

Guernsey issues regulations to implement Common Reporting Standard

Service area / [Trusts and Private Wealth](#)

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Date / [December 2015](#)

On 23 November 2015 Guernsey issued regulations to implement the Common Reporting Standard ("CRS") under Guernsey's domestic law.

The regulations follow on from the commitment made on 29 October 2014 by Guernsey, along with the other Crown Dependencies and a number of other jurisdictions, to start exchanging information under the CRS in respect of accounts maintained by financial institutions in Guernsey by 2017 at the earliest. The regulations will take effect from 1 December 2015 and will require Reporting Financial Institutions in Guernsey to apply from 1 January 2016 prescribed due diligence procedures to all financial accounts maintained by them in order to identify and report, where appropriate, certain information to Guernsey's income tax office ("ITO"), which in turn will transmit that information the following year to the tax offices of relevant jurisdictions. The regulations will be of direct interest to financial institutions that are resident in Guernsey for the purposes of compliance with the CRS, as well as non-resident financial institutions that have a permanent establishment located in Guernsey, through which they conduct the business of a financial institution.

Anatomy of regulations

The Income Tax (Approved International Agreements) (Implementation) (Common Reporting Standard) Regulations, 2015 (the "Regulations") will come into force with effect from 1 December 2015 and will be laid before Guernsey's States of Deliberation on 26 January 2016. Capitalised terms used in the Regulations are defined in Regulation 16 and Section VIII of Schedule 2 of the Regulations.

The Regulations are made up of 18 paragraphs and two Schedules. Regulation 1 and Schedule 1 implement the Multilateral and Bilateral Agreements (the "Agreements") between Guernsey and other jurisdictions which have agreed to the automatic exchange of information under the CRS. Schedule 1 currently refers to agreements that enable reciprocal exchange between Guernsey, Jersey, Isle of Man and nonreciprocal exchange of data from the British Virgin Islands to Guernsey. As Guernsey enters into bilateral agreements with other jurisdictions (such as with the Cayman Islands and the United Kingdom), Schedule 1 will be updated. Regulation 2 states that these Agreements prescribe the information to be provided to the competent tax authorities of exchange partner jurisdictions (under Regulation 3), and the reporting and due diligence procedures to be followed by Reporting Financial Institutions in Guernsey, detailing how, when and by whom the information shall be collated and provided to the ITO (under Regulation 4).

Information to be exchanged

Regulation 3 requires the ITO to provide to the tax offices of exchange partner jurisdictions the information detailed in Section I of Schedule 2 (General Reporting Requirements) in relation to financial accounts held by Reportable Persons or by a Passive Non-Financial Entity with one or more Controlling Persons who are Reportable Persons. The exchange partner jurisdictions to which the ITO will be sending such information will be identified by the ITO for each calendar year in a list to be published by the ITO.

Section I F of Schedule 2 states that a Reporting Financial Institution must provide the requested information relative to each Reportable Account in respect to each calendar year from 1 January 2016 onwards.

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Reporting and due diligence procedures

Regulation 4 provides that a Reporting Financial Institution in Guernsey must apply the due diligence procedures and report the information required as set out in Schedule 2 to the Regulations.

A Reporting Financial Institution in Guernsey is taken to comply with these due diligence and reporting procedures only if:

- the institution maintains arrangements that conform with the due diligence procedures set out in Schedule 2 of the Regulations in respect of all financial accounts; and
- evidence used, or a record of the steps taken, in accordance with Schedule 2, is kept for 6 years from the end of the year in which the arrangements were applied to the financial accounts.

The information to be provided must be filed in such form and manner and by such means as the Director of the ITO may by notice require. It is anticipated that reports will be filed by the completion of the CRS Schema, which is to be uploaded through the ITO's secure online filing portal called the Information Gateway Online Reporter ("IGOR"). IGOR is currently being used to file reports under the US-Guernsey IGA to comply with US FATCA and will be used next year to file reports under the UK-Guernsey IGA to comply with UK FATCA.

Where a Reporting Financial Institution maintains no Reportable Accounts under CRS in the year in question, it must file a return containing a statement to that effect. A Reporting Financial Institution in Guernsey which without reasonable excuse fails to comply with the requirement to apply the due diligence procedures or Schedule 2 of the Regulations is guilty of an offence. There are also potential civil and criminal penalties for contraventions of the Regulations and the making of false statements etc.

Notice to account holders

Regulation 6 provides that a Reporting Financial Institution must notify individuals no less than 30 days before any information is to be provided about them under the CRS. The notification shall be effective for the relevant calendar year and all subsequent calendar years in which information is to be provided.

Guidance notes

Regulation 12 provides that the Director of the ITO may issue guidance notes for the purpose of providing practical guidance in respect of any provision, and in connection with the administration, of the Regulations and the CRS. The guidance notes shall come into force on such date as appointed by the Director, who may revoke or revise guidance notes from time to time. Guidance notes must be taken into account by the Director in exercising his functions and they are admissible in evidence in any legal proceedings where they may be taken into account (if relevant) in determining an issue or relied upon to support or defeat a representation or submission by any party to such proceedings.

In its Consultation Document published on 25 September 2015, the ITO said that any guidance to be issued will be limited to addressing practical aspects of the CRS which are specific to its implementation by Guernsey Financial Institutions.

CRS and due diligence

Schedule 2 sets out the CRS and due diligence provisions as they apply for financial accounts maintained by Reporting Financial Institutions in Guernsey. The Schedule is divided into eight sections as follows:

- **Section I** – General Reporting Requirements
- **Section II** – General Due Diligence Requirements
- **Section III** – Due Diligence for Pre-existing Individual Accounts
- **Section IV** – Due Diligence for New Individual Accounts
- **Section V** – Due Diligence for Pre-existing Entity Accounts
- **Section VI** – Due Diligence for New Entity Accounts
- **Section VII** – Special Due Diligence Rules
- **Section VIII** – Defined Terms

Interaction with US and UK FATCA

US FATCA was implemented in Guernsey under the US-Guernsey IGA with effect from 1 July 2014 and the first reports were filed by Guernsey Financial Institutions for exchange between the ITO and the US Internal Revenue Service on 30 September 2015. Article 6(3) of the US-Guernsey IGA provides that the US is committed to working with partner jurisdictions and the Organisation for Economic Co-operation and Development on adapting the terms of the US-Guernsey IGA and other agreements between the United States and partner jurisdictions to a common model for automatic exchange of information, including the development of reporting and due diligence standards for financial institutions. The US has not signed up to CRS and will continue to require non-US financial institutions around the world to comply with US FATCA for the foreseeable future. Accordingly, Reporting Financial Institutions in Guernsey will continue to be required to comply with US FATCA for the time being under the US-Guernsey IGA.

The UK has indicated that reporting under UK FATCA by Guernsey, the other Crown Dependencies and the Overseas Territories will be replaced by reporting under the CRS, as from 1 January 2016. In transitioning from UK FATCA to CRS the UK wishes to ensure that no "gaps" occur in the data that would have been reported under the UK-Guernsey IGA for 2016 but which may not be reported under the CRS until 2018.

Continued

After consultation by the ITO with Guernsey's finance industry, it has been agreed with the UK that for 2016 the CRS reporting requirements should be supplemented by the provision of information on pre-existing individual low value accounts and pre-existing entity accounts in respect of UK residents. This means that the UK will receive 2016 calendar year information in 2017 solely under the CRS, thus avoiding the need for Guernsey financial institutions to make separate (and possibly duplicate) returns under both UK FATCA and the CRS. The intention is that due diligence already undertaken on UK Reportable Accounts under the UK-Guernsey IGA will not need to be repeated for the CRS.

The CRS does not provide for any special arrangements, such as limited data reporting for UK resident non-domiciled individuals, which exists under UK FATCA's Alternative Reporting Regime ("ARR"). As a result of the adoption of the CRS from 1 January 2016, reporting of 2016 data for all reportable UK accounts will be required in 2017 including in respect of UK resident non-domiciled account holders. The ARR will therefore be available only under the UK-Guernsey IGA, and for 2014 and 2015 only.

Further reading

The following links will take you to useful reference documentation:

[Guernsey Statutory Instrument 2015 No. 97 – The Income Tax \(Approved International Agreements\) \(Implementation\) \(Common Reporting Standard\) Regulations, 2015](#)

[Guernsey Issues amended legislation and updated draft Guidance Notes on FATCA based reporting](#)

[Listed Guernsey and Jersey funds – FATCA reporting deadlines are looming. Are you ready?](#)

[Guernsey issues bulletin to update draft guidance notes on FATCA based reporting](#)

[Guernsey issues regulations to implement FATCA based reporting](#)

[Guernsey and Jersey issue draft guidance notes for FATCA based reporting](#)

[FATCA based reporting for Guernsey](#)

[Guernsey's journey towards FATCA based reporting](#)

[Memorandum of understanding between Guernsey and HMRC](#)

[FATCA based reporting and IGAs for Guernsey](#)



FIND US

PO Box 98
Carey House
Les Banques
St Peter Port
Guernsey GY1 4BZ
Channel Islands

T +44 (0)1481 727272

F +44 (0)1481 711052

E guernsey@careyolsen.com



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