

ADVISORY | INDUSTRY INFORMATION

FATCA / CRS update: Jersey consultation announced

The Minister for External Relations of the Government of Jersey (GoJ) recently announced a public consultation seeking views on a number of proposed changes to the operation of the Common Reporting Standard (CRS) and the US Foreign Account Tax Compliance Act (FATCA) in Jersey (the **Consultation**).

Below, we summarise the Consultation's proposed changes and their impact on the current FATCA and CRS regulatory regime in Jersey, together with further key developments.

Proposals

The proposed changes are to ensure that Jersey legislation implementing both the CRS and FATCA (the **AEOI Regulations**) remain fully in line with global expectations, and to address concerns raised by industry about a potential lack of clarity in respect of the imposition of penalties under the AEOI Regulations.

Alignment of CRS framework with global expectations

Powers of Revenue Jersey to access premises and review documents

The Consultation seeks to ensure that Revenue Jersey has the requisite power, where required, to access documents that are not held in a business premises and are not considered to be business documents.

This proposed amendment is intended to clarify that a trustee of a trust who is not acting on a professional capacity is still subject to the investigative powers of Revenue Jersey. Currently, a trustee not acting in a professional capacity may not be considered to be carrying on a business and, therefore, may not be subject to Revenue Jersey's investigative powers, as it may not be considered to have a business premises and/or business documents.

Scope of the anti-avoidance rule

The Consultation proposes the amendment of the CRS Guidance Notes to clarify that the CRS anti-avoidance measure – which allows Revenue Jersey to ignore arrangements with a main purpose of avoiding the CRS in Jersey – is not limited to arrangements entered into by a person who is based in Jersey.

Clarification of the imposition of penalties under the AEOI Regulations

The consultation proposes the amendment of the AEOI Regulations to address feedback received that the penalty regime thereunder is unduly opaque by:

- clarifying that, where an obligation or penalty is imposed on an entity without legal personality, the meeting of the obligation or the payment of the penalty is a requirement of each of the following (noting that that the recovery of any penalty imposed from the assets of the relevant arrangement is not precluded):
 - in the case of a trust, each trustee on a joint and several basis,
 - in the case of a partnership, the partner identified as the responsible partner under the Income Tax (Jersey) Law 1961, and
 - in the case of a Limited Liability Company, the secretary, as defined in the Limited Liability Companies (Jersey) Law 2018;
- introducing a new standalone penalty for late filing of returns (£250 for FATCA returns and £300 for CRS returns); and
- amending the existing penalty for a failure to comply with the AEOI Regulations to allow the Comptroller discretion in applying a penalty of up to £250 and up to £300 in respect of breaches of FATCA and CRS requirements respectively, which will be supported by Comptroller guidance setting out the manner in which penalties will be calculated.

Future review of the AEOI Regulations

In November 2023, Jersey (along with a number of other jurisdictions, including Guernsey) committed to working towards a common global implementation date of 1 January 2026 for the crypto-asset reporting framework (CARF), a new global minimum standard on the automatic exchange of tax information by crypto-asset service providers on their customers, and the revised CRS, which will bring crypto-assets within the scope of the CRS for the first time.



The GoJ intends to consult on the implementation of these rules in autumn of 2024, before introducing the necessary implementing legislation in 2025. The GoJ will also use this consultation to seek views on what, if any, amendments to Jersey's framework around reporting, compliance and enforcement of the CRS and/or FATCA should be made.

Next steps

The Consultation runs until 18 March 2024 and feedback is sought from key stakeholders (including financial institutions, industry associations, practitioners and any related parties). It is expected that the States Assembly will consider the responses to the consultation in the summer of 2024.

Further change is coming, and our Regulatory & Risk Advisory team will keep stakeholders updated as the CRS and FATCA regulatory framework in Jersey, and across the Channel Islands, continues to develop.

About Walkers' Channel Island Regulatory & Risk Advisory team

We have a team of regulatory experts spanning all practice areas who regularly advise on all aspects of regulation in the Channel Islands, including financial services, AML, sanctions, data protection, tax, economic substance, FATCA and the CRS.

Further information

We practice Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Irish and Jersey law from an international network of ten offices across Europe, the Americas, Asia and the Middle East. For more information, please get in touch with your usual contact at Walkers or any of the contacts in your region listed below.



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