

Implementing the UK-US FATCA Agreement

Consultation document

Publication date: 18 September 2012

Closing date for comments: 23 November

2012

Subject of this consultation:

The implementation of the Agreement entered into between the UK and the US to improve international tax compliance and implement the

Foreign Account Tax Compliance Provisions (FATCA).

Scope of this consultation:

Comments are sought on a number of proposals to enable legislation to be drafted which can be operated most efficiently by affected

businesses. Comments are also sought to assist in establishing the

costs associated with the introduction of FATCA.

Who should read this:

Businesses, representative bodies and tax professionals

Duration: The consultation period will last for 10 weeks from 18 September to 23

November 2012.

Lead officials: Malcolm White. HM Revenue & Customs (HMRC).

How to respond or enquire about this consultation: Electronic responses to: fatca.consultation@hmrc.gsi.gov.uk

Written responses should be addressed to Neil Higgins at:

HM Revenue & Customs, CTIAA FPST, Room 3C/04, 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. A "Town Hall" meeting will be held on 25 September, details of the venue are:

The Royal Statistical Society, 12 Errol Street, London, EC1Y 8LX.

Please note places for this event are limited and not all those who express an interest in attending will be able to do so.

Expressions of interest to attend should be emailed to

neil.higgins@hmrc.gsi.gov.uk

After the consultation:

The proposals will be reviewed in light of the responses. Draft legislation will be published by the end of the year with the view to introducing legislation in Finance Bill 2013. A summary of responses will be published after the close of the consultation.

Getting to this stage:

On 26 July 2012 the Government issued a joint statement with the G5 and the US announcing the publication of the "Model Intergovernmental Agreement to Improve Tax Compliance and to Implement FATCA". The Government has now signed a bilateral Agreement with the US, based on the Model.

Previous engagement:

Since February 2012 HMRC has undertaken extensive stakeholder engagement with representative bodies and businesses to better understand the scale of impact of FATCA and an intergovernmental approach to FATCA as well as the key issues and concerns of the various impacted stakeholder groups.

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1. Introduction

- 1.1 The Government is committed to tackling tax evasion and increasing international tax transparency. The UK's information exchange relationships with the governments of other jurisdictions are a key tool to achieving these objectives.
- 1.2 The UK has recently enhanced its information exchange relationship with the US through signature of the *Intergovernmental Agreement to Improve Tax Compliance* and to *Implement FATCA* (The Agreement). The Agreement is a commitment by both governments to significantly increase the scope of information automatically exchanged. It follows the publication of the Model Intergovernmental Agreement by the G5 (France, German, Italy, Spain and the UK) and US on 26 July 2012.
- 1.3 This consultation sets out how the Government intends to legislate to deliver the commitments made in the Agreement and seeks views on the proposed approach. It also requests information on the expected costs of complying with the Agreement to inform the impact assessment.
- 1.4 As the objective of this document is to consult on implementing the Agreement into UK law, the content and consultation questions focus solely on aspects requiring implementation in the UK (rather than, for example, the requirements placed on US financial institutions by the US).

Background

- 1.5 The US Hiring Incentives to Restore Employment Act 2010 introduced the Foreign Account Tax Compliance Provisions known as FATCA which aims to combat tax evasion by US persons with non-US accounts. As the US tax system is based on citizenship, US persons do not need to be resident in the US.
- 1.6 FATCA requires financial institutions outside the US to report information on US account holders to the US Internal Revenue Service (IRS). If financial institutions fail to report the required information then 30% US tax would be withheld on all US payments to them.
- 1.7 The Government received a large number of representations from the financial services sector regarding the legal difficulties they faced with complying with FATCA reporting, specifically (but not only) in relation to data protection. This would have resulted in UK financial institutions suffering a 30% withholding tax on payments received from the US, which would have significantly damaged the UK's competitiveness. Representations were also received regarding the administrative burdens FATCA imposes.

- 1.8 The UK financial sector's concerns regarding the impacts of FATCA were also shared by financial institutions elsewhere, not least because of the EU-wide rules on data protection. Consequently the Government, along with the governments of France, Germany, Italy and Spain (the G5) approached the US outlining support of the objective of tackling tax evasion but also setting out the concerns of our financial institutions regarding the operation of FATCA and specifically how, due to legal constraints, it would not deliver the information reporting the US designed it to do.
- 1.9 The G5, with the support of the European Commission, then took part in joint discussions with the US to explore ways to address the legal difficulties presented by FATCA.
- An intergovernmental approach was identified whereby financial institutions would instead report the information to their respective tax authorities, who would then exchange the information to the US under the legal framework provided by existing double taxation and tax information exchange agreements. In return for supporting the provision of taxpayer information to the US, the G5 requested the US also provide information to the G5 on US accounts held by G5 taxpayers and for the administration costs to financial institutions to be minimised.
- On 8 February 2012, the G5 and the US issued a Joint Statement setting out 1.11 agreement to explore an intergovernmental approach to improving international tax compliance and implementing FATCA.
- Following further negotiations, on the 26 July 2012 the G5 and US issued a further Joint Statement announcing the publication of the "Model Intergovernmental Agreement to Improve Tax Compliance and to Implement FATCA" (The Model Agreement).
- The Model Agreement was to address the legal barriers to complying with FATCA, 1.13 ensure the burdens imposed on financial institutions are proportionate to the goal of combating tax evasion and establish a reciprocal approach to FATCA implementation.

http://www.hm-treasury.gov.uk/joint_intl_statement_fatca.htm http://www.hm-treasury.gov.uk/press_67_12.htm

- 1.14 More specifically, the Model Agreement provides a framework within which:
 - The legal barriers to compliance, such as those related to data protection, have been addressed.
 - Withholding tax will not be imposed on income received by UK financial institutions.
 - UK financial institutions will not be required to withhold tax on payments they make.
 - The due diligence requirements are more closely aligned to the requirements under the existing anti-money laundering rules.
 - There is a wider scope of institutions and products effectively exempt from the FATCA requirements.
 - HM Revenue & Customs will receive additional information from the US Internal Revenue Service to enhance its compliance activities.
- 1.15 The UK and the US subsequently signed a bilateral agreement based on the Model Agreement on 12 September 2012. Chapter 2 provides an outline of the Model Agreement. This consultation document requests representations on the implementation of the Agreement.

Next steps

- 1.16 Once the consultation process has been completed after consideration of the comments received the Government will publish draft legislation for comment.
- 1.17 Final legislation will be put forward as part of the Finance Bill 2013 process.
- 1.18 The Government will also continue to seek views from business on the practical aspects of implementing the Agreement, such as the necessary reporting and systems requirements, which have not yet been finalised with the US.
- 1.19 Where possible we would like to ensure that any process changes brought about by the Agreement are aligned with both present and future reporting requirements. This may mean that detailed aspects of the requirements will not necessarily be set out in the legislation introduced in Finance Bill 2013. However the requirements will be made available in sufficient time to allow business to comply with their obligations under the Agreement.

2. Outline of the UK-US Agreement

- 2.1 The UK and the US signed the *Intergovernmental Agreement to Improve Tax Compliance and to Implement FATCA* (The Agreement) on 12 September 2012 (see Annex 1). It is very closely based on the Model Agreement³ published by the G5 and US on 26 July 2012 (The Model) but also incorporates an annex specific to the UK as was anticipated in Annex II to the Model Agreement.
- 2.2 The Agreement is comprised of 3 sections
 - The Articles
 - Annex I Due Diligence Obligations,
 - Annex II Non-Reporting UK Financial Institutions and Products
- 2.3 The following Chapters describe each section of the Agreement and set out how it is intended to work. The Agreement and therefore the policy is fixed (notwithstanding the areas where options are provided within the Agreement, most prominently the ability for the Government to allow UK financial institutions to follow the due diligence procedures in the US Regulations rather than the UK-US Agreement), however representations are welcomed on how to draft the Regulations and guidance in order to implement the Agreement in a clear way.
- 2.4 Unless otherwise stated defined terms used in this document are as set out in Article 1 of the Agreement.

³ http://www.hm-treasury.gov.uk/press_67_12.htm

3. The Articles

- 3.1 Article 1 defines the terms used in the Agreement. Paragraph 2 of Article 1 states that, in general, any term not otherwise defined should be interpreted in accordance with UK law, with UK tax law taking precedence.
- 3.2 The definitions set the basis for the Agreement, for example the meaning of "Financial Institution" and "Financial Account" are provided. Article 1 also defines the type of account required to be reported on, which include a "Depository Account", a "Custodial Account" an "Equity Interest" in a partnership or trust, an "Insurance Contract" and an "Annuity Contract". The Article also defines a "US Reportable Account", "US Person" and "Specified US Person" which are used to identify which accounts which UK financial institutions need to report on.
- 3.3 While most of the definitions are relatively straightforward to interpret, we have received informal representations seeking further clarification and querying how to interpret certain definitions in a UK context. We have set these out below.
- 3.4 We have also received several queries with regards to the scope of the institutions covered by the UK-US Agreement. Article 1.1.(I) defines the meaning of "United Kingdom Financial Institution". These are essentially financial institutions resident in the UK for tax purposes, excluding branches (and subsidiaries) located outside the UK. Consequently branches of UK financial institutions situated outside the UK will not report to HMRC. Box 3.1 below provides examples to demonstrate the meaning of a United Kingdom Financial Institution.
- 3.5 We have also received queries regarding practical issues in relation to identifying a "Custodial Institution" as defined in paragraph 1.(h) of Article 1. A Custodial Institution is essentially defined as any entity with at least 20 percent or more of its gross income attributable to the holding of assets and related financial services for the account of others. Following the general rule in paragraph 2 of Article 1, UK tax law should be used to determine gross income.
 - Q.1. Are there practical issues with applying the definition of Custodial Institution? If so, what are they and how would they arise? How could these issues be addressed in UK legislation or guidance?

Box 3.1: Examples demonstrating the meaning of "United Kingdom Financial Institution"

Example 1: A bank (A), located in London, has within its group the following entities:

- a subsidiary (B) located in Edinburgh;
- a foreign subsidiary (C) located in a jurisdiction which has signed an intergovernmental FATCA agreement with the US (a non-UK FATCA Partner);
- a foreign branch (D) located in a non-UK FATCA Partner;
- a foreign branch (E) located in a jurisdiction which has not signed an intergovernmental FATCA agreement with the US but which is still able to report information directly to the US;
- a foreign branch (F) located in a jurisdiction which has not signed an intergovernmental FATCA agreement with the US and is unable to report information to the US; and
- a foreign branch (G) located in New York.

Under the terms of the Agreement:

- Both A and its subsidiary B will be a "United Kingdom Financial Institution" and report information to HMRC.
- C and D will be classified as "Partner Jurisdiction Financial Institutions" and will report to the tax authorities in their respective jurisdictions.
- E will likely be a "Participating Foreign Financial Institution" although its reporting requirements will be under the US Regulations and not the Agreement.
- F will be a Non Participating Financial Institution.
- G will report to the IRS on accounts UK persons hold with them in accordance with US law.

Example 2: A bank (H), located in a non-UK FATCA Partner, has within its group the following entities:

- a subsidiary (I) located in London; and,
- a branch (J) located in London.

Under the terms of the Agreement:

- H will report on accounts it holds to the non-UK FATCA Partner's tax authority; and
- Both I and J will be "United Kingdom Financial Institutions" and report information to HMRC.

- 3.6 We have also received representations regarding the meaning of "Depository Institution". Paragraph 1.(i) Article 1 defines Depository Institution as "an entity that accepts deposits in the ordinary course of a banking or similar business." Some respondents have expressed concern that the reference to "similar business" may widen the scope to institutions which would not normally be regarded as Depository Institutions.
- 3.7 The intention behind the wording is to ensure that the Agreement cannot be sidestepped by an institution that accepts deposits but that is not a bank. The definition of "Depositary Account" provides greater context to the types of account a depository institution is expected to hold. While we think the objective of the definition of Depository Institution is clear, it could potentially cause some uncertainty at the margins.
 - Q. 2. Are there concerns that the reference to "similar business", when read in conjunction with other parts of the Agreement, could result in institutions being caught unintentionally? If so, what are they and when would they arise?
- 3.8 Issues relating to the definition of "Investment Entity" have also been raised. Paragraph 1 (j) of Article 1 states that the definition should be interpreted in a manner consistent with the definition of financial institution in the Financial Action Task Force (FATF) Recommendations.
- 3.9 This is intended to remove from scope investment entities not required to apply UK Anti Money Laundering (AML) regulations. For example it is envisaged that most family trusts are therefore excluded with only professionally managed trusts remaining in scope.
- 3.10 However the reference to the FATF recommendations has resulted in a significant number of concerns being raised with respect of the impact on the funds sector. The issues mainly concern multiple reporting (i.e. both the investment manager and the fund are potentially treated as separate financial institutions and therefore they would both be required to report).
- 3.11 The FATCA regulations do not make it clear whether the FFI categorisation or the reporting requirements applies at the sub-fund level, or umbrella level, however US Notice 2011-34 outlined a suggested approach for centralised compliance for funds, under which an investment manager or other agent of a fund could enter into a single FFI agreement on behalf of those funds which it manages (or is otherwise authorised to act for) and that wish to become participating FFIs.
- 3.12 After making an initial assessment of the issues we think that centralising compliance in the hands of the investment manager is a sensible solution to reduce the compliance burden and costs for funds. They, or other service providers, employed by either the fund or its manager could carry out the reporting function on behalf of the fund under paragraph 4 of Article 4, "Reliance on Third Party Service Providers.

- 3.13 We consider that as the fund holds the assets, it is appropriate for the fund to be treated as the Financial Institution and therefore it will be the fund that has the responsibility for ensuring the obligations under the Agreement are carried out.
- 3.14 However, as in most cases a service provider to the fund or its manager who will hold the reportable information it is likely they would be the best placed person to report (as opposed to the fund).
 - Q.3. Do you agree that it would it be most appropriate for the fund to carry the obligations imposed on financial institutions and for the fund manager or other service provider to carry out the reporting on behalf of the fund? Is there a suitable alternative and if so how could it be provided for?
- 3.15 Some representations have been received requesting clarification with regards to the interpretation of "Custodial Account", as defined in paragraph 1.(u) of Article 1, with respect to certain insurance products. Essentially an insurance contract or an annuity contract is included within the types of asset that could be held in a Custodial Account but holding an annuity or insurance contract alone does not make the account a Custodial Account (although it may still be a Financial Account).
- 3.16 Some requests have also been received requesting clarification regarding the interpretation of "Controlling Persons" as defined in paragraph 1.(nn) of Article 1. The definition of Controlling Persons is relevant in the context of establishing whether a US person controls an entity and therefore whether the entity's accounts need to be reported on. The Agreement specifies that the term Controlling Persons is to be interpreted in a manner consistent with the FATF recommendations and therefore in a way that is consistent with UK AML rules.
 - Q. 4. Are there any other definitions in Article 1 that give rise to uncertainty or raise practical issues which could usefully be clarified in the UK legislation or guidance, and if so how?

3.17 Article 2 sets out the information UK financial institutions will need to report to HMRC, who will then exchange the information with the US under the existing exchange of information provisions in the UK-US Double Taxation Convention. The information is essentially the same as the information required under FATCA. With respect to each US Reportable Account the information in Box 3.2 (overleaf) will be reported annually to HMRC.

Box 3.2: Information to be reported

- The name, address, and US Taxpayer Identification Number of each Specified US
 Person that is an Account Holder of such account and, in the case of a Non-US
 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 US Person,
 the name, address, and US Taxpayer Identification Number (if any) of such entity and
 each such Specified US Person;
- The account number (or functional equivalent in the absence of an account number);
- The name and identifying number of the Reporting United Kingdom Financial Institution;
- 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;
- 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 United Kingdom Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
- 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,
- In the case of any account which is not a Custodial Account or Depository Account, 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 United Kingdom 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.
- 3.18 The reference in paragraph 2.(2) of Article 2 to the "functional equivalent" of an account number is intended to provide for situations where there is not a standard account number, for example this may be the case with some insurance products or with holdings in funds. In these cases a functional equivalent could include a customer reference number or another identifying number.

- 3.19 Paragraph 2.(3) in Article 2 refers to the name and identifying number of the Reporting UK Financial Institution. It has not yet been decided what the system will be for financial institutions to acquire identifying numbers, although this will involve a registration process (but not FFI Agreements as required under FATCA).
- Paragraph 2.(4) of Article 2 refers to "other appropriate reporting period". This is to provide for products where valuation at the end of the year is not appropriate. For example, certain insurance policies or insurance products will typically be valued every 12 months following the date the policy or product was taken out or started. Where this occurs, the policies or products could be valued at the normal annual valuation date, rather than at the calendar year end. Any policies or products will be required to be reported on as if the valuation took place at the end of the calendar year in which the actual valuation took place.
 - Q. 5. Are there any classes of product, aside from certain insurance policies or insurance products where it would be appropriate to use a reporting period other than the calendar year and if so why?
- 3.21 Paragraph 2.(5) of Article 2 states that for Custodial Accounts, financial institutions are required to report "the total amount of gross interest, the total amount of gross dividends, and the total gross amount of other income". Some respondents have suggested that interpreting "other income" under the meaning provided by UK tax law would include certain income that would not be included under FATCA (for example sales proceeds that are deemed to be income under UK tax law).
- 3.22 We want to avoid including types of income which would not be included under FATCA but are also mindful of the burdens that could be imposed on financial institutions by requiring them to separate different income types for reporting under the Agreement.
 - Q.6. In what circumstances would imposing a UK definition of "other income" include income types not included under FATCA? What would be the best way to address this issue, balancing reporting on a broader category of income with the administrative burdens of separating different types of income?
- 3.23 The requirements of the Agreement will mean that some entities will have to report account holder information to HMRC for the first time. We want to ensure this is adequately provided for when designing the reporting processes. For example, this is specifically the case when considering whether and how to specify the format of the data to be reported to HMRC and the method of transmission of the data.
- 3.24 International businesses have already raised the importance of having a consistent approach both in respect of data format and the legislative approach adopted by all FATCA Partner countries. The Government recognises these concerns and will continue to discuss these issues with the US, EU, OECD and other FATCA Partners to work towards as consistent an approach as possible.

- Q. 7. What would be the main concerns, especially for entities new to reporting account information, to take into account when considering whether to specify the data format and method of transmission?
- Q.8. By when would you need to know the data format and transmission method in order to be in a position to report in the first half of 2015 (see Article 3 below)? Would any transitional measures (such as phasing in the requirements) be useful to allow for any necessary systems changes to take place?
- Q. 9. Would it be reasonable to restrict the availability of transitional measures to financial institutions which have to report on fewer numbers of accounts? What should the limit on the number of accounts be?

- 3.25 Article 3 sets out the time and manner of exchange of information between the UK and the US. It first makes clear that the amount and characterisation of payments made in respect of US reportable accounts can be determined in accordance with UK tax laws.
- 3.26 Paragraph 2 states that the currency in which each relevant amount is denominated in shall also be reported. We are assuming UK financial institutions will generally report amounts in Pounds Sterling but accounts held in other currencies could be reported in those other currencies as long as the other currency is identified.
- 3.27 Paragraph 3 sets out the years for which each type of information needs to be reported. Table 3.1 overleaf sets out these requirements.

Table 3.1 Information with respect to the years	Information to be reported
2013 onwards	 Name, address, US TIN or date of birth if no US TIN available. Account number (or functional equivalent) Name and identifying number of the reporting institution Account balance or value
2015 onwards	 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 onwards	The total gross proceeds from the sale or redemption of property paid or credited to the Account

- 3.28 Paragraph 4 states that until 2017 (when the measures in paragraph 4 of Article 6 need to be in place by) UK financial institutions do not need to report US TINs unless they already have them on record. If the financial institution has a record of an individual's date of birth, this must be provided instead.
- 3.29 As referred to above, the UK has committed to introduce a requirement for financial institutions to collect and report US TINs from 1 January 2017 (paragraph 4 in Article 6).
- 3.30 Paragraph 5 of Article 3 states that HMRC must provide the US with the information by 30 September after the end of the calendar year to which the information relates. The only exception is that in respect of the calendar years 2013 and 2014 HMRC will provide the US with the information by 30 September 2015.

- 3.31 We intend to require financial institutions to report the information to HMRC by 31 March after the end of the calendar year to which the information relates to allow sufficient time for HMRC to check and transmit the data to the US.
- 3.32 For operational reasons, we are considering splitting the 2015 reporting deadlines to alleviate the burden of submitting two years data in this opening period so that the data with respect to 2013 is reported to HMRC by 31 March 2015, with the data in respect to 2014 to be reported to HMRC by 30 June 2015.
- 3.33 Paragraph 7 of Article 3 makes clear that HMRC is committed to ensuring the information exchanged will be subject to suitable safeguards regarding its use. This will be provided for by applying the existing protections and provisions contained in our existing information exchange arrangements.

- 3.34 Article 4 states that if the UK and its financial institutions meet the obligations set out in the Agreement then those financial institutions will be treated as complying with FATCA and will not be subject to withholding on their US source income. Paragraph 1.(a) to (e) set out the requirements in respect of UK financial institutions.
- 3.35 Paragraph 1.(b) requires financial institutions to annually report the name and aggregate payments made to each "Nonparticipating Financial Institution" (NPFI). The reporting requirement applies to 2015 and 2016. We intend the reporting and exchange dates to be the same as for the reporting and exchange in respect of US Reportable Accounts.
- 3.36 Under the Agreement institutions or branches can only be NPFIs for the following reasons:
 - They have been listed as an NPFI by the US following significant noncompliance.
 - They have not entered into FFI Agreements with the US under FATCA and the jurisdiction in which they are located is not a FATCA Partner jurisdiction (i.e. it has not signed an intergovernmental agreement with regards to FATCA with the US).
- 3.37 Paragraph 1.(c) of Article 4 refers to registration requirements. Discussions on the registration process are ongoing (although the final agreed process will not be an FFI Agreement as required under FATCA).
- 3.38 Under the Agreement, the requirement for UK financial institutions to withhold on the payments they make to others has been replaced with a reporting requirement in almost all cases.

- 3.39 Paragraph 1.(d) applies to financial institutions that have either elected to assume primary withholding responsibility under the US Qualifying Intermediaries (QI) Regime under Chapter 3 of subtitle A of the US Internal Revenue Code. From our discussions with the financial sector we understand that while some financial institutions are QIs they have not elected to assume primary withholding responsibility, so we do not expect UK financial institutions to fall within this sub paragraph. Instead we expect UK financial institutions to fall within paragraph 1.e). This paragraph also applies to withholding foreign partnerships and withholding foreign trusts.
- 3.40 Paragraph 1.(e) introduces a requirement to report where the financial institution makes a payment of, or acts as an intermediary, in respect of a "US source Withholdable Payment" to any NPFI. If this is the case then the financial institution must provide information required for withholding and reporting to occur, with respect to the payment, to "any immediate payor" (i.e. only where there is an immediate payor). The information required for withholding and reporting to occur is to be pooled withholding rate information (i.e. the same as the equivalent information reported under the QI regime).
- 3.41 Paragraph 2 of Article 4 removes the requirement to close the account of, or withhold upon, a "recalcitrant account holder" (which due to a conflict between different laws would often prevent this) as long as the financial institution provides the information required under paragraph 2.(a) Article 2 to HMRC.
- 3.42 In addition, Article 4 contains provisions to treat UK retirement plans as either an exempt beneficial owner or a deemed compliant financial institution as appropriate.
- 3.43 Paragraph 5 sets out the position of UK Financial Institutions which have related entities and/or branches unable to enter into FII Agreements with the US due to the jurisdictions they operate in and/or where the jurisdiction has not signed an intergovernmental agreement with the US with respect to FATCA. The UK Financial Institution will continue to be treated as complying with the terms of the Agreement for an indefinite period (unlike under FATCA) if the following conditions are met:
 - The UK Financial Institution treats each related entity and/or branch as a separate NPFI for the purposes of the Agreement, for example by annually reporting aggregate payments made to it;
 - The related entity and/or branch identifies its US accounts and reports on them to the extent permitted under the laws in the jurisdiction in which it is located; and
 - The related entity and/or branch does not specifically solicit either US
 accounts held by persons resident outside the jurisdiction in which it is
 located or the accounts of other NPFI from outside that jurisdiction and the
 related entity and/or branch is not used by the UK Financial Institution or
 any other related entity to circumvent their FATCA obligations or obligations
 under the Agreement.
 - Q. 10. Do you have any concerns regarding the implementation of Article 4 and if so how could they be addressed in UK legislation or guidance?

- 3.44 Article 5 sets out the basis on which the UK and US Competent Authorities will operate in respect of compliance and enforcement of the obligations under the IGA. The precise details will be contained within a Competent Authority agreement and are the subject of discussions with the US. Our intentions of how to operate this Article are set out below.
- 3.45 Paragraph 1 of Article 5 addresses minor and administrative errors. Examples could include the reporting of corrupted or data sets incorrectly completed. The intention is to allow the recipient country to raise concerns directly with the reporting financial institution with a view to resolving the issue. Where this leads to the information having to be resubmitted this will have to be via HMRC.
- 3.46 Where a reporting UK financial institution is concerned that an enquiry from the US goes beyond 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 the UK Competent Authority.
- 3.47 For more specific enquiries, for instance regarding a specific individual or entity, the US will need contact the UK Competent Authorities who will the contact the financial institution.
- 3.48 Paragraph 2 of Article 5 addresses more significant cases of non-compliance. Once a Competent Authority considers there is significant non-compliance by a financial institution in the other jurisdiction, it will notify the other Competent Authority, who will apply its domestic law (including applicable penalties) to address the issue.
- 3.49 Our general approach will be to apply HMRC's existing penalty regime if UK Financial Institutions fail to comply with the reporting obligations required of them. However, we will need to further consider how the existing provisions fit with all the requirements under the Agreement, such as the due diligence and verification processes set out in Annex I.
- 3.50 Our initial thoughts on the type of actions that would be regarded as significant non compliance are set out below:
 - The intentional provision of substantially incorrect information.
 - The deliberate or negligent omission of required information.
 - Ongoing or repeated failure to register, supply accurate information or establish appropriate governance or due diligence processes.
 - Repeated failure to file a return or repeated late filing.
 - Q. 11. Does UK legislation need to include provisions regarding a suitable period for repair of any errors where they are spotted by the financial institution or HMRC? Also we would welcome views on any potential difficulties with applying HMRC's existing penalty regimes to noncompliance with the Agreement.

Q. 12. Would it be desirable to have examples of minor and significant non-compliance contained in guidance material?

- 3.51 Under the Agreement there is an 18 month window, from the US notification to HMRC of significant non-compliance, for HMRC and the UK Financial Institution to resolve any significant non-compliance. If the issue remains unresolved after 18 months the financial institution will become listed as a NPFI.
- 3.52 FATCA includes a requirement to have a Responsible Officer and while this is no longer relevant in the context of the Agreement we have been considering whether there could usefully still be a role for a nominated individual in the UK context. A nominated individual could carry out the functions below:
 - Act as a single point of contact for US enquiries regarding minor or administrative errors or for HMRC if there is more significant noncompliance.
 - Ensure that the financial institution registers and meets its ongoing compliance obligations.
 - Provide sign off that the appropriate due diligence processes have been completed and that all US reportable accounts have been identified and reported.
- 3.53 We would envisage the nominated individual acting on behalf of the financial institution and not being personally liable for any penalties.
 - Q.13. We think there would be benefits in having a nominated individual undertaking certain compliance responsibilities and providing assurance that the financial institution's obligations have been met. We would welcome thoughts on such a role, and on its potential scope.
- 3.54 Paragraph 6 of Article 5 relates to reliance on third party service providers, allowing UK financial institution to use third party service providers to meet their obligations under the Agreement (such as Independent Financial Advisers). However the ultimate responsibility for complying with the terms of the Agreement must remain with the UK financial institution.
- 3.55 Paragraph 4 of Article 5 introduces a commitment by both parties to ensure that they have appropriate anti avoidance measures in place. We are still considering how this commitment might best be delivered.
 - Q. 14. Do you have any concerns regarding the implementation of Article 5 and if so how could they be addressed in UK legislation or guidance?

Article 6

3.56 In paragraph 1 of Article 6 the US provides a commitment to pursue the adoption of legislation to provide equivalent levels of reciprocal data exchange.

This acknowledges that under the Agreement there is not an exact match between the data that both parties are providing.

- 3.57 Under paragraphs 2 and 3 the UK and the US both commit to work together, along with other partners, to achieve certain objectives. Paragraph 2 contains a commitment to developing a practical and effective alternative that achieve the policy objective of withholding on both passthru payments and gross proceeds. There is also a commitment to work with others to adapt the terms of the Agreement to a common model for automatic exchange of information.
- 3.58 Paragraph 4 of Article 6 provides that the UK will introduce legislation by 1st January 2017 requiring UK financial institutions to obtain the US TIN for each specified US person. TINs will then have to be included in the information reported by UK financial institutions to HMRC for 2017 and subsequent years. The US also commits to introduce provisions requiring its financial institutions to obtain and report the date of birth of an account holder of a UK reportable account, within the same time frame.
 - Q.15. Do you have any concerns regarding the implementation the commitment to require UK financial institutions to obtain and report US TINs and if so how could they be aligned with other data gathering requirements in UK legislation?

3.59 Article 7 contains what is generally referred to as "most favoured nation provision". This means that if another FATCA Partner jurisdiction obtains more favourable terms in their bilateral agreement than those included in the UK-US Agreement then the UK can also obtain the benefit of those terms.

Articles 8-10

- 3.60 Article 8 refers to consultations between the parties and makes it clear that the Agreement can be amended by mutual consent.
- 3.61 Article 9 states that the Annexes are an integral part of the Agreement.
- 3.62 Article 10 covers the term of the Agreement; when it enters into force, how it may be terminated and also specifies that the UK and US will consult about any amendments required to the Agreement as a result of the commitments in Article 6, before the 31 December 2016.

4. Annex I: Due diligence obligations

- 4.1 Annex I sets out the processes and procedures to identify reportable US Accounts.
- 4.2 It details the due diligence processes to be followed in order to establish the status of an account holder and meet the reporting requirements of Article 2 as well as the process for indentifying Nonparticipating Financial Institutions (NPFIs) and the payments made to these entities under Article 4.
- 4.3 The Annex sets out that the UK Government may use its legislation to allow UK financial institutions to rely on the procedures set out in the US Regulations as an alternative to those provided in the Agreement. We presume this would only be needed where the Regulations offer a less burdensome process than the Agreement.
- 4.4 As such, and in order to minimise the length of the UK legislation where possible, we propose to only include alternative options to those set out in the Agreement where financial institutions consider there to be a real benefit from applying the procedures set out in the US Regulations while also considering operational and resource costs to HMRC.
 - Q. 16. We welcome comments on any circumstances where applying the US Regulations provide a less burdensome approach than applying the terms of the Agreement.
- 4.5 The balance or value of an account is generally to be determined on 31 December each year, with the exception of certain products that will be valued at a specific annual point falling within the calendar year. For example, for the year ending 31 December 2014:
 - For a reportable Depository Account the balance or value to be reported will be the balance or value as of the 31 December 2014. This will be reported in 2015.
 - For an insurance product that is valued at the anniversary date of the opening of the policy, opened for example on 3 June 2013, it will be valued on the 2 June 2014. If it exceeds the reporting threshold then it is the 2 June 2014 value that will be reported for the year ending 31 December 2014. This will be reported to HMRC in 2015.
 - Q.17. Comments are welcomed on whether the use of the term "value" in relation to specific financial products causes any difficulties for product providers.
- 4.6 In order to determine whether a non U.S. dollar account balance or value falls within any of the applicable thresholds a UK Financial Institution should convert the US dollar amounts to the relevant currency of the account using a recognised published spot rate as at the last day of the calendar year preceding the year the balance is determined.

- 4.7 Subject to the rules on Aggregation (see 4.48 below) under the Agreement Preexisting Individual Accounts with a balance or value of \$50,000 or less need not be reviewed. For Preexisting Cash Value Insurance Contracts and Annuity Contracts the threshold is \$250,000 or less. Accounts will only need to be reviewed in accordance with the procedures in Annex I, if they exceed the threshold at 31 December 2013.
- 4.8 Any accounts that do not exceed the relevant thresholds at 31 December 2013 will only need to be reviewed if they subsequently exceed \$1,000,000.
- 4.9 Paragraph II.A.3. also excludes certain Preexisting Cash Value Insurance Contracts and Annuity contracts if two conditions are met: first, where the financial institution is prohibited by laws or regulations, enacted either in the UK or US, from selling those products to US residents; and secondly if they are required to either report or withhold on these products under UK law with respect to the insurance products held by residents of the UK. This means that where a company is, for instance, unable to sell these products to US residents because it is not SEC registered and they report or withhold on the products for tax purposes, then there is no requirement to review and report on those products.
- 4.10 As set out at 4.3 above we could potentially provide UK Financial Institutions with a choice of whether or not to apply the limits as set out in II.A and allow an entity to report on all accounts, as this may prove easier, for example, in terms of systems design etc. However if there was the ability to elect to report on all accounts regardless of thresholds we understand that this could lead to data protection problems.
 - Q. 18. Do respondents feel that the ability under an election to choose whether to apply the limits set out in Annex II cause data protection issues? If so could you state why and provide examples?
- 4.11 Paragraph II.B of Annex I states that where a Preexisting Individual Account exceeds \$50,000 (\$250,000 for a Cash Value Insurance Contract or Annuity Contract) but does not exceed \$1,000,000 at 31 December 2013 (defined as "Lower Value Accounts") the financial institution must review its electronically searchable data for US indicia (see Box 4.1). If the search identifies US Indicia, as defined, then the account must be reported upon unless the financial institution undertakes the further checks set out in Part II.B.(4) of Annex I. There are specified checks for each of the indicia.

Box 4.1: US Indicia

- Identification of the account holder as a U.S. citizen or resident;
- Unambiguous indication of a U.S. place of birth;
- Current U.S. mailing or residence address (including a U.S. post office box or U.S. "in-care-of" address);
- Current U.S. telephone number;
- Standing instructions to transfer funds to an account maintained in the United States:
- Currently effective power of attorney or signatory authority granted to a person with a U.S. address; or

An "in-care-of" or "hold mail" address that is the sole address the Reporting United Kingdom Financial Institution has on file for the account holder. In the case of a Pre-existing Individual Account that is a Lower Value Account, an "incare-of" address outside the United States will not be treated as US indicia.

- 4.12 The further checks or "repairs" listed in Paragraph II,B.4 refer to "self certification". This term is used in several different contexts in the Agreement but here it is aimed at establishing whether an individual is a US citizen or a US resident for tax purposes.
- 4.13 The Annex provides that self certification can be on an IRS form W-8 or another similar agreed form. It is not envisaged that there will be the ability for individual entities to design their own forms but rather that the UK along with governments of other partner jurisdictions, the US, the EU and OECD will have the opportunity to design and agree such forms.
 - Q. 19. We would welcome comments on the type issues that should be taken into account when considering the format of a similar agreed form. For example with regard to the interaction between financial institutions and third party service providers undertaking the necessary AML or in relation to electronic accounts such as internet banking.
- 4.14 The procedures for each type of account are now described.

Preexisting Accounts

4.15 Under the Agreement an account only becomes a US Reportable Account when it is identified as such through the application of the due diligence requirements in Annex I, allowing those who have large numbers of Preexisiting Accounts to spread the review over the period allowed to review Preexisting Accounts.

- 4.16 The period for completing this review is 31 December 2015 for Preexisting Individual Accounts that are Lower Value Accounts. For example, a Lower Value Account in existence at 31 December 2013 but that is not identified as a reportable account until the due diligence checks are carried out on, for example, the 24 April 2014, would only become reportable at that date; and so will be included in the report submitted to HMRC for the calendar year ended 31 December 2014.
- 4.17 Further examples of this and the application of the thresholds at Annex I.II.A are set out below (these examples assume that a financial institution does apply the thresholds set out in A):
 - A Preexisting Individual Account (which is not a Cash Value Insurance Contract or an Annuity Contract) has a balance of \$49,000 at 31 December 2013. This account does not need to be reviewed for US indicia unless the balance exceeds \$1,000,000 at any subsequent calendar year end.
 - The circumstances are as above but the balance on the account exceeds \$50,000 at 31 December 2013. The account is reviewed for US indicia but none are found. The account does not need to be reviewed again unless there is a change in circumstances that gives rise to one or more US indicia or the balance or value of the account exceeds \$1,000,000 at any subsequent calendar year end in which case the procedure for "Higher Value Accounts" will apply.
 - A Preexisting individual deposit account has a balance of \$55,000 at 31
 December 2013. A review of the account shows US indicia and the account is reported. It will continue to be reported unless the balance or value is \$50,000 or less, or there is a change in circumstance and it is clear that the account is not, or is no longer, a US reportable account.
 - A Preexisting Individual Account which is not a Depository Account has a balance of \$55,000 for the years ending 31 December 2013 and the 31 December 2014. The account is not reviewed until September 2015 (which is within the review period allowed under the Agreement). When the account is reviewed US indicia are identified and the account should therefore be reported to HMRC in respect of the year 31 December 2015. It is important to note that as the account is not a Depository Account then it will be also reported in all subsequent years, even if the balance drops below \$50,000, unless the account ceases to be the account of a specified US person.

High Value Accounts

- 4.18 High Value Accounts are accounts with a balance or value of over \$1,000,000 either at 31 December 2013 or at 31 December of any subsequent year. These accounts are subject to an enhanced review and, depending on the capabilities, of the financial institutions electronic databases the review may need to extend to paper records. These requirements are covered in Annex I.II.D.1. 2 and 3.
- 4.19 In addition to undertaking electronic and paper searches for US indicia, financial institutions must treat any High Value Accounts with a relationship manager as a US reportable account where the relationship manager has knowledge that the account holder is a specified US person.

- 4.20 Where, after applying the enhanced review, a High Value Account is not identified as an account of a Specified US person then no further checks are required unless there is a change in circumstances that results in US indicia being associated with the account.
- 4.21 Once identified as a US Reportable Account the account remains reportable for all subsequent years unless the account holder ceases to be a specified US person or if the account is a Depository Account and the balance or value of the account is \$50,000 or less.
- 4.22 For Preexisting High Value Accounts only the enhanced review procedures must be completed by 31 December 2014. If the account is identified as reportable then the information required to be reported must include information for the calendar year 2013 and 2014. For example, a review identifies an account as a reportable High Value Account in October 2014. For these accounts the reporting entity must report the information required under Article 2 for both 2013 and 2014.
- 4.23 For accounts that are not high value as of 31 December 2013 but are determined to be high value accounts at the end of any subsequent year then the enhanced review procedure set out in Annex I.II. D must be completed by 30 June in the following year.
- 4.24 Once an enhanced review has been applied to a High Value Account there is no requirement to repeat those procedures, with the exception of the relationship manager enquiry set out in D.4. Annex I in any subsequent year.
 - Q. 20. We welcome comments with regard to the role of a relationship manager and on how to define this term appropriately for UK institutions.
- 4.25 Where a High Value Account is identified as non-reportable it remains non-reportable unless there is a change in circumstances that results in US indicia being associated with the account. Where this happens the UK Financial Institution must treat the account as a US Reportable Account unless Annex I.II.B.4 applies.
- 4.26 Subparagraph D also requires financial institutions to implement procedures to ensure that any changes of circumstance notified to a relationship manager, that result in US indicia being associated with the account, are identified and that the necessary documentation is then collected.

New Individual accounts

- 4.27 These are accounts held by individuals and opened on or after 1 January 2014. New Depository Accounts with a balance or value of \$50,000 or less and individual accounts that are Cash Value Insurance Contracts of \$50,000 or less do not need to be reviewed or reported. The threshold for reviewing new individual Cash Value Insurance contracts is therefore lower than that applicable to such Preexisting Accounts and there is no threshold for Custodial Accounts.
- 4.28 As with Preexisting accounts the Annex potentially allows UK Financial Institutions to choose whether or not they apply the thresholds.

- Q. 21. We again welcome comments on whether the ability to have such a choice is desirable as well as examples of when and why such a choice might be useful.
- 4.29 Where an account needs to be reviewed the United Kingdom Financial Institution must, upon opening the account, obtain a "self certification" to determine if the account holder is resident in the US for tax purposes and also confirm the reasonableness of such self certification based on documentation collected either in the account opening process or as part of the AML procedures. Once it is established that the account holder is US resident for tax purposes the UK Financial Institution must obtain the account holder's US TIN.
 - Q. 22. We welcome comments on how respondents see this process impacting on differing operating procedures, particularly regarding any timing issues this will raise and how this process will work where third party service providers are used to carry out the AML process.
- 4.30 If there is a change of circumstance in relation to a new Individual Account which indicates that a previous self certification is incorrect or can no longer be relied upon then the due diligence requirements must be reapplied to determine the correct status of the account. If a Reporting Financial Institution is unable to obtain a valid self certification the account must be reported.
 - Q.23. We welcome comments on whether institutions would favour the definition of a change of circumstances to be set out only in guidance or also defined in the legislation. What would be the pros and cons of either approach?

Preexisting Entity Accounts

- 4.31 Annex I.IV sets out the procedures for identifying Preexisting Entity Accounts and, within those, the accounts of Nonparticipating Financial Institutions (NPFI).
- 4.32 Preexisting Entity Accounts that have balances that do not exceed \$250,000 as of 31 December 2013 are not subject to review or any further due diligence requirements until the balance or value of the account exceeds \$1,000,000.
- 4.33 Where an account has a balance or value over \$250,000 but less than \$1,000,000 as of 31 December 2013 it will be subject to the due diligence requirements in the Agreement. The review of Preexisting entity accounts above this threshold must be completed by 31 December 2015.
- 4.34 Those accounts that exceed the \$1,000,000 threshold as of 31 December 2013 or 31 December in any subsequent year must be reviewed as required under the Agreement by 30 June of the following year.
- 4.35 The due diligence processes in Annex I.IV.D are to establish whether an entity falls into one of the four categories below; in order to establish whether the account holder is to be treated as a reportable account or the account of a NPFI.

- The entity is a Specified U.S. Person if a review of information held either for regulatory or customer relationship purposes indicates that the Entity Account holder is a specified U.S. Person then the account will be treated as reportable unless the entity certifies that it is not such a person or the UK financial institution reasonably determines based on information in its possession or publicly available that the entity is not a specified US Person.
- The entity is a Non US Financial Institution if information maintained for regulatory or customer relationship purposes indicates that the entity is a financial institution the account is not a US Reportable Account.
- The entity is a financial institution then it must be determined whether the entity is a NPFI or not, as follows:
 - Any UK Financial Institution or Partner Jurisdiction Financial Institution will not be treated as an NPFI unless they are indentified as such under paragraph 2 of Article 5. If they are not a NPFI then no further review or reporting is required.
 - Any other Financial Institution should be treated as a NPFI unless it provides a self certification that it is a certified deemed compliant FFI, an exempt beneficial owner or an excepted FFI. Additionally it need not be treated as an NPFI if it can be verified as a participating FFI or deemed compliant FFI from a list of FFIs that is to be published by the IRS.

Where an entity is determined to be an NPFI then Article 4.1(b) and 1(e) will need to be applied to payments made to it.

- The entity is a Non Financial Foreign Entity (NFFE) that holds a US reportable account; here a UK financial institution needs to indentify whether:
 - The entity has Controlling Persons and whether any of those are a citizen or tax resident of the US;
 - Whether the entity is passive rather than active;
- 4.36 In order to make these determinations a UK financial institution must follow the guidance in Annex I. IV.D. 4 (a) to (d) in the order most appropriate to the circumstances. However one of the key points to note is that in determining the Controlling Persons of an entity a UK Financial Institution can rely on information collected and maintained under the UK's AML/KYC rules. It should also be noted that as for other accounts with balances over \$1,000,000 there are slightly different procedures where that threshold is exceeded.
- 4.37 If the entity is a Passive NFFE and any of the Controlling Persons are U.S. citizens or U.S. Resident for tax purposes then the account held by the entity is a US Reportable Account.
- 4.38 If there is a change of circumstance in relation to a Preexisting Entity Account such that a UK Financial Institution knows or has reason to know that a previous self certification or any other documentation is incorrect or unreliable then the due diligence requirements must be reapplied to determine the correct status of the account.

New Entity Accounts

- 4.39 The rules for new Entity Accounts cover accounts that are opened on or after 1 January 2014. Again a UK Financial Institution needs to determine whether the entity falls into one of several categories and whether it is:
 - A Specified US Person
 - A UK or other FATCA Partner Jurisdiction Financial institution
 - A Participating FFI, Deemed Compliant Financial Institution, exempt Beneficial Owner or an excepted FFI
 - An Active (non-reportable) or Passive (reportable) NFFE
- 4.40 In making the determinations a Financial Institution may rely on information that is publicly available or in its possession in determining whether an entity is an active NFFE, a UK Financial Institution or other Partner Jurisdiction Financial Institution. In all other cases it must obtain a self certification to establish the status of the entity.
- 4.41 Once the status of an entity has been determined then a UK Financial Institution will need to report on accounts where:
 - the entity is a Specified US Person
 - the entity is a Passive NFFE with a controlling person(s) who is a US citizen or resident
- 4.42 Where an entity is determined to be an NPFI then Article 4.1(b) and 1(e) should be applied to payments made to it.
- 4.43 As set out elsewhere in Annex I a UK Financial Institution can only rely on a self certification or other documentary evidence to the extent that the entity does not know or have reason to know that the self certification or other documentary evidence is incorrect or unreliable.

Aggregation of accounts

- 4.44 In determining the balance or value of accounts held by an account holder a Reporting Financial Institution must aggregate all accounts held by that financial institution or related entities.
- 4.45 Aggregation is required to be carried out only to the extent that a financial institution's computerised systems can link accounts by reference to an identifier such as client number or a tax identification number.
 - Q. 24. Does this aggregation process cause any particular difficulties for businesses? For example where systems can link accounts together but don't go as far as totalling up separate balances. How would this affect an entity's ability to undertake the due diligence required?
- 4.46 For all joint accounts the whole balance or value of the account is to be attributed as belonging to each holder of the account.

High Value Accounts

4.47 For High Value Accounts aggregation will need to take into consideration the knowledge of relationship managers. So where a relationship manger knows or has reason to know that accounts are either directly or indirectly owned, controlled or established (except in a fiduciary capacity) by the same person then all such accounts should be aggregated.

Documentary Evidence

4.48 For the purposes of the due diligence procedures set out under the Agreement, the documentary evidence that can be relied upon is detailed at Annex I, VI.D.

5. Annex II

- Annex II is a country specific part of the agreement where the status under the agreement of certain UK entities and products is identified. These are entities and products that are seen as low risk in terms of meeting the objectives of the agreement. It lists those entities or specifies criteria by which an entity can be treated as an Exempt Beneficial Owner or Deemed Compliant Financial Institution.
- 5.2 The products listed are to be treated as exempted products and therefore will not be treated as financial accounts and will not need to be reported.
- 5.3 There is a mutual agreement mechanism for adding or removing entities or products from the Annex.
- 5.4 Annex II introduces the concept of Financial Institutions with local client bases.

 This is aimed at exempting those groups or entities that are located solely within the UK and who serve a local customer base. There are several requirements that need to be met to be able to take advantage of this exemption:
 - The entity and related entities must be located solely in the UK
 - They must be regulated in the UK and be required to report information or withhold tax on accounts held by UK resident.
 - 98% of accounts must be held by residents of the UK or another member state of the EU
 - The entity must not provide accounts to a Specified US Person, a Nonparticipating Financial Institution or any Passive NFFE who has beneficial owners who are US citizens or residents
 - Policies and procedures must be introduced to capture the fact that an account may have been provided to a Specified US Person, a Nonparticipating Financial Institution or any Passive NFFE who has beneficial owners who are US citizens or residents on or after 1 January 2014. In the event that this does happen the account must be reported as if the entity is a Reporting Financial Institution, or the account should be closed
 - For any account that is a U.S Reportable Account or the account of a NPFI
 which exists prior to the policies and procedures above being put in place,
 then these must also be reported on as if the entity were a Reporting
 Financial Institution or the account should be closed.

6. Tax Impact Assessment

We need to estimate the reduction in the burdens as a result of concluding the UK-US Agreement. One of the aims of concluding the Agreement was to significantly reduce administration burdens compared with FATCA as originally envisaged. The questions below are designed to assist us in estimating the costs and benefits of the Agreement for UK businesses.

- a. What is the estimated number of Foreign Financial Institutions impacted within your business or group? Has this estimate changed with the introduction of the Agreement?
- b. What is the estimated number of reportable accounts under the Agreement showing US indicia within your business? Can the set be broken down by the de-minimus limits i.e. Accounts with balances greater than \$50,000, \$250,000 or \$1,000,000?
- c. What are the estimated set-up costs (one-off costs) necessary within your business to comply with the requirements?
 - I. Have these cost estimates changed with the introduction of the Agreement?
 - II. Could you outline the key activities, areas of business and timescales over which these costs arise?
 - III. What will the main cost/burden for your business be with regards setting up to comply with the terms of the Agreement?
 - IV. Is it possible to outline the key assumptions and methodology used in estimating these costs?
- d. What are the estimated ongoing/annual costs of complying with the requirements once any set up costs have been incurred (for example, annual due diligence required, on boarding costs, reporting etc)?
 - I. How have these cost estimates changed with the introduction of the Agreement?
 - II. Could you outline the key activities from which these costs arise?
 - III. What will be the main ongoing burden for your business?
 - IV. Is it possible to outline the key assumptions and methodology used in estimating these costs?
- e. Are you likely to make use of third party service providers to aid compliance?
 - I. If so, how will this impact on the costs of complying with the requirements?
 - II. What is the likely scale of this impact?
- f. Annex II of the Agreement sets out the main exemptions obtained as a result of the negotiations.
 - I. What is the estimated impact of these exemptions on your business and products?
 - II. What is the estimated impact of these exemptions on the costs of complying for your business?

We would appreciate the opportunity to follow up on these questions with respondents. If you would be willing to participate in further discussions would you please indicate so in your response.

7. Summary of Consultation Questions

- Q.1. Are there practical issues with applying the definition of Custodial Institution? If so, what are they and how would they arise? How could these issues be addressed in UK legislation or guidance?
- Q. 2. Are there concerns that the reference to "similar business", when read in conjunction with other parts of the Agreement, could result in institutions being caught unintentionally? If so, what are they and when would they arise?
- Q.3. Do you agree that it would it be most appropriate for the fund to carry the obligations imposed on financial institutions and for the fund manager or other service provider to carry out the reporting on behalf of the fund? Is there a suitable alternative and if so how could it be provided for?
- Q. 4. Are there any other definitions in Article 1 that give rise to uncertainty or raise practical issues which could usefully be clarified in the UK legislation or guidance, and if so how?
- Q. 5. Are there any classes of product, aside from certain insurance policies or insurance products where it would be appropriate to use a reporting period other than the calendar year and if so why?
- Q.6. In what circumstances would imposing a UK definition of "other income" include income types not included under FATCA? What would be the best way to address this issue, balancing reporting on a broader category of income with the administrative burdens of separating different types of income?
- Q. 7. What would be the main concerns, especially for entities new to reporting account information, to take into account when considering whether to specify the data format and method of transmission?
- Q.8. By when would you need to know the data format and transmission method in order to be in a position to report in the first half of 2015? Would any transitional measures (such as phasing in the requirements) be useful to allow for any necessary systems changes to take place?
- Q. 9. Would it be reasonable to restrict the availability of transitional measures to financial institutions which have to report on fewer numbers of accounts? What should the limit on the number of accounts be?
- Q.10. Do you have any concerns regarding the implementation of Article 4 and if so how could they be addressed in UK legislation or guidance?
- Q. 11. Does UK legislation need to include provisions regarding a suitable period for repair of any errors where they are spotted by the financial institution or HMRC? Also we would welcome views on any potential difficulties with applying HMRC's existing penalty regimes to non-compliance with the Agreement.

- Q. 12. Would it be desirable to have examples of minor and significant non-compliance contained in guidance material?
- Q.13. We think there would be benefits in having a nominated individual undertaking certain compliance responsibilities and providing assurance that the financial institution's obligations have been met. We would welcome thoughts on such a role, and on its potential scope.
- Q. 14. Do you have any concerns regarding the implementation of Article 5 and if so how could they be addressed in UK legislation or guidance?
- Q.15. Do you have any concerns regarding the implementation the commitment to require UK financial institutions to obtain and report US TINs and if so how could they be aligned with other data gathering requirements in UK legislation?
- Q. 16. We welcome comments on any circumstances where applying the US Regulations provide a less burdensome approach than applying the terms of the Agreement.
- Q.17. Comments are welcomed on whether the use of the term "value" in relation to specific financial products causes any difficulties for product providers.
- Q. 18. Do respondents feel that the ability under an election to choose whether to apply the limits set out in Annex II cause data protection issues? If so could you state why and provide examples?
- Q. 19. We would welcome comments on the type issues that should be taken into account when considering the format of a similar agreed form. For example with regard to the interaction between financial institutions and third party service providers undertaking the necessary AML or in relation to electronic accounts such as internet banking.
- Q. 20. We welcome comments with regard to the role of a relationship manager and on how to define this term appropriately for UK institutions.
- Q. 21. We again welcome comments on whether the ability to have such a choice is desirable as well as examples of when and why such a choice might be useful.
- Q. 22. We welcome comments on how respondents see this process impacting on differing operating procedures, particularly regarding any timing issues this will raise and how this process will work where third party service providers are used to carry out the AML process.
- Q.23. We welcome comments on whether institutions would favour the definition of a change of circumstances to be set out only in guidance or also defined in the legislation. What would be the pros and cons of either approach?
- Q. 24. Does this aggregation process cause any particular difficulties for businesses? For example where systems can link accounts together but don't go as far as totalling up separate balances. How would this affect an entity's ability to undertake the due diligence required?

8. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

A summary of the questions in this consultation is included at chapter 7.

Responses should be sent by 23 November 2012, by e-mail to fatca.consultation@hmrc.gsi.gov.uk

By post to:

Neil Higgins HM Revenue & Customs, CTIAA FPST, Room 3C/06, 100 Parliament Street London SW1A 2BQ

Telephone enquiries 0203 300 9101 (from a text phone prefix this number with 18001)

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. This document can also be accessed from the HMRC Internet site at http://www.hmrc.gov.uk/consultations/index.htm. 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 consultation, 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 confidentiality. 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.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles. This consultation is being run for 10 weeks as HMRC would like sufficient time to consider the responses in advance of publishing the draft regulations later this year. To ensure that people are able to contribute as fully as possible to this consultation HMRC will continue to meet individual companies, representative bodies and will be holding a "Town Hall" open event on 25 September 2012.

The Consultation Principles are available on the Cabinet Office website: http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance

If you have any comments or complaints about the consultation process please contact:

Amy Burgess, Consultation Coordinator, Budget & Finance Bill Co-ordination Group, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ

e-mail hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex A: The UK-US Agreement

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA TO IMPROVE INTERNATIONAL TAX COMPLIANCE AND TO IMPLEMENT FATCA

Whereas, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America (each, a "Party") have a longstanding and close relationship with respect to mutual assistance in tax matters and desire to conclude an agreement to improve international tax compliance by further building on that relationship,

Whereas, Article 27 of the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains ("the Convention") authorises exchange of information for tax purposes, including on an automatic basis,

Whereas, the United States of America enacted provisions commonly known as the Foreign Account Tax Compliance Act ("FATCA"), which introduce a reporting regime for financial institutions with respect to certain accounts,

Whereas, the Government of the United Kingdom of Great Britain and Northern Ireland is supportive of the underlying policy goal of FATCA to improve tax compliance,

Whereas, FATCA has raised a number of issues, including that United Kingdom financial institutions may not be able to comply with certain aspects of FATCA due to domestic legal impediments,

Whereas, the Government of the United States of America collects information regarding certain accounts maintained by U.S. financial institutions held by United Kingdom residents and is committed to exchanging such information with the Government of the United Kingdom of Great Britain and Northern Ireland and pursuing equivalent levels of exchange,

Whereas, the Parties are committed to working together over the longer term towards achieving common reporting and due diligence standards for financial institutions,

Whereas, the Government of the United States of America acknowledges the need to coordinate the reporting obligations under FATCA with other U.S. tax reporting obligations of United Kingdom financial institutions to avoid duplicative reporting,

Whereas, an intergovernmental approach to FATCA implementation would address legal impediments and reduce burdens for United Kingdom financial institutions,

Whereas, the Parties desire to conclude an agreement to improve international tax compliance and provide for the implementation of FATCA based on domestic reporting and reciprocal automatic exchange pursuant to the Convention and subject to the confidentiality and other protections provided for therein, including the provisions limiting the use of the information exchanged under the Convention.

Now, therefore, the Parties have agreed as follows:

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 States" means the United States of America, including the States thereof, but do not include the U.S. Territories. Any reference to a "State" of the United States includes the District of Columbia.
 - b) The term "U.S. Territory" means American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands.
 - c) The term "IRS" means the U.S. Internal Revenue Service.
 - d) 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.
 - e) The term **"Partner Jurisdiction"** means a jurisdiction that has in effect an agreement with the United States to facilitate the implementation of FATCA. The IRS shall publish a list identifying all Partner Jurisdictions.
 - f) The term "Competent Authority" means:
 - (1) in the case of the United States, the Secretary of the Treasury or his delegate; and
 - (2) in the case of the United Kingdom, the Commissioners for Her Majesty's Revenue and Customs ("HMRC") or their authorised representative.
 - 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 December 31 (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.
- 1) 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 "Partner Jurisdiction Financial Institution" means (i) any Financial Institution resident in a Partner Jurisdiction, but excluding any branches of such Financial Institution that are located outside the Partner Jurisdiction, and (ii) any branch of a Financial Institution not resident in the Partner Jurisdiction, if such branch is located in the Partner Jurisdiction.
- n) The term "Reporting Financial Institution" means a Reporting United Kingdom Financial Institution or a Reporting U.S. 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 United Kingdom Financial Institution.
- p) The term "Reporting U.S. Financial Institution" means (i) any Financial Institution that is resident in the United States, but excluding any branches of such Financial Institution that are located outside the United States, and (ii) any branch of a Financial Institution not resident in the United States, if such branch is located in the United States, provided that the Financial Institution or branch has control, receipt, or custody of income with respect to which information is required to be exchanged under subparagraph (2)(b) of Article 2 of this Agreement.
- q) The term "Non-Reporting United Kingdom Financial Institution" means any United Kingdom Financial Institution, or other entity resident in the United Kingdom that is identified in Annex II as a Non-Reporting United Kingdom Financial Institution or that otherwise qualifies as a deemed-compliant FFI, an exempt beneficial owner, or an excepted FFI under relevant U.S. Treasury Regulations.
- r) The term "Nonparticipating Financial Institution" means a nonparticipating FFI, as that term is defined in relevant U.S. Treasury Regulations, but does not include a United Kingdom Financial Institution or other Partner Jurisdiction Financial Institution other than a Financial Institution identified as a Nonparticipating Financial Institution pursuant to paragraph 2 of Article 5.
- s) 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(s)(1) above, any equity or debt interest in the Financial Institution (other than interests that are regularly traded on an established securities market), if (i) the value of the debt or equity interest is determined, directly or indirectly, primarily by reference to assets that give rise to U.S. Source Withholdable Payments, and (ii) 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 monetizes a pension or disability benefit provided under an account, product, or arrangement identified as excluded from the definition of Financial Account in Annex II.

Notwithstanding the foregoing, the term "Financial Account" does not include any account, product, or arrangement identified as excluded from the definition of Financial Account in Annex II.

- t) 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.
- u) 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 indebtedness, a currency or commodity transaction, a credit default swap, a swap based upon a nonfinancial index, a notional principal contract, an Insurance Contract or Annuity Contract, and any option or other derivative instrument).
- 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 U.S. Person shall be treated as being a beneficiary of a foreign trust if such Specified U.S. 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.
- w) 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.
- x) 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.
- y) 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.
- z) 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.
- aa) The term "**Preexisting Account**" means a Financial Account maintained by a Reporting Financial Institution as of December 31, 2013.
- bb) The term "Reportable Account" means a U.S. Reportable Account or a United Kingdom Reportable Account, as the context requires.
- The term "United Kingdom Reportable Account" means a Financial Account maintained by a Reporting U.S. Financial Institution if: (i) in the case of a Depository Account, the account is held by an individual resident in the United Kingdom and more than \$10 of interest is paid to such account in any given calendar year; or (ii) in the case of a Financial Account other than a Depository Account, the Account Holder is a resident of the United Kingdom, including entities that certify that they are resident in the United Kingdom for tax purposes, with respect to which U.S. source income that is subject to reporting under chapter 3 or chapter 61 of subtitle A of the U.S. Internal Revenue Code is paid or credited.
- dd) The term "U.S. Reportable Account" means a Financial Account maintained by a Reporting United Kingdom Financial Institution and held by one or more Specified U.S. Persons or by a Non-U.S. Entity with one or more Controlling Persons that is a Specified U.S. Person. Notwithstanding the foregoing, an account shall not be treated as a U.S. Reportable Account if such account is not identified as a U.S. Reportable Account after application of the due diligence procedures in Annex I.
- 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. 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 Holders are 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.

- ff) The term "U.S. Person" means a U.S. citizen or resident individual, a partnership or corporation organized in the United States or under the laws of the United States or any State thereof, a trust if (i) a court within the United States would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust, and (ii) one or more U.S. persons have the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the United States. This subparagraph 1(ff) shall be interpreted in accordance with the U.S. Internal Revenue Code.
- The term "Specified U.S. Person" means a U.S. Person, other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a member of the same expanded affiliated group, as defined in section 1471(e)(2) of the U.S. Internal Revenue Code, as a corporation described in clause (i); (iii) the United States or any wholly owned agency or instrumentality thereof; (iv) any State of the United States, any U.S. Territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing; (v) any organization exempt from taxation under section 501(a) or an individual retirement plan as defined in section 7701(a)(37) of the U.S. Internal Revenue Code; (vi) any bank as defined in section 581 of the U.S. Internal Revenue Code; (vii) any real estate investment trust as defined in section 856 of the U.S. Internal Revenue Code; (viii) any regulated investment company as defined in section 851 of the U.S. Internal Revenue Code or any entity registered with the Securities Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-64); (ix) any common trust fund as defined in section 584(a) of the U.S. Internal Revenue Code; (x) any trust that is exempt from tax under section 664(c) of the U.S. Internal Revenue Code or that is described in section 4947(a)(1) of the U.S. Internal Revenue Code; (xi) a dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State; or (xii) a broker as defined in section 6045(c) of the U.S. Internal Revenue Code.
- hh) The term "Entity" means a legal person or a legal arrangement such as a trust.
- ii) The term "Non-U.S. Entity" means an Entity that is not a U.S. Person.
- jj) The term "U.S. Source Withholdable Payment" means any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income, if such payment is from sources within the United States. Notwithstanding the foregoing, a U.S. Source Withholdable Payment does not include any payment that is not treated as a withholdable payment in relevant U.S. Treasury Regulations.

- 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, the United Kingdom Competent Authority may treat an Entity as not a Related Entity of another Entity if the two Entities are not members of the same expanded affiliated group as defined in section 1471(e)(2) of the U.S. Internal Revenue Code.
- ll) The term "**U.S. TIN**" means a U.S. federal taxpayer identifying number.
- mm) 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.

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 Article 27 of the Convention.
- 2. The information to be obtained and exchanged is:
 - a) In the case of the United Kingdom with respect to each U.S. Reportable Account of each Reporting United Kingdom Financial Institution:
 - (1) the name, address, and U.S. TIN of each Specified U.S. Person that is an Account Holder of such account and, in the case of a Non-U.S. 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 U.S. Person, the name, address, and U.S. TIN (if any) of such entity and each such Specified U.S. Person;
 - (2) the account number (or functional equivalent in the absence of an account number);
 - (3) the name and identifying number of the Reporting United Kingdom Financial Institution;

- (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 United Kingdom 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 United Kingdom 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.
- b) In the case of the United States, with respect to each United Kingdom Reportable Account of each Reporting U.S. Financial Institution:
 - (1) the name, address, and date of birth of any person that is a resident of the United Kingdom and is an Account Holder of the account;
 - (2) the account number (or the functional equivalent in the absence of an account number);
 - (3) the name and identifying number of the Reporting U.S. Financial Institution;
 - (4) the gross amount of interest paid on a Depository Account;
 - (5) the gross amount of U.S. source dividends paid or credited to the account; and,
 - (6) the gross amount of other U.S. source income paid or credited to the account, to the extent subject to reporting under chapter 3 or 61 of subtitle A of the U.S. Internal Revenue Code.

Time and Manner of Exchange of Information

- 1. For purposes of the exchange obligation in Article 2, the amount and characterization of payments made with respect to a U.S. Reportable Account may be determined in accordance with the principles of the United Kingdom's tax laws, and the amount and characterization of payments made with respect to a United Kingdom Reportable Account may be determined in accordance with principles of U.S. federal income tax law.
- 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) In the case of the United Kingdom:
 - (1) the information to be obtained and exchanged with respect to 2013 and 2014 is only the information described in subparagraphs (a)(1) to (a)(4);
 - the information to be obtained and exchanged with respect to 2015 is the information described in subparagraphs (a)(1) to (a)(7), except for gross proceeds described in subparagraph (a)(5)(B); and
 - (3) the information to be obtained and exchanged with respect to 2016 and subsequent years is the information described in subparagraph (a)(1) to (a)(7);
 - b) In the case of the United States, the information to be obtained and exchanged with respect to 2013 and subsequent years is all of the information identified in subparagraph (b).
- 4. Notwithstanding paragraph 3 of this Article, with respect to each Reportable Account that is a Preexisting Account, and subject to paragraph 4 of Article 6:
 - a) subject to subparagraph (b) of this paragraph 4, if the U.S TIN is not in the records of the Reporting United Kingdom Financial Institution, the date of birth of the relevant person shall be provided; and
 - b) the Parties are not required to obtain and include in the exchanged information the date of birth or the U.S. TIN, as applicable, of any relevant person if such date of birth or U.S. TIN is not in the records of the Reporting Financial Institution.
- 5. Subject to paragraphs 3 and 4 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 year 2013 shall be exchanged no later than September 30, 2015.

- 6. The Competent Authorities of the United Kingdom and the United States shall enter into an agreement under the mutual agreement procedure provided for in Article 26 of the Convention, which shall:
 - a) establish the procedures for the automatic exchange obligations described in Article 2;
 - b) prescribe rules and procedures as may be necessary to implement Article 5; and
 - c) establish as necessary procedures for the exchange of the information reported under subparagraph 1(b) of Article 4.
- 7. All information exchanged shall be subject to the confidentiality and other protections provided for in the Convention, including the provisions limiting the use of the information exchanged.

Application of FATCA to United Kingdom Financial Institutions

- 1. <u>Treatment of Reporting United Kingdom Financial Institutions</u>. Each Reporting United Kingdom Financial Institution shall be treated as complying with, and not subject to withholding under, section 1471 of the U.S. Internal Revenue Code if the United Kingdom complies with its obligations under Articles 2 and 3 with respect to such Reporting United Kingdom Financial Institution; and the Reporting United Kingdom Financial Institution:
 - a) identifies U.S. Reportable Accounts and reports annually to HMRC the information required to be reported in subparagraph 2(a) of Article 2 in the time and manner described in Article 3;
 - b) for each of 2015 and 2016, reports annually to HMRC the name of, each Nonparticipating Financial Institution to which it has made payments and the aggregate amount of such payments;
 - c) complies with the registration requirements applicable to Financial Institutions in Partner Jurisdictions;
 - d) to the extent that a Reporting United Kingdom Financial Institution is (i) acting as a qualified intermediary (for purposes of section 1441 of the U.S. Internal Revenue Code) that has elected to assume primary withholding responsibility under chapter 3 of subtitle A of the U.S. Internal Revenue Code, (ii) a foreign partnership that has elected to act as a withholding foreign partnership (for purposes of both sections 1441 and 1471 of the U.S. Internal Revenue Code), or (iii) a foreign trust that has elected to act as a withholding foreign trust (for purposes of both sections 1441 and 1471 of the U.S. Internal Revenue Code), withholds 30 percent of any U.S. Source Withholdable Payment to any Nonparticipating Financial Institution; and

e) in the case of a Reporting United Kingdom Financial Institution that is not described in subparagraph (d) of this paragraph and that makes a payment of, or acts as an intermediary with respect to, a U.S. Source Withholdable Payment to any Nonparticipating Financial Institution, the Reporting United Kingdom Financial Institution provides to any immediate payor of such U.S. Source Withholdable Payment the information required for withholding and reporting to occur with respect to such payment.

Notwithstanding the foregoing, a Reporting United Kingdom Financial Institution with respect to which the conditions of this paragraph are not satisfied shall not be subject to withholding under section 1471 of the U.S. Internal Revenue Code unless such Reporting United Kingdom Financial Institution is identified by the IRS as a Nonparticipating Financial Institution pursuant to subparagraph 2(b) of Article 5.

- 2. <u>Suspension of Rules Relating to Recalcitrant Accounts</u>. The United States shall not require a Reporting United Kingdom Financial Institution to withhold tax under section 1471 or 1472 of the U.S. Internal Revenue Code with respect to an account held by a recalcitrant account holder (as defined in section 1471(d)(6) of the U.S. Internal Revenue Code), or to close such account, if the U.S. Competent Authority receives the information set forth in subparagraph 2(a) of Article 2, subject to the provisions of Article 3, with respect to such account.
- 3. Specific Treatment of Retirement Plans. The United States shall treat as a deemed-compliant FFI or exempt beneficial owner, as appropriate, for purposes of section 1471 of the U.S. Internal Revenue Code United Kingdom retirement plans described and identified in Annex II. For this purpose, a United Kingdom retirement plan includes an entity established or located in and regulated in the United Kingdom, or a predetermined contractual or legal arrangement, operated to provide pension or retirement benefits or earn income for providing such benefits under the laws of the United Kingdom and regulated with respect to contributions, distributions, reporting, sponsorship, and taxation.
- 4. <u>Identification and Treatment of Other Deemed-Compliant FFIs and Exempt Beneficial Owners.</u> The United States shall treat each Non-Reporting United Kingdom Financial Institution as a deemed-compliant FFI or as an exempt beneficial owner, as appropriate, for purposes of section 1471 of the U.S. Internal Revenue Code.
- 5. Special Rules Regarding Related Entities That Are Nonparticipating Financial Institutions. If a United Kingdom Financial Institution, that otherwise meets the requirements of paragraph 1 of this Article or is described in paragraph 3 or 4 of this Article, has a Related Entity or branch that operates in a jurisdiction that prevents such Related Entity or branch from fulfilling the requirements of a participating FFI or deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code, such United Kingdom Financial Institution shall continue to be in compliance with the terms of this Agreement and shall continue to be treated as a deemed-compliant FFI or exempt beneficial owner for purposes of section 1471 of the U.S. Internal Revenue Code, provided that:

- a) the United Kingdom Financial Institution treats each such Related Entity or branch as a separate Nonparticipating Financial Institution for purposes of all the reporting and withholding requirements of this Agreement and each such Related Entity or branch identifies itself to withholding agents as a Nonparticipating Financial Institution;
- each such Related Entity or branch identifies its U.S. accounts and reports the information with respect to those accounts as required under section 1471 of the U.S. Internal Revenue Code to the extent permitted under the relevant laws pertaining to the Related Entity or branch; and
- c) such Related Entity or branch does not specifically solicit U.S. accounts held by persons that are not resident in the jurisdiction where such Related Entity or branch is located or accounts held by Nonparticipating Financial Institutions that are not established in the jurisdiction where such branch or Related Entity is located, and such branch or Related Entity is not used by the United Kingdom Financial Institution or any other Related Entity to circumvent the obligations under this Agreement or under section 1471 of the U.S. Internal Revenue Code, as appropriate.

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 can 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) 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.

- b) If, in the case of a Reporting United Kingdom Financial Institution, such enforcement actions do not resolve the non-compliance within a period of 18 months after notification of significant non-compliance is first provided, the United States shall treat the Reporting United Kingdom Financial Institution as a Nonparticipating Financial Institution. The IRS shall make available a list of all Reporting United Kingdom Financial Institutions and other Partner Jurisdiction Financial Institutions that are treated as Nonparticipating Financial Institutions pursuant to this paragraph.
- 3. <u>Reliance on Third Party Service Providers</u>. Each Party may allow Reporting Financial Institutions to use third party service providers to fulfill 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. <u>Prevention of Avoidance</u>. The Parties shall implement as necessary requirements to prevent Financial Institutions from adopting practices intended to circumvent the reporting required under this Agreement.

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

- 1. Reciprocity. The Government of the United States acknowledges the need to achieve equivalent levels of reciprocal automatic information exchange with the United Kingdom. The Government of the United States is committed to further improve transparency and enhance the exchange relationship with the United Kingdom by pursuing the adoption of regulations and advocating and supporting relevant legislation to achieve such equivalent levels of reciprocal automatic exchange.
- 2. <u>Treatment of Passthru Payments and Gross Proceeds</u>. The Parties are committed to work together, along with other partners, to develop a practical and effective alternative approach to achieve the policy objectives of foreign passthru payment and gross proceeds withholding that minimizes burden.
- 3. <u>Development of Common Reporting and Exchange Model</u>. The Parties are committed to working with other partners, the Organisation for Economic Co-operation and Development, and the European Union, 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.
- 4. <u>Documentation of Accounts Maintained as of January 1, 2014</u>. With respect to Reportable Accounts that are Preexisting Accounts maintained by a Reporting Financial Institution:
 - a) The United States commits to establish, by January 1, 2017, for reporting with respect to 2017 and subsequent years, rules requiring Reporting U.S. Financial Institutions to obtain and report the date of birth of each Account Holder of a United Kingdom Reportable Account as required pursuant to subparagraph 2(b)(1) of Article 2; and

b) The United Kingdom commits to establish, by January 1, 2017, for reporting with respect to 2017 and subsequent years, rules requiring Reporting United Kingdom Financial Institutions to obtain the U.S. TIN of each Specified U.S. Person as required pursuant to subparagraph 2(a)(1) of Article 2.

ARTICLE 7

Consistency in the Application of FATCA to Partner Jurisdictions

- 1. The United Kingdom shall be granted the benefit of any more favorable terms under Article 4 or Annex 1 of this Agreement relating to the application of FATCA to United Kingdom Financial Institutions afforded to another Partner Jurisdiction under a signed bilateral agreement pursuant to which the other Partner Jurisdiction commits to undertake the same obligations as the United Kingdom described in Articles 2 and 3 of this Agreement, and subject to the same terms and conditions as described therein and in Articles 5 through 9 of the Agreement.
- 2. The United States shall notify the United Kingdom of any such more favorable terms and shall apply such more favorable terms 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 favorable terms.

ARTICLE 8

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 fulfillment 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 paragraph 1 of Article 10.

ARTICLE 9

Annexes

The annexes form an integral part of this Agreement.

ARTICLE 10

Term of Agreement

1. 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 such notifications, and shall continue in force until terminated.

- 2. Either Party may terminate the Agreement by giving notice of termination in writing to the other Party. Such termination shall become effective on the first day of the month following the expiration of a period of 12 months after the date of the notice of termination.
- 3. The Parties shall, prior to December 31, 2016, consult in good faith to amend this Agreement as necessary to reflect progress on the commitments set forth in Article 6.

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

Done at		in	duplicate,	in	English,	this	day	of
	, 2012.							

FOR THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND: FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

ANNEX I

DUE DILIGENCE OBLIGATIONS FOR IDENTIFYING AND REPORTING ON U.S. REPORTABLE ACCOUNTS AND ON PAYMENTS TO CERTAIN NONPARTICIPATING FINANCIAL INSTITUTIONS

I. General

- A. The United Kingdom shall require that Reporting United Kingdom Financial Institutions apply the due diligence procedures contained in this Annex I to identify U.S. Reportable Accounts and accounts held by Nonparticipating Financial Institutions.
- B. For purposes of the Agreement,
 - 1. All dollar amounts 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 U.S. 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 U.S. Reportable Account shall be reported annually in the calendar year following the year to which the information relates.
- C. As an alternative to the procedures described in each section of this Annex I, the United Kingdom may allow its Reporting United Kingdom Financial Institutions to rely on the procedures described in relevant U.S. Treasury Regulations to establish whether an account is a U.S. Reportable Account or an account held by a Nonparticipating Financial Institution.
- II. **Preexisting Individual Accounts.** The following rules and procedures apply for identifying U.S. Reportable Accounts among Preexisting Accounts held by individuals ("Preexisting Individual Accounts").
 - A. <u>Accounts Not Required to Be Reviewed, Identified or Reported.</u> Unless the Reporting United Kingdom Financial Institution elects otherwise, where the implementing rules in the United Kingdom provide for such an election, the following accounts are not required to be reviewed, identified, or reported as U.S. 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 December 31, 2013.
- 2. 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 December 31, 2013.
- 3. Preexisting Individual Accounts that are Cash Value Insurance Contracts or Annuity Contracts, provided the law or regulations of the United Kingdom or the United States effectively prevents the sale of Cash Value Insurance Contracts or Annuity Contracts to U.S. residents, such as if the relevant Financial Institution does not have the required registration under U.S. law, and the law of the United Kingdom requires reporting or withholding with respect to insurance products held by residents of the United Kingdom.
- 4. 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 December 31, 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. <u>Electronic Record Search</u>. The Reporting United Kingdom Financial Institution must review electronically searchable data maintained by the Reporting United Kingdom Financial Institution for any of the following U.S. indicia:
 - a) Identification of the account holder as a U.S. citizen or resident;
 - b) Unambiguous indication of a U.S. place of birth;
 - c) Current U.S. mailing or residence address (including a U.S. post office box or U.S. "in-care-of" address);
 - d) Current U.S. telephone number;
 - e) Standing instructions to transfer funds to an account maintained in the United States;
 - f) Currently effective power of attorney or signatory authority granted to a person with a U.S. address; or
 - g) An "in-care-of" or "hold mail" address that is the *sole* address the Reporting United Kingdom Financial Institution has on file for the account holder. In the case of a Preexisting Individual Account that is a Lower Value Account, an "in-care-of" address outside the United States shall not be treated as U.S. indicia.

- 2. If none of the U.S. indicia listed in subparagraph B (1) of this section are discovered in the electronic search, then no further action is required until there is a change in circumstances described in subparagraph C (2) of this section with respect to the account that results in one or more U.S. indicia being associated with the account.
- 3. If any of the U.S. indicia in subparagraph B (1) of this section are discovered in the electronic search, then the Reporting United Kingdom Financial Institution must treat the account as a U.S. Reportable Account unless it elects to apply subparagraph B (4) of this section and one of the exceptions in such subparagraph applies with respect to that account.
- 4. Notwithstanding a finding of U.S. indicia under subparagraph B (1) of this section, a Reporting United Kingdom Financial Institution is not required to treat an account as a U.S. Reportable Account if:
 - a) Where account holder information unambiguously indicates a *U.S. place of birth*, the Reporting United Kingdom Financial Institution obtains or has previously reviewed and maintains a record of:
 - (1) a self-certification that the account holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form);
 - (2) a non-U.S. passport or other government-issued identification evidencing the account holder's citizenship or nationality in a country other than the United States; *and*
 - (3) a copy of the account holder's Certificate of Loss of Nationality of the United States or a reasonable explanation of:
 - (a) the reason the account holder does not have such a certificate despite renouncing U.S. citizenship; *or*
 - (b) the reason the account holder did not obtain U.S. citizenship at birth.
 - b) Where account holder information contains a *current U.S. mailing or* residence address, or one or more U.S. telephone numbers that are the only telephone numbers associated with the account, the Reporting United Kingdom Financial Institution obtains or has previously reviewed and maintains a record of:
 - (1) a self-certification that the account holder is not a U.S. citizen or resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); *and*
 - (2) a non-U.S. passport or other government-issued identification evidencing the account holder's citizenship or nationality in a country other than the United States.

- c) Where account holder information contains *standing instructions to transfer funds to an account maintained in the United States*, the Reporting United Kingdom Financial Institution obtains or has previously reviewed and maintains a record of:
 - (1) a self-certification that the account holder is not a U.S. citizen or resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); *and*
 - (2) documentary evidence, as defined in paragraph VI.D of this Annex I, establishing the account holder's non-U.S. status.
- d) Where account holder information contains a currently effective power of attorney or signatory authority granted to a person with a U.S. address, has an "in-care-of" address or "hold mail" address that is the sole address identified for the account holder, or has one or more U.S. telephone numbers (if a non-U.S. telephone number is also associated with the account), the Reporting United Kingdom Financial Institution obtains or has previously reviewed and maintains a record of:
 - (1) a self-certification that the account holder is not a U.S. citizen or resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); *or*
 - (2) documentary evidence as defined in paragraph VI.D of this Annex I, establishing the account holder's non-U.S. status.

C. <u>Additional Procedures Applicable to Preexisting Individual Accounts</u> That Are Lower Value Accounts

- 1. Review of Preexisting Individual Accounts that are Lower Value Accounts for U.S. indicia must be completed by December 31, 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 U.S. indicia described in subparagraph B (1) of this section being associated with the account, then Reporting United Kingdom Financial Institution must treat the account as a U.S. Reportable Account unless subparagraph B (4) of this section applies.
- 3. Except for Depository Accounts described in subparagraph A (4) of this section, any Preexisting Individual Account that has been identified as a U.S. Reportable Account under this section shall be treated as a U.S. Reportable Account in all subsequent years, unless the account holder ceases to be a Specified U.S. Person.

- D. Enhanced Review Procedures for Preexisting Individual Accounts

 With a Balance or Value That Exceeds \$1,000,000 as of December 31,

 2013, or December 31 of Any Subsequent Year ("High Value Accounts")
 - 1. <u>Electronic Record Search</u>. The Reporting United Kingdom Financial Institution must review electronically searchable data maintained by the Reporting United Kingdom Financial Institution for any of the U.S. indicia identified in subparagraph B (1) of this section.
 - 2. Paper Record Search. If the Reporting United Kingdom 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 United Kingdom 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 United Kingdom Financial Institution within the last five years for any of the U.S. 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;
 - the most recent documentation obtained by the Reporting United Kingdom 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. <u>Exception Where Databases Contain Sufficient Information.</u> A Reporting United Kingdom Financial Institution is not required to perform the paper record search described in subparagraph D (2) of this section if the Reporting United Kingdom Financial Institution's electronically searchable information includes the following:
 - a) the account holder's nationality or residence status;
 - b) the account holder's residence address and mailing address currently on file with the Reporting United Kingdom Financial Institution;
 - c) the account holder's telephone number(s) currently on file, if any, with the Reporting United Kingdom Financial Institution;

- d) whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting United Kingdom Financial Institution or another Financial Institution);
- e) whether there is a current "in-care-of" address or "hold mail" address for the account holder; *and*
- f) 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 United Kingdom Financial Institution must treat as U.S. 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 U.S. Person.

5. **Effect of Finding U.S. Indicia.**

- a) If none of the U.S. 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 U.S. 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 U.S. 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 U.S. indicia being associated with the account, then the Reporting United Kingdom Financial Institution must treat the account as a U.S. Reportable Account unless subparagraph B (4) of this section applies.
- c) Except for Depository Accounts described in paragraph A (4) of this section, any Preexisting Individual Account that has been identified as a U.S. Reportable Account under this section shall be treated as a U.S. Reportable Account in all subsequent years, unless the account holder ceases to be a Specified U.S. Person.

E. Additional Procedures Applicable to High Value Accounts

- 1. If a Preexisting Individual Account is a High Value Account as of December 31, 2013, the Reporting United Kingdom Financial Institution must complete the enhanced review procedures described in paragraph D of this section with respect to such account by December 31, 2014. If based on this review such account is identified as a U.S. Reportable Account, the Reporting United Kingdom 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 December 31, 2013, but becomes a High Value Account as of the last day of a subsequent calendar year, the Reporting United Kingdom 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 U.S. Reportable Account, the Reporting United Kingdom Financial Institution must report the required information about such account with respect to the year in which it is identified as a U.S. Reportable Account and subsequent years on an annual basis.
- 3. Once a Reporting United Kingdom Financial Institution applies the enhanced review procedures set forth above to a High Value Account, the Reporting United Kingdom Financial Institution shall not be required to reapply 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 U.S. indicia described in subparagraph B (1) of this section being associated with the account, then the Reporting United Kingdom Financial Institution must treat the account as a U.S. Reportable Account unless subparagraph B (4) of this section applies.
- 5. A Reporting United Kingdom 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 United States, the Reporting United Kingdom 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.
- III. <u>New Individual Accounts</u>. The following rules and procedures apply for identifying U.S. Reportable Accounts among accounts held by individuals and opened on or after January 1, 2014 ("New Individual Accounts").

- A. <u>Accounts Not Required to Be Reviewed, Identified, or Reported.</u> Unless the Reporting United Kingdom Financial Institution elects otherwise where the implementing rules in the United Kingdom 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 U.S. 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 U.S. 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, the Reporting United Kingdom Financial Institution must obtain a self-certification which may be part of the account opening documentation, that allows the Reporting United Kingdom Financial Institution to determine whether the account holder is resident in the United States for tax purposes (for this purpose, a U.S. citizen is considered to be resident in the United States for tax purposes, even if the account holder is also a tax resident of another country) and confirm the reasonableness of such self-certification based on the information obtained by the Reporting United Kingdom 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 United States for tax purposes, the Reporting United Kingdom Financial Institution must treat the account as a U.S. Reportable Account and obtain a self-certification that includes the account holder's U.S. TIN (which may be an IRS Form W-9 or other similar agreed form).
- D. If there is a change of circumstances with respect to a New Individual Account that causes the Reporting United Kingdom Financial Institution to know or have reason to know that the original self-certification is incorrect or unreliable, the Reporting United Kingdom Financial Institution cannot rely on the original self-certification and must obtain a valid self-certification that establishes whether the account holder is a U.S. citizen or resident for U.S. tax purposes. If the Reporting United Kingdom Financial Institution is unable to obtain a valid self-certification, the Reporting United Kingdom Financial Institution must treat the account as a U.S. Reportable Account.
- IV. <u>Preexisting Entity Accounts</u>. The following rules and procedures apply for purposes of identifying U.S. Reportable Accounts and accounts held by Nonparticipating Financial Institutions among Preexisting Accounts held by entities ("Preexisting Entity Accounts").

- A. Entity Accounts Not Required to Be Reviewed, Identified, or Reported. Unless the Reporting United Kingdom Financial Institution elects otherwise, where the implementing rules in the United Kingdom provide for such an election, Preexisting Entity Accounts with account balances that do not exceed \$250,000 as of December 31, 2013, are not required to be reviewed, identified, or reported as U.S. Reportable Accounts until the account balance exceeds \$1,000,000.
- B. <u>Entity Accounts Subject to Review</u>. Preexisting Entity Accounts that have an account balance or value that exceeds \$250,000 as of December 31, 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 U.S. Persons, or by Passive NFFEs with one or more Controlling Persons who are U.S. citizens or residents shall be treated as U.S. Reportable Accounts. In addition, accounts held by Nonparticipating Financial Institutions shall be treated as accounts for which aggregate payments as described in paragraph 1(b) of Article 4 of the Agreement are reported to HMRC.
- 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 United Kingdom Financial Institution must apply the following review procedures to determine whether the account is held by one or more Specified U.S. Persons, by Passive NFFEs with one or more Controlling Persons who are U.S. citizens or residents, or by a Nonparticipating Financial Institution:

1. Determine Whether the Entity is a Specified U.S. 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 U.S. Person. For this purpose, information indicating that the entity is a U.S. Person includes a U.S. place of incorporation or organization, or a U.S. address.
- b) If the information indicates that the entity account holder is a U.S. Person, the Reporting United Kingdom Financial Institution must treat the account as a U.S. Reportable Account unless it obtains a self-certification from the account holder (which may be on an IRS Form W-8 or W-9, or a similar agreed form), or reasonably determines based on information in its possession or that is publicly available, that the account holder is not a Specified U.S. Person.

2. Determine Whether a Non-U.S. 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 entity account holder is a Financial Institution.
- b) If the information indicates that the entity account holder is a Financial Institution, then the account is not a U.S. Reportable Account.

3. <u>Determine Whether a Financial Institution is a Nonparticipating Financial Institution Payments to Which Are Subject to Aggregate Reporting Under Paragraph 1(b) of Article 4 of the Agreement.</u>

- a) Subject to subparagraph (b) of this paragraph, if the account holder is a United Kingdom Financial Institution or other Partner Jurisdiction Financial Institution, then no further review, identification, or reporting is required with respect to the account.
- b) A United Kingdom Financial Institution or other Partner Jurisdiction Financial Institution shall be treated as a Nonparticipating Financial Institution if it is identified as such by the IRS pursuant to paragraph 2 of Article 5 of the Agreement.
- c) If the account holder is not a United Kingdom Financial Institution or other Partner Jurisdiction Financial Institution, then the Reporting United Kingdom Financial Institution must treat the entity as a Nonparticipating Financial Institution payments to which are reportable under paragraph 1(b) of Article 4 of the Agreement, unless the Reporting United Kingdom Financial Institution:
 - (1) Obtains a self-certification (which may be on an IRS Form W-8 or similar agreed form) from the entity that it is a certified deemed-compliant FFI, an exempt beneficial owner, or an excepted FFI, as those terms are defined in relevant U.S. Treasury Regulations; *or*
 - (2) In the case of a participating FFI or registered deemed-compliant FFI, verifies the entity's FATCA identifying number on a published IRS FFI list.

- 4. **Determine Whether an Account Held by an NFFE is a U.S. Reportable Account.** With respect to an account holder of a Preexisting Entity Account that is not identified as either a U.S. Person or a Financial Institution, the Reporting United Kingdom 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 a citizen or resident of the United States. In making these determinations the Reporting United Kingdom 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 United Kingdom 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 United Kingdom Financial Institution must obtain a self-certification (which may be on an IRS Form W-8 or W-9, or on a similar agreed form) 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 citizen or resident of the United States for tax purposes, a Reporting United Kingdom 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 (which may be on an IRS Form W-8 or W-9, or on a similar agreed form) 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 citizen or resident of the United States, the account shall be treated as a U.S. Reportable Account.

E. <u>Timing of Review and Additional Procedures Applicable to Preexisting</u> <u>Entity Accounts</u>

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

- 2. Review of Preexisting Entity Accounts with a balance or value that does not exceed \$250,000 as of December 31, 2013, but exceeds \$1,000,000 as of December 31 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 United Kingdom 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 United Kingdom Financial Institution must re-determine the status of the account in accordance with the procedures set forth in paragraph D of this section.
- V. <u>New Entity Accounts</u>. The following rules and procedures apply to accounts held by entities and opened on or after January 1, 2014 ("New Entity Accounts").
 - A. The Reporting United Kingdom Financial Institution must determine whether the account holder is: (i) a Specified U.S. Person; (ii) a United Kingdom Financial Institution or other Partner Jurisdiction Financial Institution; (iii) a participating FFI, a deemed-compliant FFI, an exempt beneficial owner, or an excepted FFI, as those terms are defined in relevant U.S. Treasury Regulations; or (iv) an Active NFFE or Passive NFFE.
 - B. A Reporting United Kingdom Financial Institution may determine that an account holder is an Active NFFE, a United Kingdom Financial Institution, or other Partner Jurisdiction Financial Institution if the Reporting United Kingdom 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 United Kingdom Financial Institution.
 - C. In all other cases, a Reporting United Kingdom 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 U.S. Person*, the Reporting United Kingdom Financial Institution must treat the account as a U.S. Reportable Account.
 - 2. If the entity account holder is a *Passive NFFE*, the Reporting United Kingdom Financial Institution must identify the Controlling Persons as determined under AML/KYC Procedures, and must determine whether any such person is a citizen or resident of the United States on the basis of a self-certification from the account holder or such person. If any such person is a citizen or resident of the United States, the account shall be treated as a U.S. Reportable Account.

- 3. If the entity account holder is: (i) a U.S. Person that is not a Specified U.S. Person; (ii) subject to subparagraph C (4) of this section, a United Kingdom Financial Institution or other Partner Jurisdiction Financial Institution; (iii) a participating FFI, a deemed-compliant FFI, an exempt beneficial owner, or an excepted FFI, as those terms are defined in relevant U.S. Treasury Regulations; (iv) an Active NFFE; or (v) a Passive NFFE none of the Controlling Persons of which is a U.S. citizen or resident, then the account is not a U.S. Reportable Account and no reporting is required with respect to the account.
- 4. If the entity account holder is a Nonparticipating Financial Institution (including a United Kingdom Financial Institution or other Partner Jurisdiction Financial Institution that is identified by the IRS as a Nonparticipating Financial Institution pursuant to paragraph 2 of Article 5 of the Agreement), then the account is not a U.S. Reportable Account, but payments to the account holder must be reported as contemplated in paragraph 1(b) of Article 4 of the Agreement.
- VI. <u>Special Rules and Definitions</u>. 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 United Kingdom Financial Institution may not rely on a self-certification or documentary evidence if the Reporting United Kingdom Financial Institution knows or has reason to know that the self-certification or documentary evidence is incorrect or unreliable.
 - B. **<u>Definitions</u>**. The following definitions apply for purposes of this Annex I.
 - 1. <u>AML/KYC Procedures</u>. "AML/KYC Procedures" means the customer due diligence procedures of a Reporting United Kingdom Financial Institution pursuant to the anti-money laundering or similar requirements of the United Kingdom to which such Reporting United Kingdom Financial Institution is subject.
 - 2. **NFFE.** An "NFFE" means any Non-U.S. Entity that is not an FFI as defined in relevant U.S. Treasury Regulations, and also includes any Non-U.S. Entity that is resident in the United Kingdom or other Partner Jurisdiction and that is not a Financial Institution.
 - 3. **Passive NFFE.** A "Passive NFFE" means any NFFE that is not an Active NFFE.

- 4. **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) The NFFE is organized in a U.S. Territory and all of the owners of the payee are bona fide residents of that U.S. Territory;
 - d) The NFFE is a non-U.S. government, a government of a U.S. Territory, an international organization, a non-U.S. central bank of issue, or an Entity wholly owned by one or more of the foregoing;
 - e) 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;
 - f) 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 organization of the NFFE;
 - g) The NFFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;
 - h) 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 Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; *or*
 - i) The NFFE meets all of the following requirements:

- (1) It is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes;
- (2) It is exempt from income tax in its country of residence;
- (3) It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- (4) The applicable laws of the Entity's country of residence or the Entity's formation documents do not permit any income or assets of the Entity to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the Entity's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the Entity has purchased; *and*
- (5) The applicable laws of the Entity's country of residence or the Entity's formation documents require that, upon the Entity's liquidation or dissolution, all of its assets be distributed to a governmental Entity or other non-profit organization, or escheat to the government of the Entity's country of residence or any political subdivision thereof.

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 United Kingdom Financial Institution shall be required to aggregate all accounts maintained by the Reporting United Kingdom Financial Institution, or Related Entities, but only to the extent that the Reporting United Kingdom Financial Institution's computerized 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 United Kingdom Financial Institution shall be required to take into account all accounts held by Entities that are maintained by the Reporting United Kingdom Financial Institution, or Related Entities, to the extent that the Reporting United Kingdom Financial Institution's computerized 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 United Kingdom 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. <u>Currency Translation Rule</u>. For purposes of determining the balance or value of accounts denominated in a currency other than the U.S. dollar, a Reporting United Kingdom 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 United Kingdom Financial Institution is determining the balance or value.
- D. <u>**Documentary Evidence.**</u> For purposes of this Annex I, acceptable documentary evidence includes any of the following:
 - 1. A certificate of residence issued by an appropriate tax official of the country in which the payee claims to be a resident.
 - 2. With respect to an individual, any valid identification issued by an authorized 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 authorized 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 (or U.S. Territory) in which it claims to be a resident or the country (or U.S. Territory) in which the Entity was incorporated or organized.
 - 4. With respect to an account maintained in a jurisdiction with anti-money laundering rules that have been approved by the IRS in connection with a QI 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 QI agreement for identifying individuals or entities.
 - 5. Any financial statement, third-party credit report, bankruptcy filing, or U.S. Securities and Exchange Commission report.

ANNEX II

NON-REPORTING UK FINANCIAL INSTITUTIONS AND PRODUCTS

General

This Annex II may be updated by a mutual agreement entered into between the Competent Authorities of the United Kingdom and the United States: (1) to include additional entities, accounts, and products that present a low risk of being used by U.S. Persons to evade U.S. tax and that have similar characteristics to the entities, accounts, and products identified in this Annex II as of the date of entry into force of the Agreement; or (2) to remove entities, accounts, and products that, due to changes in circumstances, no longer present a low risk of being used by U.S. Persons to evade U.S. tax. Procedures for reaching such a mutual agreement may be included in the mutual agreement described in paragraph 6 of Article 3 of the Agreement.

I. <u>Exempt Beneficial Owners</u>. The following categories of institutions are Non-Reporting United Kingdom Financial Institutions that are treated as exempt beneficial owners for purposes of section 1471 of the U.S. Internal Revenue Code:

A. <u>UK Governmental Organisations</u>

- The Devolved Administrations as per:
 - o the Northern Ireland Act 1998 (updated by The Northern Ireland (St Andrews Agreement) Acts 2006 & 2007, and the Northern Ireland Act 2009)
 - o the Scotland Act 1998
 - o the Government of Wales Act 2006
- Local Government Authorities as per:
 - o Section 33 of the Local Government Act 2003
 - O The Local Government Act (NI) 1972 (as amended by The Local Government (Miscellaneous Provisions) Act (NI) 2010 and Local Government Finance Act (NI) 2011)
 - o the Local Government etc. (Scotland) Act 1994
 - o the Local Government (Wales) Act 1994.

B. Central Bank

The Bank of England and any of its wholly owned subsidiaries.

C. <u>International Organisations</u>

Any UK office of:

- The International Monetary Fund
- The World Bank
- The International Bank for Reconstruction and Development
- The International Finance Corporation
- The International Finance Corporation Order, 1955 (SI 1955 No.1954)
- The International Development Association

- The Asian Development Bank
- The African Development Bank
- The European Community
- The European Coal and Steel Community
- The European Atomic Energy Community
- The European Investment Bank
- The European Bank for Reconstruction and Development
- The OECD Support Fund
- The Inter-American Development Bank

D. Retirement Funds

Any pension scheme or other retirement arrangement established in the United Kingdom and described in Article 3 (General Definitions) of the Convention, including pension funds or pension schemes covered by IRS Announcement 2005-30, 2005-1 C.B. 988, on the Mutual Agreement on U.K. Pension Agreements.

II. <u>Deemed-Compliant Financial Institutions</u>. The following categories of institutions are Non-Reporting United Kingdom Financial Institutions that are treated as deemed-compliant FFIs for purposes of section 1471 of the U.S. Internal Revenue Code:

A. Non-profit Organisations

- Any entity registered as a charity with the Charity Commission of England and Wales
- Any entity registered with HMRC for charitable tax purposes
- Any entity registered as a charity with the Office of the Scottish Charity Regulator
- Any Community Amateur Sports Club if registered as such with HMRC

B. Financial Institutions with a Local Client Base

- 1. Any Financial Institution, including any of the entities listed in this subparagraph 1, that meets the requirements of subparagraph 2, below:
 - Credit Unions a body corporate registered under the Industrial and Provident Societies Act 1965 as a credit union in accordance with the Credit Unions Act or a body corporate registered under the Credit Unions (Northern Ireland) Order 1985 or a body corporate registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 as a credit union
 - Industrial and Provident Societies an industrial and provident society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 (c. 12)
 - **Friendly Societies** a friendly society within the meaning of the Friendly Societies Act 1992 (c. 40)
 - **Building Societies** a building society incorporated or deemed to be incorporated under the Building Societies Act 1986 (c. 53)

- **Mutual Societies** as defined in the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007
- **Investment Trust Companies** an Investment Trust Company where approved under Section 1158 of the Corporation Tax Act 2010 (CTA) and meets the requirements of The Investment Trust (Approved Company) (Tax) Regulations 2011 (S.I. 2011 No.2999)
- **Venture Capital Trusts** a Venture Capital Trust where approved as such by HM Revenue and Customs under Chapter 3 Income Tax Act 2007
- 2. A Financial Institution meets the requirements of this subparagraph 2 if it meets all of the following requirements:
 - a). The Financial Institution must be licensed and regulated under the laws of the United Kingdom;
 - b). The Financial Institution must have no fixed place of business outside t he United Kingdom;
 - c). The Financial Institution must not solicit account holders outside the United Kingdom. For this purpose, a Financial Institution shall not be considered to have solicited account holders outside of the United Kingdom merely because it operates a website, provided that the website does not specifically indicate that the Financial Institution provides accounts or services to nonresidents or otherwise target or solicit U.S. customers;
 - d). The Financial Institution must be required under the tax laws of the United Kingdom to perform either information reporting or withholding of tax with respect to accounts held by residents of the United Kingdom;
 - e). At least 98 percent of the accounts by value provided by the Financial Institution must be held by residents (including residents that are entities) of the United Kingdom or another Member State of the European Union;
 - f). Subject to subparagraph 2(g), below, beginning on January 1, 2014, the Financial Institution does not provide accounts to (i) any Specified U.S. Person who is not a resident of the United Kingdom (including a U.S. Person that was a resident of the United Kingdom when the account was opened but subsequently ceases to be a resident of the United Kingdom), (ii) a Nonparticipating Financial Institution, or (iii) any Passive NFFE with Controlling Persons who are U.S. citizens or residents;
 - g). On or before January 1, 2014, the Financial Institution must implement policies and procedures to monitor whether it provides any account held by a person described in subparagraph 2(f), and if such an account is discovered, the Financial Institution must report such account as though the Financial Institution were a Reporting United Kingdom Financial Institution or close such account;

- h). With respect to each account that is held by an individual who is not a resident of the United Kingdom or by an entity, and that is opened prior to the date that the Financial Institution implements the policies and procedures described in subparagraph 2(g), above, the Financial Institution must review those accounts in accordance with the procedures described in Annex I applicable to Preexisting Accounts to identify any U.S. Reportable Account or account held by a Nonparticipating Financial Institution, and must close any such accounts that were identified, or report on such accounts as though the Financial Institution were a Reporting United Kingdom Financial Institution; and
- i). Each Related Entity of the Financial Institution must be incorporated or organized in the United Kingdom and must meet the requirements set forth in this paragraph.
- III. <u>Exempt Products</u>. The following categories of accounts and products established in the United Kingdom and maintained by a United Kingdom Financial Institution shall not be treated as Financial Accounts, and therefore shall not be U.S. Reportable Accounts, under the Agreement:

A. Certain Retirement Accounts or Products

- Pension schemes registered with HMRC under Part 4 of the Finance Act 2004 and pension arrangements where the annual contributions are limited to £50,000 and funds contributed cannot be accessed before the age of 55 except in circumstances of serious ill health.
- Those that are UK-registered pension arrangements (including authorised payments) as set out in the Finance Act 2004 that are excluded from the definition of Financial Account pursuant to Article 1(s)(3) of the Agreement.

B. Certain Other Tax-Favoured Accounts or Products

- Individual Savings Accounts (ISAs) as defined in the Individual Savings Account Regulations 1998 (SI 1998 No.1870) and subsequent Amendment Regulations
- **Junior ISAs** as defined in the Individual Savings Account Regulations 1998 No.1870, and subsequent Amendment Regulations
- Child Trust Funds as defined in the Child Trust Funds Act 2004 and subsequent Amendment Regulations
- **Premium Bonds** where issued by NS&I (UK National Savings and Investments)
- **Children's Bonus Bonds** where issued by NS&I (UK National Savings and Investments)
- Fixed Interest Savings Certificates where issued by NS&I (UK National Savings and Investments)
- Index Linked Savings Certificates where issued by NS&I (UK National Savings and Investments)

- **Tax Exempt Savings Plans** where issued by a friendly society within the meaning of the Friendly Societies Act 1992 (c. 40)
- Save As You Earn Share Option Schemes approved by HMRC under Schedule 3 Income Tax (Earnings and Pensions) Act 2003
- **Share Incentive Plans** approved by HMRC under Schedule 2 Income Tax (Earnings and Pensions) Act 2003
- Company Share Option Plans approved by HMRC under Schedule 4 Income Tax (Earnings and Pensions) Act 2003.