



# States of Guernsey Income Tax

## **Common Reporting Standard and US IGA (“FATCA”) Reporting Status for Pension Schemes for Reporting Period 2016**

### **Bulletin 2017/5**

This Bulletin is issued under the provisions for Regulation 12 of The Income Tax ( Approved International Agreements) (Implementation) (Common Reporting Standard) Regulations, 2015 ( “The CRS Regulations”), and **Regulation 4 of the Income Tax (Approved International Agreements) (Implementation) (United Kingdom and United States of America) Regulations, 2014**

#### **1) Section 154A Pensions**

The Bulletin provides Guernsey based pension providers who offer products recognised under Section 40(o) and 40(ee) of The Income Tax Law, 1975 ( “the Law”) and who, subject to approval by the States of Guernsey of the necessary amendment of the Law (contained in the proposition detailed in Billet D’Etat XI 2017) <sup>1</sup>

a) believe that the Scheme(s) will meet the conditions for approval under Section 154A of the Law;

and

b) intend to make an application for such approval under Section 154A of the Law

confirmation that such Schemes shall be considered approved and subject to domestic reporting to the Director of Income Tax for the CRS and US IGA (FATCA) Reportable Period 2016, so that it may be considered to be fulfil the “annual information reporting about its beneficiaries” requirement , as required in the relevant definitions set out in sections 2 and 5, below.

For the avoidance of doubt s150 and s157A Schemes are also considered to be subject to domestic reporting and fulfil the “annual information reporting about its beneficiaries” requirement for the Reportable Period 2016.

#### **2) CRS Non- Reporting Financial Institutions**

Where Schemes approved under Section 150, Section 154A and Section 157A meet ALL of the conditions of the definition of Non Reporting Financial Institution, under “Broad Participation Retirement Fund” or “Narrow Participation Retirement Fund” as defined in the CRS Regulations, and with due consideration of the relevant OECD CRS Commentary<sup>2</sup> of those conditions, then the

<sup>1</sup> See P2017/3 [A Regulatory Framework for Pension Schemes and their Providers](#)

<sup>2</sup> [CRS Commentary](#) on Section VIII, Subparagraphs B(5) and (6) ( page 168-169)

Scheme would not be considered a Reporting Guernsey Financial Institution for the purposes of CRS for the 2016 period.

**Broad Participation Retirement Fund** means a fund established to provide retirement, disability, or death benefits or any combination thereof, to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund;

- a) Does not have a single beneficiary with a right to more than five percent of the funds assets;
- b) Is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in Guernsey; and
- c) Satisfies at least one of the follow requirements;
  - i. the fund is generally exempt from tax on investment income or taxation of such income is deferred or taxed at a reduced rate, due to its status as a retirement or pension plan;
  - ii. the fund receives at least 50% of its total contributions ( other than transfers of assets from other plans described in subparagraphs B(5) through (7) of the CRS or from retirement and pension accounts described in subparagraph C(17)(a) of the CRS) from the sponsoring employers;
  - iii. distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability or death ( except rollover distributions to other retirement funds described in paragraphs B(5)through (7) of the CRS or retirement and pension accounts described in subparagraph C(17)(a) of the CRS), or penalties apply to distributions or withdrawals made before such specified events; or
  - iv. contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed USD \$50,000 annually, applying the rules set forth in paragraph C of Section VI of the CRS for account aggregation and currency translation.

**Narrow Participation Retirement Fund.** A Fund established to provide retirement, disability or death benefits to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that;

- a) the fund has fewer than 50 participants
- b) the fund is sponsored by one or more employers that are not Investment Entities or Passive NFEs;
- c) the employee and employer contributions to the fund (other than transfers of assets from other retirement and pensions accounts described in subparagraph C(17)(a) of the CRS are limited by reference to earned income and compensation of the employee, respectively
- d) participants that are not residents of Guernsey are not entitled to more than 20 percent of the fund's assets; and
- e) the fund is subject to government regulation and provides annual information reporting about it beneficiaries to the relevant tax authorities in Guernsey.

If these Non Reporting Financial Institution conditions are not met, the Scheme would be a Reporting Guernsey Financial Institution and need to conduct due diligence and reporting, as provided under the CRS Regulations for the Reportable Period 2016.

A high level summary of the CRS procedures a Reporting Guernsey Financial Institution is required to undertake is summarised in 3., below.

### 3) **CRS Reporting Financial Institution Requirements under the CRS Regulations**

#### a) **Due Diligence Account Reviews ( Regulation 4(1);4(4) and Schedule 2)**

Under the “Wider Approach” each Reporting Financial Institution in Guernsey must identify the jurisdiction in which ALL Account Holders and Controlling Persons are resident for tax purposes regardless of whether the jurisdiction is a Participating Jurisdiction for CRS.

The Account will be a Reportable Account where the Account Holder is a Reportable Person in a Reportable Jurisdiction. Reportable Jurisdictions for the Reportable Period(s) have been published in [Bulletin 2017/1](#).

The due diligence procedures required depend on the date the account it was opened, and whether it is an entity account or an individual account;

For the CRS, a “pre-existing account” is one opened prior to 1 January 2016.

Account Type	Due diligence procedures	Election threshold value
Pre-existing Individual Accounts'	Section III, Schedule 2	0
New Individual Accounts	Section IV , Schedule 2	0
Pre-existing Entity Accounts	Section V, Schedule 2	\$250,000 (until exceeds \$1M)
New Entity Accounts	Section VI, Schedule	0

Reporting Guernsey Financial Institutions should also refer to the OECD [CRS Commentary](#)<sup>3</sup>, the [OECD FAQ](#)<sup>4</sup> and the domestic guidance, published at [www.gov.gg/crs](http://www.gov.gg/crs)

#### b) **CRS Reporting using IGOR. ( Regulation 4(1);4(2) & 4(3))**

Each Reporting Financial Institution in Guernsey shall provide information on each Reportable Account that it maintains as in the time and manner provided for in Section I of Schedule 2 (General Reporting Requirements) of the CRS Regulations.

CRS reporting is to be made using the CRS Schema, using the Information Gateway Online Reporter ( IGOR) at <https://igor.gov.gg/>. This site contains general help and schema guides. The Igor Forum (<https://igorforum.digimap.gg/>) allows FIs to ask any technical questions that are not addressed elsewhere.

<sup>3</sup> OECD Commentary <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/common-reporting-standard-and-related-commentaries/#d.en.345314>

<sup>4</sup> OECD FAQ <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/CRS-related-FAQs.pdf>

The reporting deadline for the Reportable Period 2016 is 30 June 2017. However the Director has confirmed that any correct 2016 reports made by 31 July 2017 shall not be subject to penalties or other compliance action.

**c) Notification of Reportable Persons (Regulation 6).**

No less than 30 days in advance to providing information to the Director under Regulation 4 of the CRS Regulations, the RGFI must inform Reportable Persons that their information may be transferred to the government of another territory. This notification need only be made once, in the first year information is provided.

**4) Retirement and Pension Accounts as Excluded Accounts for CRS**

For the avoidance of doubt, and to clarify domestic guidance, to be an Excluded Account, a retirement or pension account must satisfy all the criteria of an Excluded Account. Under the Income Tax Law, there is no annual maximum contribution of \$50,000, or lifetime contribution limits and therefore the Director if of the opinion that s150, s157A or s154A schemes will not be able to qualify as Excluded Accounts.

**5) FATCA Non Reporting Financial Institutions ( as exempt beneficial owners)**

Annex II.II.A of the IGA confirms that all Section 150 Schemes are treated as Non Reporting Guernsey Financial Institutions by qualifying as exempt beneficial owners.

Under Annex II.III.A, Section 157A RAT Schemes only available to Guernsey residents are also exempt under the IGA category "Financial Institution with a Local Client Base".

Where a section 154A or 157A fund meets ALL of the conditions of the definitions of either "Broad Participation Retirement Fund" or "Narrow Participation Retirement Fund" as defined below, then they as treated a Non Reporting Financial Institutions;

**Broad Participation Retirement Fund.** A fund established in Guernsey to provide retirement, disability or death benefits or any combination thereof, to beneficiaries that are current or former employees ( or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund;

- 1) Does not have a single beneficiary with a right to more than five percent of the funds assets;
- 2) Is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in Guernsey; and
- 3) Satisfies at least one of the follow requirements;
  - a. The fund is generally exempt from tax in Guernsey or on investment income under the laws of Guernsey due to its status as a retirement or pension plan;
  - b. The fund receives at least 50% of its total contributions ( other than transfers of assets from other plans described in paragraphs A though E of Section II of Annex II of the IGA or from retirement and pension accounts described in subparagraph A(1) of section V of s Annex II of the IGA) from the sponsoring employers;
  - c. Distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability or death ( except rollover distributions to other retirement funds described in paragraphs A through E of this

section or retirement and pension accounts described in subparagraph A(1) of Section V of Annex II), or penalties apply to distributions or withdrawals made before such specified events

- d. Contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed \$50,000 annually, applying the rules set forth in Annex I of the IGA for account aggregation and currency translation.

**Narrow Participation Retirement Fund.** A Fund established in Guernsey to provide retirement, disability or death benefits to beneficiaries that are current or former employees ( or persons designated by such employees) of one or more employers in consideration for services rendered, provided that;

1. The fund has fewer than 50 participants
2. The fund is sponsored by one or more employers that are not Investment Entities or Passive NFFEs;
3. The employee and employer contributions to the fund (other than transfers of assets from other retirement and pensions accounts described in subparagraph A(1) of section B of Annex II of the IGA) are limited by reference to earned income and compensation of the employee, respectively
4. Participants that are not residents of Guernsey are not entitled to more than 20 percent of the fund's assets; and
5. The fund is subject to government regulation and provides annual information reporting about it beneficiaries to the relevant tax authorities in Guernsey.

If these Non Reporting Financial Institution conditions are not met, the Scheme would be a RGFI and need to conduct due diligence and reporting, as provided under the FATCA Regulations for the Reportable Period 2016.

**A high level summary of the FATCA procedures a Reporting Guernsey Financial Institution is required to undertake is summarised in 5., below.**

**6) FATCA Reporting Financial Institution Requirements under the FATCA Regulations**  
**a) Due Diligence Account Reviews (Regulation 3; Annex I of the IGA)**

From 1 January 2016 Reporting Financial Institutions in Guernsey must identify the jurisdiction in which ALL Account Holders and Controlling Persons are resident for tax purposes regardless of whether the jurisdiction is a Participant Jurisdiction for CRS.

The Account will be a FATCA Reportable Account where the Account Holder is a Specified US Person.

The due diligence procedures required depend on the date the account was opened, the account balance and whether it is an entity account or an individual account;

For the FATCA, a "pre-existing account" was one opened prior to 1 July 2014.

Where RGFIs elect to apply them, certain account types may be exempt from review, identification and reporting, on the basis of the account balance.

Account Type	Due diligence procedures	Election threshold value
Pre-existing Individual Accounts'	Annex I.II	\$50,000 (\$250,000 for CVIC and Annuity Contracts)
New Individual Accounts	Annex I.III	\$50,000
Pre-existing Entity Accounts	Annex I.IV	\$250,000 (until exceeds \$1M)
New Entity Accounts	Annex I.V	\$50,000

Reporting Guernsey Financial Institutions should also refer to the US-Guernsey IGA and Guernsey guidance, both published at <https://www.gov.gg/article/119720/Intergovernmental-agreements-FATCA>

**b) FATCA Reporting using IGOR. (Regulation 4; Article 2 of the IGA)**

Each Reporting Financial Institution in Guernsey shall provide information on each Reportable Account that it maintains as in the time and manner provided for in the IGA Regulations and Article 2 of the IGA.

IGA (FATCA) reporting is to be made using the FATCA Schema v2.0, using the Information Gateway Online Reporter ( IGOR) at <https://igor.gov.gg/>. This site contains general help and schema guides. The Igor Forum (<https://igorforum.digimap.gg/>) allows FIs to ask any technical questions that are not addressed elsewhere.

The IGA reporting deadline for the Reportable Period 2016 is 30 June 2017.

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