

# Department for International Tax Cooperation



CAYMAN ISLANDS

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## 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. Communicating with the DITC

Before emailing the DITC, users should check the detailed resources available on the [DITC website](#). Here you will find the Acts, Regulations and Guidance Notes for each of the frameworks which the DITC operate. In addition there is a detailed [Portal User Guide](#).

For specific technical queries, please refer to the relevant FAQs / Practice Points ([CRS FAQs](#) (last update **16 September 2021**) and [ES Practice Points](#) (last update **8 December 2021**).

You will also note that the DITC periodically release explanatory notes or notes on specific forms (e.g. [Explanatory Note – CRS Undocumented Accounts](#) released on (**23 June 2021**) and the two Explanatory Notes for [CRS TINs](#) and [dates of birth](#) published on our website (**13 October 2021**).

## II. DITC Portal Update (NEW)

### A. FI Deactivations

The DITC Portal now has the functionality to deactivate a Financial Institution (FI) from the DITC Portal where the entity has ceased to exist or is otherwise no longer a Cayman Reporting FI. A form is available to the Principal Point of Contact (PPoC) to request an FI deactivation, and the [DITC Portal User Guide](#) has been updated (see pages 24-25) to provide guidance on how to fill out the form.

To deactivate an FI from the DITC Portal, all reporting obligations must be completed before the PPoC submits a deactivation request. These obligations include a CRS Return (if applicable), CRS Filing Declaration and CRS Compliance Form for each year the FI had reporting obligations.

#### **Evidence of dissolution**

Where an FI has ceased to exist, its PPoC must submit evidence that supports this claim. Examples include:

- Certificate of Dissolution, Strike-Off, or equivalent
- Trust deed that clearly indicates the FI Name and date of termination
- Directors resolution to terminate a cell of an SPC

#### **Change in classification**

Where an Entity is of the view that it should no longer be considered a Cayman Reporting FI, the evidence to be provided is expected to be in the form of a letter which:

- 1) explains the reason why the Entity was initially classified as an FI based on the definition of that term in the CRS;
- 2) explains the reason why the Entity is no longer an FI and from what date;
- 3) indicates how the Entity should now be classified (e.g. as a Passive or Active NFE) under the CRS; and
- 4) includes evidence supporting the claim, such as termination of an investment management agreement or self-certification forms.

## **Retention of Information**

When submitting an FI deactivation request, the PPOC is required to indicate the contact information of the person who will retain the FIs records for a period of 6 years following the date of deactivation from the DITC Portal. Record retention is required under Regulation 12(3) of the CRS Regulations, and is important to ensure that the Tax Information Authority is able perform its monitoring function and respond to requests from the jurisdictions to which CRS data has been exchanged.

## **FIs in liquidation**

An Entity does not cease to be classified as a Cayman Reporting FI for the sole reason of being in liquidation. In fact, in most cases residual assets and debtors remain, and realisation or recovery actions are being pursued the results of which may be distributed to Account Holders. Liquidators (or equivalent) must ensure that the FI continues to satisfy all of its obligations under Part 2 of the CRS Regulations. In particular, but without limitation, this includes the obligation to give the Authority a change notice regarding any User changes on the DITC Portal, any required reporting, and a deactivation request upon final dissolution or winding up.

## **B. CRS reporting correction process – technical changes**

The validation rules in the DITC Portal for submitting corrections to previously reported CRS data have changed to be better aligned with the OECD's [Common Reporting Standard User Guide](#). The changes relate to the technical specifications of the Reporting FI element where the data related to the Reporting FI has not changed but one or more Account Reports need to be corrected or deleted.

Where this is the case, the DocSpec for the Reporting FI element must now follow the rules as set out in the OECD's Common Reporting Standard User Guide. This includes the following:

- The DocTypeIndic must be set to OECD0. This indicates that no changes are made to the data related to the Reporting FI itself (e.g. its name or address).
- The DocRefId must be the same as the DocRefId used for the Reporting FI element in the most recent CRS XML Return submitted for the same reporting year and the same Reportable Jurisdiction. This is because there are no changes to the data in the Reporting FI element.
- There should not be a CorrDocRefId element. This is because the Reporting FI element is not being corrected or deleted.

The [DITC Portal User Guide](#) has been updated on pages 29-31 with more detailed instructions on how to submit corrections and deletions of CRS data. Users who are not using the CRS XML Generator Tool may need to update their processes and/or systems to ensure the reporting of corrections and deletions can be done in accordance with the latest technical guidance.

## **III. 2021 CRS Reportable Jurisdictions (NEW)**

An updated list of [CRS Reportable Jurisdictions](#) has been published in the Cayman Islands Gazette, Issue No.09/2022, on 31 January 2022. Jamaica, Kenya and Morocco have been added as Reportable Jurisdictions for the 2021 Reporting Period (reports due in 2022), while Kuwait has been removed from the list of Reportable Jurisdictions.

## **IV. Importance of correct classifications, notifications, etc. under the CRS & FATCA Regulations (reminder)**

As mentioned previously, 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 is currently matching 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.

FIs are advised that the DITC has commenced contacting the registered offices of these entities to obtain an explanation for this along with a request to take appropriate action.

## **V. Economic Substance**

### **A. Economic Substance (ES) Reporting (updated)**

#### **Form for Entity Tax Resident in another Jurisdiction (TRO Form)**

TRO Forms for successive reporting periods (i.e. a financial year following a financial year in respect of which a TRO Form has already been submitted by an entity) are now being accepted via the DITC Portal.

Responsible Persons, or any Secondary Users assigned by them for ES purposes, of entities that require to submit a TRO Form for a successive reporting period should log into their DITC Portal accounts and submit the TRO Form by the applicable deadline.

TRO Forms for successive reporting periods are based on the TRO Form submitted for the previous reporting period. Please refer to the updated version of the [DITC Portal User Guide](#) for guidance on how to complete and submit a TRO Form for a successive reporting period.

The submission deadline for TRO Forms is 12 months from the last date of the reporting period being reported on (regardless of the relevant activity(ies) conducted). For example, the submission deadline for entities that required to submit a TRO Form for a reporting period/financial year that ended on 31 December 2020 was 31 December 2021.

Please refer to the [DITC's Economic Substance Legislation and Resources](#) for more information. Please note that the [Practice Points](#) are regularly updated with frequently asked questions and so should also be referred to.

### **ES Return**

The form of ES Return is in the process of being updated to accommodate reporting under the ES Act by general partnerships, limited partnerships, exempted limited partnerships and foreign limited partnerships. The updated form of ES Return is expected to be added to the DITC Portal in Q1 2022.

## **B. Economic Substance Notification**

For entities/partnerships using the Corporate Administration Platform (CAP), 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/partnership and not the calendar year. For further information, please refer to the User Guides ([Bulk](#) and [Manual](#)) available on the [DITC website](#).

### **ESN and Partnerships**

In terms of the [International Tax Co-operation \(Economic Substance\) \(Amendment of Schedule\) Regulations, 2021](#), all general partnerships, limited partnerships, exempted limited partnerships and foreign limited partnerships must now submit ESNs on an annual basis.

For any general partnership, limited partnership, exempted limited partnership or foreign limited partnership that existed prior to 30 June 2021 (when the Regulations referred to above came into force) the first ESN that will require to be submitted by them will be for ESN Year 2022. This is due to the transitional nature of the Regulations as far as pre-existing general partnerships, limited partnerships, exempted limited partnerships and foreign limited partnerships are concerned. Their ESNs for ESN Year 2022 will be due by 31 March 2023.

Whereas for any general partnership, limited partnership, exempted limited partnership or foreign limited partnership that came/comes into existence on or after 30 June 2021 the first ESN that will require to be submitted by them will be determined by the date on which their first financial year commences. For example, if an exempted limited partnership was formed on 1 July 2021 and its first financial year covers the period commencing on 1 July 2021 and ending on 30 June 2022 then its first ESN Year will be ESN Year 2021 (and its ESN for that ESN Year will be due by 31 March 2022).

The smart form and bulk upload versions of the updated ESN are now available in CAP. General partnerships should contact the DITC for further information on how to submit the ESN.

**Key ESN changes for ESN Year 2021 (now available in CAP)** The DITC wish to provide industry with advance notice of some key changes which will apply to ESN year 2021 and going forward. Please note that the changes outlined below are not yet available in CAP, but are expected to be available in mid-October.

1. Where the tax resident outside the Islands exception (TRO) is claimed, the Entity will now be required to provide the "Date of Financial Year End" on the ESN.
2. Where the Entity is an investment fund, the following changes apply:

- a. The current question – “Check this box if the CIMA, FI or GIIN numbers provided below relate to another investment fund that directly invests or operates through the entity” will change to the following mandatory question – “The CIMA, FI and / or GIIN information provided below belongs to another investment fund that directly or indirectly invests or operates through the Entity”. Response available is “Yes” or “No”.
- b. Where the answer is Yes, the following new questions are asked:
  - i. Specify name of investment fund – free text field with 100 character limited
  - ii. Specify jurisdiction of investment fund – country code drop down

### C. Importance of correct classifications, notifications, etc. under the ES Act (reminder)

In the interest of promoting a robust culture of compliance with the ES Act, the DITC recommends that all registered office service providers remind all client entities/partnerships to carefully double-check that they have been correctly classified on the Economic Substance Notification (“ESN”) submitted via CAP for the purposes of the ES Act and are complying with all applicable obligations.

Where an error of classification is identified in any ESN, the error should be corrected by the registered office service provider (Agent) as soon as practicable in accordance with ESN Practice Point 13 on p. 3 of the [Practice Points document](#). The Agent should also ensure that any ESN for a client’s next financial year is consistent with any corrections the Agent made to the client’s previous ESN, subject to any change in circumstances. Likewise, the Agent should check whether the client’s Responsible Person has made any changes to its classification for ES purposes on the DITC Portal so that can be reflected in the next ESN. However it should be noted that ESNs can only be corrected (in CAP) if the ESN Year is currently available in CAP (with both ESN Year 2021 and ESN Year 2022 currently being available) and the affected entity is currently active in CAP (i.e. is not be pending strike off or such like). In all other cases it will be necessary for the registered office service provider to contact the DITC for guidance on how the error should be corrected/addressed. In which case the registered office provider should email the DITC’s ES team on [CaymanESPortal@gov.ky](mailto:CaymanESPortal@gov.ky).

The DITC also recommends that where the investment fund exception is claimed on the ESN, the entity/partnership provides its CIMA, GIIN and/or FI number(s). If the entity/partnership does not have a CIMA, GIIN or FI number but another investment fund that directly or indirectly invests or operates through the entity/partnership has these numbers, the entity/partnership should check the relevant box on the ESN and input the CIMA, GIIN or FI number of that investment fund.

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

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