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GUIDANCE NOTE
OGC No. 02/2024

Reference	**OGC No. 02/2024**
Title	**Common Reporting Standard**
Sub Title	**Trust - Due Diligence and Reporting Obligation**
Purpose	**Summary of the Common Reporting Standard Due Diligence and Reporting obligations concerning Trust**

Income Tax (Automatic Exchange of Information) Regulations, 2017

Common Reporting Standard – Due Diligence & Reporting Obligations for Trusts

The Barbados Revenue Authority ("The Authority") has penned this guidance note to provide Reporting Barbados Financial Institutions ("RBFIs") with guidance on the required due diligence and reporting obligations concerning trusts under the Common Reporting Standard ("CRS").

Trusts are one of the classes of entities governed under the CRS. A Trust may be either:
- a RBFI; or
- a Non-Financial Entity ("NFE") that maintains a Financial Account with a RBFI.

Determining whether a trust is a Reporting Barbados Financial Institution or a Non-Financial Entity
The most likely scenario in which a trust will be deemed an RBFI occurs where it falls within the definition of an Investment Entity as described in ***Section VIII, paragraph A(6)(b)*** of the CRS. This is the case when a trust has gross income primarily attributable to investing, reinvesting, or trading in Financial Assets and is **managed by** another Entity that is a Financial Institution ("FI"). This also includes a trust that is a Collective Investment Vehicle or other similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in Financial Assets.

The words "*managed by*" imply that the FI has some discretionary authority to manage the assets of the trust, either in whole or in part and the words "*primarily attributable to investing…*" imply that the gross income attributable to the said activities of the trust should amount to 50% or more of the trust's gross income during the shorter of:

1. *The three-year period ending on 31 December of the year preceding the year in which the determination is made, or*
2. *The period during which the trust has been in existence.*

Where a trust is not a FI, it is a NFE. A NFE will either be an active or passive NFE depending on its activities. It is possible, although perhaps less common in practice, that a trust could qualify as an active NFE, for example, a trust that is a regulated charity or a trading trust carrying on an active business.

If a trust is not an active NFE, it is a passive NFE. In addition, where a trust holds a Financial Account with a RBFI, the RBFI must treat the trust as a passive NFE and carry out due diligence and reporting in respect of the trust and its Controlling Persons (beneficial owners). In accordance with the Common Reporting Standard.

Reporting Obligations for Trusts – Reporting Financial Institution

A trust that is a FI will be a Reporting Financial Institution ("RFI") if it is resident in a Participating Jurisdiction and does not qualify as a Non-Reporting Financial Institution. A trust is resident if it is subject to tax in the jurisdiction of the Participating Jurisdiction. This will be the case if, for example, a trustee is resident in the jurisdiction, or the trust is otherwise subject to the laws of the jurisdiction.

Where there is more than one trustee and the trustees are resident in more than one jurisdiction, the trust will be a RFI in each Participating Jurisdiction in which a trustee is resident. In other words, if the trustees were each resident in different jurisdictions, the trust would be a RFI in each of those Participating Jurisdictions, and will, *prima facie*, have due diligence and reporting obligations in each of those Participating Jurisdictions. However, the Standard provides relief from such multiple jurisdiction obligations, if the trust reports all the information required to be reported pursuant to the CRS, with respect to Reportable Accounts maintained by the trust in one Participating Jurisdiction because it is resident for tax purposes in that jurisdiction. In other words, the trust may report in one Participating Jurisdiction and not be required to report in any other jurisdiction.

Separately, the Standard also provides for a category of Non-Reporting Financial Institution ("NRFI") available to a trust if the trustee of the trust is a RFI and reports all information required to be reported with respect to all Reportable Accounts of the trust ("Trustee-Documented Trusts"). In this case, the trustee has taken on the responsibility for due diligence and reporting on behalf of the trust.

Finally, a trust categorized as a FI may not be an RBFI if it qualifies under another category of NRFI. For example, in the case of retirement funds, whether broad- or narrow-participation.

A trust that is a RBFI must identify and report on its Financial Account holders. In the case of a trust, Financial Accounts are defined by the CRS as "a debt or equity interest" in the trust. The Equity Interests are held by any person treated as a settlor or beneficiary of all or a portion of the trust, or, any other natural person exercising ultimate effective control over the trust. The reference to any other natural person exercising ultimate effective control over the trust, at a minimum, will include the trustee and the protector as an Equity Interest Holder. Furthermore, a discretionary beneficiary will only be treated as an Account Holder in the years in which it receives a distribution from the trust. If a settlor, beneficiary or other person exercising ultimate effective control over the trust is itself an Entity, that Entity must be examined (including any further intermediate Entities), and the ultimate natural Controlling Person(s) behind that Entity must be treated as the Equity Interest Holder.

Reporting Obligations for Trusts – Non-Financial Entities ("NFEs")

If a NFE holds an account with an RBFI, the RBFI is required to report the account under the CRS.

Accounts are reportable if either:

1. The trust is a Reportable Person; or
2. The trust has one or more Controlling Persons that is a Reportable Person.

RBFIs are required to collect sufficient information about Entity Account Holders to determine whether they are any Controlling Persons that are Reportable Persons.

In the case of a trust, the term "Controlling Persons" means:

i. the settlor(s);
ii. the trustee(s);
iii. the protector(s) (if any);
iv. the beneficiary(ies) or class(es) of beneficiaries, and;
v. any other natural person(s) exercising ultimate effective control over the trust.

The settlor(s), the trustee(s), the protector(s) (if any), and the beneficiary(ies) or class(es) of beneficiaries, must always be treated as Controlling Persons of a trust, regardless of whether or not any of them exercise control over the trust. Where the settlor or beneficiaries of a trust that is an NFE are themselves entities, the RFI must identify the natural person(s) exercising control of that entity.

Due Diligence Obligations

The RBFI must apply the due diligence rules as outlined in the CRS (for pre-existing and new accounts) in order to ascertain the identity and residence of the account holders to determine if the account held by the trust is a Reportable Account. RBFIs may rely on information collected pursuant to AML/KYC procedures to identify the Controlling Persons.

RBFIs must:

1. **collect prescribed information** about the foreign tax residents and accounts. This generally includes:

- identifying information (on Controlling Persons) - name, address, foreign taxpayer identification number(s) or equivalent, and date of birth information for the relevant foreign tax resident who is a Controlling Person. Where a Controlling Person of a trust is an entity, the RBFI must identify the natural person(s) exercising control of that entity;

- identifying information (on a trust entity) - name and identifying number of the trust; and

- identifying Financial Account information - account balance, and various prescribed types of payments or credits to the account (or with respect to the account).

2. **report this information** annually to the Barbados Revenue Authority by **July 31** of the relevant year.

Account holder	Pre-existing accounts maintained as at June 30, 2017	New accounts opened on or after July 1, 2017
Trusts	Generally able to rely on information already on file for indicators that the trust or its Controlling Persons is a relevant foreign tax resident/s	Required to ask the trust account holder and all Controlling Persons to 'self-certify' whether it and any of its Controlling Persons is a relevant foreign tax resident/s at the point of onboarding.

Reporting the Relevant Information: Trusts - RBFIs

Where a trust is a RBFI, the RBFI will report the account information and the financial activity for the year with respect to each account maintained by the trust (or, as explained earlier in this Guidance Note in relation to Trustee-Documented Trusts, a trustee that is a Reporting Financial Institution may do this on behalf of the trust). The account information includes the identifying information for each Reportable Person who is a Controlling Person (such as name, address, residence, taxpayer identification number, date of birth and account number). It is possible that a trust that is a RBFI will not have an account number for each of the Equity or Debt Interest holders. The trust should in that case use a unique identifying number that will enable the trust to identify the subject of the report in the future.

Reporting the Relevant Information: Trusts - Passive NFEs

In respect of a trust that is a passive NFE, an RBFI maintaining an account for the trust must report on each Reportable Person as identified through the conduct of the due diligence procedures required by the CRS. Where the RBFI has information available that identifies the type of each Controlling Person (i.e. whether it is the settlor, trustee, protector or beneficiary), this information is also expected to be reported. Including this information in reports will significantly increase the usefulness of the data to the receiving jurisdiction and benefit the Controlling Persons themselves due to the increased clarity in relation to their status.[1]

[1] *For additional guidance, please see Section IVf of the [Common Reporting Standard XML Schema User Guide - June 2019] on the Authority's Global Relations CRS Resources website.*

Reporting the Relevant Financial Information

The financial information to be reported will be the account balance or value of the account held by the equity interest holder; and the value of any payments made or credited to them in the year. Each Controlling Person/equity interest holder is attributed the entire value of the account unless they are a discretionary beneficiary only (in which case the value of their account will be NIL) or they have a defined equity interest; as well as the total amounts paid or distributed to them during the year.

The equity interests in a trust are deemed to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust (this will include the trustee as an equity interest holder). A discretionary beneficiary will only be treated as an account holder in the years in which he/she receives a distribution from the trust. RBFIs should obtain sufficient information concerning the beneficiary (ies) to satisfy the RBFI that it will be able to establish the identity of the beneficiary (ies) at the time of the payout or when the beneficiary (ies) intends to exercise vested rights. That occasion will constitute a change in circumstances and will trigger the relevant procedures.

Intermittent distributions to discretionary beneficiaries by a trust that is a Reporting Financial Institution

A Reportable Person will be treated as a beneficiary of a trust if they receive, directly or indirectly, a discretionary distribution from the trust. Indirect distributions by a trust may arise when the trust makes payments to a third party for the benefit of the beneficiary. For example, where a trust pays the tuition fees or repays a loan taken up by another person are to be considered indirect distributions by the trust.

Indirect distributions also include cases where the trust grants a loan free of interest or at an interest rate lower than the market interest rate or at other non-arm's length conditions. In addition, the write-off of a loan granted by a trust to its beneficiary constitutes an indirect distribution in the year the loan is written-off.

> *Example*: If a loan was made to a beneficiary on 1 January 2023 of $10 000 on interest free terms when the comparable market rate of interest is say 5%, the reportable amount is $10 000 in 2023, plus $500 for that year and in each subsequent year until the loan is repaid. If in 2028 the same loan was forgiven, the amount written off would be reported as a gross distribution in 2028.

> ***N.B.***: Gross amounts are reported without offset and it is up to the tax authority receiving the information to ascertain what net amount may be taxable.

In all of the above cases the Reportable Person will be person that is the beneficiary of the trust receiving the indirect distribution (i.e. in the above examples, the debtor of the tuition fees or the recipient of the favourable loan conditions).

Account Closures

Where the Financial Account held by the trust is closed during the year, the financial activity to be reported includes both the fact of closure of the account and the gross payments made to the Account Holder during the relevant reporting period.

Controlling Person	Account Balance or Value	Gross payments
Settlor	Total account balance or value	Gross payments made or credited as per **Section I.A** of the CRS
Trustee	Total account balance or value	Gross payments made or credited as per **Section I.A** of the CRS
Beneficiary: mandatory	Total account balance or value	Gross payments made or credited as per **Section I.A** of the CRS
Beneficiary: discretionary on years where there is a disbursement	Total account balance or value	Gross payments made or credited as per **Section I.A** of the CRS
Protector (if any)	Total account balance or value	Gross payments made or credited as per **Section I.A** of the CRS
Any of the above, if the account was closed	Total account balance or value	Gross payments made or credited until the date of account closure as per **Section I.A** of the CRS

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