

The negotiations of the US and UK Intergovernmental Agreements (“IGAs”) have been progressing over the last few months. All substantial issues have been resolved in respect of the US IGA and it is anticipated to be signed over the coming weeks. In respect of the UK IGA, this is in the process of being finalised, jointly with Jersey and the Isle of Man, and is due to be signed shortly. The main open points are regarding the practical application of the alternative reporting regime for non-doms.

Trusts:

In respect of the US IGA, a new Annex II has been published since our last update. This is of particular interest to Trustees, as it further clarifies the treatment of trusts.

The updated Annex II states that a trust established under the laws of Guernsey, when the trustee of the trust is a Reporting Model 1 FFI (i.e. a Guernsey licensed fiduciary), which reports all information required to be reported pursuant to the IGA with respect to all U.S. Reportable Accounts of the trust, will be regarded as a non-reporting Guernsey Financial Institution. This new treatment means that the trust will be deemed compliant and will not be required to register with the IRS.

In addition, Annex II has clarified the treatment of sponsored, closely-held investment vehicles:

Where a Guernsey Financial Institution is a Financial Institution solely because it is an Investment Entity and is not a Qualified Intermediary, and the sponsoring entity is a Reporting Model I FFI, authorised to act on the behalf of the Financial Institution, and agrees to perform all the compliance requirements under the IGA on behalf of the Financial Institution, the Guernsey Financial Institution is regarded as a non-reporting Guernsey Financial Institution. There are some other conditions to be met in order to achieve this treatment, but this is the main requirement. This may be a useful category for managed entities other than trusts.

There are still two key outstanding points relevant to trusts, namely the identification of controlling persons in a discretionary trust and the treatment of investment companies owned by a trust. It seems likely that these will be dealt with in Guernsey’s guidance notes rather than the IGA itself.

A draft W8-BEN has been published by the IRS, which incorporates the FATCA entity classifications and outlines the declarations to be made under each classification. It is likely that many US withholding agents and other financial institutions will request these forms in the future so it is worth familiarising yourself with them. A copy of the draft W8-BEN can be found [here](#).

Registration:

The Chief Minister has recently provided an update on FATCA, announcing the imminent signing of the US IGA and the finalisation of the negotiations of the UK IGA. He has also stressed that the registration deadline for FFIs in Model I IGA jurisdictions (including Guernsey) has now been pushed out to 31 December 2014. We are waiting for final confirmation of this from the US, although US Treasury has given informal confirmation, and the extended deadline is mentioned in the final FATCA Regulations. This is a welcome extension to the standard registration process which opens on 15 July 2013 and closes on 25 October 2013.

“FATCA-type” proposal for EU Member States:

Earlier this month, the European Commission proposed extending the automatic exchange of information between EU Member States to dividends, capital gains, and all other forms of financial income and account balances—what is referred to as a “FATCA-type” proposal for the EU.

The proposal would provide for the exchange of information on dividends, capital gains, and any other financial income and account balances secured or held by a financial institution in one EU Member State for the direct or indirect benefit of a beneficial owner who is a natural person resident in another EU Member State.

Under the proposal, information would be exchanged as of 1 January 2015 in respect to tax periods as from 1 January 2014.

Luxembourg has not yet officially responded to the proposal. However, any extension of the scope of the EU Administrative Cooperation Directive requires unanimity. If the proposal were to be adopted, it would present a challenge for the Luxembourg financial sector. Yet, given the anticipated future signing of a FATCA agreement between Luxembourg and the United States, it appears that the general trend would support the EC proposal

G8 Initiative on Transparency:

The Minister has also emphasised that Guernsey is fully supportive of the UK's G8 agenda, particularly in respect of tax transparency and information exchange. He stated that Guernsey remains committed to meet all international standards on beneficial ownership and supports international co-operation on the transparency of, and access to, beneficial ownership information.

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