

OUR COMMENTS ON THE 31 MAY 2013 VERSION OF THE UK GUIDANCE AND DRAFT REGULATIONS ON IMPLEMENTING THE UK-US AGREEMENT

Introduction

The Building Societies Association represents mutual lenders and deposit takers in the UK including all 46 UK building societies. Mutual lenders and deposit takers have total assets of over £375 billion and, together with their subsidiaries, hold residential mortgages of £245 billion, 20% of the total outstanding in the UK. They hold more than £250 billion of retail deposits, accounting for 22% of all such deposits in the UK. Mutual deposit takers account for 31% of cash ISA balances. They employ approximately 50,000 full and part-time staff and operate through approximately 2,000 branches.

We welcome the opportunity to comment on the latest version of the UK guidance and draft regulations. We are also grateful for the continued engagement of HMRC. Our comments are mainly minor in nature.

Draft statutory instrument: The International Tax Compliance (United States of America) Regulations 2013

Regulation 10: Modifications for calendar years 2013 to 2016

(1)(a) There is no need to report custodial accounts in 2013 or 2014.

Depository accounts are not mentioned (they too do not need to be reported in 2013 or 2014, per Article 3(3) of the IGA and this is reflected in the guidance notes, but not in the regulations).

Implementation of International Tax Compliance (United States of America) Regulations 2013 – guidance notes

Section 1 Background

1.3 Interaction with US regulations

We think that any beneficial advantage from the US regulations should be applied automatically. We do not consider HMRC should have the option of whether FIs can or cannot take advantage of more favourable treatment in the US regulations.

Section 2 Financial institutions

2.1 Introduction (final two paragraphs)

The requirements for registered deemed compliant appear slightly different to those in 2.15.

2.12 Deemed compliant financial institutions

This says only a registered deemed compliant FI, or in certain circumstances a local client base FI (see section 2.13) are required to register with the IRS. This conflicts with the end of paragraph 2.1 which says that a non-reporting FI do not need to obtain a GIIN or carry out the due diligence and reporting obligations under the agreement.

Which is correct?

2.13 Local client base financial institutions

(c), (e), (f) and (h) We would like confirmation in the guidance that residency is determined by mailing address on file alone. **This is critical for our members.**

(e) We continue to question whether the assessment needs to be done at all. If it must be, we recommend a **three-year** validation cycle, with a grace year after the determination to comply with the rules for reporting FIs. This three-year validation cycle would be consistent with that in the US final FATCA regulations for registered deemed compliant FIs.

(g) We would appreciate confirmation in the guidance that the Financial Conduct Authority will not take TCF action against FIs that close accounts on FATCA grounds.

2.15 Registered deemed compliant financial institutions

See comments on 2.1.

Section 4 Due diligence

4.2 Acceptable documentary evidence

We would like to know why the lists of documents for natural persons is restricted. Also, we would like to know when this list comes into play . is just the cases where self certification is in doubt?

4.8 Confirming the reasonableness of self certification

Some financial institutions do the AML/KYC checks, which will now also include FATCA self certification, at the point that they onboard a new customer. This may be before they actually open a product or even if a product is opened at the same time, it may not be an FATCA in-scope product. Therefore these institutions are concerned that they will have breached the DPA by asking the self-certification question when it may not have been necessary to do so. Can HMRC confirm these companies will not be in breach of the DPA? We suggest that the following paragraph be added:

FIs may perform AML/KYC checks . which include FATCA self-certification . on new customers for products that do not come within the scope of FATCA. This does not give rise to a breach of data protection legislation.+

4.19 Mergers or bulk acquisitions of accounts

We proposed that FIs should have two years rather than six months to rely on the status of account holders as determined by the predecessor FI. In practice, merging all elements of accounts can take longer than six months.

Section 5 Pre-existing individual accounts

5.19 One or more US telephone numbers associated with the account

We consider that the last sub clause, which is new, is confusing. Given the well known problems in identifying US telephone numbers, the last part (as long as reasonable steps⁵ US number+) is unhelpful. We therefore suggest that the last part be removed and the paragraph read as it did in the last draft of the guidance notes¹:

In the case of any uncertainty as to whether a phone number is US or not, for example a mobile phone number, the number should not be treated as a US indicia.+

6. New individual accounts

6.1 Threshold exemptions that apply to new individual accounts

We urge HMRC to formulate its policy and processes on elections as a matter of urgency. At the very least, our members would like to know when and how consultation on this matter will take place. (This applies also for pre-existing accounts per 5.1.)

9. Reporting

9.7 Format and 9.8 Transmission

It would be helpful to have some understanding of the timescale as some of our members are now working on coding for their software and systems. In particular, we very much hope there will be test facilities which remain open so that both testing and re-testing will be possible. If the test facility is not robust, HMRC runs the risk of a great deal of unnecessary work in March 2015.

18 June 2013

¹ Released for confidential comment by HMRC to BSA on 19 April 2013