

Department for International Tax Cooperation



CAYMAN ISLANDS

Updates Bulletin

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It is recommended that this webpage is reviewed regularly to check for updates on the following subjects:

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I. CRS & FATCA

A. Importance of correct classifications, notifications, etc. under the CRS & FATCA Regulations

Each Cayman Islands company, partnership and trust, and its directors or equivalent fiduciaries, must ensure that it has been correctly classified for the purposes of the CRS and /or FATCA Regulations (“Regulations”). The DITC will match CRS & FATCA notification data against other data sources, such as Economic Substance notifications (“ESNs”), CIMA licences/registrations, General Registry nature of business classifications, and the IRS GIIN registration list. It is an offence under the Regulations for Financial Institutions (“FIs”) to fail to notify the DITC of their correct classification under the Regulations. Every FI with reporting obligations must also observe all other requirements under the Regulations. The DITC will consider appropriate compliance and enforcement action where mis-classification is discovered.

Each FI and its directors, or equivalent fiduciaries, are responsible for compliance with the Regulations and may be liable to administrative penalties or other sanctions in the event of non-compliance.

In the interest of promoting a robust culture of CRS & FATCA compliance, the DITC recommends that all registered office service providers remind all client entities to carefully double-check that they have been correctly classified for the purposes of the Regulations and are complying with all applicable obligations.

B. Portal Access & Reporting Obligations

Each FI registered on the DITC Portal must have an AP and PPOC assigned, and those users must be able to access their user account.

If the IT system of an FI’s assigned user does not permit the security measures used by the DITC Portal it is the responsibility of the FI to assign persons who can access the DITC Portal. A user’s inability to log in and fulfil the FI’s obligations will not be regarded as a reasonable position by the FI, or by its directors or equivalents, for the FI’s failure to comply.

C. CRS & FATCA Reporting Deadlines

Industry should note the following reporting deadlines for the 2019 and 2020 reporting period:

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

D. CRS Reporting Reminders

1. CRS Reportable Jurisdictions

The list of [2021 CRS Reportable Jurisdictions](#) has been published in the Cayman Islands Gazette, Issue No.05/2021, on 1 March 2021. Albania and New Caledonia have been added as Reportable Jurisdictions for the 2020 Reporting Period.

2. CRS v2.0 Schema

The OECD has transitioned to a new version of the [CRS XML Schema](#). CRS XML Schema Version 2.0 and CRS User Guide Version 3.0 are now applicable to all CRS XML Returns submitted on the DITC Portal, which is now open for submissions. FIs that were unable to submit CRS reporting by the 16 December 2020 deadline must submit all reporting using the new version of the Schema.

Please note that the XML Generator tool has been updated to incorporate the changes to the CRS XML Schema. For Reporting FIs using their own tool to generate the XMLs, please note the main changes:

- Empty elements are no longer allowed. If there is no data to be provided in an optional element, the element should be excluded altogether.
- All string (text) elements now have a minimum and maximum length. The majority of which have a minimum of 1 character and a maximum of 200 characters.
- All XMLs must contain the updated v2.0 XML Schema Instance Namespaces at the start:

```
<crs:CRS_OECD xmlns:cfc="urn:oe.cd:ties:commontypesfatcacrsv2"
xmlns:stf="urn:oe.cd:ties:crsstfv5" xmlns:crs="urn:oe.cd:ties:crsv2" version="2.0">
```
- The element 'MessageTypeIndic' within the 'MessageSpec' at the start of the XML file is now mandatory.

3. CRS Filing Declarations

Industry is reminded that CRS Filing Declarations are mandatory for all FIs with CRS reporting obligations, including Trustee Documented Trusts ("TDTs"). Failure to submit a CRS Filing Declaration by the reporting deadline is an offence under Part 2 of the Regulations. Further information can be found in the [CRS Guidelines](#).

4. CRS Compliance Forms

The CRS Compliance Form is mandatory for all FIs with CRS reporting obligations, including TDTs. Failure to submit a CRS Filing Declaration by the reporting deadline is an offence under Part 2 of the Regulations.

E. CRS Compliance

The DITC Compliance Team have identified a number of areas where FIs have potentially not complied with the CRS Regulations. In addition to cases of mis-classification, some further examples are provided below. It should be noted that a contravention of the CRS Regulations may result in the application of an Administrative Penalty of up to \$50,000 for a body corporate, or otherwise \$20,000. In appropriate cases, criminal prosecution may also be initiated by the Director of Public Prosecutions.

All communications with the DITC Compliance Team will be via the dedicated email address: DITC.Compliance@gov.ky.

1. Undocumented accounts

Financial Accounts should only be reported as an undocumented account (i.e. Receiving Country is Cayman Islands [“KY”]) in specific circumstances. These circumstances are limited to Preexisting Individual Accounts. For these accounts, where the only indicium discovered in the electronic search is a “hold mail” instruction or “in-care-of” address **and** a paper search fails to establish an indicium **and** the attempt to obtain the self-certification or Documentary Evidence is not successful, the account should be reported as an undocumented account. In no other circumstances should an account be reported as an undocumented account. FIs are reminded that for New Accounts a valid self-certification must always be obtained.

2. Missing TINs & date of birth in XML uploads

The Tax Identification Number (TIN) and, in relation to individuals, the date of birth must always be reported for each Account Holder and Controlling Person where this information is available in the records of the FI. In the case of New Accounts, this information is required to be collected in the self-certification and should therefore always be available (unless the Reportable Jurisdiction does not issue TINs or does not require TINs to be collected). Further information on TINs and their structures for each jurisdiction can be found on the [OECD website](#).

Please note that the CRS XML Schema User Guide indicates that the TIN and date of birth elements are “Optional (Mandatory)”. For the avoidance of doubt, this does not mean that it is optional to provide data in this element. In all cases described in the previous paragraph (and further explained in the CRS Regulations), it is mandatory to provide data in the TIN and data of birth elements.

F. FATCA Reporting Reminders

Any outstanding FATCA XML Returns are to be uploaded to the Portal as soon as possible. The DITC Portal will begin to accept FATCA XML Returns for the 2020 Reporting Period in May 2021.

1. Missing TINs

FIs are reminded that, where an Individual TIN is held it must be reported in the return.

In order to better understand the reasons why a Foreign Financial Institution (FFI) in a U.S. Model 1 IGA jurisdiction may not have been able to obtain a U.S. TIN, the IRS has developed a series of codes that may be used by an FFI to populate the TIN field in circumstances where the TIN is not available. The use of these codes is optional and does not mean that an FFI will not be at risk of being found significantly non-compliant due to a failure to report each required U.S. TIN. The IRS will take into account the facts and circumstances leading to the absence of the U.S. TIN, such as the reasons why the TIN could not be obtained, whether the FFI has adequate procedures in place to obtain TINs, and the efforts made by the FFI to obtain TINs.

The codes are as follows:

Code	Reason
22222222	Preexisting individual account with only U.S. indicia being a U.S. place of birth.
33333333	<p>New individual account that (1) has indicia of a U.S. place of birth, and (2) either:</p> <p>(a) has a change in circumstances causing the self-certification originally obtained at account opening to be incorrect or unreliable, and a new self-certification has not been obtained, or</p> <p>(b) was below the threshold for documenting and reporting the account at the time of account opening and subsequently exceeded the threshold, and a self-certification has not been obtained.</p>
44444444	<p>Preexisting individual and entity account that (1) has U.S. indicia other than a U.S. place of birth, and (2) either:</p> <p>(a) has a change in circumstances, causing the self-certification or other documentation originally obtained to be incorrect or unreliable, and a new self-certification or other documentation has not been obtained, or</p> <p>(b) was below the threshold for documenting and reporting the account at the time of account opening and subsequently exceeded the threshold, and a self-certification or other documentation has not been obtained.</p>
55555555	<p>New individual and entity account that has a U.S. indicia other than a U.S. place of birth, and (2) either:</p> <p>(a) has a change in circumstances causing the self-certification or other documentation originally obtained to be incorrect or unreliable, and a new self-certification or other documentation has not been obtained, or</p> <p>(b) was below the threshold for documenting and reporting the account at the time of account opening and subsequently exceeded the threshold, and a self-certification or other documentation has not been obtained.</p>
66666666	Preexisting entity account with account balance exceeding \$1,000,000 held by a passive NFFE with respect to which no self-certifications have been obtained, and no U.S. indicia has been identified in relation to its controlling persons.
77777777	For pre-existing accounts where there is no TIN available and the account has been dormant or inactive, but remains above the reporting threshold, also known as a “dormant account”. For reference, the U.S. defines “dormant account” in U.S. Treasury Regulations §1.1471-4(d)(6)(ii).

G. DITC Portal Technical Support

Users experiencing issues accessing the DITC Portal should resolve these themselves using the recommendations set out below. However, should they continue to experience issues, it is the responsibility of the FI to assign a User who can access the DITC Portal.

Note: Inability to log in and submit reporting will not be a defense for a failure to submit reporting.

1. Failure to receive activation e-mail due to DITC e-mail address and IP address not being whitelisted

An activation email may not be received due to a restriction at the recipient's end. If a User has not yet received their activation e-mail then they should have their IT Team ensure that the email address (no-reply@ditc.ky) and the IP address (74.222.80.174) from which their activation email has been sent, has not been blocked.

2. Failure to receive activation e-mail due to incompatible encryption or no encryption

For security reasons, the use of TLS 1.2 for delivery of activation emails (and PIN code e-mails) using one of the following TLS 1.2 cipher suites is required:-

- ECDHE_RSA_AES_256_GCM_SHA384
- ECDHE_RSA_AES_128_GCM_SHA256
- ECDHE_ECDSA_AES_256_GCM_SHA384
- ECDHE_ECDSA_AES_128_GCM_SHA256
- ECDHE_ECDSA_AES_128_CBC_SHA256
- ECDHE_ECDSA_AES_256_CBC_SHA384
- ECDHE_RSA_AES_128_CBC_SHA256
- ECDHE_RSA_AES_256_CBC_SHA384
- ECDHE_RSA_AES_256_CBC_SHA384
- DHE_RSA_AES_128_GCM_SHA256
- DHE_RSA_AES_256_GCM_SHA384
- DHE_RSA_AES_128_CBC_SHA
- DHE_RSA_AES_256_CBC_SHA
- AES_256_GCM_SHA384
- AES_128_GCM_SHA256
- RSA_AES_256_GCM_SHA384
- RSA_AES_128_GCM_SHA256
- RSA_AES_256_CBC_SHA256
- RSA_AES_128_GCM_SHA256

If a User has not yet received their activation email then they should have their IT Team review their email connectivity logs on their server to determine the cause of the delivery failure.

3. DITC Portal functionality issues resulting from an unsupported web browser

Certain browsers are not fully supported by the DITC Portal. The use of either of these browsers is therefore recommended:-

- Google Chrome
- Firefox.

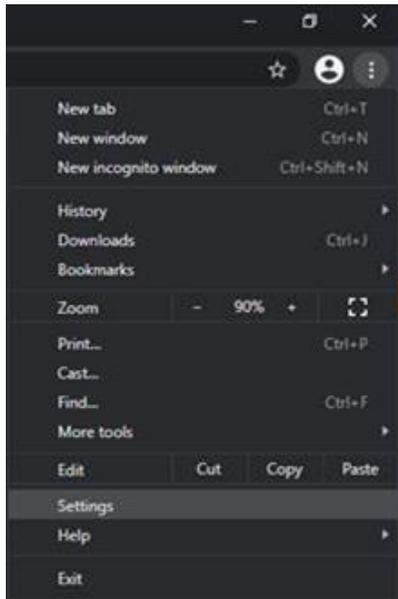
The current versions of the aforementioned browsers should be used.

4. DITC Portal functionality issues due to JavaScript being disabled

The DITC Portal requires the use of JavaScript. This should therefore be enabled in the browser being used (in accordance with the following instructions):-

a) *Enabling JavaScript in Google Chrome*

1. On the web browser menu click on the "Customise and control Google Chrome" and select "Settings".



2. Under "Privacy and security" click "Site settings".
3. Click on the "JavaScript" section and ensure that "Allowed (recommended)" is selected.
4. Close and reopen Chrome.

b) *Enabling JavaScript in Firefox*

1. In the address bar, type "about:config" and press Enter.
2. Click "Accept the Risk and Continue".
3. Type "javascript.enabled" in the search bar.
4. Double-click the preference or use the arrows to the right to toggle the value from "false" to "true".

II. Economic Substance

A. Economic Substance (ES) Reporting

Industry is advised that both the ES Return and the Form for an Entity Tax Resident in another Jurisdiction are available on the [DITC Portal](#). A model of these forms is also available in PDF format on the [DITC website](#) under the heading reporting.

The revised reporting deadlines, which apply only for this first year, are as follows:

Period End Date (for purposes of the ES Return)	ES Obligation	Deadline
31 December 2019 - 30 April 2020	ES return (all except IP Business)	30 April 2021
1 May 2020 - onwards	ES returns	12 months after the period end date
31 December 2019 - 29 February 2020	ES Return with Type Income: Relevant Activity - IP Business and Form for Entity Tax Resident in Another Jurisdiction	28 February 2021
1 March 2020 - onwards	ES Return with Type Income: Relevant Activity - IP Business and TRO	12 months after the period end date

Please note that the DITC regularly updates the [Practice Points](#) with common issues, please refer to this document before contacting the ES Team. Where you cannot find an answer to your question on the resources available on the website, please email the ES team on CaymanESPortal@gov.ky.

B. Economic Substance Notification

The ESN submission window for the financial year commencing in 2020 open. Entities are now able to submit their ESNs via CAP or CBP (as the case may be).

This notification is required as a prerequisite to filing an Annual Return and will be due annually. The ESN is based on the financial year of the Entity and not the calendar year. For further information, please refer to the User Guides ([Bulk](#) and [Manual](#)) available on the DITC website.

Industry should be aware that the submission window for the financial year commencing in 2021 is also now available in CAP. This is primarily to facilitate Entities who wish to file their ESN in advance of dissolving / winding up during the financial year which commences in 2021.

*** END ***