



# Cayman Islands Base Erosion Profit Shifting (BEPS) Updates

## **Cayman Islands Base Erosion Profit Shifting (BEPS) updates**

The Cayman Islands Ministry of Financial Services has provided an Industry Update on recent changes and updates to Cayman Islands BEPS regulations, including FATCA/CRS, Economic Substance and Country by Country reporting.

### **AEOI updates**

The Cayman Islands Tax Information Authority (TIA) has confirmed that the annual statutory Reporting deadline for the 2019 calendar year and onward will be moved to July 31 (previously May 31). TIA has also advised automatic penalties will apply for those Cayman Financial Institutions (FIs) that complete reporting on the Cayman Portal after the statutory deadline has passed. The statutory deadline for Notification will remain at May 31.

In addition to the change in reporting deadline for calendar years 2019 onward, a Cayman Common Reporting Standard (CRS) Compliance Declaration is likely to be mandatory for FIs. We await further details on this but Reporting entities are expected to be required to declare the number of Reportable Accounts and Non-Reportable Accounts and potentially provide a dollar value on the non-reportable accounts.

Finally, our understanding is that Cayman TIA will also likely be required by the OECD to implement a CRS Compliance Program, which is expected to commence next year. This program is expected to involve reviewing some of the filings by selected FI's to ensure the FI is compliant with the Cayman Islands CRS regulations. We note that similar review programs have already begun by tax authorities in other CRS jurisdictions in recent months.

### **Economic Substance Law (ESL) updates**

The Cayman Islands' legislative framework for the ESL was determined by the Forum on Harmful Tax Practices (FHTP) to be in line with the OECD standard for BEPS Action Item 5, and therefore "not harmful."

Updated Guidance Notes (Guidance version 3.0) are expected to be issued in November 2019 and importantly will include more sector-specific guidance and examples relevant to Cayman businesses.

The TIA has confirmed that the annual ESL Notification will be a prerequisite, separate filing to the Cayman Islands General Business Registry's Annual Return. The Economic Substance Notification Form is expected to be completed via the Cayman Islands ES Portal ("CAP"), which was released by TIA on October 17, 2019.

The annual ESL Return will be due by December 31, 2020. The ES Return will be submitted via

a Cayman ESL Portal, which is expected to go live by July 2020.

The Cayman ESL became effective on July 1, 2019 for Relevant Entities that were in existence prior to January 1, 2019 (ESL is considered effective on January 1, 2019 for all new entities in calendar year 2019 onward).

Most recently, Cayman TIA released information on the notification process that is due by March 31, 2020. All Cayman entities, other than limited partnerships and trusts, will need to complete this notification before completing their Corporate Annual Return. Also foreign companies registered under Cayman's Companies Law will need to file a notification. See the link below for more information on the notification.

[http://www.tia.gov.ky/pdf/Economic\\_Substance\\_Notification\\_User\\_Guide\\_v1.0.pdf](http://www.tia.gov.ky/pdf/Economic_Substance_Notification_User_Guide_v1.0.pdf)

### **Country by Country Reporting (CbCr) Updates**

We anticipate that further updates on CbCr may be announced shortly by the TIA, but it does not appear there will be significant changes this year (2018 tax year reporting). However, it does appear the OECD will have notable changes for CBCR reporting next year (2019 tax year reporting).

### **KPMG observations**

#### **CRS Compliance Program**

- Cayman Islands FIs must ensure they are in adherence with the Cayman Islands CRS Regulations, including having written CRS Policies & Procedures in place. We continue to see some clients with no policies and procedures in place.

If an FI has not recently completed a review of their investor records we recommend a review is conducted now. As a reminder, as noted in the Cayman CRS Regulations, all records must be maintained for a six year period.

#### **Expected changes in ESL Guidance v3.0**

- Additional sector specific guidance for the Relevant Activities, such as Financing and Leasing, Insurance, Fund Management, etc., is expected to be included in Guidance version 3.0. This Guidance will be welcomed by industry and should provide clarity to the qualifications and CIGA requirements for each Relevant Activity.

### **Next steps**

- Cayman Islands FIs should ensure they are in adherence with the Cayman Islands CRS obligations. Where gaps are identified, remediation action should be taken to ensure compliance prior to the commencement of the TIA CRS Compliance Program.
- As the Cayman ESL came into effect for pre-existing entities in July, businesses within Cayman should be analyzed immediately to determine if they fall under the ESL for the 2019 reporting year and if adequate Substance is in place. Should the Relevant Entity potentially fail the ESL test, alternatives should be discussed to determine changes to Cayman activities, re-domiciling, or other changes to the organizational structure.

### **How KPMG in the Cayman Islands can help**

KPMG in the Cayman Islands have been working closely with the Cayman TIA and industry groups on the various BEPS initiatives.

- We can provide an initial analysis of the extent to which the BEPS initiatives may impact your business and organizational structure.
- We can conduct a CRS gap analysis/health check to assess whether your business is in compliance with the Cayman Islands CRS obligations and identify where remediation action can be taken.
  
- We can also provide assistance with the implementation of the ESL, including:
  - Advice on the requirements for your business to ensure compliance, including considering outsourcing within the Islands.
  - Compliance with the Economic Substance annual notification and reporting requirements.

### Get in touch

Please contact one of our tax advisors below to assist with all of your questions and concerns. You can also contact us [here](#).



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If you have any questions, please send an email to [marketing@kpmg.ky](mailto:marketing@kpmg.ky).

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