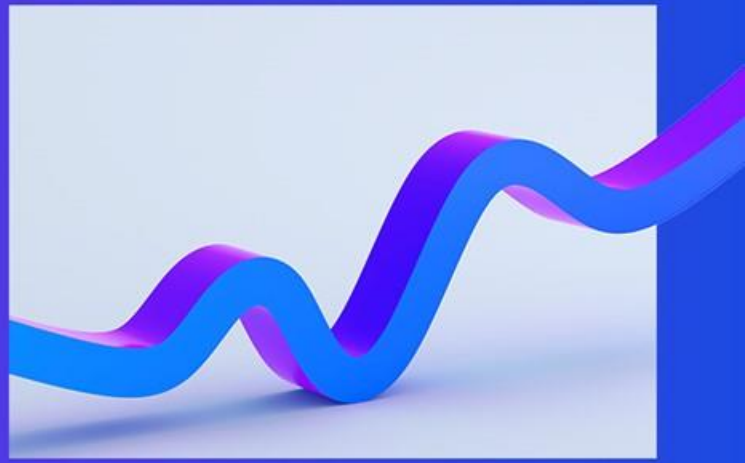




Tax IRW Ops Insights Quick Tips & Updates

KPMG Information Reporting & Withholding
Tax Services



Cayman Issues Enforcement Guidelines for CRS

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On March 31, 2022, the Cayman Islands Ministry of Financial Services (Ministry) and Department for International Tax Cooperation (DITC) announced that the Cayman Tax Information Authority (TIA) has issued Enforcement Guidelines v1.0, with respect to the Common Reporting Standard (CRS) and Economic Substance (ES) frameworks. These guidelines set out the enforcement process and subsequent penalties for failure to comply by any persons within the scope of TIA's compliance monitoring and enforcement powers.

CRS

The CRS Enforcement Guidelines are broken out into nine sections: (1) Overview; (2) Administrative Penalties; (3) Investigatory Functions of the Authority; (4) Breach Notice; (5) Contesting a Proposed Penalty on its Amount; (6) Penalty Notice; (7) Appeals Process; (8) Payment of Penalty & Interest; and (9) Notice Templates.

These Guidelines are only applicable to those under the administrative penalties' regime of the CRS Regulations, and do not extend to the criminal provisions of the CRS Act. The intent of the administrative procedures under the Enforcement Guidelines is to ensure effective implementation of the CRS Act, including:

- Rules to prevent any Financial Institutions (FIs), persons or intermediaries from adopting practices intended to circumvent the reporting and due diligence procedures

- Rules requiring Reporting FIs to keep records of the steps undertaken and any evidence relied upon for the performance of the above procedures and adequate measures to obtain those records
- Administrative procedures to verify Reporting FIs' compliance with the reporting and due diligence procedures; administrative procedures to follow up with a Reporting Financial Institution when undocumented accounts are reported
- Administrative procedures to ensure that the Entities and accounts defined in domestic law as Non-Reporting FIs and Excluded Accounts continue to have a low risk of being used to evade tax; and
- effective enforcement provisions to address non-compliance.

The Authority may impose a Primary Penalty of up to 50,000 CI (approx. \$60,975 USD) for offenses by an FI, as well as Continuing Penalties of 100 CI (approx. \$122 USD) for each day the violation continues.

The Authority's procedure for imposing penalties will be to initially issue a Breach Notice, potentially followed by a Penalty Notice. The statute of limitations for issuing penalties is the earlier of (a) one year after becoming aware of the breach, or (b) six years after the breach occurred. Notices will be issued by email to the PPoC of an FI, using the email address registered on the DITC Portal. If the PPoC is not available, the Notice will be sent to the Authorised Person ("AP"). If neither the PPoC nor AP are available, the Notice will be sent to the Registered Office address of the FI. In the case of Notices served on individuals, they will be served directly on that person electronically. The penalty amounts on the Notices are not final and may be appealed by the FI within 60 days of the Penalty Notice.

The following list provides some examples of what the Authority may prioritize during reviews:

- Incorrect submission of undocumented accounts
- No AP or PPoC registered on the DITC Portal
- Incorrect Entity classification
- Failure of an FI to register on the DITC Portal and notify its classification and reporting obligations
- Failure to submit a CRS Filing Declaration
- Failure to submit a CRS Compliance Form
- Incorrectly reporting, or failing to report, a Reportable Account in a CRS XML Return
- Incorrectly reporting, or failing to report, the Taxpayer Identification Number or date of birth of Account Holders or Controlling Persons

The FI under review should have its books and records, written policies and procedures, self-certifications and other documentary evidence readily available for the Authority.

KPMG Comments

While the potential Primary Penalty imposed on each FI, excluding Continuing Penalties, may be up to 50,000 CI, it is important to note the individual amounts for each offense. Some of the more notable offenses and their respective penalties are:

- Failure to establish and maintain written policies and procedures under the CRS – 7,500 CI (noting there are three other offenses related to failure to comply with policies and procedures under the CRS)
- Failure to register on the DITC Portal by the notification deadline of April 30th – 37,500 CI
- Failure to provide an update via the DITC Portal to inform the Authority of changes to reporting obligations, Entity classification, or authorized users – 10,000 CI
- Failure to submit a CRS return – 5,000 CI (penalty per reportable account)
- Failure to submit a nil return or provide any further information (e.g. CRS Filing Declaration and CRS Compliance Form) – 10,000 CI
- FI relies on self-certification that it knows or has reason to believe is inaccurate and makes a return based on this self-certification – 20,000 CI

Reference

For further information, please refer to the full Cayman Islands CRS Enforcement Guidelines, [here](#).

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