How FATCA and CRS Apply to Pension Plans

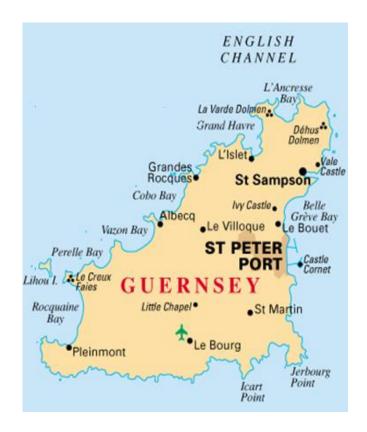
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Agenda

- Background information
- UK reporting
- Common Reporting Standard (CRS)
- Implementing FATCA and CRS locally
- Problems encountered so far

Guernsey





Guernsey

- Self-governing dependency of English Crown
- International finance center
- Favourable tax treatment for international pensions
- Strong trust law



Strict rules on AML/CFT



Personal Perspective

- US taxpayer living and working outside
 US
- Still subject to US tax on worldwide income
- Non US pensions not tax effective for US taxes, so declared as regular income
- Form 8938 and FinCEN Form 114 to declare non US accounts

UK Reporting

- UK Crown Dependencies "encouraged" to have IGAs with the UK
- Very similar to US FATCA rules, but some differences
- Only for 2014 and 2015
- UK (and Crown Dependencies) in the Common Reporting Standard from 2016



Common Reporting Standard

- About 100 jurisdictions signed up so far
- US is the notable exception
- Many rules similar to FATCA (even with amounts in US dollars)
- Standard pension plan exemptions similar to FATCA
- First reporting in 2017 (for 2016 information)





FATCA (and UK Reporting) in Guernsey (1)

- IGAs make compliance a legal requirement
- Local Guidance Notes put IGAs into practice
- More recent versions of Guidance Notes include specific section on pension plans
- Some exemptions for local pension plans
- Occupational pension plans treated as discretionary trusts (no due diligence or reporting until payments made)

FATCA (and UK Reporting) in Guernsey (2)

- Most non exempt plans are Deemed Compliant FFIs (Trustee Documented Trust or Sponsored Investment Entity)
- Reporting done locally via Information Gateway Online Reporter (IGOR)



BWCI Perspective (1)

- FATCA and UK reporting potentially big issue!
- Trustees or administrators to hundreds of pension plans with 20,000+ members
- Work for insurance companies, captive insurers, share trusts, and various other entities that could be FFIs
- Many international clients

BWCI Perspective (2)

- Currently, not much exposure to the US
- Significant exposure to the UK
- Much activity completing Form W-8BEN-E or other forms to document status
- Reporting to Guernsey, Jersey, and the UK (so far)

Local Guidance on CRS

- Initial guidance very limited mostly refers to standard CRS guidance
- Not (yet) as flexible as FATCA and UK reporting
- Working with local authorities to educate on pension issues
- Some ability to define local "low-risk"
 Financial Institutions or accounts similar to standard exemptions

Problems Encountered (1)

- Rules not always clear
- Guidance is sometimes slow and may not be very specific
- Interpretations can vary widely by practitioner and jurisdiction
- Difficult to explain reason for rules to clients or members
- Each FI has different forms for attesting FATCA and CRS status (and sometimes different within FI)

Problems Encountered (2)

- Requires much data analysis by client and by member
- Much data manipulation for reporting
- XML files not easy to work with
- XML requirements vary by jurisdiction
- Method for submitting data also varies
- Intended to be bilateral reporting?

Broad Participation Retirement Fund (1)

- No beneficiary has right to more than 5% of assets
- Subject to government regulation, and provides annual information reporting about its beneficiaries to the tax authorities

Broad Participation Retirement Fund (2)

Satisfies at least one of the following:

- Exempt from tax on investment income due to status as retirement or pension plan
- At least 50% of total contributions from sponsoring employer(s)
- Distributions or withdrawals allowed only upon occurrence of specified events related to retirement, disability, or death
- Contributions by employees limited by reference to earned income of employee or may not exceed US\$50,000 annually

Narrow Participation Retirement Fund (1)

- Fewer than 50 participants
- The fund is sponsored by one or more employers that are not Investment Entities or Passive NFFEs
- The employee and employer contributions to the fund are limited by reference to earned income and compensation of the employee, respectively

Narrow Participation Retirement Fund (2)

- Participants that are not residents are not entitled to more than 20 percent of the fund's assets
- The fund is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities

Retirement and Pension Account

- The account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits)
- The account is tax-favored
- Annual information reporting is required to the tax authorities with respect to the account

Retirement and Pension Account (2)

- Withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events
- Either (A) annual contributions are limited to US\$50,000 or less, or (B) there is a maximum lifetime contribution limit to the account of US\$1,000,000 or less

Should Reporting Apply to Pension Plans?

- Risk of individual tax avoidance?
- Government plans are exempt
- Many local occupational plans are exempt
- Some liberal interpretations of standard rules depending on jurisdiction
- Potential arbitrage
- Standard exemptions arbitrary (and US plans do not meet all requirements!)

Questions?

