



## CRS Obligations for Investment Managers and Advisers

Generally, under the Common Reporting Standard (**CRS**) investment managers and advisers are classified as 'Investment Entities' and are 'Reporting Financial Institutions' for CRS purposes. As a result, they have certain obligations to fulfil under Bermuda CRS legislation. This differs from the position under FATCA which allows for most investment managers and advisers to be classified as 'Non-Reporting Financial Institutions'.

Under the Bermuda-US Inter-Governmental Agreement on FATCA, an Investment Entity established in Bermuda that is a Financial Institution solely because it (i) renders investment advice to, and acts on behalf of, or (ii) manages portfolios for, and acts on behalf of, a customer for the purposes of investing, managing, or administering funds deposited in the name of the customer with a Financial Institution (other than a Non-participating Financial Institution) is a Non-Reporting Bermuda Financial Institution treated as a certified deemed-compliant FFI for purposes of the U.S. Internal Revenue Code and have no notification or reporting obligations for FATCA purposes.

Under the CRS, the term "Investment Entity" means any entity:

- a) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:
  - (i.) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
  - (ii.) individual and collective portfolio management; or
  - (iii.) otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; or
- b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph (a) above.

According to the CRS, any equity or debt interest in an Investment Entity is considered a "Financial Account". However, Financial Accounts do not include any equity or debt interests in an Entity that is classified as an Investment Entity solely because it (i) renders investment advice to, and acts on behalf of, or (ii) manages portfolios for, and acts on behalf of, a customer for the purposes of investing, managing or administering Financial Assets deposited in the name of the customer with a Financial Institution. Thus, accounts with an investment adviser or an investment manager are not typically classified as Financial Accounts under the CRS. This is known as the "solely because" test which models the corresponding FATCA test, although it is applied differently under the CRS in that there is no general exemption under the CRS for investment managers or advisers (even though they may not hold Financial Accounts).

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Equity or debt interests that are generally considered Financial Accounts under the CRS include equity or debt interests in an Investment Entity that is a professionally managed investment entity, or that functions or holds itself out as a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in Financial Assets.

It is also important to note that, under the CRS, any equity or debt interests in a Custodial Institution, Depository Institution, Investment Entity (other than an investment adviser or an investment manager), or Specified Insurance Company, that were established with a purpose of avoiding reporting will be classified as Financial Accounts under the CRS.

Bermuda's CRS Guidance confirms that Financial Institutions which are not maintaining any Financial Accounts have no reporting responsibilities. It also specifically states that Investment Entities that are providing investment advisory or management services and meet the "solely because" test will be regarded as not having any Financial Accounts, and therefore will not have any reporting obligations. Further, Bermuda does not require the filing of nil reports (although a Reporting Financial Institution may opt to do so).

Nevertheless, although they may not have CRS reporting obligations, investment managers and advisers classified as Investment Entities should be aware that they do have the following obligations under the Bermuda CRS framework:

- Registration/notification requirement to enrol on the Bermuda Tax Information Reporting Portal (**Portal**) (and provide Primary User details) by 14 July, 2017
- Implementation of written policies and procedures appropriate for the nature of the business which should also reflect any delegation to service providers

A helpdesk has been implemented by the Ministry for issues or queries relating to the Portal, as detailed in the User Guide issued by the Bermuda Government.

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Bermuda Reporting Financial Institutions should speak with their tax and legal advisers if they are uncertain about any of their obligations under the CRS or any other international exchange of information regime. This article is intended for informational purposes only and is not a substitute for legal advice. For further information on the matters referred to in this article, please contact Stephanie P. Sanderson or your usual contact at BeesMont Law:



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