

FATCA, IGA's and information reporting

Introduction

- How does FATCA impact my business?
- What should I be doing to prepare for the new regime?
- How much time do I have to prepare?

- What are other jurisdictions doing?
- How is this going to work for cross border structures?

- Are we going to have a UK “Son of FATCA”
-and a disclosure facility?

The UK/US IGA and International landscape

Preparation for FATCA reporting.

Rob Bridson

Overview

The Foreign Account Tax Compliance provisions (FATCA) is designed to identify US taxpayers with accounts at Foreign Financial Institutions (FFIs) and to enforce reporting of those accounts through withholding.

- February 2012 - Joint statement from the US, France, Germany, Italy, Spain and the UK regarding an intergovernmental approach (“IGA”) to improving international tax compliance and implementing FATCA.
- July 2012 - Model IGA to improve tax compliance and to implement FATCA.
- September 2012 - Agreement between the UK and US Improve International Tax Compliance and to Implement FATCA.
- December 2012 - Joint statements issued by Jersey and Guernsey and the Isle of Man.

“As communicated last week, officials from Guernsey, Jersey and the Isle of Man continue to engage with US officials, aimed at concluding Intergovernmental Agreements under the US FATCA regulations”.

The Isle of Man Government has confirmed that it will be adopting tax information sharing arrangements with the United Kingdom which will follow closely the FATCA intergovernmental agreement currently being negotiated with the United States.

Foreign Account Tax Compliance Act

The objective of FATCA is to enforce disclosure of offshore accounts held by US taxpayers, and the primary target for this enforcement activity are Foreign Financial Institutions (“FFI”)

FFIs will need to...

...for Due Diligence

- Obtain information on account holders that is necessary to determine if accounts are U.S. Accounts.
- Comply with any required due diligence and verification procedures.
- Attempt to obtain a waiver of applicable information disclosure limitations or close.

...for Withholding

- Deduct and withhold a 30% tax on any “passthru payment” to any account holders who do not supply the required information (“recalcitrant”) or other FFIs that do not meet the requirements.
- Develop a strategy for managing recalcitrant clients both short- and long-term.

...for Reporting

- Report information on U.S. Accounts.
- Comply with IRS information requests.
- Certify completion of due diligence and verification procedures.

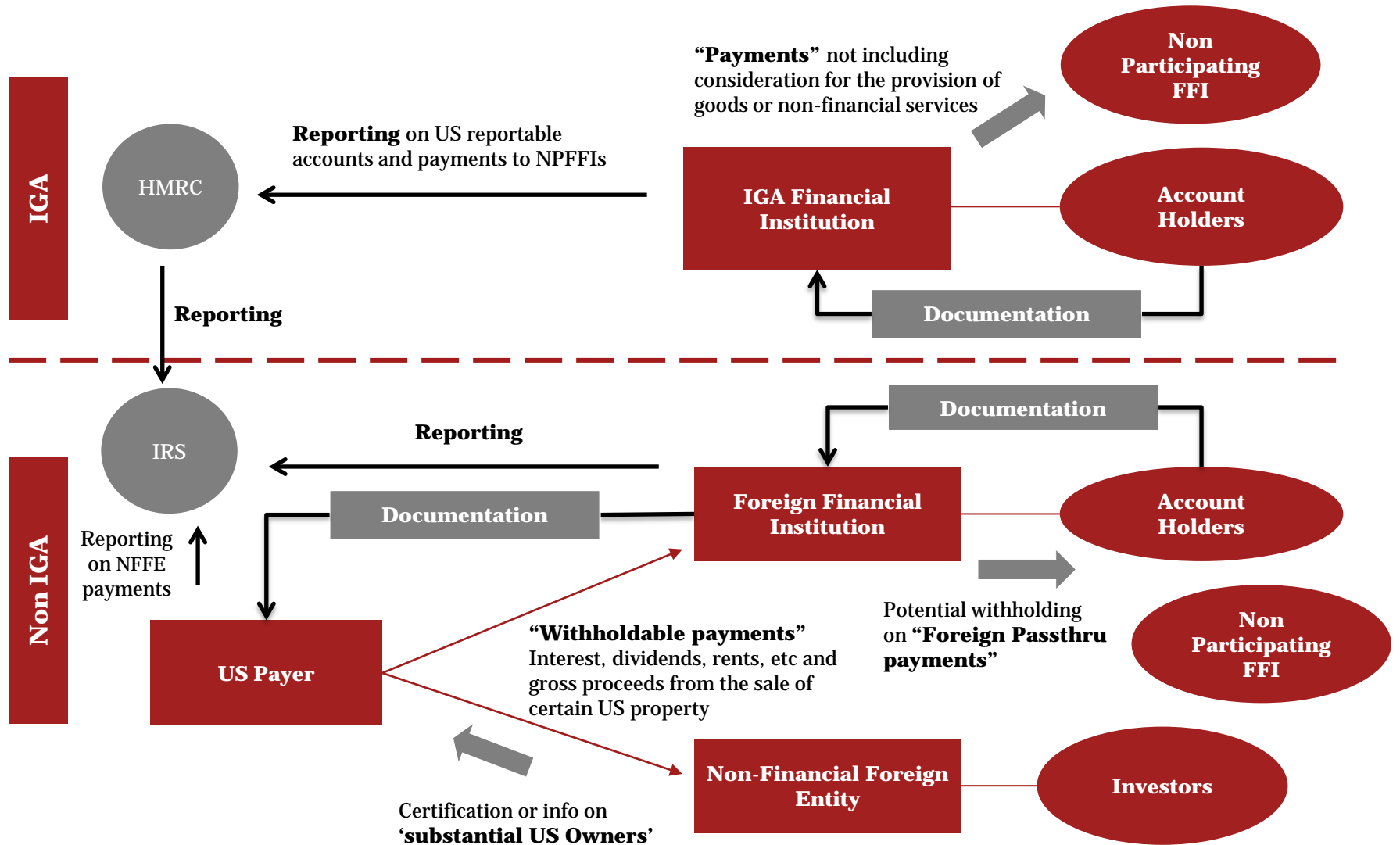
...for Intergovernmental Agreements (IGA)

- Avoid legal impediments to compliance.
- Simplify practical implementation and reduce FFI costs.
- Eliminates withholding for majority of FFIs in FATCA Partner countries.

International Support for Combating Offshore Tax Evasion and Facilitating FATCA Implementation

Signed or initialled	Finalising	Actively engaged	Working to explore
United Kingdom	France	Argentina	Bermuda
Denmark	Netherlands	Australia	British Virgin Islands
Ireland	Italy	Belgium	Chile
Mexico	Japan	Cayman Islands	Czech Republic
Switzerland (Model II)	Canada	Cyprus	Lebanon
Spain	Finland	Estonia	Luxembourg
Norway	Guernsey	Hungary	Gibraltar
Germany	Isle of Man	Israel	India
	Jersey	Korea	Romania
		Liechtenstein	Russia
		Malaysia	Seychelles
		Malta	Saint Maarten
		New Zealand	Slovenia
		Slovak Republic	South Africa
		Singapore	
		Sweden	

FATCA with Model I IGA



Who is required to comply with FATCA in the UK?

Type of FFI	Model IGA
Custodial	Any entity that holds, as a substantial portion of its business, financial assets for the account of others.
Depository	Any entity that accepts deposits in the ordinary course of a banking or similar business.
Investment Entity	<p>Any entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:</p> <ol style="list-style-type: none"> 1. Trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading. 2. Individual and collective portfolio management. 3. Otherwise investing, administering, or managing funds or money on behalf of other persons. <p><i>(Interpreted in a manner consistent with similar language set forth in the definition of “financial institution” in the FATF Recommendations).</i></p>
Specified Insurance Company	Any entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Financial Account.

Which financial accounts are subject to review in the UK?

Type	The term financial account means
Deposit	A commercial, checking, savings, time, or thrift account, or an account which is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument and any amount held by an insurance company under an agreement to pay or credit interest thereon.
Custodial	An account for the benefit of another person that holds any financial instrument or contract held for investment.
Equity or debt interest	Partnership – Equity means capital or profits interest in the partnership Trust - Equity means an interest held by a person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Specified U.S. Person will be treated as being a beneficiary of a foreign trust if they have the right to receive directly or indirectly a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.
Insurance	Cash Value Insurance Contract ¹ and any non exempt ² Annuity Contract issued or maintained by a Financial Institution.

The treatment of pre-existing accounts is subject to the pre-existing account due diligence exclusions.

1. The term “Cash Value Insurance Contract” means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value greater than \$50,000.

2. A non exempt annuity contract is and annuity contract other than a noninvestment linked, nontransferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit provided under an account, product, or arrangement identified as excluded from the definition of Financial Account in Annex II of the IGA.

What is the timeline for compliance?

	2012	2013	2014	2015	2016	2017 / 2018
FFI governance		<ul style="list-style-type: none"> July 15 2013 - IRS FATCA registration portal available (Note 2) Oct 25 2013 – Last day to register for inclusion on the Dec 2, 2013 IRS list of PFFIs and RDCFFIs 	<ul style="list-style-type: none"> Dec 2 2013 -First IRS list of PFFIs and RDCFFIs to be published Jan 1 2014 – Earliest date that an FFI can be a Partner Country FI 			
Due diligence for preexisting accounts				<ul style="list-style-type: none"> Dec 31 2014 – Complete identification and review of preexisting high value individual accounts (Note 3) 	<ul style="list-style-type: none"> Dec 31 2015 – Complete identification and review of all remaining preexisting individual and entity accounts (Note 3) 	
Procedures for new accounts			<ul style="list-style-type: none"> Jan 1 2014 –Enhanced account opening procedures must be in place to establish the FATCA status of new accounts (Note 4) 			
Withholding (Note 5)			<ul style="list-style-type: none"> Jan 1 2014 – Begin FATCA withholding on US source FDAP income for NPFIs (Note 5) Jan 1 2014 –Cut-off date for grandfathered obligations (Note 6) 			
Reporting				<p>Prior to Sep 30, 2015 – Reporting FATCA Partner FI will need to provide required information to FATCA Partner prior to IGA deadlines in order for FATCA Partner to be able to meet corresponding deadlines (Note 7, 8)</p>	<p>2016 – Reporting FATCA Partner FI to report to FATCA Partner Country the name and the aggregate amount of payments made in 2015 and 2016 to NPFI (Note 7)</p>	<p>2018 – Reporting FATCA Partner FI to obtain and report TIN of each specified US account holder for preexisting accounts (Note 7)</p>

(1) IGA: Intergovernmental Agreement.

(2) The IRS has committed to making the FATCA registration portal available no later than July 15, 2013. Thus, it could be available earlier.

(3) Due diligence for pre-existing Accounts is subject to the application of thresholds

(4) Dates for withholding on gross proceeds and passthru payments are highly speculative and will be worked out between the US and FATCA partner countries in the next two years.

(5) Withholding applies to US source income paid to nonparticipating financial institutions by reporting FATCA Partner financial institutions acting as a withholding QI, withholding foreign partnership or withholding foreign trust. Other reporting FATCA Financial Institutions must provide information necessary to allow an immediate payor to withhold.

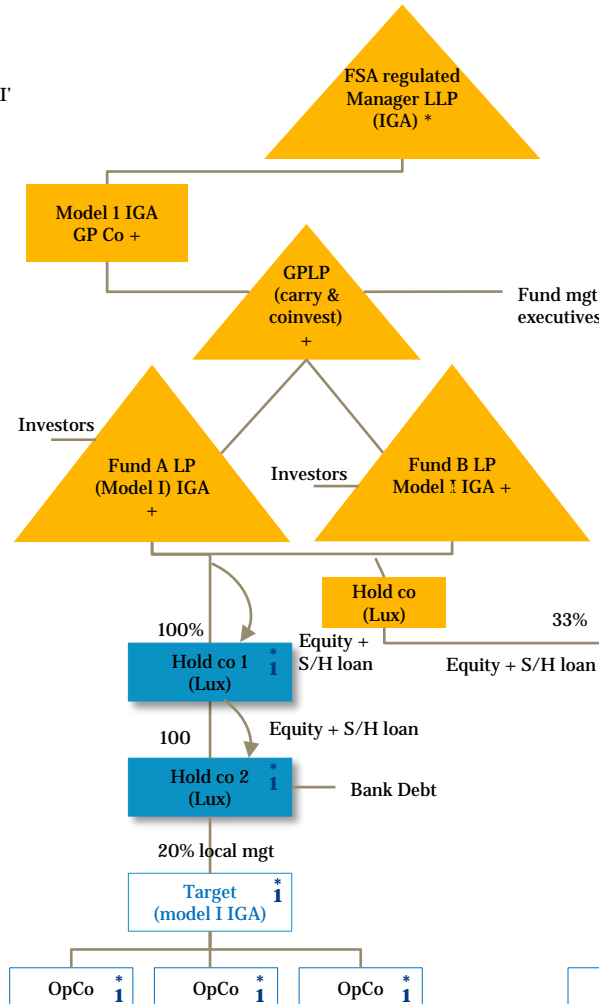
(6) Generally applies to obligations that can produce a withholdable payment. Grandfathered obligations also include: (1) any obligation that gives rise to a withholdable payment solely because the obligation is treated as giving rise to a dividend equivalent pursuant to section 871(m) and the regulations thereunder, provided that the obligation is executed on or before the date that is six months after the date on which obligations of its type are first treated as giving rise to dividend equivalents; (2) with respect to foreign passthru payments, any obligation that is executed on or before the date that is six months after the date on which final regulations defining the term foreign passthru payment are filed with the federal register; and (3) any agreement requiring a secured party to make a payment with respect to, or to repay, collateral posted to secure a grandfathered obligation.

(7) Dates will be provided under legislation or regulations issued by FATCA Partner tax authorities.

(8) For 2013 and 2014 reporting is limited to: name, address, U.S. TIN (date of birth for preexisting accounts if no U.S. TIN), account number, name and identifying number of the reporting institution, and account balance or value. For 2015 reporting includes the information reported for 2013 and 2014, plus the income paid to the account. For 2016 and beyond, reporting includes the information reported for 2015 plus proceeds from the sale of property.

Impact on Private Equity

- ▲ Financial Institution for FATCA
- * Sponsoring FI – Assumes responsibility for FATCA reporting for each sponsored FI
- + Sponsored FI – for Ltd Partnerships – covered by IGA in jurisdiction of GP
- FI – Not under control of sponsoring FI
- * Expanded affiliated group → Non financial business
- Active NFFE
- Passive NFFE/excepted FI (depending on specific circumstances)



Investors

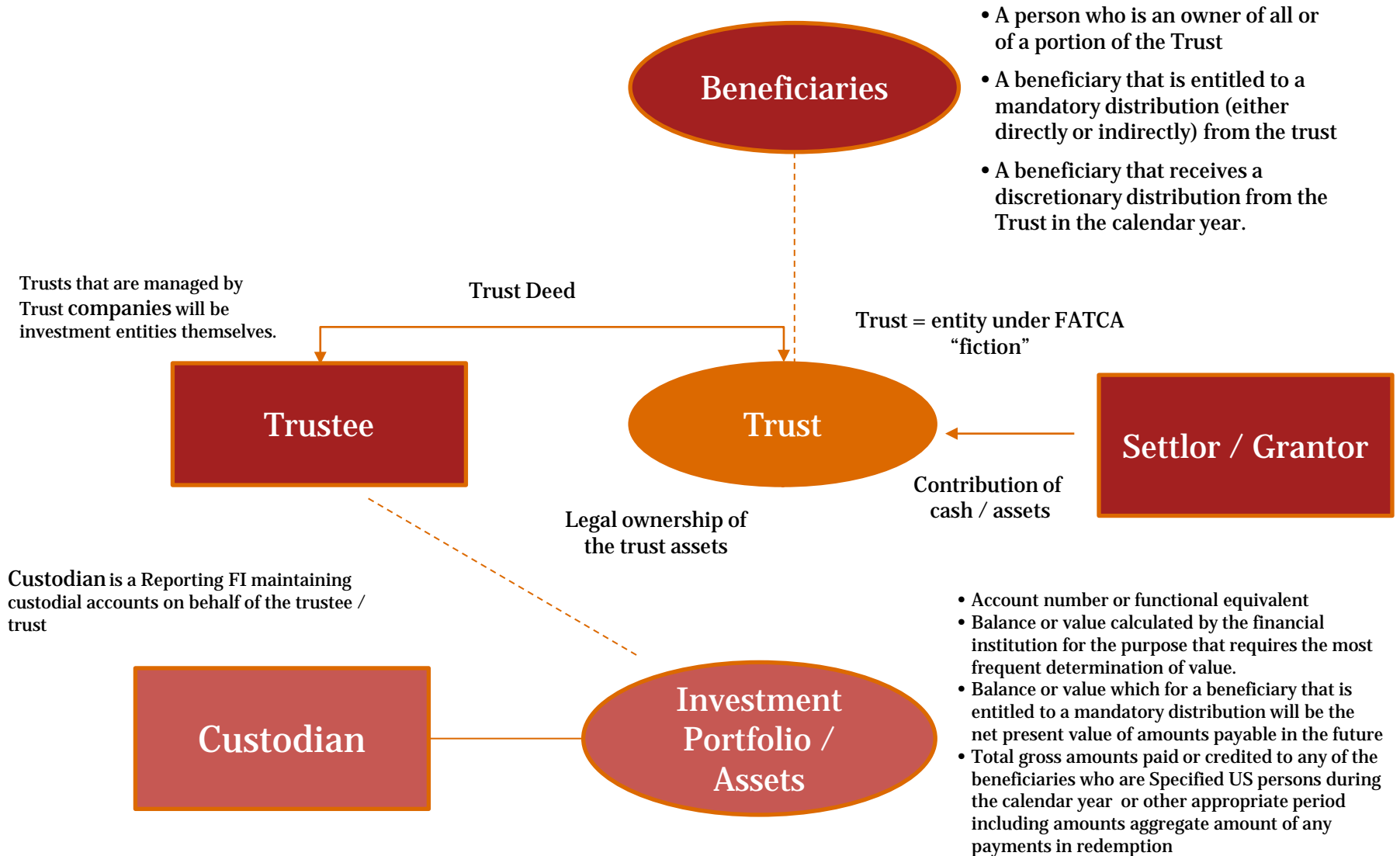
Usually 3rd party:

- US account holders
- Financial institutions
- Passive NFFEs
- Some HNWI's/Friends and family

KYC/DD requirements

- Differ for individual and entity investors
- Identify FI investors
- Identify US (whether individual or entity)
- Obtain explanation for conflicting 'indicia'

Impact on Trusts



PwC support

- Experienced local FATCA and forensic resources.
- Proven knowledge transfer to business project teams.
- Acceleration of process change programmes.
- Efficient, structured and documented remediation of customer data.
- Implementation of new customer identification processes.
- Integrated support from PwC legal.
- Experience of negotiating disclosure processes with HMRC.
- Support for customer communication programmes.
- Experience of supporting customer negotiations with HMRC.

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Welcome to Compass

Welcome to the Compass tool which enables Asset Managers to assess gaps in compliance between their current operating processes and those defined by the Regulators. Click [here](#) for more information.



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Entity analysis



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ENTITY ANALYSIS

Entity list

Due Diligence

GAP ANALYSIS

Entity List

Create New Entity

Entity Name	Country of Location	Classification	Completed By	Completed Date	Registration Required
Songer Spanish Ltd	Spain	Reporting Partner Jurisdiction Financial Institution	Joseph Adams	27/02/13	✓
Songer Pension Fund	UK	Non-Reporting Partner Jurisdiction Financial Institution	Joseph Adams	27/02/13	
Songer Electronics plc	UK	Active NFFE	Joseph Adams	27/02/13	
Songer Electronics French Branch	France	Active NFFE	Joseph Adams	27/02/13	
Songer Custodial Services	UK	Reporting Partner Jurisdiction Financial Institution	Joseph Adams	27/02/13	✓

Export to Excel

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Entity analysis



ENTITY ANALYSIS

Entity list

Due Diligence

GAP ANALYSIS

Entity Details

Entity Name: Songer Custodial Services

Parent Entity: Songer Pension Fund

Company overview

Please provide details on each company Legal Entity and Branch so that their obligations under FATCA can be evaluated.

1 What is the legal entity's name?



Songer Custodial Services



2 What is the entity's general business activity?



The entity holds and maintains securities for funds managed by a related entity.



3 Is the entity a branch?



Yes



No



4 Who is the primary contact regarding questions on the legal entity?

Mr. SC



Gap analysis



ENTITY ANALYSIS

GAP ANALYSIS

Investor Accounts

Data and system considerations

Payment processing

Reporting

Glossary

FATCA Gap Analysis

Instructions

The list below shows the questionnaire sections that you are required to complete. To access a section, click on the section name or the button next to the relevant section. When answering questions you will notice that many questions have a icon button next to them. Click this icon button to view useful guidance text relating to that question.

Investor Accounts	<input type="text"/>	0%	
Data and system considerations	<input type="text"/>	0%	
Payment processing	<input type="text"/>	0%	
Reporting	<input type="text"/>	0%	
Glossary	<input type="text"/>	0%	

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Home

Gap Analysis

Actions Management

Directive Evidence

Document Library

Reporting

Admin

FATCA

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ENTITY ANALYSIS

GAP ANALYSIS

Investor Accounts



Data and system considerations




Payment processing




Reporting




Glossary




Investor Identification




- 1 Does the Reporting Financial Institution have a process to identify investors (including indirect clients such as the beneficial owners) by account balance or value?  


 Yes No N/A Require Further Information
- 2 Does the Reporting Financial Institution have the ability to aggregate all accounts and balances for the same investor across all product ranges?  

 Yes No N/A Require Further Information
- 3 Does the Reporting Financial Institution have a process to convert balances or accounts into U.S. Dollars?  

 Yes No N/A Require Further Information
- 4 Does the Reporting Financial Institution have a method for identifying and classifying accounts by specific types (eg Cash Value Insurance Contracts, Annuity Contracts, etc.)?  

 Yes No N/A Require Further Information
- 5 Does the Reporting Financial Institution have a process to appropriately categorise accounts?  

 Yes No N/A Require Further Information
- 6 Is the Reporting Financial Institution able to identify and classify accounts as a Depository Account?  

 Yes No N/A Require Further Information

Gap analysis

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ENTITY ANALYSIS **Investor Identification**

GAP ANALYSIS

Investor
Data a
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Report
Glossa

Directive Reference

Annex I, VI C 4

4. Currency Translation Rule. For purposes of determining the balance or value of accounts denominated in a currency other than the U.S. dollar, a Reporting United Kingdom Financial Institution must convert the dollar threshold amounts described in this Annex I into such currency using a published spot rate determined as of the last day of the calendar year preceding the year in which the Reporting United Kingdom Financial Institution is determining the balance or value.

Cancel

4. Does the Reporting Financial Institution have a method for identifying and classifying accounts by specific types (eg Cash Value Insurance Contracts, Annuity Contracts, etc.)?
 Yes No N/A Require Further Information

5. Does the Reporting Financial Institution have a process to appropriately categorise accounts?
 Yes No N/A Require Further Information

6. Is the Reporting Financial Institution able to identify and classify accounts as a Depository Account?
 Yes No N/A Require Further Information

Disclosure Facilities

What would a disclosure facility mean for Jersey|Guernsey?

Stephen Camm & Ronnie Pannu

The UK landscape

- Increased media and public focus on “paying your fair share of tax”.
- HMRC attack on offshore tax issues.
- “Resource to Risk” compliance model.
- Consequences of non compliance:
 - Higher penalties – up to 200% of tax lost.
 - More prosecutions – CPS looking for five fold increase.
 - ‘Naming and shaming’ – first list published Feb 2013.
- Changing UK taxpayers’ behaviour.

IF YOU
HAVE AN
OFFSHORE
ACCOUNT YOU
NEED TO
PAY TAX
ON IT

➤ **2007 Offshore Disclosure Facility**

- HMRC get offshore account information from five largest UK banks.
- £400m yield from 44,000 disclosures.
- £91m yield from 12,000 enquiries.

➤ **2009 New Disclosure Opportunity**

- HMRC get offshore account data from over 300 further UK financial institutions.
- £80m yield from 5,500 disclosures.
- £6m from 800 enquiries.

➤ **2009 Liechtenstein Disclosure Facility**

- 1721 registrations by September 2011.
- £140m by March 2011.
- Open to March 2016.

➤ **2010 UK Swiss Agreement**

- HMRC estimate yield of £4bn to £7bn.
- HMRC to request information about 500 individuals per year.
- HMRC to get details of top 10 destinations for money outflows.

➤ **2013 Isle of Man Disclosure Facility**

The advantages of the LDF

- A guarantee of immunity from prosecution for tax related offences.
- Tax is paid only from 6 April 1999 not the normal 20 years.
- Penalty is normally fixed at 10% of the unpaid tax (increased to 20% from 2009/2010).
- No need to meet with HMRC.
- A quick and efficient process.
- All worldwide assets can be legitimised.
- No detailed and intrusive forensic review of your financial affairs by HMRC required.
- The opportunity to have an initial 'no names' discussion with HMRC before making a disclosure.
- Composite Rate and Single Rate options can give significant savings, particularly of inheritance tax.
- No 'naming and shaming' or increased future scrutiny by HMRC.

LDF registrations

	<i>Total</i>	<i>Increase</i>
March 2010	419	+419
September 2010	876	+457
March 2011	1,351	+475
September 2011	1,721	+370

UK/CH Agreement announced

	<i>Total</i>	<i>Increase</i>
March 2012	2,350	+629
September 2012	3,227	+877
March 2013		+ more than 1,000*

(*based upon 3.910 (+683) at January 2013)

Isle of Man Disclosure Facility (IOMDF)

Main features:

- Runs from 6 April 2013 to 30 September 2016.
- Financial Intermediaries to contact clients before 31 December 2013.
- No liability before 6 April 1999.
- Maximum penalty of 10% up to 2009 (then 20% to 40%).
- A clear process involving no client meetings with HMRC.
- Advance 'no names' approach to HMRC gives certainty.

A comparison : LDF -v- MDF

Differences:

- IOMDF offers no immunity from prosecution.
- IOMDF has no composite rate or single rate options.
- IOMDF not available for 'UK Swiss agreement' assets.
- IOMDF not available to anyone under enquiry at 5 April 2013.
- IOMDF available for those who only have assets in UK.
- IOMDF doesn't require 20% of assets be moved to IOM.

Consider all disclosure facilities to give best advice to clients.

Are you ready?

How a Jersey disclosure facility could look

The Jersey|Guernsey Disclosure Facility (JDF|GDF) was created by a Memorandum of Understanding between the UK and Jersey | Guernsey. It runs from 6 April 2013 to 30 September 2016. It provides an opportunity for those with assets in Jersey|Guernsey to make a tax disclosure to Her Majesty's Revenue and Customs (HMRC).

To use the JDF|GDF to disclose unpaid tax liabilities you must either hold or have a beneficial interest in relevant property held in Jersey|Guernsey between 6 April 1999 and 31 December 2013. Assets can be moved to Jersey|Guernsey to allow qualification. You must not be under investigation (civil or criminal) at 6 April 2013.

What should you be doing if there is a IGA and JDF/GDF?

- Educate your staff to understand the issues.
- Be clear about who and what is affected.
- Be able to respond to clients' questions.
- Guide clients who need advice to experienced advisors.
- Use PwC flyers as a reminder and call PwC to get help anytime.
- PwC can work with you to understand client scenarios.
- PwC offer free and confidential first meetings to your clients.
- PwC can get 'no names' clearance for clients considering a disclosure.
- PwC offer clients capped fee estimates.
- PwC have made hundreds of disclosures successfully.

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