comprehensive and does not contain definitive advice.

If you would like to receive further information, or more detailed guides on a range of BVI legal topics, please do not hesitate to contact:

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