

# Global IRW Newsbrief

Information reporting and withholding (IRW)

August 14, 2013

## *The International Tax Compliance (United States of America) Regulations 2013 effective on September 1, 2013*

On August 7, 2013, HM Treasury and HMRC laid the *International Tax Compliance (United States of America) Regulations 2013* (“UK Regulations”) before the UK House of Commons. The UK Regulations will bring the Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland to Improve International Tax Compliance and Implement FATCA (“the Treaty”) into UK law.

The UK Regulations are required to lay before the UK House of Commons for 21 days and are scheduled to come into force with effect on September 1, 2013.

The UK Regulations align the timelines for implementing various provisions under FATCA with the revised timelines set out in Notice 2013-43 issued by the Internal Revenue Service (“IRS”) and the US Department of the Treasury (“Treasury”) on July 12, 2013 (“the Notice”). The UK Regulations also provide clarifications in respect of the definition of a UK reporting financial institution (“Reporting UK FI”).

This Newsbrief identifies key changes and certain additions from the proposed UK Regulations which were released in May 2013.

### *Background*

Since the joint announcement between the United States, France, Germany, Italy, Spain and the United Kingdom, in February 2012, to intensify their co-operation in combating international tax evasion, entities and branches resident in the UK have sought clarification in respect of the scope and impact of the Treaty. The most recently updated information was:

- May 31, 2013, HM Treasury and HMRC released the UK Regulations to implement the Agreement to Improve International Tax Compliance and to Implement FATCA and simultaneously released updated Guidance Notes *HM Treasury and HMRC release details outlining the implementation of FATCA in the UK*
- August 14, 2013, HM Treasury and HMRC released updated Guidance Notes *Updated guidance*

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## *Key changes from the proposed UK Regulations*

### **1. Due Diligence Deadlines**

The UK Regulations amend certain definitions based on the Treaty to reflect the Notice, including changes to the definition of a:

- pre-existing account which becomes a financial account maintained as of June 30, 2014 (previously December 31, 2013 in the proposed UK Regulations); and
- new account which becomes an account opened on or after July 1, 2014 (previously January 1, 2014).

The timeline for the completion of the enhanced review procedures in respect of High Value Accounts is also extended from December 31, 2014 to June 30, 2015.

The timeline for the completion of the due diligence procedures in respect of pre-existing individual accounts, that are Lower Value Accounts, and entity accounts with an account balance or value that exceeds \$250,000 as of June 30, 2014 is extended from December 31, 2015 to June 30, 2016.

Pre-existing individual accounts which are not High Value Accounts as of June 30, 2014 must be reviewed as of the last day of 2015 or of any subsequent calendar year to determine if they have become High Value Accounts. In the event that any account has become a High Value Account, the timeline for completion of the enhanced review procedures is 6 months after the end of the calendar year in which the account balance or value exceeds \$1 million. Similar changes have also been made in respect of pre-existing entity accounts with a balance or value that does not exceed \$250,000 as of June 30, 2014.

For accounts identified as a US Reportable Account on or before December 31, 2014, the Reporting UK FI must report the required information with respect to 2014 on or before May 31, 2015 and on an annual basis thereafter.

In the case of an account identified as a US Reportable Account after December 31, 2014 and before July 1, 2015, the Reporting UK FI is not required to report information about such account with respect to 2014, but must report the required information about the account on an annual basis thereafter.

***PwC Observation:** The UK Regulations defer the implementation of FATCA by 6 months in accordance with the revised timelines set out in the Notice.*

*The date to review pre-existing individual and entity accounts to determine whether they have become High Value Accounts or accounts the balance or value of which exceeds \$1 million, respectively is now the last day of 2015 as opposed to 2014.*

*In one of the more significant changes, the requirement to report information in respect of 2013 has been removed although the original reporting date of May 31, 2015 is retained.*

### **2. Reporting Financial Institution**

The UK Regulations generally retain the definitions of a Reporting UK FI, with refinements in respect of the statutory references included in the definitions of a depository institution, an investment entity and a collective investment scheme, including changes to the definitions in respect of the financial assets test for an investment entity.

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The UK Regulations introduce an “applicable period” for the gross income in respect of the financial assets test, which is the shorter of either the period comprising the previous three calendar years or the period:

- starting on the later of the first day of the previous three calendar years and the date that the entity commenced the business; and
- ending on the earlier of the last day of the previous three calendar years and the last day that the entity carried on the business.

The UK Regulations extend the definition of a “relevant holding company” to also include a person whose “business consists wholly or mainly of holding shares or securities” and who has a “qualifying relationship with a qualifying entity”.

A “qualifying entity” means an entity that “is, or is formed with a view to it becoming” an entity that is managed by a financial institution and meets the financial assets test. A person has a “qualifying relationship” with a qualifying entity if the person is connected with the entity, or the person provides services or holds investments on behalf of the entity.

***PwC Observation:** The changes in the UK Regulations have been made in response to comments received and are primarily intended to identify certain holding companies, such as those used for the purposes of Private Equity investment, as UK financial institutions.*

*We understand that the revision to the investment transaction definition within the financial assets test is intended to incorporate the applicable transactions from the relevant regulations as opposed to broader considerations with regard to an Authorised Investment Fund becoming party to the relationship. This will require clarification in future Guidance.*

## *Some actions to think about*

Whilst the delay in the implementation of FATCA provides some welcome respite for many FIs, the extended timelines can also present cost, resource allocation and project management challenges. It should be noted that the IRS registration portal is scheduled to open on August 19, 2013 although no further details have been issued in respect of the registration process and the method of transmission of data and the format of data to be reported have yet to be defined.

In the UK Regulations, the details of account holder self-certification and the use of publicly available information for due diligence purposes remain matters for Reporting UK FIs to determine themselves. In the absence of further guidance, there are a number of initiatives underway in the UK through industry associations as well as at a number of financial institutions to try to create standardised self-certification forms. There appears to be limited interest in the use of publicly available information due to concerns around the availability of data and the application of such tests to non UK resident account holders.

Updates to the previously issued UK Guidance are expected before the end of August 2013 and further information is also expected in respect of the UK Intergovernmental Agreements with the Crown Dependencies and Overseas Territories. These agreements will impact financial institutions in the Crown Dependencies of Jersey, Guernsey and the Isle of Man and the Overseas Territories of Anguilla, Bermuda, British Virgin Islands, the Cayman Islands, Gibraltar, Montserrat and Turks and Caicos Islands.

UK resident entities and branches need to ensure that any Reporting UK FIs are correctly identified and become compliant in the most cost effective and least disruptive way possible.

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***To view PwC FATCA contacts in each country***

*<http://www.pwc.com/us/en/financial-services/fatca-contacts.jhtml>*