

## FATCA and CRS: 2016 Year End Reminders and a Look Ahead to 2017

Written by Christopher "Kip" Cawley

December 1, 2016

As 2016 comes to a close, U.S. FATCA is almost fully phased-in, U.K. FATCA is being phased-out and the Common Reporting Standard ("CRS") is nearing the first anniversary of its effective date. What began as a concept in 2010 has developed into a complex network of new regulations and international agreements designed to increase transparency and decrease incidents of tax evasion on a global scale. With three separate regimes that may apply to a given investment entity, now is a good time for investment managers to consider the upcoming compliance deadlines that may apply to investment entities under their control.

### Summary of Upcoming Deadlines (United States and Cayman Islands)

December 31, 2016	U.S. FATCA	All investment entities that are "sponsored investment entities" must be separately registered with the IRS and obtain separate Global Intermediary Identification Numbers ("GIINs").
December 31, 2016	CRS	Cayman Islands investment entities that are subject to CRS must complete due diligence on pre-existing individual accounts that had a value in excess of USD 1 million on December 31, 2015.
March 15, 2017	U.S. FATCA	U.S. withholding agents must file IRS Forms 1042 and 1042-S to report withholdable payments made to non-U.S. persons during 2016.
April 30, 2017	U.S. FATCA, U.K. FATCA and CRS	Cayman Islands investment entities that are subject to FATCA and/or CRS requirements must notify the Cayman Islands government that they are subject to U.S. FATCA, U.K. FATCA and/or CRS (if they have not done so in past years).
May 31, 2017	U.S. FATCA, U.K. FATCA and CRS	Cayman Islands investment entities with reportable accounts under one or more of the three reporting regimes must file an annual report with the Cayman Islands government with respect to 2016.
December 31, 2017	CRS	Cayman Islands investment entities that are subject to CRS must complete due diligence on all other pre-existing individual accounts and all pre-existing entity accounts that had a value in excess of USD 250,000 on December 31, 2015 or December 31, 2016.

### U.S. FATCA Notes

Until now, investment entities that are “sponsored investment entities” have been able to present the GIIN of their respective “sponsoring entities” as evidence of their own FATCA compliance. Beginning on January 1, 2017, however, each sponsored investment entity must be separately registered with the IRS and have its own unique GIIN, which it must use going forward to signify its FATCA compliance. Accordingly, all sponsored investment entities must be separately registered by their respective sponsoring entities by December 31, 2016. The registration process for sponsored investment entities – which is a simplified version of the standard GIIN registration – may be completed through the sponsoring entity’s homepage on the IRS FATCA portal. Once registered, a sponsored investment entity will have its own GIIN and will need to update its IRS Form W-8 to reflect its new GIIN, and not the sponsoring entity’s GIIN that it had been using to date.

### Model 1 Investment Entities

Investment entities in jurisdictions that have negotiated a “Model 1” FATCA agreement with the United States are not required to enter into separate FATCA agreements with the IRS in order to be FATCA-compliant (unlike in the case of investment entities in “Model 2” and “non-IGA” jurisdictions). Many Model 1 jurisdictions have implemented their respective Model 1 FATCA agreements with local legislation and procedural infrastructure. Other Model 1 jurisdictions, however, have not.<sup>1</sup> Beginning on January 1, 2017, the IRS will update its list of Model 1 jurisdictions, and those jurisdictions whose status is indicated as “signed” or “agreed in substance” will be required to take meaningful steps toward implementation or else run the risk of no longer being classified as a Model 1 jurisdiction. Investment entities located in jurisdictions that fall off of the Model 1 list will need to enter into separate FATCA agreements with the IRS in order to maintain their FATCA-compliant status. Investment entities in “at risk” Model 1 jurisdictions should monitor this issue closely to ensure there is no gap in their FATCA-compliant status if their jurisdiction is removed from the Model 1 list.

### Reporting (for 2016)

Each Cayman Islands investment entity that is subject to U.S. FATCA reporting obligations will need to file a U.S. FATCA report (for 2016) by May 31, 2017 if it had any “reportable accounts” for U.S. FATCA purposes during 2016. “Nil reporting” is not required if such a Cayman Islands investment entity had no “reportable accounts” in 2016, but notification still is necessary for new Cayman Islands investment entities that have not previously submitted a U.S. FATCA notice to the Cayman Islands government. U.S. withholding agents that made withholdable payments to non-U.S. persons during 2016 must file IRS Forms 1042 and 1042-S (with copies of the latter to the respective non-U.S. recipients) by March 15, 2017.

## U.K. FATCA Notes

### Reporting (for 2016)

Each Cayman Islands investment entity that is subject to U.K. FATCA reporting obligations will need to file a U.K. FATCA report (for 2016) by May 31, 2017 if it had any “reportable accounts” for U.K. FATCA purposes during 2016. Again, “nil reporting” is not required if such a Cayman Islands investment entity had no “reportable accounts” in 2016, but notification still is necessary for new Cayman Islands investment entities that have not previously submitted a U.K. FATCA notice to the Cayman Islands government. U.K. FATCA is being phased-out and replaced by the CRS. Accordingly, the returns due in May 2017 (with respect to 2016) are expected to be the last returns due under U.K. FATCA. Going forward, U.S. FATCA and CRS should be the only effective compliance regimes.

## CRS Notes

### Due Diligence

Reporting investment entities in CRS jurisdictions (including the Cayman Islands) are required to conduct due diligence with respect to all of their investors to determine whether any investor is a tax resident in a CRS jurisdiction. In general, CRS due diligence should be conducted by soliciting CRS self-certification forms (linked here: [Entities/Individuals](#)) from investors (in addition to IRS Forms W-8 and W-9) according to the following timetable:

- “New” Investors (i.e., first admitted on/after January 1, 2016):
  - ▶ Upon admission (or within 90 days of admission).

- “Pre-Existing” Investors (i.e., admitted before January 1, 2016):

- ▶ December 31, 2016: Individual investors whose investment value on December 31, 2015 was more than USD 1 million.
- ▶ December 31, 2017: Individual investors whose investment value on December 31, 2015 was USD 1 million or less; entity investors whose investment value on December 31, 2015 or December 31, 2016 was more than USD 250,000.

#### Reporting (for 2016)

Each Cayman Islands investment entity that is subject to CRS reporting obligations will need to notify the Cayman Islands Tax Information Authority by April 30, 2017 that it is subject to CRS requirements and will need to file a CRS report (for 2016) by May 31, 2017 if it had any “reportable accounts” for CRS purposes during 2016. Consistent with FATCA, “nil reporting” is not required if such a Cayman Islands investment entity had no “reportable accounts” in 2016, but notification still is necessary, even if such investment entity previously submitted a notification relating to its FATCA obligations.

FATCA and CRS obligations in jurisdictions other than the United States and the Cayman Islands are substantially the same as those noted above, although there may be certain differences (e.g., notification requirements, “nil reporting” requirements and filing deadlines). Investment entities that are subject to FATCA and/or CRS requirements should take steps to ensure compliance with any applicable obligations. Transitional “phase-in” periods are expiring, and taxing authorities around the globe will begin to enforce the various FATCA and/or CRS compliance obligations with which we have been familiarizing ourselves over the past few years.

---

1. Currently, the list of “signed” or “agreed in substance” Model 1 jurisdictions includes: Algeria, Angola, Anguilla, Antigua & Barbuda, Bahrain, Belgium, Cambodia, Cape Verde, China, Costa Rica, Croatia, Dominica, Dominican Republic, Greece, Greenland, Grenada, Guyana, Haiti, Indonesia, Kazakhstan, Malaysia, Montenegro, Montserrat, Peru, Philippines, Saudi Arabia, Serbia, Seychelles, Thailand, Trinidad & Tobago, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, and Uzbekistan.

#### RELATED INDUSTRIES

- [Investment Advisers & Private Funds](#)
- [Professional Services](#)

#### RELATED PRACTICES

- [Business Counseling](#)
- [Taxation](#)

---

This communication is intended for general information purposes and as a service to clients and friends of Foley Hoag LLP. This communication should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.

United States Treasury Regulations require us to disclose the following: Any tax advice included in this document was not intended or written to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Attorney advertising. Prior results do not guarantee a similar outcome. © 2017 Foley Hoag LLP. All rights reserved.