

UPDATE

CRS in the BVI – Obligations and enforcement

Update prepared by Sara Galletly (Cayman Islands).

This update provides a summary of the obligations of BVI financial institutions (**FIs**) under the Common Reporting Standard (**CRS**), as well as the enforcement powers of the BVI International Tax Authority (the **Authority**).

Introduction

With the British Virgin Islands (**BVI**) undergoing ongoing assessment by the OECD Global Forum¹ in relation to the effective implementation of the CRS, BVI FIs should prepare for enforcement action if they do not meet their obligations.

Obligations of BVI FIs

Under the Mutual Legal Assistance (Tax Matters) Act, Revised Edition 2020 (as amended, the **CRS Act**), BVI FIs are required to apply the CRS, which includes the following obligations:

- Register with the Authority via the BVI Financial Accounts Reporting system (**BVIFARS**) by 30 April in the first calendar year following the entity becoming a BVI FI, providing certain information including the contact details of a person authorised to be the FI's principal point of contact (**PPoC**) for all CRS purposes.
- Appoint a PPoC.
- Notify the Authority immediately upon any change to the information filed upon registration (or thereafter).
- Establish, implement and maintain written policies and procedures facilitating compliance with the CRS Act.
- Conduct due diligence on account holders and/or their controlling persons, including determining their jurisdiction of tax residence.
- File a return with the Authority containing the requisite information regarding reportable accounts, or a nil return where there are no reportable accounts maintained by an FI, on or before 31 May in the year following the calendar year to which the return relates.
- Maintain records of the steps taken to comply with the CRS Act and information obtained thereby for at least six years from the end of the year to which the information relates or during which the steps were taken.

Enforcement by the Authority

If an FI does not meet its obligations under the CRS Act, the Authority has a toolkit of options it may use to enforce compliance.

¹ The Global Forum on Transparency and Exchange of Information for Tax Purposes of the Organisation for Economic Co-operation and Development.

Information requests and inspection powers

The Authority may, where required to determine if information submitted to it by an FI was correct and complete, require a BVI FI to provide information (including electronic information) or documents to it or make that information available for inspection.

An FI's CRS policies and procedures must meet the requirements of the CRS Act and will be reviewed by the Authority's Compliance Unit. Accordingly, the Authority has the power to inspect or perform an inquiry into the due diligence procedures applied by a BVI FI.

Failure to comply with an obligation under the CRS Act where no specific penalty is imposed (see below) is an offence, leading to liability to a fine of up to US\$5,000 and/or up to two years' imprisonment on summary conviction or a fine of up to US\$100,000 and/or up to five years' imprisonment on conviction on indictment.

CRS offences

Each of the following is an offence which may lead to the imposition of a fine of up to US\$100,000 on conviction:

- Failure to register with the Authority.
- Failure of a BVI FI to establish and maintain CRS policies and procedures which are compliant with the CRS Act. In this regard, an FI will be deemed to have contravened the policies and procedures requirements where it:
 - knows or has reason to believe that a self-certification or documentary evidence relied upon as part of the due diligence procedures is inaccurate in a material way; and
 - files a return that relies upon the accuracy of such self-certification or documentary evidence.

Wilfully or knowingly providing false or inaccurate information to the Authority is also an offence, leading to liability to a fine of up to US\$5,000 and/or up to two years' imprisonment on summary conviction or a fine of up to US\$100,000 and/or up to five years' imprisonment on conviction on indictment.

How we can help

Mourant can assist BVI FIs in a number of ways, including:

- performing CRS health checks;
- confirming their CRS classification;
- acting as a secondary user in BVIFARS;
- providing CRS due diligence and reporting services; and
- assisting with compliance, inspections and remediation.

For further information, please contact your usual Mourant contact or one of the contacts named below.

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