FATCA, UK FATCA and CRS
AFM Tax Training Day

10 June 2014
Global Information Exchange

Introduction

• Increased tax information exchange is a key focus area on the international agenda

• An exponential increase of tax information exchange is expected over the next 2-3 years, with financial institutions reporting on an increasing number of their customers/investors

• FATCA has set the benchmark for exchange and this framework is being built on by the international community

• Business has emphasised the need for consistency in implementation across the globe but uncertainties remain over how this can be achieved
Regulatory Update
Summary of recent developments

US FATCA

• The US Treasury Department and the IRS released the updated FATCA and Coordination Regulations on 20 February 2014

• Updated UK Guidance was published by HMRC on 28 February 2014 and further technical amendments in April

• IGAs continue to be signed

• IRS Notice 2014 – 33 (2 May 2014) – 6 month deferral not adopted into UK regulations

UK FATCA

• UK Regulations released covering UK FATCA implementation

• Draft Guidance issued by HMRC (3 February 2014), covering the obligations for UK Financial Institutions under the agreements with Crown Dependencies and Overseas Territories

• Crown Dependency Guidance also released covering obligations of FIs in Jersey, Guernsey and Isle of Man

Multilateral Exchange of Information

• On 14 February 2014 The OECD released their Common Reporting Standard (CRS) document and Model Competent Authority Agreement (CAA)

• Over 40 countries now committed – incl. China and US (OECD announcement 6 May 2014)
US FATCA
US FATCA timings

17 Jan 2013
Release of final FATCA US Regulations

19 August 2013
IRS Registration portal opens

5 May 2014
Date registration must be completed to be on initial IRS list of compliant FFIs released 2 June 2014

1 July 2014
Withholding begins on US source FDAP payments under final US regulations
On-boarding of new investor rules apply

31 May 2015
Account information reporting due for 2014

31 May 2016
FIs reporting on prior year income of identified US accounts & NPFIs

1 Jan 2017
Withholding begins on US source gross proceeds under final US regulations

30 June 2015
Review of pre-existing high value accounts complete

30 June 2016
Review of pre-existing non high value accounts complete

2013

2014

2015

2016

2017
Global Information Exchange agreements

UK FATCA

Main body of the UK FATCA Agreements broadly in line with the current US IGAs (including key timings), with some key differences:

• UK FATCA only impacts FIs in UK and CDs/OTs
• Reportable persons are defined with reference to residency rather than citizenship and residency.
• The first reporting deadline will be 31 May 2016
• There is an Alternative Reporting Regime for UK Resident Non-Doms
• No concept of Non-Participating FIs or Recalcitrant account holders
• No withholding requirements
• No additional registration requirement at present
• No holding company or treasury centre definition
• Specified person definition is different and will include some FIs
# US FATCA and UK-CDs and OTs IGAs

## Summary of key high level differences

<table>
<thead>
<tr>
<th>UK-CDs and OTs IGAs</th>
<th>US FATCA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Alternative reporting</strong></td>
<td>There is the option for the CDs and OTs to provide for an alternative reporting regime, available on election, to individuals who are resident but not domiciled in the UK, and who are taxed on the remittance basis rather than the arising basis.</td>
</tr>
<tr>
<td><strong>Disclosure facility</strong></td>
<td>FIs in Counterparty Jurisdictions are required to contact Specified UK Persons to advise of the availability of a disclosure facility.</td>
</tr>
<tr>
<td><strong>Specified Person Definition</strong></td>
<td>Definition of relevant persons focuses on tax residency.</td>
</tr>
<tr>
<td><strong>Specified Person ID details</strong></td>
<td>Date of birth and UK National Insurance Number (NINO).</td>
</tr>
<tr>
<td><strong>Indicia</strong></td>
<td>Requirement to search for 4 indicia when reviewing pre-existing individual accounts.</td>
</tr>
<tr>
<td></td>
<td>Requirement to search for place of birth, telephone number and UK standing instructions (on depository accounts) removed.</td>
</tr>
<tr>
<td><strong>Pre-existing Individual Accounts – guidance Section 5.1</strong></td>
<td>Pre-existing Insurance Contracts are subject to the same due diligence and reporting requirements under the CD and Gibraltar regulations as other pre-existing financial accounts.</td>
</tr>
</tbody>
</table>
## US FATCA and UK-CDs and OTs IGAs
### Summary of key high level differences

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<tr>
<td><strong>Financial Institution definition</strong></td>
<td>There is no Holding Company and Treasury centres of Financial Groups subcategory under the definition of a Financial Institution.</td>
</tr>
<tr>
<td><strong>Non-participating FIs</strong></td>
<td>No concept of a Non-Participating FI.</td>
</tr>
</tbody>
</table>
| **Non-reporting FIs and exempt products** | The UK-CDs IGA contains separate annexes for the UK (Annex II) and the CDs and Gibraltar (Annex III) non-reporting financial institutions and exempt products. The CDs and Gibraltar lists are significantly different from Annex II in the US/UK IGA. This document does not provide an exhaustive list but examples include:  
- No Local Client Base FI provision.  
- Charitable organisations not considered Deemed-Compliant FIs but position under review by HMRC. | Non-reporting FIs and exempt products are significantly different to those included in the CDs and Gibraltar lists (Annex III of the UK-CDs and Gibraltar IGAs) and can also vary depending on IGAs implemented in different jurisdictions. |
| **Reporting timing** | First reporting date is 31 May 2016. | First reporting date is 31 May 2015 under the US-UK IGA. |
| **Withholding** | There is no withholding. | Withholding may still occur in some circumstances. |
Achieving FATCA compliance
The FATCA Funnel methodology

- The diagram opposite shows a structured funnel approach, which breaks down the requirements into logical steps aligned with the FATCA obligations.
- It is intended to ensure that efforts are focused on those areas that are in-scope for FATCA and reach the ultimate reporting requirement in a streamlined manner.
- To ensure efficient delivery it is essential that a strong governance structure is agreed upon and implemented.
The on-boarding requirements remain complex and there are a number of strategic considerations to take into account.

**Required tasks**

- Develop processes to ensure identification of the tax residency of persons opening New Individual and Entity Accounts (including self-certification).
- Update systems to capture relevant data and include flags for additional documentation requests.
- Identify any commercial plans which might impact the timeline for implementing changes to on-boarding.
Practical approach to meeting on-boarding requirements

Key actions

• Develop a FATCA compliant process to ensure the identification and classification of persons opening Entity and Individual Accounts. The development of these processes will require the translation of the FATCA technical requirements around on-boarding into a series of practical questions and actions.

• Implementing the technical requirements will likely require changes to the current customer on-boarding process, so there may be the need to update systems to capture relevant data and include flags for additional documentation requests.

• Identify any commercial plans which might impact the timeline for implementing changes to on-boarding.

• Consideration should also be given to future proofing on-boarding procedures to reduce future costs given the announcement of other similar information exchange agreements.

Question

• What is the Group’s current approach to on-boarding, AML KYC?
Practical approach to meeting on-boarding requirements

Objective

- To create a user friendly and structured approach to applying the various Regulations/guidance/IGAs to appropriately classify new entity accounts for FATCA purposes during the on-boarding process.
- To tailor this practical process to the accounts and account holders that are most common for the Group’s business, to make the process as effective and efficient as possible.

Key considerations

- Who will be carrying out the classification of new accounts and what FATCA knowledge/experience will they have?
- What definitions and supporting documents are required in order to be able to follow the process maps?
- Is it possible to minimise the amount of work that has to be undertaken through the classification of “easier” accounts first? Also, which account holders will be the hardest to classify and how can the Regulations/IGAs be applied to these persons?
- How will any communication be managed with clients?
- What are the associated FATCA documentation and reporting requirements for each classification of account holder?
- Will the process be future-proofed?
- What processes and evidence will be collected and documented to demonstrate the classification process has been undertaken with appropriate governance?
New Individual Accounts

Examples of self-certification

- The UK Guidance Notes provide examples of how self-certification can be worded and format in which it may be obtained.

- The Financial Institutions, or any third parties it uses must introduce and maintain arrangements to establish the tax residency of all account holders (i.e. not just US persons) and are allowed to introduce systems for collecting and maintaining information regarding tax residency from 1 September 2013.

- Examples of account opening procedures given include:
  - **Online applications** – the individual is asked to select the appropriate country or countries in which they are tax resident and whether they are a US citizen.
  - **Paper applications** – the individual is required to provide “Country of residence for tax purposes.”

- The diagram below provides an overview of a process to identify the requirements under the IGA for New Individual Accounts.
New Entity Accounts
Determining status of account holders

• A group Financial Institution may determine that an account holder is an Active NFFE, a UK FI, or a Partner Jurisdiction FI, on the basis of publicly available or currently held information.

• A process of determining the status of new entity account holders under the UK IGA is outlined below.
Reasonableness tests and monitoring
FATCA requirements

- An FI is required to confirm the reasonableness of any self-certifications by comparing it to other information obtained or held (e.g. AML/KYC).

- For both individuals and entities, self-certification cannot be relied on if there is reason to know that it is incorrect, unreliable or there is a change in circumstances which changes the account holder’s status.

- A change of circumstance includes any change or addition of information in relation to an account, and includes any changes made to an associated account (i.e. where aggregation takes place).

- A change of circumstance is only relevant where the information affects the status of the account holder for FATCA purposes.

- The Financial Institution should verify the account holder’s actual status in sufficient time to allow it to report the account, if required, in the next reportable period (90 days under US Regulations).
Key priorities

Industry update

Registration
- 1st deadline now passed
- First published list due [TBC]

Onboarding
- FATCA compliant onboarding procedures implemented before 1 July 2014
- Consideration should also be given to future proofing onboarding procedures

Governance
- Robust governance framework is critical in order to sign off and document key decisions
- Supports Responsible Officer declarations and any future tax authorities audit

Comms & training
- Effective external and internal communications strategy
- A number of FIs are using eLearning modules to educate internal stakeholders

Preexisting Account remediation
- Perform analysis including population size & initial bucketing before 30 June 2014
- Develop plan for performing searches including resourcing & remediation requirements.
OECD Common Reporting Standard

Overview

• OECD recently released the CRS which sets out a framework for the automatic exchange of information effectively moving to a multilateral model of information exchange.

• Over 40 countries have currently committed to implementing the CRS.

• It is premised on the automatic exchange of information from the source country to the residence country.

• To be implemented through domestic reporting legislation and bilateral or multilateral competent authority agreements under existing or new treaties or TIEAs.

• Governments are hoping that it will acts as a further deterrent against tax evasion, increasing voluntary compliance and encouraging taxpayers to report all relevant information.

• A global standard has been introduced to reduce inconsistencies and help minimize compliance cost to financial institutions, particularly institutions operating in multiple jurisdictions.

• It builds on the concepts of FATCA by imposing obligations on Financial Institutions to undertake due diligence and report account holders.
Global Information Exchange agreements
OECD - Common Reporting Standard

Following the release of the CRS on 13 February 2014, the Joint Statement in March 2014 by the Early Adopters Group (now 44 countries) recognises that the proposed timetable is ambitious but achievable. The timetable provides that:

- Pre-existing accounts are those open as at 31 December 2015.
- New accounts will be those opened from 1 January 2016 and relevant procedures to record tax residence should therefore be in place by then.
- Due diligence will be required to be completed by 31 December 2016 for high-value pre-existing individual accounts and by 31 December 2017 for low value pre-existing accounts.
- The first exchange of information in respect of new accounts and pre-existing high value accounts will be by the end of September 2017.
- Information on pre-existing low value accounts and entity accounts will first be exchanged either by the end of September 2017 or September 2018 depending on when they are identified as reportable by a Financial Institution.
Global Information Exchange agreements
OECD - Common Reporting Standard

OECD framework is based on two key elements:

**Competent Authority Agreement ("Model CAA")**
- Model agreement which establishes a legal basis for the automatic exchange of financial account information, including:
  - Modalities of exchange
  - Representations on domestic reporting, confidentiality, safeguarding and the existence of the necessary infrastructure for an effective exchange relationship

**Common Reporting Standard ("CRS")**
- Common standard which outlines the information to be reported by financial institutions and exchanged with residence jurisdictions, outlining:
  - The scope of financial information to be reported
  - The scope of account holders subject to reporting
  - The scope of financial institutions required to report
# Automatic Exchange of Information

## Common Reporting Standard

| Financial Institution | • Definitions broadly align to those under the Model 1 IGA.  
|                       | • No Holding Company or Treasury Centre category  
|                       | • Qualified Credit card issuer is exempted assuming conditions met  
|                       | • FIs are treated as jurisdiction FIs based on their incorporation or place of residence  
|                       | • Non-Reporting FI category – includes trusts if trustee is FI and undertakes reporting  
|                       | • Non-participating FIs are Passive NFEs |

| Financial Accounts | • Broadly aligned to the IGA with some amendments  
|                   | • Open definition that allows domestic law to treat similar low-risk accounts as Excluded Accounts  
|                   | • No regularly traded exemption for equity/debt interests |

| Reporting | • FIs will be required to report on the residency of individual and entity account holders.  
|           | • For entities, tax residency of controlling persons of Passive NFEs are reportable  
|           | • Initial reporting including information on payments (other than those of gross proceeds) made to the account, not just account information and value at year end.  
|           | • No reporting on NPFIs |
# Common Reporting Standard

## Due Diligence

<table>
<thead>
<tr>
<th>New Individual Accounts</th>
<th>Pre-existing Individual Accounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>New individual account are broadly treated the same as under IGA</td>
<td>Includes:</td>
</tr>
<tr>
<td>Self-certification, reasonableness test and monitor change in circumstances</td>
<td>1. Residence address test based on documentary evidence</td>
</tr>
<tr>
<td>TIN required to be collected as part of self-certification</td>
<td>2. Electronic indicia check</td>
</tr>
<tr>
<td></td>
<td>3. Enhanced review for high value accounts ($1m+)</td>
</tr>
</tbody>
</table>

## Issues/key points
- No de minimis threshold is included for Individual Accounts.
- Entity due-diligence for pre-existing and new accounts is broadly similar to the IGA.
- $250k threshold remains for pre-existing entity accounts.
- Cash value insurance contracts are excluded from due diligence if prevented from selling contracts to residents of Reportable jurisdiction.
- Treatment of new accounts for pre-existing account holders is unclear.
Future state compliance
Core components for information exchange regimes

New information and interactions
- Relevant information gathered from new clients
- Relevant information maintained for all existing clients
- ‘Live’ monitoring of client information
- New client experience and interface

Enforcing and evidencing compliance
- New compliance roles for employees
- New processes and controls
- A robust body of evidence

Consideration for new products
- Identifying whether products are in-scope for reporting
- Considering whether access to products needs to be restricted
- Identifying whether products could impact other areas of compliance (for example, FI status)

New regular reporting
- Increased volume of annual reporting
- Contact with multiple authorities
- New interfaces for information exchange

New technical knowledge
- New SME roles within financial institutions
- Training for impacted groups
- New third party technical support requirements

Information exchange components
- Governance
- Clients
- Products
- Reporting
- Technical
Conclusions

Key Points

• Less than 2 months until FATCA goes live – focus on key priorities and manage IRS and IGA delays

• FATCA has helped trigger a global push in cross border information reporting

• Governments must work together to help keep rules consistent and to reach shared goal of information transparency whilst limiting impact on FIs

• New jurisdiction neutral forms may be needed to replace US tax forms – what will you use?

• Exponential increase in the volume of reporting under CRS so plan carefully

• Undertake impact assessment of CRS

• Consider what elements of your FATCA Programme can be future proofed and leveraged for CRS
## Global Information Exchange

### Summary comparisons

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<tr>
<th>US FATCA</th>
<th>UK FATCA</th>
<th>OECD - CRS</th>
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<tbody>
<tr>
<td>Exchange of information between the US and partner jurisdictions</td>
<td>Exchange of information between the UK and the CDs/OTs</td>
<td>Exchange of information between 40+ countries and future partner jurisdictions</td>
</tr>
<tr>
<td>May be reciprocal</td>
<td>Reciprocal with the CDs and Gibraltar, not with other OTs</td>
<td>Reciprocal</td>
</tr>
<tr>
<td>Final regulations released 28 February 2014 and a number of IGAs signed by jurisdictions</td>
<td>IGAs entered into by the Crown Dependencies and Overseas Territories</td>
<td>40+ countries committed</td>
</tr>
<tr>
<td>Register and obtain GIIN</td>
<td>Additional UK registration?</td>
<td>?</td>
</tr>
<tr>
<td>Identify certain US Persons holding Financial Accounts</td>
<td>Identify certain CD/OT/UK Persons holding Financial Accounts</td>
<td>Identify a wide group of persons in various residencies holding Financial Accounts</td>
</tr>
<tr>
<td>Report information on these to local authority or the IRS as appropriate</td>
<td>Report information on these to local authority</td>
<td>Report information on these to local authority</td>
</tr>
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</table>
EU Savings Directive
Expansion of scope

The scope now covers new types of savings income and products that generate interest or equivalent income. Tax authorities will now also have a requirement to identify the beneficiaries of interest payments. The expansion of the EUSD includes the following changes:

- All types of regulated investment funds investing in debt claims will be covered by the expanded EUSD. In practice, this means that non-UCITS (part II) SICAV, SIF-SICAV and SICAR will be within scope;
- Certain life insurance products will be covered by the expanded EUSD (such as certain unit linked life insurance contracts but subject to grandfathering for contracts subscribed before 1 July 2014);
- The concept of Residual Entities will be extended to all EU entities not subject to effective taxation (whereas the definition under the current EU Savings Directive is much more restrictive). In practice, payments made to a significantly broader range of entities, trusts, foundations, and similar legal arrangements within the EU will become reportable (e.g. German KG, UK LP, Dutch Stichting, trusts in several Member States);
- Look-through rules will apply regarding payments made to 'blacklisted' entities, trusts, foundations and similar legal arrangements outside the EU (such as Bermuda trusts, HK Private Limited Companies, Panama foundations, etc.).

The Member States will have until 1 January 2016 to adopt national legislation in order to comply with the directive which is intended to be applicable from 1 January 2017.

Questions
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