

## British Virgin Islands FATCA Update

News - 25/03/2015

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The British Virgin Islands International Tax Authority (“ITA”) have this week released an updated version of the Guidance Notes on the International Tax Compliance Requirements of the Intergovernmental Agreements (“IGAs”) between the British Virgin Islands and the United States of America and the United Kingdom.

Whilst many of the changes serve to provide clarification to the first draft of the Guidance Notes, the updated Guidance Notes present the follow material points:

- **Reporting Deadlines and Notification Process:** The reporting deadline for the 2014 reporting year has been extended to 30 June 2015. For the 2015 reporting year onwards, the deadline will going forward be 31 May. The ITA has not clarified the required steps in the notification process. However, they have informally stated that a letter appointing a representative/contact person will be required but the letter will not need to be notarised. The reporting deadline for the UK IGA is 31 May 2016.
- **BVI Financial Account Reporting System:** Reporting British Virgin Islands Financial Institutions are required to submit their FATCA returns to the ITA via a web-based application, the BVI Financial Account Reporting System (“BVIFARS”). BVIFARS is expected to be available on 15 April 2015. Each Financial Institution and Sponsoring Entity will have one primary user and up to four secondary users. The method of reporting for UK IGA purposes has not yet been confirmed.
- **Reportable Accounts:** If the holder of a Reportable Account is no longer a Specified US/UK Person, then the relevant account will no longer be a Reportable Account.
- **Collective Investment Vehicles:** The definition of a “Collective Investment Vehicle” has been clarified and is now more aligned with the definition used by other jurisdictions. All “funds” under section 40(1) of the Securities and Investment Business Act, 2010 will be Collective Investment Vehicles for the purposes of FATCA and will therefore be treated as “Investment

Entities” and therefore BVI FIs.

- **Nominee Shareholders:** a company acting as a Nominee Shareholder can elect to be treated as a Custodian Institution.
- **Clarification of “Managed by” test:** A company with individual or corporate directors provided by a corporate services provider may, should it wish to do so, elect to be treated as being managed by such corporate service provider and so be an Investment Entity itself.
- **Dormant and Liquidating Companies and Companies that have been struck off:** The reporting obligations of these entities have been clarified, and it has been confirmed that reporting obligations still apply in respect of a company that has been struck off. Dormant and liquidating companies (where a liquidator has been appointed) will not be considered to be Investment Entities for the purpose of the IGAs.
- **Exempt Beneficial Owners:** An extra category of exempt beneficial owners, “Limited Capacity Exempt Beneficial Owners” has been included, mirroring Annex II of the UK IGA and removing the need for charities to look through to their Controlling Persons.
- **Amendment of the Mutual Legal Assistance (Tax Matters) Act, 2003:** The Guidance Notes indicate that an order under this legislation is to be made that will formalise the reporting deadlines and make breach of the reporting requirements an offence.

If you have any questions or would like to discuss these issues further, please reach out to your usual Ogier contact.

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