

## **COMPETENT AUTHORITY AGREEMENT TO IMPROVE INTERNATIONAL TAX COMPLIANCE**

On November 28, 2013, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the British Virgin Islands signed an intergovernmental agreement (“IGA”) entitled “Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the British Virgin Islands to Improve International Tax Compliance.” The IGA requires, in particular, the exchange of certain information with respect to United Kingdom Reportable Accounts on an automatic basis, pursuant to the provisions of Article 5A of the 2008 Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the British Virgin Islands for the exchange of information relating to tax matters (the “TIEA”).

Article 3(6) of the IGA provides that the Competent Authorities of the United Kingdom and the British Virgin Islands (the “Competent Authorities”) “shall enter into an agreement under the mutual agreement procedure provided for in Article 5A of the TIEA”, establishing and prescribing rules and procedures necessary to implement certain provisions in the IGA. Article 5A of the TIEA permits the Competent Authorities to also address other matters regarding implementation of the TIEA. These matters may also be addressed herein as the IGA is entered into pursuant to the TIEA. Consistent with the IGA and after consultations between the Competent Authorities, the Competent Authorities have reached the following agreement (this “Agreement”).

### **Paragraph 1**

#### **OBJECT AND SCOPE**

1.1 As provided by Article 3(6) of the IGA, this Agreement establishes the procedures for the automatic exchange obligations described in Article 2 of the IGA and for the exchange of information reported under Annex III(D)(1) and (2) of the IGA. Information to be exchanged pursuant to Articles 2 and Annex III(D)(1) and (2) of the IGA includes information provided:

1.1.1 by a Reporting British Virgin Islands Financial Institution,

1.1.2 by or on behalf of the following, that would be treated as Non-Reporting British Virgin Islands Financial Institutions under Annex II of the IGA (a “Paragraph 1.1.2 Financial Institution”):

- a Trustee-Documented Trust, as described in Section III(A) of Annex II of the IGA;
- a Sponsored Investment Entity, as described in Section III(B) of Annex II of the IGA;
- a Sponsored, Closely Held Investment Vehicle, as described in Section III(C) of Annex II of the IGA;

- an Investment Advisor or Investment Manager, as described in Section III(D) of Annex II of the IGA;
  - a Collective Investment Vehicle, as described in Section III(E) of Annex II of the IGA;
- 1.2 Terms used both in this Agreement and in the IGA have the same meaning as in the IGA, unless otherwise specified in this Agreement. References to Paragraphs and Attachments pertain to Paragraphs of, and Attachments to, this Agreement, unless otherwise specified. Except as otherwise provided in the IGA any references to IRS Publications include updated versions.
- 1.3 All references to days comprising time periods for completion of actions refer to calendar days and not business days. However, if such period ends on a Saturday, Sunday or national statutory holiday, it would be treated as ending on the next calendar day that is not a Saturday, Sunday or national statutory holiday.
- 1.4 As provided in Article 3(6) of the IGA, this Agreement prescribes rules and procedures as may be necessary to implement Article 4 of the IGA.
- 1.5 As permitted by Article 5A of the TIEA, this Agreement addresses other matters concerning implementation of the IGA, including: confidentiality and data safeguards, costs, consultation and modification, and publication of this Agreement.

## **Paragraph 2**

### **TIME AND MANNER OF EXCHANGE OF INFORMATION**

- 2.1 Automatic Exchange:
- 2.1.1 Exchange within Nine (9) Months: Consistent with Article 3(4) of the IGA, the Competent Authorities intend to exchange automatically the information described in Article 2 of the IGA within nine (9) months of the end of the calendar year to which the information relates. Notwithstanding the foregoing, the information that relates to calendar year 2014 shall be exchanged no later than 30 September 2016.
- 2.1.2 Annex III: Consistent with Annex III(F) of the IGA, the British Virgin Islands Competent Authority will exchange automatically the information described in Annex III(D)(1) and (2) within one year and nine months after the end of the Relevant Reporting Period to which the information relates and the information described in Annex III(E)(1) within nine (9) months of the end of the calendar year to which the information relates. Notwithstanding the foregoing, the information under Annex III(E)(1) that relates to calendar year 2014 shall be exchanged no later than 30 September 2016.

2.1.3 Automatic exchange under this agreement is subject to Appendix 1.

## 2.2 Format:

2.2.1 Information Described in Article 2(2) of the IGA: The FATCA XML Schema V1.1, as reflected in the FATCA XML Schema User Guide (IRS Publication 5124), posted on IRS.gov is intended to be used as the format for exchange of information described in Article 2(2) of the IGA. The FATCA XML Schema User Guide (IRS Publication 5124) describes the structure of the schemata and includes data dictionaries with summaries of the relevant data elements.

2.2.2 Information Described in Annex III(D)(1) and (2) and Annex III(E)(1) of the IGA: The format for exchange described in Annex III(D)(1) and (2) and Annex III(E)(1) may be in such form as is agreed between the Competent Authorities in advance of the exchange.

## 2.3 Information Transmission:

2.3.1 Method: The Competent Authorities intend to use files sent by encrypted email or other electronic transfer for all exchange of information, including notices described in Paragraph 3.2, pursuant to the IGA.

2.3.2 When Information is Exchanged: Information described in Article 2(2), Annex III(D)(1) and (2) and Annex III(E)(1) of the IGA would be considered exchanged at the time of receipt specified in Paragraph 2.3.4. See Paragraph 4.2 concerning the United Kingdom Competent Authority's responsibility for maintaining confidentiality and other protections with respect to exchanged information.

2.3.3 Feedback and Consultation: The Competent Authorities understand that feedback with regard to data quality and usability is an important element of the exchange process and they may consult with each other as provided in Paragraph 6.2 about data error transmission problems inadequately addressed through standard notification process.

2.3.4 Time of Receipt: Except as described below, information transmitted by the British Virgin Islands Competent Authority would be considered provided to, and received by, the United Kingdom Competent Authority on the date the information is sent by encrypted email or other secure electronic transfer.

## 2.4 Notification of File Validation Success or Failure:

2.4.1 Notification of File Validation Success: Within thirty (30) days of successfully receiving a file containing the information described in Article 2(2), Annex III(D)(1) and (2) and Annex III(E)(1) of the IGA in the time and manner described in Articles 3(4) and Annex III(F) of the IGA and in Paragraph 2, the United Kingdom Competent Authority should provide notice of such

successful receipt to the British Virgin Islands Competent Authority. The notice need not express the United Kingdom Competent Authority's view about the adequacy of the information received or whether the United Kingdom Competent Authority believes that the British Virgin Islands Competent Authority should take measures pursuant to Article 4 of the IGA to obtain corrected or complete information.

- 2.4.2 Notification of File Validation Failure: Within thirty (30) days of receiving a file containing information that cannot be validated, the United Kingdom Competent Authority should provide notice of such validation failure to the British Virgin Islands Competent Authority.

### **Paragraph 3**

#### **REMEDICATION AND ENFORCEMENT**

- 3.1 In General: The British Virgin Islands Competent Authority should each seek to ensure that all of the information specified in Articles 2(2), Annex III(D)(1) and (2) and Annex III(E)(1) of the IGA has been identified and reported to the British Virgin Islands Competent Authority, so that such information is available to be exchanged in the time and manner described in Article 3(4) and Annex(F) of the IGA and in Paragraph 2.
- 3.2 The United Kingdom Competent Authority will notify the British Virgin Islands Competent Authority when the first-mentioned Competent Authority has reason to believe that an error may have led to incorrect or incomplete information reporting or there is non-compliance by a Reporting Financial Institution with the applicable reporting requirements and due diligence procedures consistent with the IGA. The British Virgin Islands Competent Authority will take all appropriate measures available under its domestic law to address the errors or non-compliance described in the notice.
- 3.3 Transition Period for Remediation and Enforcement: The Competent Authorities intend calendar years 2014 and 2015 to be a transition period for the purposes of the enforcement and administration of any data collection, due diligence, information reporting and automatic information exchange described in the IGA. The Competent Authorities intend to take into account the good faith efforts of each other, Reporting Financial Institutions, and Paragraph 1.1.2 Non-reporting Financial Institutions toward compliance with any such requirements during this transition period when pursuing enforcement.

### **Paragraph 4**

#### **CONFIDENTIALITY AND DATA SAFEGUARDS**

- 4.1 Confidentiality and Use: In accordance with Article 3(7) of the IGA, all information exchanged pursuant to the IGA is subject to the confidentiality and other protections

provided for in the TIEA, (hereinafter “Confidentiality Protections”), including the provisions limiting the use of the information exchanged. The Competent Authorities intend to maintain appropriate safeguards and infrastructure (“Data Safeguards”).

- 4.2 Transmission Risk and Responsibility: The United Kingdom Competent Authority intends to maintain Confidentiality Protections regarding information transmitted by the British Virgin Islands Competent Authority from the time it successfully receives such information by encrypted email or other secure electronic transfer.
- 4.3 Notification of Actual or Potential Breach of Confidentiality and Safeguard Protections: A Competent Authority should notify the other Competent Authority promptly regarding any actual or potential breach of the Confidentiality Protections, or in the event that the Competent Authority no longer intends to maintain the Data Safeguards.

## **Paragraph 5**

### **COSTS**

- 5.1 Unless the Competent Authorities specify otherwise in writing, each Competent Authority intends to bear its own ordinary costs incurred in administering its domestic laws and providing assistance under this Agreement. The Competent Authorities may consult with each other in advance of the incidence of extraordinary costs to consider whether, and if so how, to allocate such costs between the Competent Authorities.

## **Paragraph 6**

### **EFFECT, CONSULTATION AND MODIFICATION**

- 6.1 Operative Date: This Agreement becomes operative on the date the Agreement is signed by the United Kingdom and the British Virgin Islands Competent Authorities or the date of the notification provided by the British Virgin Islands that its jurisdiction has the necessary laws in place to implement the Agreement. Once the Agreement is operative, its provisions apply to all information that is exchanged pursuant to the IGA, including information for calendar years that precede the operative date.
- 6.2 Consultation: Each Competent Authority may at any time request consultations on the implementation, interpretation, application, or modification of this Agreement. Such consultation (through discussion or correspondence) should take place within a period of thirty (30) days from the date of receipt of such request, unless otherwise mutually decided. If a Competent Authority believes the other Competent Authority has failed to fulfil its obligations under the IGA, it may request immediate consultation to ensure their fulfilment.
- 6.3 Modification: This Agreement may be modified at any time by mutual consent of the Competent Authorities, in writing.

6.4 Discontinuation: This Agreement is intended to be discontinued automatically upon termination of the IGA. In the event of discontinuation, all information previously received under this Arrangement would remain subject to the Confidentiality Protections.

**Paragraph 7**

**PUBLICATION**

The Competent Authorities intend to make this Agreement publicly available.

Signed in duplicate.

**Competent Authority for the  
United Kingdom**

**David Smith** (Sgd.)  
International Relations  
Her Majesty's Revenue and Customs  
Date: 29<sup>th</sup> September, 2016

**Competent Authority for the British  
Virgin Islands**

**Neil Smith** (Sgd.)  
Financial Secretary  
Ministry of Finance  
Date: 29<sup>th</sup> September, 2016

## Appendix 1

### Transition from the IGA to the CRS

The intergovernmental agreement (IGA) entitled “Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the British Virgin Islands to improve International Tax Compliance was signed on 28 November 2013. The jurisdictions now wish to replace the IGA with the Common Reporting Standard (CRS) developed by the OECD, with G20 countries, to tackle tax avoidance and evasion and improve tax compliance.

The Competent Authorities of the United Kingdom and the British Virgin Islands (the “Competent Authorities”) are agreed that, while there is overlap in the period covered by the IGA and the CRS, there will be no need for duplicate reporting. Thus where due diligence has been done under the IGA, it will be deemed to have been done for the purposes of the CRS.

The Competent Authorities are agreed that the transition arrangements will be as set out in the attached schedule. In summary –

- Exchange in respect of the 2014 and 2015 years, to be made no later than 30 September 2016 will be made in accordance with the IGA,
- Exchange in respect of 2016, to be made no later than 30 September 2017 will include the maximum of what is required by the CRS or the IGA in that year. That is, in addition to what is required under the IGA the accounts which need to be reported in 2017 will also include all pre-existing high value accounts which were not required to be reported under the IGA or reported under the alternative reporting regime in 2014 and 2015, and which were still open at the end of 2015; and any accounts identified in 2016 as reportable under the CRS but not reportable under the IGA,
- Exchange in respect of 2017 onwards will be in accordance with the CRS provided that each Competent Authority has notified the other Competent Authority that it has the necessary laws in place to implement the CRS.

The Competent Authorities are agreed that the IGA will need to remain in force until 31 December 2018 so that any queries on information sent under the IGA in respect of 2014, 2015 and 2016 can be dealt with.

## CRS Transition Summary Proposal

This table ignores ARR. As noted, ARR will not apply under CRS, so any accounts for 2017 that would be excluded under ARR but are included under CRS will be “more” and will need to be reported.

Year			IGA	CRS	Agreement
2014 Data	Pre-Existing Individual	Below Threshold Exemption <sup>1</sup>	Some <sup>2</sup>	n/a	Use IGA
		Lower Value	Some <sup>3</sup>	n/a	Use IGA
		High Value	Some <sup>3</sup>	n/a	Use IGA
	Pre-Existing Entity	Below Threshold Exemption <sup>4</sup>	Some <sup>2</sup>	n/a	Use IGA
		All Other	Some <sup>3</sup>	n/a	Use IGA
	New Individual	Below Threshold Exemption <sup>5</sup>	Some <sup>6</sup>	n/a	Use IGA
		All Other	All	n/a	Use IGA
	New Entity	All	All	n/a	Use IGA
	2015 Data	Pre-Existing Individual	Below Threshold Exemption <sup>1</sup>	Some <sup>7</sup>	n/a
Lower Value			Some <sup>8</sup>	n/a	Use IGA
High Value			All	n/a	Use IGA
Pre-Existing Entity		Below Threshold Exemption <sup>4</sup>	Some <sup>7</sup>	n/a	Use IGA
		All Other	Some <sup>8</sup>	n/a	Use IGA
New Individual		Below Threshold Exemption <sup>5</sup>	Some <sup>6</sup>	n/a	Use IGA
		All Other	All	n/a	Use IGA
New Entity		All	All	n/a	Use IGA
2016 Data		Pre-Existing Individual	Below Threshold Exemption <sup>1</sup>	Some <sup>6</sup>	Some <sup>9</sup>
	Lower Value		All	Some <sup>9</sup>	Use IGA
	High Value		All	All	Use CRS
	Pre-Existing Entity	Below Threshold Exemption <sup>4</sup>	Some <sup>6</sup>	Some <sup>9</sup>	Use Either
		All Other	All	Some <sup>9</sup>	Use IGA
	New Individual	Below Threshold Exemption <sup>5</sup>	Some <sup>6</sup>	All	Use CRS
		All Other	All	All	Use CRS
	New Entity	All	All	All	Use CRS
	2017 Data	Pre-Existing Individual	Below Threshold Exemption <sup>1</sup>	Some <sup>6</sup>	All
Lower Value			All	All	Use CRS
High Value			All	All	Use CRS
Pre-Existing Entity		Below Threshold Exemption <sup>4</sup>	Some <sup>6</sup>	All	Use CRS
		All Other	All	All	Use CRS
New Individual		Below Threshold Exemption <sup>5</sup>	Some <sup>6</sup>	All	Use CRS
		All Other	All	All	Use CRS
New Entity		All	All	All	Use CRS

### Notes

<sup>1</sup> \$50,000 or \$250,000 Cash Value Insurance

<sup>2</sup> Report only where election has not been applied for and due diligence completed before 31.12.2014

<sup>3</sup> Report only where due diligence is completed before 31.12.2014

<sup>4</sup> \$250,000

<sup>5</sup> \$50,000

<sup>6</sup> Report only where election has not been applied for

<sup>7</sup> Report only where election has not been applied for and due diligence completed before 31.12.2015

<sup>8</sup> Report only where due diligence completed before 31.12.2015

<sup>9</sup> Report only where due diligence completed before 31.12.2016