



## Guernsey issues regulations to implement FATCA based reporting

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

Location / [Guernsey](#)

Date / [September 2014](#)

Guernsey has published regulations to implement and enable the administration and enforcement under Guernsey domestic law of the intergovernmental agreements entered into with the UK on 22 October 2013 (the "UK-Guernsey IGA") and with the United States of America on 13 December 2013 (the "US-Guernsey IGA"). The UK-Guernsey IGA and the US-Guernsey IGA are together referred to as "IGAs" and each as an "IGA".

The regulations will be of direct interest to financial institutions that are resident in Guernsey for the purposes of compliance with the IGAs as well as non-resident financial institutions that have a permanent establishment located in Guernsey through which they conduct a business of a financial institution.

### Anatomy of regulations

The Income Tax (Approved Agreements) (Implementation) (United Kingdom and United States of America) Regulations, 2014 (the "Regulations") came into force with effect from 30 June 2014 and will be laid before Guernsey's States of Deliberation on 29 October 2014. Capitalised terms use in the Regulations are defined in Regulation 15. There are 17 paragraphs to the Regulations and one Schedule, which refers in turn to each of the UK-Guernsey IGA and the US-Guernsey IGA. Regulation 1 implements the provisions of the two IGAs and Regulation 2 provides that they shall have the force of law subject to such exceptions, adaptations and modifications as are set out in the Schedule.

### Obligations of reporting guernsey financial institutions

Regulation 3 sets out the obligation to comply with certain due diligence procedures and Regulation 4 sets out the reporting obligations, for Reporting Guernsey Financial Institutions.

### Due diligence procedures

Regulation 3 provides that a Reporting Guernsey Financial Institution must apply the due diligence procedures set out in Annex I to the IGAs (as brought into effect by the Regulations). This is in order to identify:

- for the purposes of the US-Guernsey IGA, US Reportable Accounts and accounts held by Non-Participating Financial Institutions; and
- for the purposes of the UK-Guernsey IGA, UK Reportable Accounts.

A Reporting Guernsey Financial Institution is taken to comply with the due diligence procedures only if:

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

A Reporting Guernsey Financial Institution which without reasonable excuse fails to comply with the requirement to apply the due diligence procedures or Annex I of the IGAs is guilty of an offence.

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## Reporting obligations

Regulation 4 sets out the requirement to provide on an annual basis the Director of Income Tax with certain information in order to comply with the two IGAs. For the purposes of the US-Guernsey IGA, the information set out in paragraph 2(a) of Article 2 of the US-Guernsey IGA must be provided. For the purposes of the UK-Guernsey IGA, Reporting Guernsey Financial Institutions must file the information set out in paragraph 2(a) of Article 2 of the UK-Guernsey IGA.

## Nil returns

Regulation 4 provides that, where the institution maintains no US or UK Reportable Accounts in the year in question, it must file a return containing a statement to that effect. The Director of Income Tax may by notice specify any other documents or information that may be required for the purposes of the Regulations or the IGAs.

## Format and manner of reporting

Regulation 4(2) and (3) provides that the returns and other documents and information to be provided must be filed in such form and manner and by such means and at such times or intervals as the Director may by notice require. This may include the Director requiring by notice that a Reporting Guernsey Financial Institution registers in order to access an electronic portal for the purposes of filing information and documents. No notice has yet been published.

## Guidance notes

Regulation 10 provides that the Director 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 IGAs. The Guidance Notes shall come into force 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. The latest version of the draft Guidance Notes was issued jointly by Guernsey, the Isle of Man and Jersey on 28 July 2014. It is the third iteration of the draft Guidance Notes, which continue to be the subject of on-going discussions with various parties and members of the finance industry.

## Requests for information

The Regulations provide that the existing provisions in the Income Tax (Guernsey) Law, 1975, as amended (the "Income Tax Law") that enable the Director to request information and the production of documents apply to the Regulations and the IGAs. For example, the Director may use his powers under Sections 75A or 75B of the Income Tax Law to issue a notice to obtain information where the IRS or HMRC has notified the Director that it has reason to believe that incorrect or incomplete information has been reported or there has been other infringements of the relevant IGA. A notice to provide information issued by the Director would operate in the same way that notices are currently issued for the purposes of compliance with a request made by a foreign tax authority pursuant to a tax information exchange agreement entered into between that foreign jurisdiction and Guernsey.

## Penalties

There are potential civil and criminal penalties for contraventions of the Regulations and the IGAs and the making of false statements etc.

## Further reading

The following links will take you to useful reference information:

[Carey Olsen bulletin February 2014: Guernsey and Jersey issue draft guidance notes for FATCA based reporting](#)

[Carey Olsen bulletin August 2013: FATCA based reporting for Guernsey](#)

[Carey Olsen bulletin May 2013: Guernsey's journey towards FATCA based reporting](#)

[Carey Olsen bulletin April 2013: Memorandum of understanding between Guernsey and HMRC](#)

[Carey Olsen bulletin March 2013: FATCA based reporting and IGAs for Guernsey](#)

[Carey Olsen bulletin October 2012: FATCA IGAs for Crown Dependencies](#)

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## 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](mailto:guernsey@careyolsen.com)



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