

The Guernsey Association of Trustees and STEP Guernsey Branch, the local Fiduciary Sector's representative and educational organisations, have jointly consulted with their combined membership and in this document set out comments in regard to the draft Guidance Notes as published on 31st January 2014.

Question A (1) – GN 6.4

No Guernsey Entities have been identified as a **Financial Institution** with a **Local Client Base**. We have asked our members to identify whether they are aware of **any Guernsey Entities** that would **qualify** under the **requirements** detailed in the **relevant Annexes** for **inclusion** in the Guidance Notes? (Refer to US IGA Annex II Section III A, Page 39 & 10 criteria (GN 4.2.2, pages 26-29)).

We note the difference below which arises because the concept of Local Client Base is only relevant to the US IGA:

- US IGA states that FI with a Local Client Base must **establish** and **monitor** whether it provides Financial Accounts to *any Specified US Person who is not a resident of Guernsey or NPMF*. **If so, the FI must report, or close, or transfer the account.**
- UK IGA states differently that FI, including those with a Local Client Base, will have to apply full DD under UK IGA and report

We have no other comments on this question

Question A2 (1) - GN 6.5

Guidance Note 6.5 has not yet been completed. This covers exemptions from definitions of Reporting FI or Financial Accounts under Annex II of the US IGA and Annex III of the UK IGA. We have asked our members whether they are aware of any Guernsey Entities able to satisfy the requirements to be an exempt entity as headlined below and if so, list those examples in the Guidance Notes.

Please note following observation:

- Local Bank – (US IGA only/not in UK IGA)
- Financial Institution with Only Low-Value Accounts (US IGA and UK IGA)

- Qualified Credit Card Issuer (US IGA and UK IGA)

The only entities that we thought should be considered are RAT's which are open to Guernsey residents and believe that GAPP have already commented on this point.

Question B (1) - GN 13.1

Introduction of a computerised system for FIs to submit reports to the ITO. All Guernsey FIs will be required to register to access secure reporting system.

Please note the following:

- The Director is suggesting to use computerised reporting system to send reminders to all FIs who have registered to use secure reporting system.
- A computerised system which allows for the upload of files will be the most efficient and effective for the industry

We would want assurances that resources will be made available to ensure such a system is flexible enough to encompass the broad spectrum of institutions that will need to report and that such a system is simple to use. It would also be helpful if the reporting system was consistent over all 3 Crown Dependencies

We would recommend that reminders are sent to all institutions, not just those who have registered, to make them aware that they may need to register and report.

Question B (2) – GN 7.11, 12.1.2, 19.3

Financial Institutions to make Nil Returns where no Reportable Accounts are identified in a given year.

Please see discrepancy below:

- GN 7.11, 12.1.2 and 19.3 all state that returns are not required where Reportable Accounts are not identified
- Draft UK-CD/Gibraltar GNs state that if Reporting FIs maintain no Reportable Accounts then an annual Nil Return will be made (page 43)
- Updated draft UK-US GNs state that UK Reporting FIs with no Reportable Accounts will be required to make a Nil Return to HMRC on an annual basis (page 69)

We would welcome some consistency on this where possible but recognise there is the choice of being consistent with HMRC's approach for UK based FIs or the approach of Jersey and IoM

for their FIs. We have asked our members if they have a preference.

Question C – GN 12.5

An insurance contract is a contract, other than an Annuity Contract, under which the issuer agrees to make payments upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk, including [any CD specific reference could be added here].

We have asked our members whether they are aware of any text, specific to Guernsey, which could be inserted into this section to assist in defining an Insurance Contract.

- We note that this is the same definition as in updated draft UK-US GNs
- Compare definitions in Schedule 5 of The Insurance Business (Bailiwick of Guernsey) Law, 2002 as amended

Question D – GN 19.5

Reporting date to Director of ITO:

currently 30 June 2015/6/7** - or -on or before 30 June 2015/6/7**

- FIs can submit returns earlier – e.g. 31 May to coincide with UK operations with earlier reporting dates to HMRC

Please clarify whether once filed can a report be amended before 30 June?

Can ITO confirm that it will not be filing reports to IRS and HMRC earlier than 30 September?

Other comments on the Guidance Notes

Investment Entity – GN 3.9

Could consideration be given to expanding the list of assets that would not be considered financial assets detailed under 3.9.2 Regulations Definition, page 20, to include the following as non financial assets on the basis they could be considered depreciating assets:

- Yachts and tenders to yachts
- Yacht moorings and yacht berths
- Classic cars

- Aircraft
- Works of art
- Antiques

Foundations - GN 8

Please ensure that GN8 is consistent with Guernsey's Foundations Law.

- Handbook 4.6.1:
 - A general threshold of 25% is deemed to indicate effective control or ownership
 - Individuals having ultimate effective control ... in the case of foundations will include members of the governing council and any supervisors but only where they have 25% or more interest in the capital or net assets of the legal body
- Risk for AML is standard or high risk of financial crime/drug trafficking/bribery and corruption/sanction busting
- Annex II and Annex III IGAs refer to risk evading tax only

The relevant risk for the IGAs is tax evasion and not the wider risks of the AML Handbook

Pensions and EBTS – GN 6.3, 7.14, 12.7, 12.12

- GN 6.3: S.150 are exempt for both UK and US IGAs
- What about S.157A, 157E, 40(o), 40(ee) schemes?
- GN 12.7: Pension annuities – as per GN 6 these are exempt products but apart from S.150 Schemes, no other pensions are mentioned.
- GN 12.12: S.157A RATS or EBTs may qualify provided all the criteria of GN 4.2.3 (sic) are met. However GN 4.2.3 is not a correct cross-reference. Possible criteria could be:
 - GN 4.2.2 Local Client Base (10 criteria and US IGA only)
 - Annex III Certain Savings Accounts Retirement and Pension Accounts (3 criteria UK IGA only)
 - Annex II Certain Savings Accounts Retirement and Pension Accounts (5 criteria US IGA only)
 - Annex II and III Broad and Narrow Participation Retirement Funds (US and UK IGA only) but these are employer sponsored

What about umbrella schemes? How are these to be treated?

- Please ensure that subject to government regulation means registered or approved with ITO
 - GN 7.14: EBTs should be considered in the same way as any trust and categorised accordingly
- compare treatment of EBTs under Guernsey Disclosure Facility. Please specify the duties of the trustee of an EBT when the Sponsoring employer refuses to conduct DD on the members of the EBT to enable the trustee to report.

Charitable Trusts – GN 7.17

GN 7.17: A trust that is a charitable organisation will be treated as a Non-Reporting Guernsey FI

- Please specify the meaning of charitable?

Section 12: Charities and Non-Profit Organisations (Registration) (Guernsey) Law 2008 as amended defines charity as follows–

- a) means any organisation established for charitable purposes only, and
- b) where any property or fund the income whereof is applicable to charitable purposes only is entrusted to any person, means, in relation to that property or fund and the income thereof, that person.

- What about NPOs?
- Please clarify that charities will be Deemed Compliant FIs for US IGA and no need to register or report but query whether the trustee or other FI maintaining accounts for the charity will have to report (GN 7.12)? Please clarify.

Final points to consider

- Need clarity on the definition of what is meant by “meaningful trading” in regard to US FATCA GN for NFFE stock
- Recommending a common approach amongst all Crown Dependencies



Thank you for giving us the opportunity to comment and we will await the revised draft Guidance Notes.

Yours faithfully

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