HM Revenue & Customs

Implementing the United Kingdom's Agreements with the Crown Dependencies to Improve International Tax Compliance.

Discussion document

Publication date: 26 June 2013
Closing date for comments: 06 September 2013

Subject:	The implementation of the agreements between the United Kingdom ("UK") and the Crown Dependencies ("CDs") to improve international tax compliance ("the Agreement").
Who should read this:	Businesses, representative bodies and tax professionals
Duration:	The discussion period will last for 10 weeks, 26 June – 06 September 2013.
How to respond or enquire about this discussion:	Electronic responses to fatca.consultation@hmrc.gsi.gov.uk Written responses should be addressed to Charlotte Hopwood at: HM Revenue & Customs, Room 3C/03, 100 Parliament Street London SW1A 2BQ.
Additional ways to be involved:	HMRC will engage directly with representative bodies and affected businesses through existing customer relationships but welcomes views from all interested parties.
After the discussion:	The proposals will be reviewed in light of the responses, with the view to introducing regulations and guidance in Autumn 2013.

Contents

1	Introduction	4
2	The Agreement	6
3	The Articles	8
4	Annex I: Due Diligence Obligations	15
5	Annex II and Annex III	21
6	Annex IV: Alternative Reporting Regime for Certain UK Reportable Accounts	22
7	Summary of Questions	26
8	The Discussion Process: How to respond	28
Annex A	Model Agreement	29
Annex B	Model Annex I	40

On request this document can be produced in Welsh and alternate formats including large print, audio and Braille formats

1. Introduction

Ensuring everyone pays their fair share of tax is in sharper focus than ever. A key element of this agenda is tackling offshore tax evasion. This is critical not only to protect the public finances but also to reinforce the public's confidence in the tax system, as well as the international economic system as a whole. Central to tackling offshore evasion is the sharing of financial information between governments.

In September 2012 the UK became the first jurisdiction to sign an enhanced automatic tax information exchange agreement with the United States (US). This was after very close working with several European countries and the US to develop a new model intergovernmental agreement based on the US FATCA legislation. The US has since concluded several more agreements based on the model and is in negotiations with over 75 jurisdictions in total.

The UK was quick to see the potential that this provides to embed a new international standard in the exchange of information based around the FATCA model. This would provide a step change in the ability of the international community to tackle tax evasion, while minimising costs for governments and business (who are already investing in the systems and processes necessary to comply with the US FATCA legislation and the subsequent intergovernmental agreements to implement it). At Autumn Statement 2012 the Government announced that it saw its agreement with the US as setting a new standard in international tax transparency and would look to conclude similar agreements with other jurisdictions. This would all form part of a drive to embed a new single international standard in the automatic exchange of tax information.

The Government will continue to work to embed this new international standard in all international fora. This approach has already delivered results in the G20, European Union and, under the UK presidency, the G8 who have all supported the OECD work on turning the many agreements being concluded with the US into a new global standard.

A first step towards this new international standard is to conclude agreements between the UK and the British Crown Dependencies (Isle of Man, Guernsey and Jersey) and those Overseas Territories with financial centres (Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Montserrat and the Turks and Caicos Islands). The Government of the UK and the governments of the Crown Dependencies (CDs) and Overseas Territories (OTs) have a shared aim of tackling tax evasion, and see entry into these agreements as contributing towards setting a new standard in international tax transparency.

The approach taken when negotiating these agreements has been to aim for maximum consistency with the UK/US agreements and the agreements being negotiated between the CDs and OTs and the US. This is in order to minimise the additional costs and burdens to business from the increased reporting requirements. While this has been our starting point, there are areas where it has not been

appropriate to exactly mirror the US model due to differences in context, for example the taxation systems.

One area that will differ from the US model is the option for the CDs and OTs to provide for an alternative reporting regime, available on election, to individuals who are resident but not domiciled in the UK, and who are taxed on the remittance basis rather than the arising basis.

This alternative reporting regime has been designed in recognition of the different basis for the taxation of this group of taxpayers. The regime therefore focuses on information relevant to this different basis of taxation and is consequently designed to ensure that the information reported is of equivalent value as the standard FATCA-type account information, to ensure compliance with UK tax. This alternative reporting regime will be optional to the CD and OT governments who will need to implement it through their domestic laws.

While the Model Agreement contained in this document is being used as the basis for discussion with both the CDs and the OTs, the UK will only be required to implement domestically its agreements with the CDs. This is because:

- The agreements that the UK is negotiating with the Isle of Man, Jersey and Guernsey will be fully reciprocal (information will flow both from the UK to the CDs and from the CDs to the UK). This will therefore require domestic legislation to implement the agreements in the UK. It is the implementation of these agreements that is therefore the focus of this discussion document.

- While based on the same model Agreement, the agreements the UK is negotiating with the Overseas Territories with a financial centre will not be reciprocal (information will flow only from the OTs to the UK). These agreements will not require UK domestic legislation to implement them and therefore are not specifically discussed in this document.

This discussion document covers implementation issues that will affect UK business. As UK Financial Institutions will only have reporting obligations under the reciprocal agreements it is the reciprocal version of the Model agreement that is attached to this document.

As the non-reciprocal version of the model does not require UK legislation all references to the Agreement that follow should be taken to apply to the proposed reciprocal agreements only.

2. The Agreement

We have published a model Agreement alongside this discussion document. The Agreement is the current model of an inter-governmental agreement between the UK and an "**IGA Counterparty**", where there is reciprocal exchange of information. We hope to shortly finalise agreements that will be very close to the model, with the CDs and the OTs, although as mentioned overleaf the agreements with the OT's are expected to be non- reciprocal and there will be revisions to the model to reflect that the difference in approach.

This discussion document asks about the impact of these Agreements on UK Financial Institutions, and also asks how the final Agreements can best be implemented in the UK through regulations and guidance. The Agreements will impact institutions in both jurisdictions which are party to the Agreement but this document concerns the UK implementation of those Agreements and so focuses on the impact on UK Financial Institutions. UK Financial Institutions will only have reporting obligations under the reciprocal agreements and it is anticipated that under the terms of these Agreements they will only be reporting on accounts held by Isle of Man, Guernsey and Jersey residents.

As part of the UK legislative process, we will publish a Tax Information and Impact Note ("TIIN") alongside the UK Regulations. This will include an estimate of the impact on UK business from the expansion of reporting obligations under these Agreements (i.e. the TIIN will need to include an estimate of the costs of this additional reporting, over and above the costs incurred under the UK/US agreement). This discussion document therefore also asks for details of the expected increase in administrative burden on UK business as a result of the additional reporting requirements. For the purposes of making these estimates UK Financial Institutions should presume that they will only be reporting on Reportable Accounts with respect to the Isle of Man, Guernsey and Jersey.

Once the agreements have been finalised HMRC will introduce Regulations ("The Regulations") through a power introduced in Finance Bill 2013 to enact the reciprocal agreements in UK Law. These will provide the legal basis for UK Financial Institutions to comply with their obligations under the Agreements. It is anticipated that these UK Regulations will be enacted towards the end of 2013.

No UK Regulations will be required in respect of any non-reciprocal agreements as there will be no reporting in respect of these by UK institutions.

As stated above, this discussion document invites comments on identified issues for consideration in developing the enacting legislation and the supporting guidance.

We invite specific input on:

- Any information and data with regard to the costs of implementation and compliance with the obligations being introduced,
- Any changes that would be needed to the implementing Regulations, when compared with those regulations that have been used to implement the agreement signed with the US, and
- Any changes and additions that will be needed to the guidance already developed to support implementation of the agreement signed with the US.

Unless otherwise stated defined terms used in this document are as set out in Article 1 of the Agreement.

As with the UK/US agreement, signed in September 2012, this model Agreement provides for an intergovernmental agreement approach to data exchange. Relevant UK Financial Institutions will report the required information to HMRC under UK law. HMRC and the CD tax administrations will then automatically exchange this information under existing exchange of information provisions in the relevant Tax Information Exchange Agreements (TIEAs) or Double Taxation Agreements (DTAs).

The Agreement is comprised of 5 sections

- The Articles
- Annex I – Due Diligence obligations,
- Annex II – Non-Reporting UK Financial Institutions and Products
- Annex III – Non-Reporting CD Financial Institutions and Products
- Annex IV – Alternative Reporting Regime for Certain UK Reportable Accounts

The following Chapters describe the Articles and Annex I of the Agreement and set out how they are intended to work.

Annexes II, III and Annex IV of the Agreement are still the subject of detailed discussion and so are not being published at this point. However we hope to publish them later this summer.

This discussion document focuses on the implementation of the model Agreements in UK domestic legislation, the following chapters raise specific questions, but any other thoughts on how such Agreements can be best incorporated in UK regulations and guidance are welcomed.

3. The Articles

The Agreement requires UK Financial Institutions to identify and report details of accounts held by Specified CD Persons. This covers accounts that such persons hold in their own name, as well as accounts that are held by an entity that is controlled by one or more Specified CD Persons.

Article 1

Article 1 of the Agreement defines the terms used in the Agreement and sets out what is meant by a Financial Institution and also a Financial Account: which includes a Depository Account, a Custodial Account, a Cash Value Insurance Contract or Annuity Contract, as well as Equity Interests in partnerships and trusts. The Article also includes definitions of a “CD Reportable Account” a CD person and a “Specified CD Person” which are used to identify the accounts that a UK Financial Institution needs to report to HMRC under the Agreement.

To minimise the additional burdens placed on Financial Institutions the terms used mirror, as closely as possible, those in the UK/US agreement. In order to achieve this consistency some terms and definitions within the Agreement have been imported from US regulations, and in places there are cross references to them. Many of the concepts and definitions in the attached model have previously been the subject of consultation in respect of the UK/US agreement. Therefore this document will focus on the areas of difference and how any new or amended concepts or definitions can best be implemented in the UK.

Given the reciprocal nature of the model Agreement, the definitions have been expanded to apply for both parties. UK Financial Institutions will be obliged to identify and report on CD Reportable Accounts held by Specified CD Persons, and CD Financial Institutions will be obliged to identify and report on UK Reportable Accounts held by Specified UK Persons.

Article 1.1 (f) defines US Treasury Regulations.

As explained above cross references to the US regulations have been retained in some places in order to preserve consistency with the UK/US agreement.

It should be noted that the US regulations that will be relevant for the purposes of the Agreement are those that are in place on the date the Agreement is signed by the UK and the CD counterparty. If any subsequent changes are made to the US regulations referenced in the Agreement, they will only be recognised if both parties agree to adopt those changes in the Agreement and any relevant domestic legislation.

> *Q – Do you foresee any implementation issues due to the inclusion of cross references to the US Treasury regulations? How can these best be incorporated in UK Regulations to achieve consistency?*

Article 1.1 (l) sets out what is meant by a UK Financial Institution.

These are defined as Financial Institutions resident in the UK for tax purposes; excluding branches (and subsidiaries) that are located outside of the UK. Financial Institutions are Custodial Institutions, Depository Institutions, Investment Entities, or Specified Insurance Companies.

It is anticipated that the UK Financial Institutions falling within this definition will be broadly the same as those to whom the UK/US agreement applies, subject to any modifications to the exemptions included in Annex II.

Article 1.1 (cc) sets out what is meant by a CD Reportable Account.

This definition mirrors that for a US Reportable Account under the UK/US agreement, subject to some necessary modifications to the definition of Specified CD Person, detailed below.

Article 1.1 (gg) sets out what is meant by a Specified CD Person.

This definition varies from the equivalent definition for a Specified US Person as, unlike the US, the CD's do not use citizenship as their basis for taxation. Therefore only information on persons who are resident in the CD's for tax purposes will be relevant information. This is the same for the definition of Specified UK Person.

Although Annex III (which will contain exempt entities and products) has not yet been finalised, the Agreement makes cross references to the exemptions that will be included in that Annex. This is to avoid the need to list those exemptions in the definition of Specified Person, as they were in the UK/US agreement. The UK exempt entities and products will be contained in Annex II.

On the basis that they are not relevant in the context of an agreement with any territory other than the US, the model Agreement does not contain references to the following:

- Partner Jurisdiction
- Nonparticipating Financial Institution

Q –. Are there any other definitions in the Agreement that give rise to uncertainty or raise practical issues which have not been covered by the existing UK guidance in relation to the UK/US agreement?

Q – Would adding additional sections of guidance regarding the Agreement to the existing guidance on the UK/US agreement be the most effective way of clarifying differences between the UK's agreements?

Article 2

Article 2 sets out the information that will need to be obtained by UK Financial Institutions and provided to HMRC, who will then annually exchange that information

under the exchange of information provisions in the relevant TIEA/DTA. The current working assumption is that the normal date by which Financial Institutions will need to supply data to HMRC will be the 31st May each year.

HMRC is aware that the requirements of the Agreement will result in increased reporting by Financial Institutions to HMRC. In order to minimise the additional burdens and system costs that UK Financial Institutions will incur, the Agreement states that the format in which data needs to be returned to HMRC and the method of transmission of that data shall be the same as required for the UK/US agreement.

> *Q – To enable us to produce estimates of the administrative burden on UK business for publication in the TIIN, can you tell us what additional burdens and costs are anticipated in respect of the reporting and transmission of data on CD Reportable Accounts?*

It is proposed that the first date for reporting data on CD Reportable Accounts, to HMRC, will be 31 May 2016, a year later than the first reporting for US Reportable Accounts. It is currently proposed that all reportable data for 2013, 2014 and 2015 must be provided by this date.

The proposed deferral to 2016 applies to the reporting timescale only. Although UK Financial Institutions will have additional time to report data on CD Reportable Accounts, the identification of those accounts through the due diligence procedure must be completed to the same timescale as that for US Reportable Accounts. This is covered in more detail in Annex I.

> *Q – Is the proposal to align the annual date for reporting CD information with the existing date to report US information workable for UK Financial Institutions? Or would separation of reporting dates be preferable?*

> *Q – Would the use of staggered reporting dates be a preferable option to the single date approach for the reporting of 2013 and 2014 data to HMRC? If so, which dates within the period 1 January 2016 to 31 May 2016 would be preferred for reporting data for these years?*

Information requirements

Article 2 also specifies the information that must be obtained in respect of each Reportable Account held by each Reporting Financial Institution, and then exchanged annually between the parties. This means that UK Financial Institutions will need to report the information in box 3.1 in respect of CD Reportable Accounts. This information will then be exchanged annually, on an automatic basis.

As the Agreements with the CDs will be reciprocal, the UK will receive the same details in respect of UK Reportable Accounts.

Box 3.1

1. the name, address, date of birth and where available the CD National Insurance Number of each Specified CD Person that is an Account Holder of such account and, in the case of an Entity that, after application of the due diligence procedures set forth in Annex I, is identified as having one or more Controlling Persons that is a Specified Person in the other Party, the name, address, of such entity and the name, address, date of birth and where available the CD National Insurance Number of each such Specified CD Person;
2. the account number (or functional equivalent in the absence of an account number);
3. the name of the Reporting Financial Institution and, where provided when registering with the U.S. Internal Revenue Service for FATCA purposes, the Global Intermediary Identification Number;
4. the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year, immediately before closure;
5. in the case of any Custodial Account: ▪ the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and ▪ the total gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting UK Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
6. in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
7. in the case of any account not described in subparagraph (5) or (6) of this paragraph, the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting UK Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

The information that needs to be reported with respect to a CD Reportable Account is very similar to the data to be reported with respect to a US Reportable Account but does differ in two respects. The Agreement asks for the date of birth of the Specified CD Person, and for the CD National Insurance Number (NINO) rather than the US Tax Identification Number (TIN). These changes reflect the different systems of the tax administrations involved.

Q – Will the differences in the information being requested lead to any increased burdens for your business? If so then what will the additional costs be, what will they relate to and how will they arise?

HMRC is aware that it is possible some Financial Institutions will have to report to HMRC for the purposes of this Agreement, but that those institutions may not have any Reportable Accounts under the UK/US agreement. We would like to ensure that the number of Financial Institutions of this type, and the impact of the reporting obligations on them, is fully understood.

Q – Are there any Financial Institutions that do not have Reportable Accounts under the UK/ US agreement but are likely to have Reportable Accounts under any Agreement between the UK and the CDs?

Q – Will the Financial Institutions identified above already be undertaking due diligence procedures for the purposes of the US/UK agreement? For instance they may be undertaking due diligence in order to identify that there are no US Reportable Accounts.

Q – To enable us to produce estimates of the administrative burden on UK business, for publication in the TIIN, can you tell us what additional burdens and costs the requirement to report data to the CD's is likely to introduce for any of the Financial Institutions identified above?

Article 3

Article 3 sets out the time and manner of exchange of information between the UK and the CDs.

The differing categories of information that are required to be reported under Article 3 for the years 2013 - 2016 are set out in Box 3.2 below. 2016 is the first year of full reporting and later years will require the same data:

Box 3.2

Information with respect to the years	Information that needs to be reported
2013 and 2014	• Name, address, date of birth and National Insurance Number if available. • Account number (or functional equivalent) • Name of the reporting institution and it's GIIN if available • Account balance or value
2015	In addition to the above: • For Custodial Accounts - the total gross interest, total gross dividends and the total gross amount of other income generated with respect to the assets held in the account. • For Depository Accounts - the total gross amount of the interest paid or credited to the Account • For any other account - the total gross proceeds paid or credited to the Account Holder
2016	In addition to all the above: • The total gross proceeds from the sale or redemption of property paid or credited to the Account

Article 4

This sets out the basis on which the UK and CD Competent Authorities will operate in respect of compliance and enforcement of the obligations under the IGA. The majority of this section of the Model is the same as the UK/US agreement, although there are some minor differences to article 4.4 as outlined below.

Article 4.1 is the same as the UK/US agreement, and addresses minor and administrative errors which might arise, for instance where the data received has been corrupted or perhaps where data sets were filled in incorrectly. In this case the Competent Authority of the CD may contact a UK Financial Institution directly in order to resolve the issue.

As with the UK/US agreement, where a reporting UK Financial Institution is concerned that an enquiry is about more than the quality or format of the data and potentially presents difficulties in respect of their obligations under the Data Protection Act 1988 (DPA), or implementing the requirements of the Data Protection Directive (Directive

95/46/EC), then they should contact HMRC. Similarly, more specific enquiries (for instance pertaining to a specific individual or entity) will need to be conducted through the Competent Authorities. In this situation the UK Financial Institution will deal directly with HMRC and HMRC will deal with the relevant CD Competent Authority.

Article 4.4 introduces a commitment by both parties to ensure that they have appropriate anti avoidance measures in place. The wording of the section varies from that in the UK/US agreement, as action taken to circumvent the aims of the Agreements will not carry a threat of withholding by either party. For this reason the commitment given by each party to ensure the effective implementation of the Agreement is broader than that in the UK/US agreement.

Article 5

This is a Mutual Commitment to Continue to Enhance the Effectiveness of Information Exchange and Transparency Article. It is identical to the corresponding section in the UK/US agreement and does not appear to require further discussion here.

Article 6

This article contains what is generally known as a “Most Favoured Nation” provision. This essentially works by comparing similar agreements, whether they are signed by the UK with third parties or signed by the CDs with third parties, to see whether those agreements contain more favourable terms.

The first step is that either the UK or the CD enters into a signed bilateral agreement with another jurisdiction, *under which the other jurisdiction commits to undertake the* ***same*** *obligations and is subject to the* ***same*** *terms and conditions as in the Agreement*.

If the UK or the CD provides more favourable terms in their third-country bilateral agreement compared to those included in the Agreement then either the CD or the UK respectively can obtain the benefit of those terms.

However, it should be noted that the agreements between the UK and US, or between the CDs and the US, to implement FATCA will not trigger this clause with respect to the Agreement. That is because under the current US agreements the US does not undertake the same obligations as those that are placed on the UK and the CD’s under the model Agreement.

4. Annex I: Due Diligence

Annex 1 sets out the due diligence process that needs to be followed in order for a Financial Institution to establish the status of an Account Holder and meet the reporting requirements of Articles 2 and 3.

In order to minimise any new administrative burdens being imposed, the due diligence processes are designed to be as similar as possible to those under the UK/US agreement.

Procedures for Financial Institutions who are using due diligence procedures from the US Treasury Regulations

Under the UK Regulations to implement the UK/US agreement, UK Financial Institutions may either rely on the due diligence procedures set out in Annex 1 of that agreement or, where provided for in the UK regulations they can use certain procedures set out in the US treasury regulations ("alternative procedures"). To minimise burdens on Financial Institutions, it is anticipated that the regulations implementing the Agreement will allow UK Financial Institutions to use the same procedures, and to make the same choices, in respect of the CDs as they can in respect of the US.

UK Financial Institutions will be able to rely on the alternative procedures only to the extent allowed for in UK regulations. Any UK regulations that are introduced to allow use of alternative procedures when identifying CD Reportable Accounts will still have to maintain compliance with the overall reporting obligations in the Agreement.

The Agreement sets out that any revised or amended procedures or definitions taken from the US treasury regulations can only be used where both parties agree to their adoption. Therefore any modifications that are made to the US Treasury Regulations will not apply for the purposes of the Agreement unless they are accepted by both parties. If such changes were accepted they would then need to be enabled by UK legislation.

We are working on the presumption that where UK Financial Institutions intend to use procedures taken from the US treasury regulations for the purpose of the UK/US agreement, e.g. to rely on either an indicia check *or* self certification with regard to on-boarding of new individual accounts, they will also want to use those procedures for the purpose of this Agreement.

> *Q – Is the option for the UK to provide in Regulations for UK Financial Institutions to be able to use the same due diligence procedures as they have chosen to use for the purposes of the UK/US agreement a welcome option?*
>
> *Q – Are there any areas where these due diligence procedures will not be equally applicable for identification of CD Reportable Accounts?*

Individual accounts

For pre-existing individual accounts with a value over $50,000 but less than $1,000,000 at 31st December 2013 under Annex I. II. B (defined as “Lower Value Accounts”), the UK Financial Institution must review its electronically searchable data for CD indicia. (See Box 4.1).

This $50,000 threshold mirrors that for a pre-existing individual account in the UK/US agreement. For consistency the model Agreement uses the US $ threshold rather than substituting a Sterling equivalent. This ensures that UK Financial Institutions do not have to deal with multiple thresholds and initial discussions with business have suggested there is no strong preference for using a Sterling equivalent rather than a US $ amount.

Under the current UK Regulations for identifying US Reportable Accounts the Financial Institution must make an election for the thresholds to apply. If the Financial Institution has not elected to apply the thresholds then accounts must be reviewed regardless of value, but there will be no corresponding obligations for the aggregation of account balances. Where the Financial Institution has elected for the thresholds to apply, then the Account Balance Aggregation Rules in Annex 1.IV.C will also need to be applied.

> *Q – The default position under the UK regulations to implement the UK/US agreement is that the thresholds do not apply unless an election has been made to apply them? Would UK Financial Institutions welcome the same approach in respect of CD Reportable Accounts*

The due diligence procedures for new individual accounts follow those in the UK/US agreement. As no changes have been introduced this is not discussed any further here.

Indicia

UK Financial Institutions will need to use search for the following indicia to fulfil their due diligence requirements:

Box 4.1

a)	Identification of the account holder as a Specified CD Person;
b)	Current mailing or residence address (including a post office box or "in-care-of" address) in the CD
c)	Standing instructions to transfer funds to an account maintained in the CD
d)	Currently effective power of attorney or signatory authority granted to a person with a CD address; or
e)	An "in-care-of" or "hold mail" address in the CD that is the ***sole*** address the Reporting UK Financial Institution has on file for the account holder.

The indicia used in the Agreement to identify CD Reportable Accounts are based on those used in the UK/US agreement to identify US Reportable Accounts. As many of the indicia are the same as those in the UK/US agreement we have not discussed those any further here and have instead focussed on those that are different.

Indicia a)

This differs from the indicia of "Identification of the account holder as a US citizen or resident", in the US agreement.

This US indicia was designed to identify account holders who are Specified US Persons. Individual Specified US Persons are those who are either citizens or residents of the United States. The definition of Specified CD Person is narrower and an individual will only be a Specified CD Person if they are tax resident in the CD.

In order for the UK Financial Institution to comply with their obligation to search for "identification of the account holder as a Specified Person" they will need to search their records for the account holder's CD tax residence/Specified Person status if held. That is, if the Financial Institution has searchable records stating the tax residence of the account holder then these must be searched. Once the search has been carried out, if no such identification has been obtained indicia a) will not have been found.

Indicia c)

The reference to standing instructions to transfer funds to an account maintained in the CD has been retained in indicia c). However it has been suggested that due to the geographical proximity between the UK and CDs this indicia could lead to accounts being incorrectly identified as Reportable Accounts. For example, a person based in the CDs may make regular payments for services and utilities to third parties, who are based in the UK even though they provide services to the CD's. This would appear to

be a particular concern in respect of standing instructions from Depositary Accounts, rather than for other types of Financial Accounts.

Whilst we are not consulting on the terms of the Agreement we are happy to receive any immediate thoughts that business and their advisors have on this point.

Other indicia

There are a number of other changes from the indicia listed in the UK/US agreement:

- Because neither the UK nor the CD's tax on the basis of citizenship the reference to an "unambiguous place of birth", contained in the UK/US agreement has been removed from the model.

- Reference to a telephone number has also been removed.

Q – We are aware that the changes to the indicia will need to be clarified in guidance. Are there any specific areas that would benefit from additional clarification?

Repairing CD Indicia

If a UK Financial Institution's search identifies CD indicia connected with an account then that account must be reported to HMRC. However, the Agreement allows the UK Financial Institution to "repair" the indicia by undertaking the further checks which are set out in Part II. B. 4 of Annex I. There are specified checks applicable to the particular indicia.

As the definition of a Specified CD Person under the Agreement is based on the tax residence and not the citizenship of the person the repairs for each indicia are different to those used in the UK/US agreement.

All the further check or repairs listed in Annex I, II. B. 4 refer to self certification. The term "self-certification" is used in several different contexts in the Agreement, but here it is aimed at establishing whether an individual is a CD (or UK in the context of CD Financial Institutions) tax resident.

There is no set form that a self-certification must take, but it must be sufficient to allow the Financial Institution to identify where the account holder is tax resident, and for UK Financial Institutions to identify that an account holder is not a CD tax resident.

Q – Do you foresee any practical issues in obtaining a self certification where there is no existing form (i.e. no US from W-8 or equivalent)?

If a UK Financial Institution positively identifies an account holder of a Financial Account as a Specified CD Person under Annex I. II. B. 1. a) then the account should be treated as a CD Reportable Account.

If any of the other indicia listed under Annex I. II. B. 1. b) to e) are present then the Agreement provides for two different cures, depending on which indicia is found.

Annex I. II. B. 1. b)

The Account Holder information contains a current mailing or residence address in the CD. This can be repaired by obtaining the following documentation from the Account Holder:

self-certification that the Account Holder is not resident in the CD for tax purposes, ***and either***,

- a certificate of residence for tax purposes issued by an appropriate official of the country in which the Account Holder claims to be resident,

or

- the provision of a local tax identification number of the jurisdiction in which the Account Holder claims to be resident, **and**, a passport issued by the jurisdiction in which the Account Holder claims to be resident

Annex I. II. B. 1 c) to e)

If any of these are present, they can be repaired by obtaining the following documentation from the Account Holder:

- self-certification that the Account Holder is not resident in the CD for tax purposes,

and

- a piece of documentary evidence, as defined in paragraph VI.D of Annex I to the Agreement.

Q – As these repairs differ from those in the UK/US agreement would it be useful to cover them in additional guidance? If so what aspect of the above procedures would benefit from further explanation?

Q – To enable us to produce estimates of the administrative burden to UK business for publication in the TIIN, can you tell us what burdens and costs will be incurred from applying repairs to CD indicia in addition to burdens and costs already being incurred from repairing US indicia?

Entity accounts

Under the Agreement an Entity account is a Reportable Account if either, the Entity is a Specified CD Person, or, the Entity is a Passive NFFE with one or more Controlling Persons who are tax resident in the CD. As with the UK/US agreement, an Entity account held by an Active NFFE is not a Reportable Account.

However, in the Agreement the definition of an Active NFFE does not include the categories that are contained in Annex I. VI. 4. i) of the UK/US agreement.

The exclusion in the UK/US agreement reflects the fact that the US viewed such entities as low risk. An exclusion of this nature does not appear appropriate for the UK or the CDs.

Timing

As well as setting out the due diligence procedures Annex 1 also sets out the required timeframe for identifying and reporting on CD Reportable Accounts.

Although the first exchange of data between the UK and the CD is not until 2016, UK Financial Institutions must have completed their due diligence requirements for pre-existing lower value individual or entity accounts by 31 December 2015. This is the same timeframe as in the UK/US agreement.

The review of pre-existing individual accounts that are higher value accounts must be completed by the 31st December 2014.

General

Q – To help us produce estimates of the increase in administrative burden on UK business for publication in the TIIN, can you tell us what additional burdens and costs you envisage arising from applying due diligence procedures in respect of CD Specified Persons in addition to burdens and costs already being incurred from applying due diligence procedures in respect of US indicia?

5. Annex II and Annex III

Annexes II and III will set out those entities and products, either in the UK (Annex II) or the CD (Annex III) which are exempt from reporting under the Agreement.

These are entities and products that are seen as low risk in terms of meeting the objectives of the Agreement.

6. Annex IV: Alternative Reporting Regime for Certain UK Reportable Accounts

Summary

Annex IV of the Agreement will set out a proposed Alternative Reporting Regime for Certain UK Reportable Accounts.

The Alternative Reporting Regime is a variation in the type of data that is reported to the UK on Reportable Accounts held by certain Specified UK Persons. It is only available to Specified UK Persons who are taxed in the UK on the remittance basis of taxation and hold Financial Accounts in the CDs or OTs.

The remittance basis of taxation is an alternative basis of taxation which is available to UK resident but non-domiciled individuals, and allows them to pay UK tax on their foreign income or gains only when those amounts are 'remitted' to the UK. This means that where someone is on the remittance basis, any income or gains arising overseas, which are never remitted to the UK, are not taxed in the UK. However, the UK income and gains of individuals who are taxed on the remittance basis will still be subject to UK tax.

The objective of these agreements is to ensure compliance with UK tax. It is therefore crucial that the information that the UK receives for remittance basis taxpayers under the Alternative Reporting Regime is of equal value in terms of enabling HMRC to identify any UK tax evasion risk as the information received under Article 2. This is the case whether that risk arises from potentially undeclared UK income or gains or from undeclared remittances to the UK.

Under the Alternative Reporting Regime in Annex IV, rather than the CD or OT Financial Institution reporting the balance and income of any Reportable Account to the UK, the flow of value/funds to and from the UK from the Reportable Account, will instead be reported in respect of any Specified UK Person who elects for this alternative reporting to apply.

This means that any transfers that the person makes from a CD Reportable Account **to** the UK will be reported, as will any transfers they make **from** the UK to a CD/OT Reportable Account.

A UK resident but non-domiciled person may elect into the remittance basis of taxation on an annual basis, and therefore our current expectation is that the election into the Alternative Reporting Regime in Annex IV will also be the subject of an annual election. That is, any UK person who meets the criteria, and could therefore be subject to Alternative Reporting, must elect for it to apply each year.

The details of Annex IV are still to be agreed but it is anticipated that any person who wishes to elect into the Alternative Reporting Regime will have to do so **in advance of the tax year in which they expect to claim the remittance basis of taxation in the**

UK. This is to enable the Financial Institution to collect data on flows to and from the UK.

As this election will have to be made in advance of a person actually claiming the remittance basis of taxation for a tax year they will, after submission of their UK tax return, have to provide a certification to the Financial Institution confirming that **they have made a claim to be taxed on the remittance basis for the year in question**.

The CDs do not operate a Remittance Basis of taxation and so this regime will not be available for accounts held by Specified CD Persons in UK Financial Institutions.

Detail

The Alternative Reporting Regime is designed to report alternative data that is specifically relevant to the UK activity of the account holder.

The Alternative Data to be reported under the Alternative Reporting Regime is:

Coming into the Reportable Account:

- Payments and Assets ***received from*** the UK;
- Payments and Assets ***received from*** an unknown source;

Made from the Reportable Account:

- Payments and Assets ***transferred to*** the UK;
- Payments and Assets ***transferred to*** an unknown destination.

As mentioned above, the Alternative Reporting Regime will involve the account holder making an election and then providing subsequent certification to the Financial Institution. As this introduces additional requirements, it is optional and a Specified UK Person will be able to choose whether they use the Alternative Reporting Regime or not.

For the Alternative Reporting Regime to apply, it is our expectation that the following criteria must all have been met:

- The CD/OT will have to agree inclusion of Annex IV in their agreement with the UK

- It is currently anticipated that each Financial Institution will be able to decide whether or not to operate this Alternative Reporting Regime, so in addition the Financial Institution will have had to elected to apply it.

- The account holder will have to elect into the regime for each year they wish it to apply, and provide the necessary certification.

Issues

The Alternative Reporting Regime can only be offered by Financial Institutions in the CDs or OTs. As it is not relevant for UK Financial Institutions the issues discussed here will focus on the issues that the regime will raise for a UK resident on the remittance basis who may wish to elect into the Alternative Reporting Regime.

Who is eligible to use the Alternative Reporting Regime?

- The Alternative Reporting Regime is only available to Specified UK Persons who are taxed on the remittance basis. The regime is linked to the remittance basis of taxation in the UK and NOT to the domicile status of the individual per se.

- A UK resident but non-domiciled person who is taxed in the UK on the arising basis will not be eligible.

The Alternative Reporting Regime is available to Specified UK Persons who make a claim to be taxed on the remittance basis.

- This will include UK resident but non-domiciled persons who pay the annual remittance basis charge as well as those who do not.

- UK resident but non-domiciled persons who are automatically on the remittance basis in the UK may currently not be making a claim. In these cases, if the person wishes to elect into the Alternative Reporting Regime, they will be able to submit a UK tax return in which they can make such a claim. This will not trigger a liability to the remittance basis charge if it would not otherwise arise.

For a UK person who is taxed on the remittance basis to actually use the Alternative Reporting Regime the following criteria will have to be met:

- The UK person will have to hold accounts in a jurisdiction that has elected to include Annex IV in their IGA with the UK

- They will have to hold that account with a Financial Institution that has elected to operate the Alternative Reporting Regime

- The UK person will have to provide an election to the Financial Institution that they wish to be reported on under the Alternative Reporting Regime.

  The precise timing of this election will be determined by domestic legislation and the terms imposed by Financial Institutions but it is anticipated that this will be *in advance* of the commencement of the tax year in which the person is expecting to claim the remittance basis in the UK. This is to allow the Financial Institution to collect the required data in real time.

  If the person has a right to claim the remittance basis they may make an election for protective purposes.

Whilst this is an issue for domestic legislation, our current expectation is that the date by which the person would have to elect to the Financial Institution would be ***on or in advance of the 5 April of the calendar year for which the election is being made***.
I.e. if a person was making an election for the Alternative Reporting Regime to apply for 2016 the election would have to be made by 5 April 2016 or earlier.

- Following the submission of their tax return in the UK for the tax year in question, the person will then have to provide certification to the Financial Institution, confirming that they have indeed made a claim in their tax return to be taxed on the remittance basis.

  Whilst this is an issue for CD/OT domestic legislation, and the requirements of each Financial Institution, our current expectation is that the person would have to provide a written or electronic statement, stating that their UK tax return for the year in question:

  a) Contains a statement that they are not domiciled anywhere within the UK, and

  b) Includes a claim to be taxed under the remittance basis, and that any remittance basis charge that was due has been paid, and

  c) They must also confirm that to the best of their knowledge, their domicile status and claim to the remittance basis is not being formally disputed by HMRC.

  If the person has made an election to the Financial Institution, but then subsequently fails to provide the required certification then the Financial Institution will report on the account in accordance with Article 2 of the agreement between the UK and the CD/OT.

What form will the election be in?

The criteria determining the form of the election will be determined by domestic legislation and the terms imposed by Financial Institutions, but our current expectation is that the election will be in written or electronic form and that the election must be recordable and auditable, but the specific criteria will be determined by domestic law the CD's and OTs.

What form will the certification be in?

The criteria determining the form of the certification will be determined by domestic legislation and the terms imposed by Financial Institutions, but our current expectation is that this will be a self certification, that it will be in written or electronic form and that it must be recordable and auditable.

7. Summary of Questions

Section 3. Articles

Article 1 – Definitions

Q 1 Do you foresee any implementation issues due to the inclusion of cross references to the US Treasury regulations? How can these best be incorporated in UK Regulations to achieve consistency?

Q 2 Are there any other definitions in the Agreement that give rise to uncertainty or raise practical issues which have not been covered by the existing UK guidance in relation to the UK/US agreement?

Q 3 Would adding additional sections of guidance regarding the Agreement to the existing guidance on the UK/US agreement be the most effective way of clarifying differences between the UK's agreements?

Article 2 – Reporting Obligations

Q 4 To enable us to produce estimates of the administrative burden on UK business for publication in the TIIN, can you tell us what additional burdens and costs are anticipated in respect of the reporting and transmission of data on CD Reportable Accounts?

Q 5 Is the proposal to align the annual date for reporting CD information with the existing date to report US information workable for UK Financial Institutions? Or would separation of reporting dates be preferable?

Q 6 Would the use of staggered reporting dates be a preferable option to the single date approach for the reporting of 2013 and 2014 data to HMRC? If so, which dates within the period 1 January 2016 to 31 May 2016 would be preferred for reporting data for these years?

Q 7 Will the differences in the information being requested lead to any increased burdens for your business? If so then what will the additional costs be, what will they relate to and how will they arise?

Q 8 Are there any Financial Institutions that do not have Reportable Accounts under the UK/ US agreement but are likely to have Reportable Accounts under any Agreement between the UK and the CDs?

Q 9 Will the Financial Institutions identified above already be undertaking due diligence procedures for the purposes of the US/UK agreement? For instance they may be undertaking due diligence in order to identify, that there are no US Reportable Accounts.

Q 10 To enable us to produce estimates of the administrative burden on UK business, for publication in the TIIN, can you tell us what additional burdens

and costs the requirement to report data to the CD's is likely to introduce for any of the Financial Institutions identified above?

Section 4. Annex I: Due Diligence

Alternative Procedures

Q 11 Is the option for the UK to provide in Regulations for UK Financial Institutions to be able to use the same due diligence procedures as they have chosen to use for the purposes of the UK/US agreement a welcome option?

Q 12 Are there any areas where these due diligence procedures will not be equally applicable for identification of CD Reportable Accounts?

Thresholds

Q 13 The default position under the UK Regulations to implement the UK/US agreement is that the thresholds do not apply unless an election has been made to apply them? Would UK Financial Institutions welcome the same approach in respect of CD Reportable Accounts?

Indicia

Q 14 We are aware that the changes to the indicia will need to be clarified in guidance. Are there any specific areas that would benefit from additional clarification?

Repairing CD Indicia

Q 15 Do you foresee any practical issues in obtaining a self certification where there is no existing form (i.e. no US from W-8 or equivalent)?

Q 16 As these repairs differ from those in the UK/US agreement would it be useful to cover them in additional guidance? If so what aspect of the above procedures would benefit from further explanation?

Q 17 To enable us to produce estimates of the admin burden to UK business for publication in the TIIN, can you tell us what burdens and costs will be incurred from applying repairs to CD indicia in addition to burdens and costs already being incurred from repairing US indicia?

General

Q 18 To help us produce estimates of the increase in administrative burden on UK business for publication in the TIIN, can you tell us what additional burdens and costs you envisage arising from applying due diligence procedures in respect of CD Specified Persons in addition to burdens and costs already being incurred from applying due diligence procedures in respect of US indicia?

8. The Discussion Process

How to respond

A summary of the questions in this discussion document is included at chapter 6.

Responses should be sent by 06 September 2013, by e-mail to fatca.consultation@hmrc.gsi.gov.uk

or by post to:

Charlotte Hopwood
HM Revenue & Customs,
Room 3C/06,
100 Parliament Street
London
SW1A 2BQ.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this discussion document, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentially can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Annex A. Model Agreement

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF [IGA COUNTERPARTY] TO IMPROVE INTERNATIONAL TAX COMPLIANCE

ARTICLE 1

Definitions

1. For purposes of this agreement and any annexes thereto ("Agreement"), the following terms shall have the meanings set forth below:

a) The term **"United Kingdom"** means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised.

b) The term **"**[**IGA Counterparty**]**"** means […].

c) The term "[…]" means the […], between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of [IGA Counterparty] for […] as amended from time to time or such successor arrangement as may henceforth be agreed between the Parties. References to paragraphs of […] shall be read as references to the paragraphs of […] as amended from time to time or to such equivalent provisions contained in any successor arrangement.

d) The term **"HMRC"** means Her Majesty's Revenue and Customs.

e) The term **"Competent Authority"** means:

(1) in the case of the United Kingdom, the Commissioners for HMRC or their authorised representative; and

(2) in the case of [IGA Counterparty], the […].

f) The term **"U.S. Treasury Regulations"** means the U.S. Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities. In the event that these Regulations are amended, then the term "U.S. Treasury Regulations" shall mean the amended Regulations where both Parties agree that any or all of the amendments should apply.

g) The term **"Financial Institution"** means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.

h) The term **"Custodial Institution"** means any Entity that holds, as a substantial portion of its business, financial assets for the account of others. An Entity holds financial assets for the account of others as a substantial portion of its business if the Entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 percent of the Entity's gross income during the shorter of: (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the Entity has been in existence.

i) The term **"Depository Institution"** means any Entity that accepts deposits in the ordinary course of a banking or similar business.

j) The term **"Investment Entity"** means 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:

(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; or

(3) otherwise investing, administering, or managing funds or money on behalf of other persons.

This subparagraph 1(j) shall be interpreted in a manner consistent with similar language set forth in the definition of "financial institution" in the Financial Action Task Force Recommendations.

k) The term **"Specified Insurance Company"** means 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 Cash Value Insurance Contract or an Annuity Contract.

l) The term **"United Kingdom Financial Institution"** means (i) any Financial Institution resident in the United Kingdom, but excluding any branches of such Financial Institution that are located outside the United Kingdom, and (ii) any branch of a Financial Institution not resident in the United Kingdom, if such branch is located in the United Kingdom.

m) The term **"[IGA Counterparty] Financial Institution"** means (i) any Financial Institution resident in [IGA Counterparty], but excluding any branches of such Financial Institution that are located outside [IGA Counterparty], and (ii) any branch of a Financial Institution not resident in [IGA Counterparty], if such branch is located in [IGA Counterparty].

n) The term **"Reporting Financial Institution"** means a Reporting United Kingdom Financial Institution or a Reporting [IGA Counterparty] Financial Institution, as the context requires.

o) The term **"Reporting United Kingdom Financial Institution"** means any United Kingdom Financial Institution that is not a Non-Reporting Financial Institution.

p) The term **"Reporting** [**IGA Counterparty**] **Financial Institution"** means any [IGA Counterparty] Financial Institution that is not a Non-Reporting Financial Institution.

q) The term **"Non-Reporting Financial Institution"** means any Financial Institution, or other Entity resident in the United Kingdom or [IGA Counterparty] that is described in Annex II for the United Kingdom or Annex III for [IGA Counterparty] as a Non-Reporting Financial Institution or that otherwise qualifies as a deemed-compliant FFI, or an exempt beneficial owner, under U.S. Treasury Regulations.

r) The term **"Financial Account"** means an account maintained by a Financial Institution, and includes:

(1) in the case of an Entity that is a Financial Institution solely because it is an Investment Entity, any equity or debt interest (other than interests that are regularly traded on an established securities market) in the Financial Institution;

(2) in the case of a Financial Institution not described in subparagraph 1(r)(1) of this Article, any equity or debt interest in the Financial Institution (other than interests that are regularly traded on an established securities market), if the class of interests was established with a purpose of avoiding reporting in accordance with this Agreement; and

(3) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a noninvestment-linked, nontransferable immediate life annuity that is issued to an individual and monetises a pension or disability benefit provided under an account, product, or arrangement that is excluded from the definition of Financial Account in Annex II for the United Kingdom or Annex III for [IGA Counterparty].

Notwithstanding the foregoing, the term "Financial Account" does not include any account, product, or arrangement that is excluded from the definition of Financial Account in Annex II for the United Kingdom or Annex III for [IGA Counterparty].

s) The term **"Depository Account"** includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. A Depository Account also generally includes an amount held by an insurance company under an agreement to pay or credit interest thereon.

t) The term **"Custodial Account"** means an account (other than an Insurance Contract or Annuity Contract) for the benefit of another person that holds any financial instrument or contract held for investment (including, but not limited to, a share or stock in a corporation, a note, bond, debenture, or other evidence of

u) The term **"Equity Interest"** means, in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership. In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any 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 Person shall be treated as being a beneficiary of a trust if such Specified Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.

v) The term **"Insurance Contract"** means a contract (other than an Annuity Contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.

w) The term **"Annuity Contract"** means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.

x) 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.

y) The term **"Cash Value"** means the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract. Notwithstanding the foregoing, the term "Cash Value" does not include an amount payable under an Insurance Contract as:

(1) a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;

(2) a refund to the policyholder of a previously paid premium under an Insurance Contract (other than under a life insurance contract) due to policy cancellation or termination, decrease in risk exposure during the effective period of the Insurance Contract, or arising from a redetermination of the premium due to correction of posting or other similar error; or

(3) a policyholder dividend based upon the underwriting experience of the contract or group involved.

z) The term **"Preexisting Account"** means a Financial Account maintained by a

aa) The term **"Reportable Account"** means a United Kingdom Reportable Account or an [IGA Counterparty] Reportable Account, as the context requires.

bb) The term **"United Kingdom Reportable Account"** means a Financial Account maintained by a Reporting [IGA Counterparty] Financial Institution and held by one or more Specified United Kingdom Persons or by a non-United Kingdom Entity with one or more Controlling Persons that is a Specified United Kingdom Person. Notwithstanding the foregoing, an account shall not be treated as a United Kingdom Reportable Account if such account is not identified as a United Kingdom Reportable Account after application of the due diligence procedures in Annex I.

cc) The term **"**[**IGA Counterparty**] **Reportable Account"** means a Financial Account maintained by a Reporting United Kingdom Financial Institution and held by one or more Specified [IGA Counterparty] Persons or by a non-[IGA Counterparty] Entity with one or more Controlling Persons that is a Specified [IGA Counterparty] Person. Notwithstanding the foregoing, an account shall not be treated as a [IGA Counterparty] Reportable Account if such account is not identified as a [IGA Counterparty] Reportable Account after application of the due diligence procedures in Annex I.

dd) The term **"Account Holder"** means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment adviser, or intermediary, is not treated as holding the account for the purposes of this Agreement, and such other person is treated as holding the account. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.

ee) The term **"Specified Person"** means a Specified United Kingdom Person or a Specified [IGA Counterparty] Person, as the context requires.

ff) The term **"Specified United Kingdom Person"** means a person or Entity who is resident in the United Kingdom for tax purposes, and includes a person or Entity who is resident in both the United Kingdom and [IGA Counterparty] under the respective domestic law of each Party, other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) a corporation that is a member of the same affiliated group, as defined in Section 1471(e)(2) of the U.S. Internal Revenue Code, as a corporation described in (i) above; (iii) a Depository Institution; (iv) a broker or dealer in securities, commodities, or derivative financial instruments (including notional principle

gg) The term **"Specified [IGA Counterparty] Person"** means a person or Entity who is resident in [IGA Counterparty] for tax purposes, and includes a person or Entity who is resident in both [IGA Counterparty] and the United Kingdom under the respective domestic law of each Party, other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) a corporation that is a member of the same affiliated group, as defined in Section 1471(e)(2) of the U.S. Internal Revenue Code, as a corporation described in (i) above; (iii) a Depository Institution, (iv) a broker or dealer in securities, commodities, or derivative financial instruments (including notional principle contracts, futures, forwards, and options) that is registered as such under the laws of [IGA Counterparty]; or (v) an exempt beneficial owner as defined in Annex III.

hh) The term **"Entity"** means a legal person or a legal arrangement such as a trust, partnership or limited liability partnership. An Entity such as a partnership, limited liability partnership or similar arrangement shall be resident in a Party if the control and management of the business takes place in that Party.

ii) The term **"Non-United Kingdom Entity"** means an Entity that is not a person or Entity who is resident in the United Kingdom for tax purposes;

jj) The term **"Non-[IGA Counterparty] Entity"** means an Entity that is not a person or Entity who is resident in [IGA Counterparty] for tax purposes;

kk) An Entity is a **"Related Entity"** of another Entity if either Entity controls the other Entity, or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50 percent of the vote or value in an Entity. Notwithstanding the foregoing, either Party may treat an Entity as not a related entity if the two Entities are not members of the same affiliated group, as defined in Section 1471(e)(2) of the U.S. Internal Revenue Code.

ll) The term **"Controlling Persons"** means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term "Controlling Persons" shall be interpreted in a manner consistent with the Recommendations of the Financial Action Task Force.

2. Any term not otherwise defined in this Agreement shall, unless the context otherwise requires or the Competent Authorities agree to a common meaning (as permitted by domestic law), have the meaning that it has at that time under the law of the Party applying the Agreement, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

ARTICLE 2

Obligations to Obtain and Exchange Information with Respect to Reportable Accounts

1. Subject to the provisions of Article 3, each Party, shall obtain the information specified in paragraph 2 of this Article with respect to all Reportable Accounts and shall annually exchange this information with the other Party on an automatic basis pursuant to the provisions of Paragraph […] of […].

2. The information to be obtained and exchanged is:

a) With respect to each Reportable Account of each Reporting Financial Institution:

(1) the name, address, date of birth and, where available, the National Insurance Number of the other Party for each Specified Person that is an Account Holder of such account and, in the case of an Entity that, after application of the due diligence procedures set forth in Annex I, is identified as having one or more Controlling Persons that is a Specified Person in the other Party, the name and address of such Entity and the name, address, date of birth and, where available, the National Insurance Number of the other Party for each such Specified Person;

(2) the account number (or functional equivalent in the absence of an account number);

(3) the name of the Reporting Financial Institution and, where provided when registering with the U.S. Internal Revenue Service for FATCA purposes, the Global Intermediary Identification Number;

(4) the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year, immediately before closure;

(5) in the case of any Custodial Account:

(A) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and

(B) the total gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;

(6) in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate

(7) in the case of any account not described in subparagraph 2(a)(5) or 2(a)(6) of this Article, the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

ARTICLE 3

Time and Manner of Exchange of Information

1. For purposes of the exchange obligation in Article 2, the amount and characterisation of payments made with respect to a United Kingdom Reportable Account may be determined in accordance with the principles of [IGA Counterparty]'s tax laws, and the amount and characterisation of payments made with respect to a [IGA Counterparty] Reportable Account may be determined in accordance with the principles of the United Kingdom's tax laws.

2. For purposes of the exchange obligation in Article 2, the information exchanged shall identify the currency in which each relevant amount is denominated.

3. With respect to paragraph 2 of Article 2, information is to be obtained and exchanged with respect to 2013 and all subsequent years, except that:

a) the information to be obtained and exchanged with respect to 2013 and 2014 is only the information described in subparagraphs 2(a)(1) to 2(a)(4) of this Agreement;

b) the information to be obtained and exchanged with respect to 2015 is the information described in subparagraphs 2(a)(1) to 2(a)(7), except for gross proceeds described in subparagraph 2(a)(5)(B) of Article 2 of this Agreement; and

c) the information to be obtained and exchanged with respect to 2016 and subsequent years is the information described in subparagraphs 2(a)(1) to 2(a)(7) of Article 2 of this Agreement.

4. Subject to paragraph 3 of this Article, the information described in Article 2 shall be exchanged within nine months after the end of the calendar year to which the information relates. Notwithstanding the foregoing, the information that relates to calendar years 2013 and 2014 shall be exchanged no later than 30 September 2016.

5. Unless otherwise agreed, the information to be exchanged under Article 2 will be provided in the agreed format to be used when complying with the agreements between the Government of the United Kingdom and the Government of [IGA Counterparty], as the context requires, and the Government of the United States of America to Improve International Tax

6. The Competent Authorities of each Party shall enter into an agreement under the mutual agreement procedure provided for in Paragraph […] of […], which shall:

a) establish the procedures for the automatic exchange obligations described in Article 2; and

b) prescribe rules and procedures as may be necessary to implement Article 4.

7. All information exchanged shall be subject to the confidentiality and other protections provided for in Paragraph […] of […], including the provisions limiting the use of the information exchanged.

ARTICLE 4

Collaboration on Compliance and Enforcement

1. **Minor and Administrative Errors.** Subject to any further terms set forth in a competent authority agreement executed pursuant to paragraph 6 of Article 3, a Competent Authority may make an inquiry directly to a Reporting Financial Institution in the other jurisdiction where it has reason to believe that administrative errors or other minor errors may have led to incorrect or incomplete information reporting or resulted in other infringements of this Agreement. The competent authority agreement may provide that a Competent Authority shall notify the Competent Authority of the other Party when the first-mentioned Competent Authority makes such an inquiry of a Reporting Financial Institution in the other jurisdiction regarding the Reporting Financial Institution's compliance with the conditions set forth in this Agreement.

2. **Significant Non-Compliance.** A Competent Authority shall notify the Competent Authority of the other Party when the first-mentioned Competent Authority has determined that there is significant non-compliance with the obligations under this Agreement with respect to a Reporting Financial Institution in the other jurisdiction. The Competent Authority of such other Party shall apply its domestic law (including applicable penalties) to address the significant non-compliance described in the notice in a timely manner.

3. **Reliance on Third Party Service Providers.** Each Party may allow Reporting Financial Institutions to use third party service providers to fulfil the obligations imposed on them by a Party, as contemplated in this Agreement, but these obligations shall remain the responsibility of the Reporting Financial Institutions.

4. **Prevention of Avoidance.** The Parties shall:

a) support the full and effective implementation of this Agreement including through any changes to domestic legislation or administrative practice;

b) implement, as necessary, requirements to prevent Financial Institutions, any persons or intermediaries from adopting practices intended to circumvent the reporting required under this Agreement. This shall include legislation with the

equivalent effect, and introduced to the same timetable as, that required by any agreement each Party has with Government of the United States of America to Improve International Tax Compliance and to Implement FATCA.

ARTICLE 5

Mutual Commitment to Continue to Enhance the Effectiveness of Information Exchange and Transparency

1. **Development of Common Reporting and Exchange Model.** The Parties are committed to working with other partners and the Organisation for Economic Co-operation and Development on adapting the terms of this Agreement to a common model for automatic exchange of information, including the development of reporting and due diligence standards for financial institutions.

2. **Documentation of Accounts Maintained as of 1 January 2014.** With respect to Reportable Accounts that are Pre-existing Accounts maintained by a Reporting Financial Institution, both parties commit to establish, by 1 January 2017, for reporting with respect to 2017 and subsequent years, rules requiring Reporting Financial Institutions to obtain and report the date of birth and National Insurance Number of the other Party for each Account Holder of a Reportable Account as required pursuant to subparagraph 2(a)(1) of Article 2.

ARTICLE 6

Consistency in the Application of the Agreement

1. [IGA Counterparty] shall be granted the benefit of any more favourable terms afforded to another jurisdiction under a signed bilateral agreement with the United Kingdom pursuant to which the other jurisdiction commits to undertake the same obligations as described in Articles 2 and 3 of this Agreement, and subject to the same terms and conditions as described therein and in Articles 4 to 8 of the Agreement.

2. The United Kingdom shall notify [IGA Counterparty] of any more favourable terms and such more favourable terms shall apply automatically under this Agreement as if they were specified in this Agreement and effective as of the date of the entry into force of the agreement incorporating the more favourable terms.

3. The United Kingdom shall be granted the benefit of any more favourable terms afforded to another jurisdiction under a signed bilateral agreement with [IGA Counterparty] pursuant to which the other jurisdiction commits to undertake the same obligations as described in Articles 2 and 3 of this Agreement, and subject to the same terms and conditions as described therein and in Articles 4 to 8 of the Agreement.

4. [IGA Counterparty] shall notify the United Kingdom of any more favourable terms and such more favourable terms shall apply automatically under this Agreement as if they were specified in this Agreement and effective as of the date of the entry into force of the agreement incorporating the more favourable terms.

ARTICLE 7

Consultations and Amendments

1. In case any difficulties in the implementation of this Agreement arise, either Party may request consultations to develop appropriate measures to ensure the fulfilment of this Agreement.

2. This Agreement may be amended by written mutual consent of the Parties. Unless otherwise agreed upon, such an amendment shall enter into force through the same procedures as set forth in Article 9.

ARTICLE 8

Annexes

The annexes form an integral part of this Agreement.

ARTICLE 9

Entry into Force

The Parties shall notify each other in writing when their necessary internal procedures for entry into force have been completed. The Agreement shall enter into force on the date of the later of these written notifications.

ARTICLE 10

Termination

This Agreement shall remain in force until it is terminated by one of the Parties. Either Party may terminate this Agreement by giving written notice of termination at least six months before the end of any calendar year beginning after the expiry of […] from the date of entry into force of this Agreement. In such event, this Agreement shall cease to have effect.

In witness whereof, the undersigned, being duly authorised thereto by their respective Governments, have signed this agreement.

Done at […], in duplicate, this […] day of […], 20[…]

FOR THE GOVERNMENT OF THE UNITED KINGDOM:

FOR THE GOVERNMENT OF [IGA COUNTERPARTY]:

Annex B. Model Annex 1

ANNEX I

DUE DILIGENCE OBLIGATIONS FOR IDENTIFYING AND REPORTING ON REPORTABLE ACCOUNTS

II. **General**

A. Under the Agreement each Party shall require that Reporting Financial Institutions apply the due diligence procedures contained in this Annex I to identify Reportable Accounts.

B. For the purpose of this Annex I, as it applies to [IGA Counterparty] Reporting Financial Institutions, Reportable Account shall be read to mean United Kingdom Reportable Account, Specified Person shall be read to mean United Kingdom Specified Person, a Resident Entity shall be read to be an Entity who is resident in the United Kingdom and Non-Resident Entity shall be read to be an Entity who is not resident in the United Kingdom.

C. For the purpose of this Annex I, as it applies to United Kingdom Reporting Financial Institutions, Reportable Account shall be read to mean [IGA Counterparty] Reportable Account, Specified Person shall be read to mean [IGA Counterparty] Specified Person, Resident Entity shall be read to be an Entity who is resident in [IGA Counterparty] and Non-Resident Entity shall be read to be an Entity who is not resident in [IGA Counterparty].

D. For purposes of the Agreement,

1. All dollar amounts are US dollars and shall be read to include the equivalent in other currencies.

2. The balance or value of an account shall be determined as of the last day of the calendar year or other appropriate reporting period.

3. Where a balance or value threshold is to be determined as of the last day of a calendar year under this Annex I, the relevant balance or value shall be determined as of the last day of the reporting period that ends with or within that calendar year.

4. Subject to paragraph II.E (1), an account shall be treated as a Reportable Account beginning as of the date it is identified as such pursuant to the due diligence procedures in this Annex I.

5. Unless otherwise provided, information with respect to a Reportable Account shall be reported annually in the calendar year following the year to which the information relates.

E. As an alternative to the procedures described in each section of this Annex I either Party may allow its Reporting Financial Institutions to apply the procedures described in the relevant U.S. Treasury Regulations, in so far as they have been accepted by both Parties, to establish whether an account is a Reportable Account.

III. **Preexisting Individual Accounts.** The following rules and procedures apply for identifying Reportable Accounts among Preexisting Accounts held by individuals ("Preexisting Individual Accounts").

A. **Accounts Not Required to Be Reviewed, Identified or Reported.** Unless the Reporting Financial Institution elects otherwise, where the implementing rules in the jurisdiction provide for such an election, the following accounts are not required to be reviewed, identified, or reported as Reportable Accounts:

1. Subject to subparagraph E (2) of this section, Preexisting Individual Accounts with a balance or value that does not exceed $50,000 as of 31 December 2013.

   Subject to subparagraph E (2) of this section, Preexisting Individual Accounts that are Cash Value Insurance Contracts and Annuity Contracts with a balance or value of $250,000 or less as of 31 December 2013.

2. Any Depository Account with a balance or value of $50,000 or less.

B. **Review Procedures for Preexisting Individual Accounts With a Balance or Value as of 31 December 2013, that Exceeds $50,000 ($250,000 for a Cash Value Insurance Contract or Annuity Contract), But Does Not Exceed $1,000,000 ("Lower Value Accounts")**

1. **Electronic Record Search.** The Reporting Financial Institution must review electronically searchable data maintained by them for any of the following indicia:

   a) Identification of the Account Holder as a Specified Person;

   b) Current mailing or residence address (including a post office box or "in-care-of" address) in the other Party;

   c) Standing instructions to transfer funds to an account maintained in the other Party;

   d) Currently effective power of attorney or signatory authority granted to a person with an address in the other Party; or

   e) An "in-care-of" or "hold mail" address in the other Party that is the ***sole*** address the Reporting Financial Institution has on file for the Account Holder.

2. If none of the indicia listed in subparagraph B (1) of this section are discovered in the electronic search, then no further action is required until

3. If any of the indicia in subparagraph B (1) of this section are discovered in the electronic search, then the Reporting Financial Institution must treat the account as a Reportable Account unless subsection B (4) applies.

4. Notwithstanding a finding of indicia under subparagraph B (1) of this section, a Reporting Financial Institution is not required to treat an account as a Reportable Account if:

    a) Where Account Holder information contains a current mailing or residence address (including a post office box or "in-care-of" address) in the other Party, the Reporting Financial Institution obtains or has previously reviewed and maintains a record of:

        (1) a self-certification that the Account Holder is not resident in the other Party for tax purposes, ***and***

        (2) ***either,***

            (a) a certificate of residence for tax purposes issued by an appropriate official of the country or jurisdiction in which the Account Holder claims to be resident, ***or***

            (b) the provision of a local tax identification number of the country or jurisdiction in which the Account Holder claims to be resident, ***and,*** a passport issued by the jurisdiction in which the Account Holder claims to be resident.

    b) Where Account Holder information contains standing instructions to transfer funds to an account maintained in the other Party, a currently effective power of attorney or signatory authority granted to a person with an address in the other Party, or an "in-care-of" or "hold mail" address in the other Party that is the ***sole*** address the Reporting Financial Institution has on file for the Account Holder; the Reporting Financial Institution obtains or has previously reviewed and maintains a record of:

        (1) a self-certification that the Account Holder is not resident in the other Party for tax purposes, ***and***

        (2) documentary evidence, as defined in paragraph VI.D of this Annex I, establishing the Account Holder's non-residence status.

C. **Additional Procedures Applicable to Preexisting Individual Accounts That Are Lower Value Accounts**

1. Review of Preexisting Individual Accounts that are Lower Value Accounts for indicia must be completed by [31 December 2015].

2. If there is a change of circumstances with respect to a Preexisting Individual Account that is a Lower Value Account that results in one or more indicia described in subparagraph B (1) of this section being associated with the account, then Reporting Financial Institution must treat the account as a Reportable Account unless subparagraph B (4) of this section applies.

3. Except for Depository Accounts described in subparagraph A (3) of this section, any Preexisting Individual Account that has been identified as a Reportable Account under this section shall be treated as a Reportable Account in all subsequent years, unless the Account Holder ceases to be a Specified Person.

D. **Enhanced Review Procedures for Preexisting Individual Accounts With a Balance or Value That Exceeds $1,000,000 as of 31 December 2013, or 31 December of Any Subsequent Year ("High Value Accounts")**

1. **Electronic Record Search.** The Reporting Financial Institution must review electronically searchable data maintained by them for any of the indicia identified in subparagraph B (1) of this section.

2. **Paper Record Search.** If the Reporting Financial Institution's electronically searchable databases include fields for and capture all of the information identified in subparagraph D (3) of this section, then no further paper record search is required. If the electronic databases do not capture all of this information, then with respect to High Value Accounts, the Reporting Financial Institution must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting Financial Institution within the last five years for any of the indicia identified in subparagraph B (1) of this section:

   a) the most recent documentary evidence collected with respect to the account;

   b) the most recent account opening contract or documentation;

   c) the most recent documentation obtained by the Reporting Financial Institution pursuant to AML/KYC Procedures or for other regulatory purposes;

   d) any power of attorney or signature authority forms currently in effect; ***and***

   e) any standing instructions to transfer funds currently in effect.

3. **Exception Where Databases Contain Sufficient Information.** A Reporting Financial Institution is not required to perform the paper record search described in subparagraph D (2) of this section if the Reporting Financial Institution's electronically searchable information includes the following:

   a) the Account Holder's residence address and mailing address currently on file with the Reporting Financial Institution;

   b) whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting Financial Institution or another Financial Institution);

   c) whether there is a current "in-care-of" address or "hold mail" address for the Account Holder; ***and***

   d) whether there is any power of attorney or signatory authority for the account.

4. **Relationship Manager Inquiry for Actual Knowledge.** In addition to the electronic and paper record searches described above, the Reporting Financial Institution must treat as Reportable Accounts any High Value Accounts assigned to a relationship manager (including any accounts aggregated with such account) if the relationship manager, has actual knowledge that the Account Holder is a Specified Person.

5. **Effect of Finding Indicia.**

   a) If none of the indicia listed in subparagraph B (1) of this section are discovered in the enhanced review of High Value Accounts described above, and the account is not identified as held by a Specified Person in subparagraph D (4) of this section, then no further action is required until there is a change in circumstances described in subparagraph E (4) of this section.

   b) If any of the indicia listed in subparagraph B (1) of this section are discovered in the enhanced review of High Value Accounts described above, or if there is a subsequent change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account unless subparagraph B (4) of this section applies.

   c) Except for Depository Accounts described in paragraph A (3) of this section, any Preexisting Individual Account that has been identified as a Reportable Account under this section shall be treated as a Reportable Account in all subsequent years, unless the Account Holder ceases to be a Specified Person.

E. **Additional Procedures Applicable to High Value Accounts**

1. If a Preexisting Individual Account is a High Value Account as of 31 December 2013, the Reporting Financial Institution must complete the enhanced review procedures described in paragraph D of this section with respect to such account by [31 December 2014]. If based on this review such account is identified as a Reportable Account, the Reporting Financial Institution must report the required information about such account with respect to 2013 and 2014 in the first report on the Account. For all subsequent years, information about the account should be reported on an annual basis.

2. If a Preexisting Individual Account is not a High Value Account as of 31 December 2013, but becomes a High Value Account as of the last day of a subsequent calendar year, the Reporting Financial Institution must complete the enhanced review procedures described in paragraph D of this section with respect to such account within six months after the last day of the calendar year in which the account becomes a High Value Account. If based on this review such account is identified as a Reportable Account, the Reporting Financial Institution must report the required information about such account with respect to the year in which it is identified as a Reportable Account and subsequent years on an annual basis.

3. Once a Reporting Financial Institution applies the enhanced review procedures set forth above to a High Value Account, the Reporting Financial Institution shall not be required to re-apply such procedures, other than the relationship manager inquiry in subparagraph D (4) of this section, to the same High Value Account in any subsequent year.

4. If there is a change of circumstances with respect to a High Value Account that results in one or more indicia described in subparagraph B (1) of this section being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account unless subparagraph B (4) of this section applies.

5. A Reporting Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in the other Party, the Reporting Financial Institution shall be required to treat the new address as a change in circumstances and shall be required to obtain the appropriate documentation from the Account Holder.

IV. **New Individual Accounts.** The following rules and procedures apply for identifying Reportable Accounts among accounts held by individuals and opened on or after 1 January 2014 ("New Individual Accounts").

A. **Accounts Not Required to Be Reviewed, Identified, or Reported.** Unless the Reporting Financial Institution elects otherwise where the implementing rules in both jurisdictions provide for such an election:

1. A New Individual Account that is a Depository Account is not required to be reviewed, identified, or reported as a Reportable Account unless the account balance exceeds $50,000 at the end of any calendar year or other appropriate reporting period.

2. A New Individual Account that is a Cash Value Insurance Contract is not required to be reviewed, identified, or reported as a Reportable Account unless the Cash Value exceeds $50,000 at the end of any calendar year or other appropriate reporting period.

B. **Other New Individual Accounts.** With respect to New Individual Accounts not described in paragraph A of this section, upon account opening, (or within 90 days after the end of the calendar year in which the account ceases to be described in Paragraph A of this section), the Reporting Financial Institution must obtain a self-certification which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine whether the Account Holder is resident in the other Party for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.

C. If the self-certification establishes that the Account Holder is resident in the other Party for tax purposes, the Reporting Financial Institution must treat the account as a Reportable Account.

D. If there is a change of circumstances with respect to a New Individual Account that causes the Reporting Financial Institution to know or have reason to know that the original self-certification is incorrect or unreliable, the Reporting Financial Institution cannot rely on the original self-certification and must obtain a valid self-certification that establishes whether the Account Holder is a tax resident in the other Party. If the Reporting Financial Institution is unable to obtain a valid self-certification, the Reporting Financial Institution must treat the account as a Reportable Account.

V. **Preexisting Entity Accounts.** The following rules and procedures apply for purposes of identifying Reportable Accounts ("Preexisting Entity Accounts").

A. **Entity Accounts Not Required to Be Reviewed, Identified, or Reported.** Unless the Reporting Financial Institution elects otherwise, where the implementing rules in the jurisdiction provide for such an election, Preexisting Entity Accounts with account balances that do not exceed $250,000 as of 31 December 2013, are not required to be reviewed, identified, or reported as Reportable Accounts until the account balance exceeds $1,000,000.

B. **Entity Accounts Subject to Review.** Preexisting Entity Accounts that have an account balance or value that exceeds $250,000 as of 31 December 2013, and Preexisting Entity Accounts that initially do not exceed $250,000 but the account balance of which later exceeds $1,000,000 must be reviewed in accordance with the procedures set forth in paragraph C of this section.

C. **Entity Accounts With Respect to Which Reporting is Required.** With respect to Preexisting Entity Accounts described in paragraph B of this section, only accounts that are held by one or more Entities that are Specified Persons or by Passive NFFEs with one or more Controlling Persons who are Specified Persons, shall be treated as Reportable Accounts.

D. **Review Procedures for Identifying Entity Accounts With Respect to Which Reporting is Required.** For Preexisting Entity Accounts described in paragraph B of this section, the Reporting Financial Institution must apply the following review procedures to determine whether the account is held by one or more Specified Persons, or by Passive NFFEs with one or more Controlling Persons who are Specified Persons:

1. **Determine Whether the Entity is a Specified Person.**

   a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Entity Account Holder is a Specified Person. For this purpose, information indicating that the Entity is a Specified Person includes the place of incorporation or organisation, or an address in the other Party.

   b) If the information indicates that the Entity Account Holder is a Specified Person, the Reporting Financial Institution must treat the account as a Reportable Account unless it obtains a self-certification from the Account Holder, or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Specified Person.

2. **Determine Whether a Non-Resident Entity is a Financial Institution.**

   a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Non-Resident Entity Account Holder is a Financial Institution.

   b) If the information indicates that the Non-Resident Entity Account Holder is a Financial Institution, then the account is not a Reportable Account.

3. **Determine Whether an Account Held by an NFFE is a Reportable Account.** With respect to an Account Holder of a Preexisting Entity Account that is not identified as either a Specified Person or a Financial Institution, the Reporting Financial Institution must identify (i) whether the Entity has Controlling Persons, (ii) whether the Entity is a Passive NFFE, and (iii) whether any of the Controlling Persons of the Entity is Specified Person. In making these determinations the Reporting Financial Institution should follow the guidance in sub-paragraphs (a) through (d) of this paragraph in the order most appropriate under the circumstances.

a) For purposes of determining the Controlling Persons of an Entity, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.

b) For purposes of determining whether the Entity is a Passive NFFE, the Reporting Financial Institution must obtain a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Entity is an Active NFFE.

c) For purposes of determining whether a Controlling Person of a Passive NFFE is a Specified Person, a Reporting Financial Institution may rely on:

(1) Information collected and maintained pursuant to AML/KYC Procedures in the case of a Preexisting Entity Account held by one or more NFFEs with an account balance that does not exceed $1,000,000; ***or***

(2) A self-certification from the Account Holder or such Controlling Person in the case of a Preexisting Entity Account held by one or more NFFEs with an account balance that exceeds $1,000,000.

d) If any Controlling Person of a Passive NFFE is a Specified Person in either jurisdiction, the account shall be treated as a Reportable Account.

E. **Timing of Review and Additional Procedures Applicable to Preexisting Entity Accounts**

1. Review of Preexisting Entity Accounts with an account balance or value that exceeds $250,000 as of 31 December 2013, must be completed by 31 December 2015.

2. Review of Preexisting Entity Accounts with a balance or value that does not exceed $250,000 as of 31 December 2013, but exceeds $1,000,000 as of 31 December of a subsequent year, must be completed within six months after the end of the calendar year in which the account balance exceeds $1,000,000.

3. If there is a change of circumstances with respect to a Preexisting Entity Account that causes the Reporting Financial Institution to know or have reason to know that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Financial Institution must re-determine the status of the account in accordance with the procedures set forth in paragraph D of this section.

VI. **New Entity Accounts.** The following rules and procedures apply to accounts held by Entities and opened on or after 1 January 2014 ("New Entity Accounts").

A. The Reporting Financial Institution must determine whether the Account Holder is: (i) a Specified Person; (ii) a Non-Resident Entity which is a Financial Institution; (iii) a deemed-compliant FFI as defined in U.S. Treasury Regulations; (iv) an exempt beneficial owner as defined in U.S. Treasury Regulations; (v) an Active NFFE or Passive NFFE.

B. A Reporting Financial Institution may determine that an Account Holder is an Active NFFE or a Non-Resident Entity which is a Financial Institution in the other Party, if the Reporting Financial Institution reasonably determines that the Entity has such status on the basis of information that is publicly available or in the possession of the Reporting Financial Institution.

C. In all other cases, a Reporting Financial Institution must obtain a self-certification from the Account Holder to establish the Account Holder's status.

1. If the Entity Account Holder is a ***Specified Person***, the Reporting Financial Institution must treat the account as a Reportable Account.

2. If the Entity Account Holder is a ***Passive NFFE***, the Reporting Financial Institution must identify the Controlling Persons as determined under AML/KYC Procedures, and must determine whether any such person is a tax resident in the other Party on the basis of a self-certification from the Account Holder or such person. If any such person is a tax resident of the other Party, the account shall be treated as a Reportable Account.

3. If the Entity Account Holder is: (i) a Person resident in the other Party that is not a Specified Person; (ii) a Non-Resident Entity which is a Financial Institution; (iii) an exempt beneficial owner; (iv) an Active NFFE; or, (v) a Passive NFFE where none of the Controlling Persons of which is a Specified Person, then the account is not a Reportable Account and no reporting is required with respect to the account.

VII. **Special Rules and Definitions.** The following additional rules and definitions apply in implementing the due diligence procedures described above:

A. **Reliance on Self-Certifications and Documentary Evidence.** A Reporting Financial Institution may not rely on a self-certification or documentary evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or documentary evidence is incorrect or unreliable.

B. **Definitions.** The following definitions apply for purposes of this Annex I.

1. **AML/KYC Procedures.** "AML/KYC Procedures" means the customer due diligence (CDD) procedures of a Reporting Financial Institution pursuant to the anti-money laundering or similar requirements of the jurisdiction concerned to which such Reporting Financial Institution is subject.

2. **Resident Entity.** A "Resident Entity" means an Entity that is resident in the other Party for the purposes of this Agreement and includes an Entity that is resident in both Parties under the respective domestic law of each Party.

3. **Non-Resident Entity.** A Non-Resident Entity means an Entity that is not resident in the other Party for the purposes of this Agreement.

4. **NFFE.** A "NFFE" means any Non-Resident Entity that is not a Financial Institution as defined in this Agreement.

5. **Passive NFFE.** A "Passive NFFE" means any NFFE that is not an Active NFFE.

6. **Active NFFE.** An "Active NFFE" means any NFFE that meets any of the following criteria:

   a) Less than 50 percent of the NFFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 percent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;

   b) The stock of the NFFE is regularly traded on an established securities market or the NFFE is a Related Entity of an Entity the stock of which is traded on an established securities market;

   c) Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, and providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an NFFE shall not qualify for this status if the NFFE functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;

   d) The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution; provided, that the NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFFE;

   e) The NFFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution; ***or***

   f) The NFFE primarily engages in financing and hedging transactions with or for Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a

C. **Account Balance Aggregation and Currency Translation Rules**

1. **Aggregation of Individual Accounts.** For purposes of determining the aggregate balance or value of accounts held by an individual, a Reporting Financial Institution shall be required to aggregate all accounts maintained by the Reporting Financial Institution, or Related Entities, but only to the extent that the Reporting Financial Institution's computerised systems link the accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances to be aggregated. Each holder of a jointly held account shall be attributed the entire balance or value of the jointly held account for purposes of applying the aggregation requirements described in this paragraph.

2. **Aggregation of Entity Accounts.** For purposes of determining the aggregate balance or value of accounts held by an Entity, a Reporting Financial Institution shall be required to take into account all accounts held by Entities that are maintained by the Reporting Financial Institution, or Related Entities, to the extent that the Reporting Financial Institution's computerised systems link the accounts by reference to a data element such as client number or taxpayer identification number and allow account balances to be aggregated.

3. **Special Aggregation Rule Applicable to Relationship Managers.** For purposes of determining the aggregate balance or value of accounts held by a person to determine whether an account is a High Value Account, a Reporting Financial Institution shall also be required, in the case of any accounts that a relationship manager knows or has reason to know are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts.

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 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 Financial Institution is determining the balance or value.

D. **Documentary Evidence.** For purposes of this Annex I, acceptable documentary evidence includes any of the following:

1. A certificate of residence for tax purposes issued by an appropriate official of the country or jurisdiction in which the Account Holder claims to be resident.

2. With respect to an individual, any valid identification issued by an authorised government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes.

3. With respect to an Entity, any official documentation issued by an authorised government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the country in which it claims to be a resident or the country in which the Entity was incorporated or organised.

4. With respect to an account maintained in a jurisdiction with anti-money laundering rules that have been approved by the U.S. Internal Revenue Service in connection with a Qualifying Intermediary agreement (as described in relevant U.S. Treasury Regulations), any of the documents other than a Form W-8 or W-9 referenced in the jurisdiction's attachment to the Qualifying Intermediary agreement for identifying individuals or Entities.

5. Any financial statement, third-party credit report, bankruptcy filing.