



THE CAYMAN ISLANDS  
BANKERS' ASSOCIATION

# Cayman Islands Bankers' Association

January 2015

P.O. Box 676 Grand Cayman KY1-1107

T: (345)949-0330 F: (345)945-1448

email: ciba@cibankers.org

## Looking beyond FATCA

At the end of November last year CIBA welcomed Duncan Nicol, Director, Department of International Tax Cooperation, to talk about current and future tax initiatives that will affect the Cayman Islands. Mr Nicol's presentation at our social event at Grand Old House was entitled 'Beyond FATCA' and gave a comprehensive insight into regulatory initiatives emanating from onshore that were in the pipeline for Cayman.

Mr Nicol began his presentation by stating that the global landscape in taxation had changed, and was changing, and it was doing so at an unprecedented pace.

### FATCA: Where are we now?

The main legislative framework to implement FATCA is already in place in the form of the primary legislation, which amended the Tax Information Authority Law to expressly permit all forms of exchange of information for tax purposes, including automatic exchange of information (AEOI), he said, plus regulations for both US FATCA and

UK 'FATCA', as well as Guidance Notes.

Mr Nicol added that the final main component in any AEOI reporting regime was the reporting system. "AEOI is not only 'automatic' EOI, it is 'automated'," he said.

Deloitte, in conjunction with Vizor (software) and Kirk iSS (hardware) was working on providing the IT solution in respect of the technical modalities for both FATCA and the Common Reporting Standard (CRS). Work has already commenced, Mr Nicol said, and financial institutions will be able to make their notifications and reports to the Tax Information Authority through the AEOI portal, which will open in early 2015.

### FATCA notification and reporting dates

- The regulations required notification by financial institutions to enable the TIA to establish the Cayman financial institution reporting world that will be filing reports. Financial institutions are required to notify the competent authority that they are a financial institution with reporting obligations. This is a one-off notification.
- Current notification date is 31 March, but the DITC has proposed to recommend a change of the date prescribed in regulations 10(3) and 14(3) of the UK and US Regulations, respectively, to 30 April.
- Other aspects of the regulations will not be affected, including annual data reporting no later than 31 May

### Automatic Exchange of Information/ OECD Common Reporting Standard

The G20 has a mandate for AEOI to be the new global standard, so the single new standard [the Common Reporting Standard



*Duncan Nicol, Director, Department of International Tax Cooperation*

(CRS)] for automatic exchange of tax information was endorsed by all OECD member countries, along with several non-member countries, earlier this year.

Added to the G20 and the OECD, there are over 50 early adopter jurisdictions, Cayman included, which have committed to implement CRS to an agreed timetable with information exchanges in 2017, Mr Nicol explained.

CRS is modelled on the FATCA IGA Model 1, so financial institutions will be able to leverage off FATCA systems and procedures for CRS. However, differences will need to be catered for. For example:

- US FATCA is based on citizenship; CRS is based upon tax residence.
- US FATCA has a de minimis exclusion for accounts with lower values; CRS does not. All accounts must therefore be reviewed and more may be reportable under the CRS.
- US FATCA has withholding; CRS does not.

**See Page 2**



*Mr. Mark McIntyre, President, CIBA*

## From Page 1

- CRS is on a different timeline from US FATCA; for an early adopter such as Cayman, this involves first exchanges of 2016 data in 2017.

Cayman can anticipate CRS regulations in the course of 2015.

### UK 'FATCA'

UK 'FATCA' is governed by Cayman's domestic regulations and guidance and, for

# Looking beyond FATCA

immediate purposes, 2015 data will be reported in 2016.

However, going forward, the net effect of CRS is that the UK IGAs will have a phased merger into the CRS, Mr Nicol explained.

From a user perspective, both government

and industry, this will avoid duplication of reporting and will result in a holistic approach to the CRS.

The technical aspects of this transition will be worked out during the course of 2015 and advisories will be issued to industry, he confirmed.

## Global Developments on Tax and Transparency

The Global Forum is now the largest tax body in the world with 123 member jurisdictions and, since the first iteration of the Global Forum, Cayman has taken a leading role.

Cayman's current positions as Vice-Chair of the Peer Review Group and a member of the Steering Group, which is the governing body of the Global Forum, were confirmed in the annual plenary meeting in Berlin last month, Mr Nicol confirmed.

We also continue to be a member of the AEIOI group, and an observer delegate to the OECD Working Party 10, which is the body responsible for producing the CRS. We have also engaged as expert assessors on peer

reviews, and as presenters and trainers at OECD events. In 2013, the Peer Review Group was tasked with a review of the existing Terms of Reference for EOI on request. As a result, proposals for the revision of the Terms of Reference were accepted and endorsed by the Global Forum Plenary in Berlin last month.

In 2015 work will be undertaken by the Peer Review Group to finalise the detailed changes. All jurisdictions will undergo a new round of peer reviews – which are the 'phase 3 reviews' – commencing in 2016. It is anticipated that Cayman will be scheduled as one of the first jurisdictions to be reviewed. Consequently, preparations for this review will begin soon to ensure that our laws and practices are in line with the revised standard. There will also be a peer



*Mr. Mike McWatt, CIBA Immediate Past President and Mr. Mahes Nagendram, CIBA Treasurer*

review of AEIOI. When the G20 endorsed AEIOI as the new global standard, they mandated the Global Forum to monitor and review the implementation and practice of AEIOI.

This year the AEIOI group started creating Terms of Reference and methodology for these peer reviews. Further work remains to be done to finalise the review process but it is anticipated that this will be completed in 2015, with a schedule of reviews following shortly thereafter.

"With this coming down the line, I think it goes without saying that what we do now to prepare for, implement and practice AEIOI, be it FATCA or CRS, is critical to our success in these reviews. That is why I encourage all of us to broaden our view and to be forward looking," he said.

### Ongoing G20 and OECD Initiatives: Base Erosion and Profit Shifting - BEPS

BEPS refers to laws and practices which cause erosion of countries' tax bases and to the moving of profits to avoid tax. This is an OECD project; it is not part of the work of the Global Forum, but its impact on jurisdictions such as Cayman must be carefully monitored.

Mr Nicol said Cayman was doing this, but they strongly encouraged industry to raise its awareness level on this large and complex project which is on a very aggressive timeline, he said.

15 substantive action items were being delivered to the G20; some were already complete, the remainder was scheduled for 2015. Not all may be of immediate relevance but worthy of note is the focus in 2015 on the role of zero tax rate jurisdictions in the international system and action item on Harmful Tax Practices, Mr Nicol stated.