

BVIFARS Portal - Live January 2024

From January 2024, all relevant entities with reporting obligations in relation to the United States ("US") Foreign Account Tax Compliance Act ("FATCA"), Organisation for Economic Co-operation and Development (the "OECD") Common Reporting Standards ("CRS") and Country by Country Reporting ("CbCr") (each as implemented in British Virgin Islands ("BVI") law) will have to pay an annual fee of US\$185 to use the BVI Financial Accounting Reporting System ("BVIFARS") portal to submit FATCA, CRS and CbCr reports.

Starting 1 June 2024, payment must be made **by 1 June each year** through the BVIFARS portal by direct debit, Visa, ATH or Master Card.

Background – OECD Peer Review

This change comes after the OECD published a Peer Review of the Automatic Exchange of Financial Account Information 2022 ("AEOI Report") setting out effectiveness ratings for 99 jurisdictions committed to starting automatic exchange of information ("AEOI") in 2017 or 2018, including the BVI.

The BVI is one of 15 jurisdictions to be rated as 'Partially Compliant', in particular in relation to the effectiveness of the implementation of the AEOI standard in practice, implementation of BVI's compliance strategy and verification activities, monitoring of key information points and with respect to enforcement procedures.

In response to the AEOI Report, the BVI Government previously noted that the BVI has been committed to implementing the AEOI standard from its inception as an early adopter and highlighted the significant impact of

Hurricanes Irma and Maria, followed by the global pandemic, on the BVI's ability to exchange the required information and take steps to ensure compliance of all reporting financial institutions with the standard.

The BVI Government requested, and has been granted, a supplementary review by the OECD Global Forum to more accurately reflect the BVI's current legislative status. We understand that the OECD has scheduled the supplementary review to take place in Q1 of 2024 and that it will include an onsite visit. Following the supplementary review, the BVI is confident that a largely compliant rating should be reinstated.

Administrative Penalties

On 1 December 2023, the International Tax Authority (Administrative Penalties) Regulations 2023 were published in the BVI Gazette, revoking the 2022 International Tax Authority (Administrative Penalties) Regulations such that administrative penalties can now be imposed by the International Tax Authority ("ITA") on a person or legal entity for breach of the ITA Act or any mutual legal assistance legislation, Beneficial Ownership Secure Search System Act (As Revised) and the Economic Substance (Companies and Limited Partnership) Act (As Revised). Previously administrative penalties could be imposed for breach of the ITA Act, the Regulatory Code or any directive issued by the ITA. The level of administrative penalties that can be imposed ranges from US\$100 to US\$50,000, depending on the breach, and the regulations also introduce a new power for the ITA to impose continuing penalties for breach of US\$50 a day.

Reporting Obligations and Deadlines

Upcoming enrolment and submission deadlines are as follows:

- (a) Enrolment deadline for US FATCA is 1 April 2024;
- (b) Enrolment / notification deadline for CRS is 30 April 2024; and
- (c) Annual reporting submission deadline for US FATCA and CRS is 31 May 2024.

With respect to BVI Constituent Entities:

- (a) Enrolment for CbCr is no later than the last day of the reporting fiscal year of the Multinational Enterprise ("MNE") Group; and
- (b) Annual reporting submission deadline for CbCr is no later than 12 months after the last day of the reporting fiscal year of the MNE Group.

Economic Substance

As a reminder, each legal entity must provide its registered agent with the prescribed economic substance ("ES") information under the economic substance regime on an annual basis.

The registered agent must provide such particulars to the ITA within six months of the end of the relevant reporting period (called a 'financial period' in the ES Act). Reporting is made by the registered agent through the Beneficial Ownership Secure Search System which is operated by the ITA and facilitates secure reporting.

The prescribed economic substance required and the annual reporting deadline, will depend on whether a 'relevant activity' is being carried out, where the legal entity is 'tax resident' (if anywhere) and the end of the annual financial period for that legal entity.

Beneficial Ownership

The BVI Government issued a press release on 8 December 2023 setting out its position on publicly accessible beneficial ownership registers. The

press release confirmed: *"All of the Overseas Territories ("OTs") and Crown Dependencies, have previously committed to the implementation of publicly accessible registers of beneficial ownership, commonly referred to as PARBOs, on the basis of European Union ("EU") Member States' implementation of the EU Fifth Anti-Money Laundering Directive. However, the decision late last year by the European Court of Justice ("ECJ") changed the international context, affirming privacy and data protection as fundamental human rights which must be respected and appropriately weighed when providing such access."* Given this, the BVI Government has determined that its approach to PARBOs must take into account the ECJ judgement to help minimise the risk of legal challenges on human rights grounds. Hon. Lorna Smith, Minister for Financial Services, Labour and Trade said; *"the safeguarding of these fundamental human rights necessitates the application of a 'legitimate interest test' to determine access for those parties whose request for beneficial ownership information is genuinely aimed at preventing or combatting money laundering and terrorist financing"*.

Further Assistance

If you require regulatory advice and, or assistance meeting your on-going obligations under FATCA, CRS, CbCr, Economic Substance and, or Beneficial Ownership please contact us.

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