



Common Reporting Standards and Jersey consultation on Country-by-Country Reporting

1st March 2016



Agenda

- What you need to know regarding laws, regulations and Guidance Notes
- Guidance Notes
- Some practical issues
- Country-by-Country Reporting

Laws, Regulations and Guidance Notes

What you need to know and what you don't

- Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information to Improve International Tax Compliance
- Common Standard on Reporting and Due Diligence for Financial Account Information
- Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Jersey) Regulations 2015
- Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Amendment Regulations) (Jersey) Order 2016
- Taxation (Implementation) (International Tax Compliance) (United Kingdom) (Amendment) (Jersey) Regulations 2015
- OECD Commentary on CRS - 307 pages of commentary
- CRS Handbook issued August 2015 by OECD
- FAQ issued by OECD in August 2015
- Local Guidance Notes which advise on the options available to a Reporting Jersey FI

To whom does it apply?

First exchanges by September 2017 (for 2016)

Schedule 2 (52 jurisdictions)

Anguilla, Argentina, **Barbados**, Belgium, Bermuda, British Virgin Islands, **Bulgaria**, Cayman Islands, Colombia, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Italy, South Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Montserrat, Netherlands, **Niue**, Norway, Poland, Portugal, Romania, San Marino, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Turks and Caicos Islands, United Kingdom

First exchanges by September 2018 (for 2017) Schedule 3 (25 jurisdictions)

Albania, **Andorra**, **Antigua and Barbuda**, Aruba, Australia, Austria, **Belize**, Canada, Chile, **China (People's Republic of)**, **Cook Islands**, Costa Rica, Ghana, **Grenada**, Indonesia, **Japan**, **Malaysia**, **Marshall Islands**, **Monaco**, New Zealand, **Saint Lucia**, **Saint Vincent and the Grenadines**, **Samoa**, **Sint Maarten**, Switzerland

Jurisdictions that have committed but with no firm date: Schedule 4 (17)

Bahamas, Brazil, Brunei Darussalam, Dominica, Greenland, Hong Kong (China), Israel, Macao (China), Qatar, Russia, Saint Kitts and Nevis, Saudi Arabia, Singapore, Trinidad and Tobago, Turkey, United Arab Emirates, Uruguay



Review of CRS Draft Guidance Notes

Contents and agenda

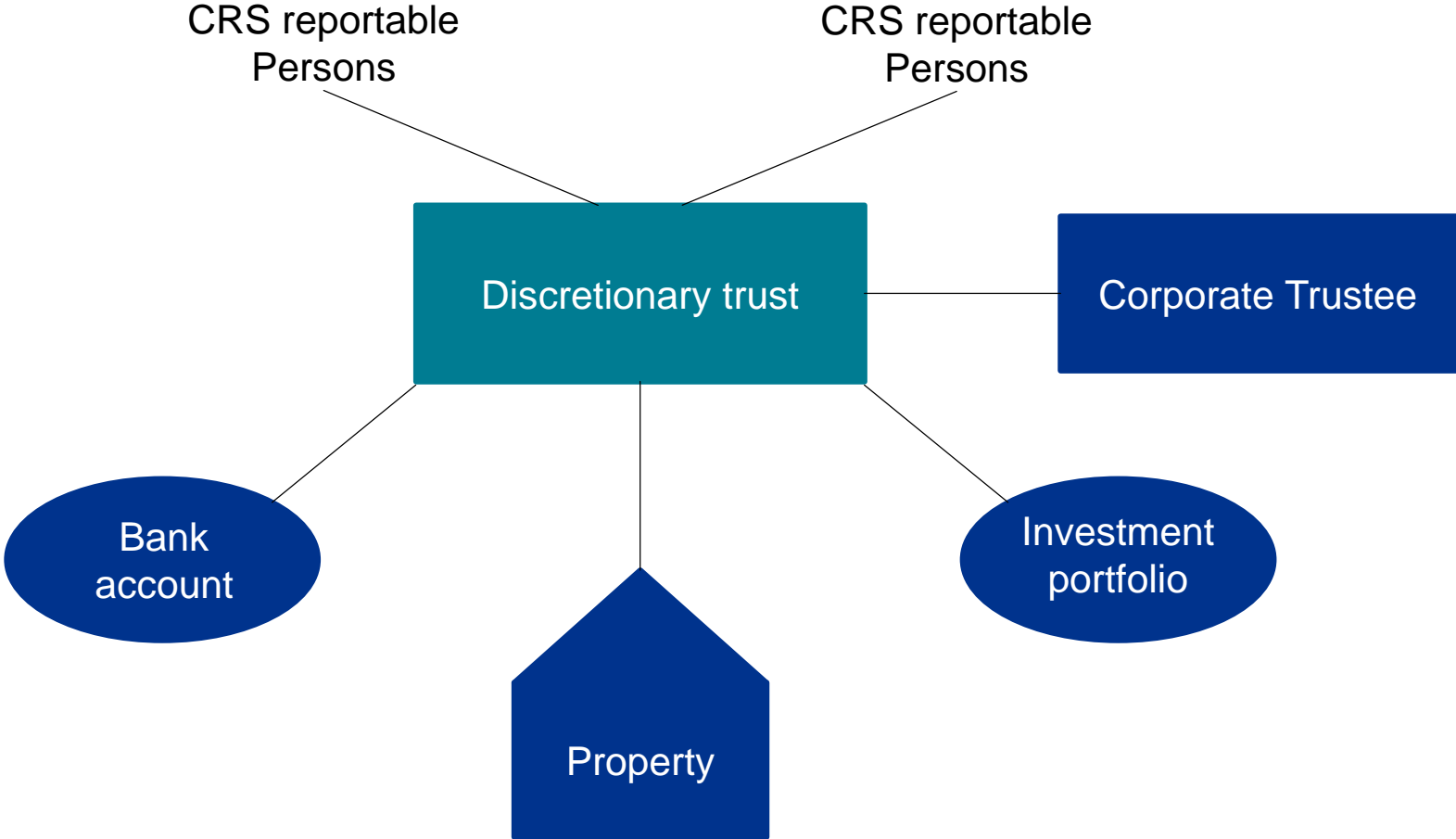
- Contents of the draft updated GNs below. The chapters in green will be looked at in more detail:

1. Background
2. The Domestic Law
3. FATCA IGA/CRS Comparisons
4. Options
5. Excluded Accounts
6. Non-Reporting Financial Institutions
7. Participating Jurisdictions
8. Effective Dates
9. Information to be reported to the Taxes Office
10. Self-Certification
11. Format of Reporting
12. Administrative Matters

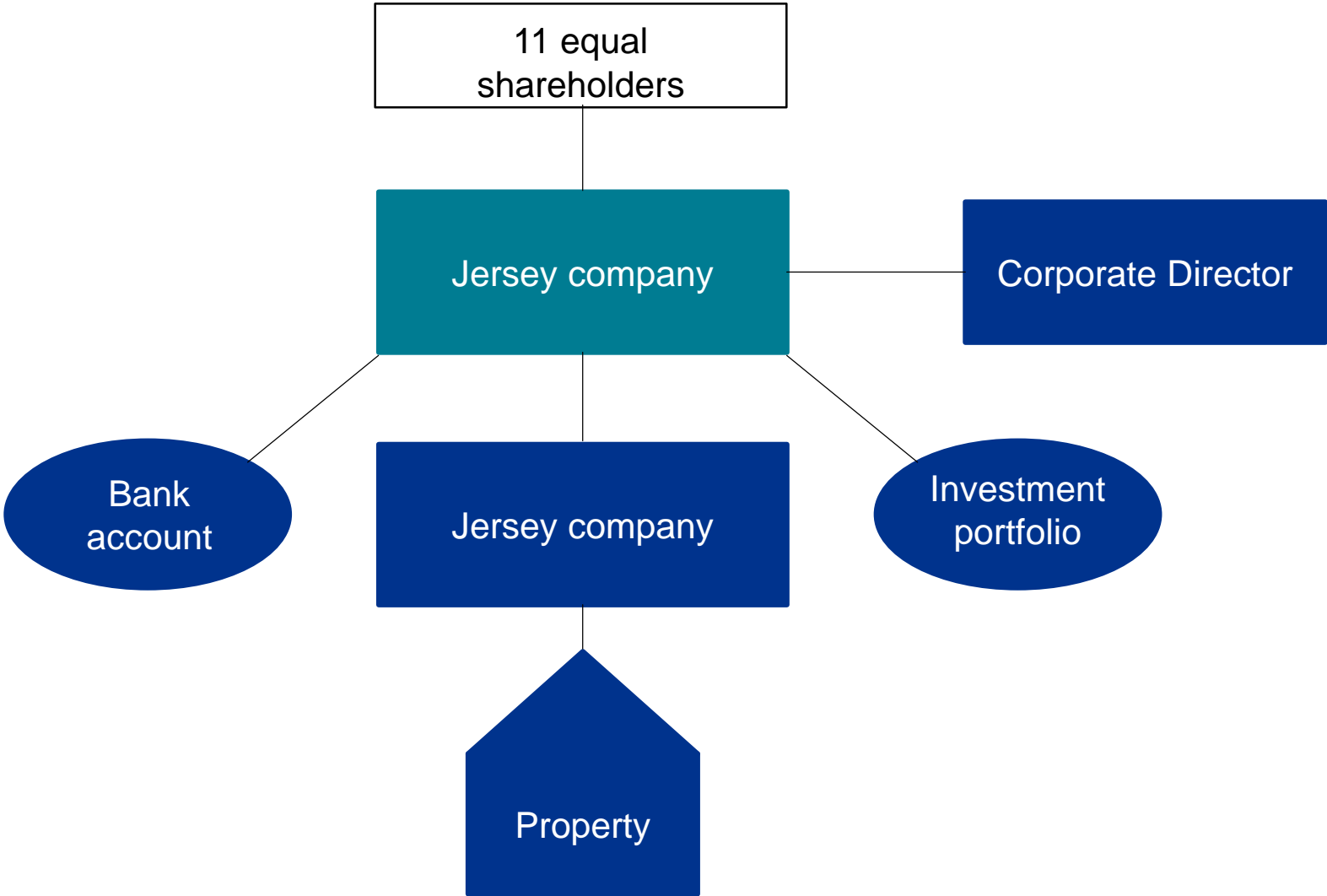
Domestic law and FATCA IGA/CRS comparisons

- Highlights of domestic law to ease the burden faced by FIs
- Regulation 1(5) – Allows FIs in appropriate circumstances to use definitions as applied for FATCA/IGAs, so long as in doing so they are not frustrating the purposes of the CRS and Model CAA
- Examples where it is considered that the IGA Guidance may continue to apply include:
 - Section 3.2 – Resident for tax purposes
 - Section 3.9 – Investment entity
 - Section 3.12 – Nominee company
 - Sections 7.1, 7.2, 7.3 - Jersey trusts
 - Section 7.8 - Settlor specifically excluded from trust
 - Section 7.13 - EBTs
 - Section 19.4 - Multiple Financial Institutions – Duplicate reporting
 - Appendix 4 - Beneficiary of a pension scheme will not be treated as having a financial account until a benefit payment is made

Section 3.9 – Investment entity



Section 3.9 – Frustrating the purposes of the CRS?



Options available under CRS - proposed Jersey approach

- CRS includes a number of options to which jurisdictions have a choice as to how to implement the CRS. There are 17 options detailed in the GNs which include the following:
 - 1) Alternative approach to calculating account balances - **NO**
 - 2) Use of a reporting period other than the calendar year – **NO**
 - 3) Phasing in the requirement to report gross proceeds - **NO**
 - 4) Filing of nil returns – **NO**
 - 5) Allow third party service providers to fulfil the obligations on behalf of the financial institutions - **YES**
 - 6) Use of New Account procedures for Pre-Existing accounts – **YES**
 - 7) Use of High Value procedures for Low Value Accounts - **YES**
 - 8) Use Residence Address test for Low Value Individual Accounts - **YES**

Options available under CRS - proposed Jersey approach

- 9) Optional exclusion from due diligence for Pre-Existing Entity accounts of less than \$250,000 – YES
- 10) Alternative documentation procedure for certain employer-sponsored group insurance or annuity contracts – YES
- 11) Allow Financial Institutions to make greater use of existing standardised industry coding systems for the due diligence process – YES
- 12) Currency translation - YES
- 13) Expanded definition of Pre-existing Account – YES
- 14) Expanded definition of Related Entity – YES
- 15) Use of the grandfathering rule for bearer shares issued by Exempt Collective Investment Vehicle - YES
- 16) Report details for a discretionary trust that is a PNFE under same rules as an FI – YES
- 17) Option to treat an FI in a Schedule 3 jurisdiction as an FI and not a Passive NFE - YES

Excluded Accounts

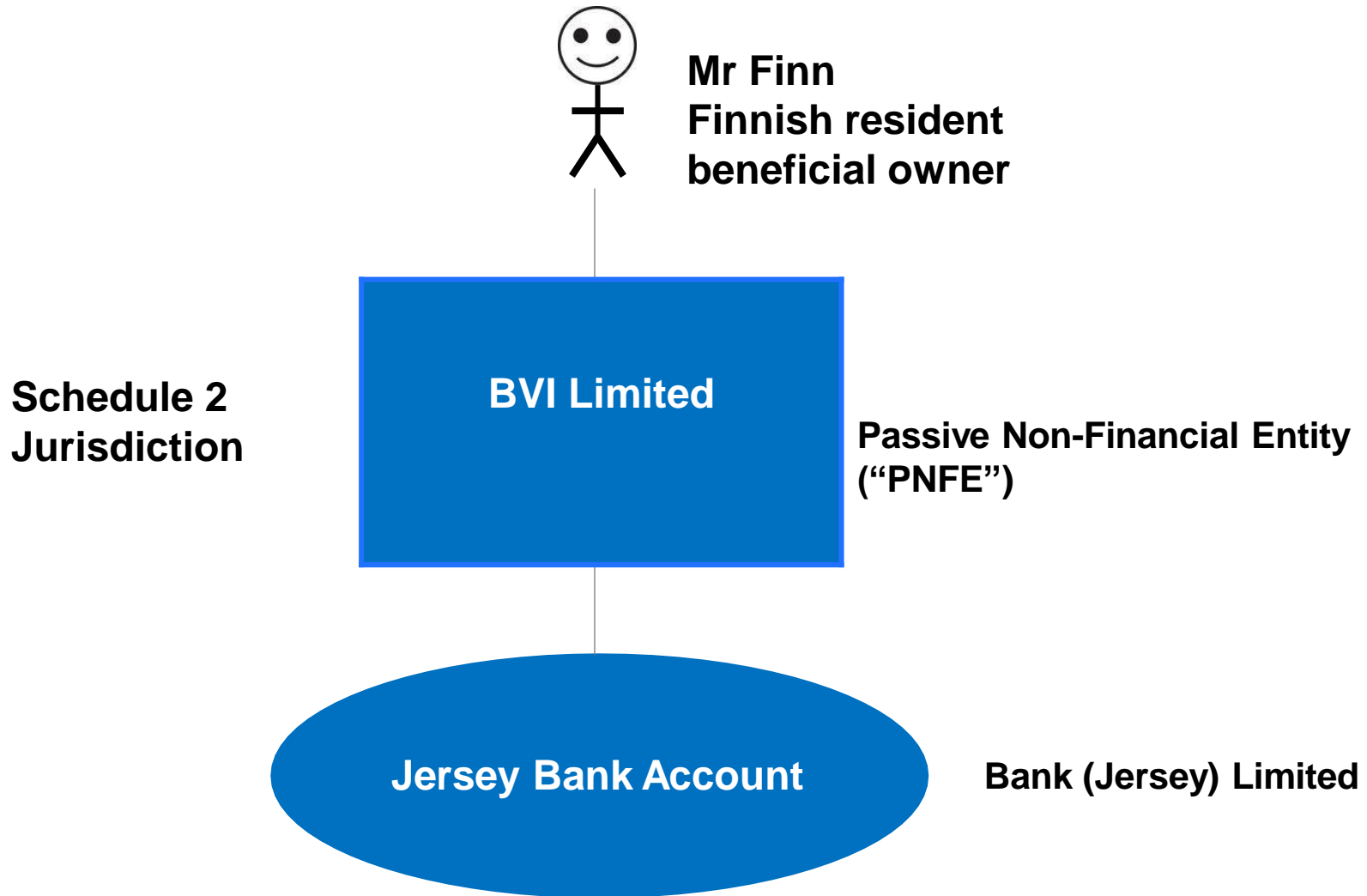
- Financial accounts that are seen to be low risk of being used to evade tax are specifically excluded from needing to be reviewed. This can vary from jurisdiction to jurisdiction. Jersey excluded accounts include:
 - Retirement and pension accounts - (Article 131)
 - Non-retirement tax favoured accounts
 - Term Life Insurance contracts
 - Estate accounts
 - Escrow accounts
 - Depository accounts due to not returned overpayments
 - Other low risk excluded accounts
- Dormant accounts where the balance does not exceed \$1,000 can be viewed as excluded.

Excluded Accounts – listed funds

- Treatment for listed funds
 - IGAs
 - Test 1 ‘regularly traded’
 - Test 2 ‘established securities market’
 - CRS
 - No specific exemption

- Impact for listed funds under CRS
 - Listed Funds will need to review the account holders (investors) to determine if any are reportable
 - However, it is most likely these shares will be held by a stockbroker or an intermediary which will be an FI. There is no requirement under CRS to report on an FI (unless an investment entity in a non-participating jurisdiction)
 - It is necessary, however, that the listed fund performs and documents this process

Information to be reported to the Taxes Office



CRS - Reporting

Report made to CoT and passed to BVI Competent Authority

- Name and address of BVI Limited
- Jurisdiction of residence (BVI)
- TIN
- Account number
- Name and identifying number of Bank (Jersey) Limited
- Account balance at 31 December X
- Total gross interest paid or credited

Report made to CoT and passed to Finnish Competent Authority

- Name, address, jurisdiction of residence and TIN of BVI Limited
- Name and address of Mr Finn
- Residence, date of birth and TIN (if available) of Mr Finn
- Account number
- Name and identifying number of Bank (Jersey) Limited
- Account balance at 31 December X
- Total gross interest paid or credited

Information to be reported to the Taxes Office



Mr Finn
Finnish resident
beneficial owner

**Schedule 3
Jurisdiction
(Option 17
GNs if an FI)**



Swiss Ltd

**FI or Deemed Passive Non-Financial
Entity?**



Jersey Bank Account

Bank (Jersey) Limited

Self certification

- Self certification required for all accounts opened from 1 January 2016: ‘Jersey FIs have an obligation to maintain account opening processes that facilitate collection of a valid self-certification at the time a New Account is opened’
- Self certification is required on ‘Day 1’, however local guidance gives you no later than 90 days after the account has been opened
- If a self certification is not obtained then it will be treated as an undocumented account until a valid self certification is obtained. No requirement to close the account
- The undocumented accounts category applies to Pre-existing and New accounts when no valid self certification is received following a ‘change in circumstance’
- If the FI has a disproportionate number of undocumented accounts it may be subject to a compliance review



Some practical issues

Where should you be?

IGA/FACTA

- Classified all administered entities
- Registered on US Portal all Reporting FIs
- Entered into sponsoring entity agreements
- Valued PE Individual accounts at 30 June 2014?
- Reviewed all high value PE individual a/cs
- Changed take on procedures and obtained self certification for all new account holders
- Applied for ARR for 2014 and obtained self-certs for RND clients for 2014
- Submitted 2014 US report
- Started indicia search for low valued PEIA
- Started review of all client account holders
- Set for making your 2015 US report and

CRS

- Classified all entities for CRS
- Entered into third party agreements
- Consider whether to value PE accounts as at 31 December 2015
- Considered whether to adopt the narrower or Jersey wider approach
- Changed your take-on procedures to accommodate CRS
- Consider how to document policies/decisions – important for audit process

Effective dates

	Individual Pre-Existing Accounts	Individual New Accounts	Entity Pre-Existing Accounts	Entity New Accounts
Low Value (<\$1M)	Review by 31 December 2017	Self Certification from 1 January 2016	Review by 31 December 2017	Self Certification from 1 January 2016
High Value (>\$1M)	Review by 31 December 2016	Self Certification from 1 January 2016	Review by 31 December 2017	Self Certification from 1 January 2016
De Minimis Exclusions (no reporting or due diligence required)	n/a	n/a	<\$250,000 for all accounts	n/a

■ FIs can complete all DD in 2016



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UK IGA Transition

Changeover from UK IGA to CRS

- If no agreed methodology, then RJFI would need to report on UK account holders under UK IGA and also CRS. Plus they would have to undertake due diligence on UK account holders firstly under IGA and then also under CRS
- No desire by either Jersey or UK for double reporting
- UK desire to implement CRS by 1 January 2016 for all CD and OTs, but does not want to terminate IGA on 31 December 2015 as LVA would not be reported in 2016
- CRS 2016 report (to be submitted by 30 June 2017) will include the pre-existing LVA and pre-existing entity accounts for UK resident account holders
- New Accounts for IGA purposes will be viewed as New Accounts for CRS
- No requirement to undertake new due diligence procedures under CRS for UK accounts other than for de minimis pre-existing individual accounts and New Individual Depository Accounts
- The ARR effectively disappears for 2016 reporting and subsequent reports



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Some due diligence issues

Due diligence issues in CRS

- RJFI must preform an electronic indicia search for all PEIAs
 - Identification of the A/c Holder as a residence of a Reportable Jurisdiction (“RJ”)
 - Current mailing address and residence address (including PO Box) in a RJ
 - Ignore address of service provider where there is another current address on file
 - One or two telephone numbers in a RJ and no telephone number(s) in Jersey
 - Ignore ‘old’ telephone numbers
 - Standing instructions to transfer funds to another account in a RJ (other than for depository accounts)
 - Eg. Mr Smith instructs Jersey custodian to transfer automatically all dividend income to bank account in Switzerland
 - A current “hold mail” instruction or “in-care-of” address in a RJ if no other address on file
 - Current effective power of attorney or signatory authority granted to a person with an address in a RJ
- Consider using the Residence Test for Low Valued Individual Accounts
- For High Valued Individual Accounts, paper record search might be needed

Due diligence issues in CRS for HV Individual Accounts

- No requirement to undertake a paper record search if database can be searched for
 - Residence status
 - Residence address and mailing address
 - Telephone number
 - Whether there are standing instructions to transfer funds to another account (other than for depository accounts)
 - Whether there is a current “in-care-of” address or “hold mail” instruction
 - Whether there is any power of attorney or signatory authority for the account
- Must preform a file review where data field is empty
 - Paper review only on missing data
 - No paper review if FI policy not to obtain that specific data
- PEIA reportable in each jurisdiction where one or two indicia are found
- Must consider change of circumstance which results in one or two indicia
- Who is a relationship manager?

TINs and date of birth – FATCA/IGA and CRS

■ FATCA/IGA

- For new individual accounts, only TIN is needed
- No TIN for PNFs, only Specified US Persons
- For PEIAs, TIN must be reported if collected but where no TIN collected, must report DoB
- No obligation to obtain TIN for PEIA for 2014, 2015 and 2016 reports, but domestic legislation must be in place by 1 January 2017 to enable RJFI to obtain and report TIN for 2017 report

■ CRS

- For new individual accounts, both TIN and DoB is needed
- TIN required for all entity accounts
- For PEIAs, TIN and/or DoB must be reported if in RJFI records
- Where above does not apply, RJFI must use “reasonable efforts” to obtain
- Exception to above (and for New Accounts) is where a TIN is not issued by the relevant Reportable Jurisdiction, or the law of the Reportable Jurisdiction does not require the collection of the TIN

TINs and date of birth – FATCA/IGA and CRS

■ FATCA/IGA

- Where no TIN, JRFI must report 000-00-0000

■ CRS

- TIN is the a/c holder's TIN jurisdiction of resident and not jurisdiction of source
- “reasonable efforts” to obtain TIN for PE a/cs must be made by the end of 2nd calendar year following the year in which an account was identified as reportable
 - HVA found to be reportable on 29 February 2016 but has no TIN, RFI has until 31 December 2018 to seek to obtain TIN
- Reasonable efforts (“RE”) must be at least once a year during the period between identification and end of 2nd calendar year
 - e.g. contacting account holder; and searching electronically searchable information of a related entity
 - RE does not need to include closing, transferring or freezing account
- TIN for UK person is National Insurance no. for IGA but UTR also used for CRS
- TIN for Jersey individual is Jersey Social Security number
- TIN for Jersey entity is tax reference number – many entities will not have one!



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Compliance

CRS Penalties

- Penalty of £300 for failure to comply with any obligation under the regulations
- If failure continues after the person has been notified of penalty, subsequent penalty may be imposed on up to £60 per day
- Reasonable excuse clause
- Daily penalty may be increased up to £1,000 per day subject to approval of Commission of Appeal where failure of obligation continues for more than 30 days after daily penalty imposed
- A penalty of up to £3,000 may be imposed where an inaccurate return has been submitted and
 - The inaccuracy is as a result of the DD process or is deliberate; or
 - person is aware of inaccuracy but does not inform Comptroller

CRS Compliance

- Comptroller or authorised person has power to enter business premises and examine business documents
- Unlimited fine and six months imprisonment for obstructing an authorised person in seeking to enter business or examine business documents
- Unlimited fine and two years imprisonment for intentionally altering, suppressing or destroying business documents that have been requested by the Comptroller or authorised person
- Comptroller to implement some form of compliance program
- [It is expected that draft Guidance Notes will state that a RFI that has a disproportionate amount of undocumented accounts will be subject to a compliance visit]

Key points to take away

- It is possible to use US IGA definitions for CRS as long as it does not frustrate the purpose of CRS
- Listed funds must participate in the process
- Not too late to amend your take-on procedures
- Reports are to be submitted on a jurisdictional basis
- Consider submitting your 2015 US report and your 2014 and 2015 UK reports as early as possible
- If you are applying the ARR for 2015, don't forget to elect for the status (30 May 2016) and obtain RND certifications (28 February 2017)
- No ARR for UK RNDs for reporting year 2016
- Ensure you have documented your policies/procedures
- As required by the CRS, the Comptroller of Taxes will be introducing procedures whereby an audit of the implementation of the Regulations will be reviewed. Details of these procedures will be published [shortly]...



Country-by-Country Reporting

“Jersey is committed to support the actions being undertaken in the Base Erosion and Profit Shifting (“BEPS”) project”

Country-by-Country Reporting – what is it?

- Part of the OECD BEPS initiative
 - Action Plan 13
 - Three part approach on transfer pricing documentation to enhance transparency for tax administration
- Requires large MNE to file annually CbC Reports outlining for each tax jurisdiction in which they do business
 - The amount of revenue earned
 - Profit before tax
 - Tax paid and accrued
 - Number of full time employees
- Report is on a consolidated basis – i.e. affects all entities included in the consolidated group for financial reporting

Who does it affect?

- MNE where the ultimate parent entity is resident in Jersey
- MNE defined as any Group that includes two or more enterprises the tax residence of which is in different jurisdictions or an enterprise resident in one jurisdiction and subject to tax in another due to it carrying on business through a PE in another jurisdiction
- Excludes MNE Group with consolidated “revenues” of less than £586 million in a 12 month period ending prior to the reporting period
 - This threshold will be viewed in 2020 with a view to reducing it
 - Revenue includes revenue from sales or inventory and properties, services, royalties, interest, premiums and any other amounts, but exclude dividends from consolidated subsidiaries
- All types of business structure are in scope including companies, limited partnerships, investment vehicles, trusts etc

When and how?

- Although the OECD proposal is for the first report to be for accounting periods beginning on or after 1 January 2016, Jersey proposes to start filing reports for the accounting period beginning on or after 1 January 2017
- Report must be filed no later than 12 months after the end of the accounting period in which it relates
- Report to be filed to the Comptroller who will automatically pass the return to the jurisdictions in which the Group operates (relevant jurisdictions)
- Relevant jurisdictions may require Jersey entities to provide, within 14 days, information to determine the accuracy of the report
- Same penalties as CRS

Final template (page 1) and guidance

Name of the MNE group										
Tax Jurisdiction	Unrelated Party Revenue	Related Party Revenue	Total Revenue	Profit (loss) before income tax	Income tax paid (on a cash basis)	Income tax accrued – current year	Stated Capital	Accumulated Earnings	Number of employees	Tangible Assets other than Cash and Cash Equivalents
Country A	x	x	x	x	x	x	x	x	x	x
Country B	x	x	x	x	x	x	x	x	x	x
Not resident in any tax jurisdiction	x	x	x	x	x	x	x	x	x	x

Use same data source consistently year on year

Choice from:

- Consolidated reporting packages.
- Separate entity statutory financial statements^(a).
- Regulatory financial statements.
- Internal management accounts.

Group GAAP versus **Local GAAP** – differences, practicalities, reconciliation.

Aggregate on a country basis

Tax jurisdiction

- Reporting on tax a jurisdiction basis.
- **Self assess** tax residence – Tax treaty tie breakers, or principles of place of effective management.
- **Dual resident** entities – apply the tax treaty tie breaker, or if no treaty, report in the place of effective management.
- **Not resident anywhere** – report all such vehicles in a single line

Note: (a) Translate to the functional currency of the Reporting MNE at average rate.

Final template (page 2) and guidance

Tax Jurisdiction	Constituent entities resident in the tax jurisdiction	Tax jurisdiction of organisation or incorporation if different from tax jurisdiction of residence	Activities													
			Research and development	Holding or Managing intellectual property	Purchasing or procurement	Manufacturing or production	Sales, marketing or distribution	Administrative, management or support services	Provision of services to unrelated parties	Internal group finance	Regulated financial services	Insurance	Holding shares or other equity instruments	Dormant	Other	
Country A	Entity A	Country B		✓												
	Entity B				✓	✓				✓						✓
Country B	Entity C		✓										✓			
	PE 1							✓								

Scope

Reporting Multinational Enterprise (MNE) – ultimate parent of an MNE group.

Constituent Entity – any separate business unit of the MNE group:

- Company
- Corporation
- Trust
- Partnership
- Etc....

Included in the consolidated group for financial reporting purposes.

Entities excluded from accounts due to **size/materiality** – include for CbCR.

Permanent Establishments/Branches

Report separately if separate income statement prepared for:

- Regulatory;
- Financial reporting;
- Internal management; or
- Tax purposes.

Include in the country where they are situated

Exclude from the 'parent' country

Exceptions are accumulated earnings and stated capital. Report the former in the parent and the latter in the parent unless there is a defined capital requirement in the PE jurisdiction for regulatory purposes

Importance of CbC Reporting to Jersey

- European Commission's Anti-Avoidance Package (28 January 2016)
 - Anti-BEPS Directive
 - Non-public CbC Reporting
 - Recommendation to tackle treaty abuse
 - External Strategy for Effective Taxation
- Common approach to “Tax Good Governance” towards “third countries”
- Characteristics that a “third country” must satisfy for “Tax Good Governance”
 - Transparency and exchange of information
 - Fair tax competition
 - G20/OECD BEPS standards
 - Other relevant standards such as international standards on AML

How to value third countries

- The EU have stated that the EU list is intended as a “last resort” option. The process to list the third country is based on a three step strategy:
- **Step 1**
 - The Commission will identify a set of third countries that need to be screened by the EU. This will be done through a neutral score board of indicators, which will determine the potential risk level of each third country’s tax system in facilitating tax avoidance
 - It is expected that all Crown Dependencies (“CDs”) and Overseas Territories (“OTs”) will be listed
- **Step 2**
 - On the basis of the score board results, Member States should decide which of third countries should be formally screened by the EU
 - Once more, it is expected that the CDs and OTs will be listed
- **Step 3**
 - After the assessment process, the Commission will recommend to Member States which third countries should be put on the common EU list and why. Member States should take the final decision on the third countries to be listed. The conditions for de-listing will be clearly communicated to each listed third country and the list will be reviewed on a regular basis

My assessment of Jersey's "Tax Good Governance"

- Transparency and Exchange of Information
 - We are largely compliant by OECD Global Forum
 - Early adopter of CRS
- Fair Tax Competition
 - Compliant with Code of Conduct on Business Taxation
 - Code to be revamped to possibly include EU Anti-BEPS directive (such as CFC provisions, limited interest relief and exit taxation)
- G20/OECD BEPS
 - CbC Reporting by 2017?
 - Wait and see action by G20/OECD/EU on other proposals before considering our actions
- Other Standards
 - We have been assessed for AML by Moneyval
 - We seem to be leaders on identification of beneficial owners of companies



Questions

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