

Guernsey's journey towards FATCA-based reporting - a global context

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At the beginning of May the Director of Income Tax of the States of Guernsey wrote to licensed financial intermediaries in Guernsey regarding the Guernsey Disclosure Facility and the requirement to contact current clients who may be able to take advantage of the Disclosure Facility to make them aware of the Disclosure Facility. In that letter, the Director also requested confirmation as to whether the recipient wished to receive further communications concerning:

- FATCA/Intergovernmental Agreements;
- Other FATCA-type Agreements; and
- The Guernsey Disclosure Facility.

This client briefing is the latest issue in our series of briefing notes and explains Guernsey's journey towards FATCA-based reporting in the context of recent initiatives to establish a global system of regulatory and tax compliance. The latest development in this field for Guernsey is encapsulated in an open letter from Guernsey's Chief Minister to the UK Prime Minister on possible participation in a multilateral information exchange facility.

[Letter to the Prime Minister](#)

On Tuesday, 1 May 2013 Guernsey's Chief Minister, Deputy Peter Harwood, sent an open letter to the UK Prime Minister, the Right Honourable David Cameron MP, in response to the UK's request for Guernsey to commit to a multilateral exchange facility, recently announced by the five West European countries, i.e. France, Germany, Italy, Spain and the UK, to be piloted between them ("G5 Pilot"). In that letter, Deputy Harwood referred to Guernsey's intention to enter into an

intergovernmental agreement ("IGA") with the US ("US IGA") to enable Guernsey-based financial institutions to comply with the US Foreign Account Tax Compliance Act ("FATCA"). The Chief Minister also referred to Guernsey's intention to finalise a separate IGA with the UK ("UK IGA"), implementing FATCA-based reporting of tax information, with an alternative reporting arrangement for non-domiciled UK tax residents. Discussions to finalise the text for the US IGA and the UK IGA are well advanced. When the terms are settled, these bilateral agreements will be presented to the States of Deliberation (Guernsey's parliamentary assembly) for approval. At that juncture the Chief Minister confirmed that a report and recommendation for Guernsey to join the G5 Pilot would be considered following due process on the assumption that "there is sufficient information and details on the pilot to inform that report and decision".

[What are the recent developments that have brought us to this stage?](#)

[January 2013](#)

In his speech to the World Economic Forum in Davos on 24 January 2013, Prime Minister David Cameron outlined his priorities for the governments of the world's eight wealthiest western countries in advance of assuming the presidency of the G8 forum later this year. The UK Prime Minister's stated priorities are trade, tax and transparency to encourage global economic growth. In relation to global tax compliance, the Prime Minister said, "if there are options for more multilateral deals on automatic information exchange to catch tax evaders we need to explore them".

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March 2013

On 15 March 2013, Chief Minister Peter Harwood announced that Guernsey was in the process of finalising an agreement with the UK to cover a 'tax package' of 3 initiatives to include:

- an agreement on reporting of tax information along FATCA principles through an IGA, with alternative arrangements for UK resident but non-domiciled individuals – the UK IGA;
- an agreement to negotiate revisions to the existing UK-Guernsey Double Taxation Agreement; and
- an agreement on a Disclosure Facility for UK taxpayers – the Guernsey Disclosure Facility.

The UK IGA will follow the approach of FATCA in its reliance on Guernsey-based financial institutions to report detailed information about certain UK accounts held by UK residents, or by entities in which UK residents hold substantial interests.

In the same statement of 15 March 2013, it was confirmed that Guernsey was moving closer to concluding the US IGA to enable Guernsey-based financial institutions to comply with FATCA in a manner that does not engage domestic legal impediments and facilitates streamlined reporting on certain US accounts held by US taxpayers or by entities in which US taxpayers hold substantial interests. Unlike the UK IGA, the US IGA targets US taxpayers based on US citizenship or residence. Where compliance with FATCA outside of an IGA would require foreign financial institutions to apply a 30% withholding tax on certain US-connected payments to non-participating foreign financial institutions and recalcitrant account holders, the US IGA would remove this requirement for Guernsey-based financial institutions. Unlike the US approach, reporting under the UK IGA is not backed up by a withholding tax regime.

On 20 March 2013, Jersey followed suit and confirmed it too would enter into an IGA with the UK. This completed the policy alignment of the 3 Crown Dependencies; the Isle of Man having already signalled agreement to enter into an IGA with the UK in December 2012.

April 2013

On 9 April 2013, the G5 governments of France, Germany, Italy, Spain and the UK announced that they were piloting between themselves a multilateral exchange facility ("G5 Pilot"). In an open letter to EU Taxation Commissioner Algirdas Šemeta, the finance ministers of the G5 economies invited other EU Member States to join the G5 Pilot in the "hope that Europe can take a lead in promoting a global system of automatic information exchange". They also called on all EU Member States to agree without delay on the amending proposal to the EU Savings Taxation Directive of 2003 ("EU Savings Directive"). The EU Savings Directive was implemented in Guernsey through domestic legislation in 2005. The G5 see the amending proposal of the EU Savings Directive as paving the way for "extending its scope to relevant third countries". For these purposes the third countries are Switzerland, Andorra, San Marino, Monaco and Liechtenstein.

May 2013

On 2 May 2013, the UK Chancellor of the Exchequer confirmed that all British Overseas Territories with significant financial centres have agreed to participate in the G5 Pilot. The territories listed in the Chancellor's confirmation were Anguilla, Bermuda, the British Virgin Islands, Gibraltar, Montserrat and the Turks and Caicos Islands, with positive responses received by the UK from the Isle of Man and Guernsey. In response, on Sunday 5 May 2013, it was reported that the EU Taxation Commissioner was supportive of efforts to extend tax information reporting beyond the scope of the existing EU Savings Directive. The extension is likely to apply across the 27 EU Member States and would require automatic exchange of information on a wider range of structures, financial interests and returns. Any eventual agreement over changes to the EU Savings Directive would have to be unanimously adopted by all 27 Member States before the amended Directive could enter into force. Guernsey, along with other dependent and associated territories, will need to consider the effect of any proposed changes to the EU Savings Directive in the context of existing bilateral treaties and domestic law at the relevant time.

Coming soon for June 2013

The G8 Summit in Lough Erne, Northern Ireland, on 17 - 18 June 2013, will be hosted by the UK. In a recently published letter from the UK Prime Minister to Herman Van Rompuy, President of the European Council, the Prime Minister mentioned that other European countries, including Poland, have signalled their willingness to join the G5 Pilot and the UK has asked the OECD to report ahead of the G8 Summit on how to deliver a multilateral automatic information exchange as a new global standard at the earliest opportunity. The Prime Minister also raised the possibility of enhancing the availability of beneficial ownership information through central public company registries. However, he noted the importance of working with other countries and financial centres to ensure a level playing field in pursuing this initiative.

Concluding comments

Details of the G5 Pilot and how it is to be implemented have yet to be reported. It is possible that the multilateral framework will be implemented in effect through a series of bilateral IGAs, however this has yet to be determined. If the G5 Pilot is successful in moving FATCA-based reporting to a new OECD standard across a number of jurisdictions, this would be a significant step towards creating a level playing field, which Guernsey, amongst other offshore financial centres, has been calling for some time. Indeed, Deputy Harwood's letter to the UK Prime Minister of 1 May 2013 sets out in detail Guernsey's efforts in the field of good global governance as evidence of Guernsey's commitment to tax transparency. It remains to be seen how efforts through the European Council and ECOFIN to extend the EU Savings Directive will develop alongside the UK-led initiative for multilateral automatic exchange as a new global standard, and how either or both of these initiatives will impact financial institutions in Guernsey.

Continued

Carey Olsen has issued a number of client bulletins on developments in this field. We should be pleased to assist clients as they review and update their internal reporting procedures, customer communications and tax and regulatory disclosures to keep pace with the rapidly changing landscape of exchange of information in the field of regulatory and tax compliance.



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