KPMG AEOI Updates & Tracking Service
FATCA/CRS Alert

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Guernsey: Issued Bulletin 2021/6

On 17 December 2021, the Guernsey Revenue Service issued Bulletin 2021/6 under the provisions of Regulation 10 of the Income Tax Regulations, 2014 and the provisions of Regulation 12 of The Income Tax Regulations, 2015.

Bulletin 2021/6 includes the following:

- Legislative & Regulatory Changes: Bulletin 2021/6 provides more information on the legislation and regulatory changes enabling Revenue Service to implement additional compliance measures to:
  - Provide necessary directions to institutions for the purposes of securing compliance with the international tax provisions;
  - Appoint independent inspectors to investigate a relevant institution which is suspected of violating the international tax provisions; and
  - Require Financial Institutions (FIs) to report all account holders for which they have been unable to obtain valid self-certification for the purposes of CRS and/or FATCA due diligence procedures. It also enables the Revenue Service to make relevant enquiries and, if necessary, serve a notice to FIs asking them to freeze the account until a valid self-certification is obtained.
- Disclosure or discovery of non-compliance: When an FI discovers any issues relating to their compliance obligations, the FI must provide full details of any unresolved non-compliance issue following its discovery. Within a short period of time, the FI should provide a report of the action(s) being taken and the timescale to rectify or remediate the issue. Bulletin 2021/6 lists a number of factors that the Revenue Service will consider to determine the actions the FI needs to take.

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— Directions to Secure Compliance (Section 171D of the Law): Due to the seriousness or risk presented by a matter, the Revenue Service will provide specific directions to an FI and the following will apply: — the directions will be made in a written notice to the FI, — the directions notice will clearly explain what the FI is required to do (or not to do); and — where required, will provide the timeframe for completion of the directions (noting that a notice of directions that does not specify a timeframe for which it applies remains in force until it is revoked by the Revenue Service). — Appointment of an Inspector (Section 171E of the Law): If the potential seriousness and/or risks posed by the reported or discovered non-compliance are of a significant nature then the Revenue Service will instruct the FI to appoint an independent external compliance professional ("an inspector") at their expense. — Informing the Revenue Service of a Failure to Obtain a Valid Self-Certification and Freezing Orders (section 171F of the Law): — Informing the Revenue Service of a Failure to Obtain a Valid Self-Certification (New Accounts): FIs should obtain a self-certification at the time of account opening and must validate the self-certification within 90-days of the account being opened. An exception is provided where the day 91 reporting deadline falls in January of any year. The Revenue Service will accept the report being made on or before 31 January in that year. In exceptional cases where it might not be possible to obtain the self-certification at the time of account opening, it is expected that the self-certification will be obtained as soon as possible and will be validated within the 90 days timeframe. — Informing the Revenue Service of a failure to provide self-certification (Pre-existing Accounts): The Revenue Service realises that "change of circumstance" triggers will continue to occur on pre-existing accounts. It is evident that for some pre-existing accounts, FIs have been seeking to obtain self-certifications for some time with the account holder continuing to fail to comply with the ask (potentially leading to a scenario where the account is reported as undocumented). Hence there will continue to be cases of pre-existing accounts that will require to be reported under section 171F of the Law. Where the trigger event occurred on or after 1 January 2022 and the self-certification remains unresolved either the later of the end of the calendar year, or 90 days from the date of discovery, a report will be required to be submitted to the Revenue Service on or before 31	

January in the following year or on or before the 91st day of discovery, whichever is later.

Where the requirement to obtain a self-certification of a pre-existing account occurred or was used prior to 01 January 2022 and a valid self-certification was not obtained (which could have resulted in the account being reported as undocumented annually or referred as "legacy cases"), there is a requirement for each of those accounts to be reported under the provisions of section 171F of the Law.

The Revenue service further acknowledges that for some FIs there might be several legacy cases and, if the FI is unable to report those accounts by 01 January 2022, the Revenue service is prepared to consider those cases as compliant as long as they are submitted before 31 March 2022.

- Form and manner of reporting self-certification to the Revenue Service: FIs are required to use the secure Information Gateway Online Reporter (IGOR) messaging portal to submit the information of each account that is required to be reported.

- Notices requiring additional information and Freezing Orders (section 171F of the Law): Accounts which do not provide a valid self-certification will not necessarily result in a freezing order being issued by the Revenue Services to the FI, rather the freezing order is one of the options available with the Revenue Service.
  The information required in the report made under section 171F of the Law will provide the Revenue Service with details of the non-compliant Account Holders/controlling persons and the possible risks they pose to the accuracy of the FATCA/CRS reporting. The Revenue Service may then require the FIs to provide additional information and will work with the FIs to help them resolve issues with non-compliant account holders.

- Application: The Revenue Service recognises the potential impact of implementing necessary measures to comply with freezing orders and will carefully consider the facts and circumstances on a case-by-case basis. It is expected that these measures will only apply in the most serious cases.

- Implementation: Although the provisions came into effect from 15 July 2021, the Revenue Service understands that additional time was required to communicate the practical application of these provisions (as set out in this Bulletin). Hence, the Revenue Service will apply these provisions from the beginning of January 2022.

- Right of Appeal: An FI wishing to make an appeal against any of the decisions made by the Revenue Service must do so by giving a notice in writing within 30 days of the date of the Revenue Service's decision mentioning the grounds of the appeal.

— Information: The Bulletin provides a link to Revenue Service CRS & FATCA webpages, which contain information on the various regulations and laws. — Summary of Implementation Timeline: The Bulletin provides a summary of the timeline for implementing each activity. — Frequently Asked Questions (FAQs): The Bulletin includes an FAQ section, which summarises potential FI queries along with possible solutions.	
Reference: Bulletin 2021/6 [PDF 193KB] For information on KPMG's global AEOI network professionals, please email GO-FM AEOI Program Support. For more information on KPMG AEOI Updates & Tracking Service, please see here. For additional summaries of the latest AEOI developments, please visit KPMG's TaxNewsFlash-FATCA/IGA/CRS Insights page, here.	

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