

The British Virgin Islands releases updated FATCA Guidance Notes

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Global Financial Services Industry



BVI Updates FATCA Reporting Guidance

On March 24, 2015, the International Tax Authority (“ITA”) of the British Virgin Islands (“BVI”) published its highly anticipated updated FATCA Guidance Notes titled - Guidance Notes on the International Tax Compliance Requirements of the Legislation Implementing the Intergovernmental Agreements between the British Virgin Islands and the United States of America and the United Kingdom to Improve International Tax Compliance Version 2.0. Discussed in this Deloitte communication are the BVI Legislation, highlights of the various changes, and the deadlines and manner for submission.

After signing the UK and US Intergovernmental Agreement (“IGA”) on November 28, 2013 and June 30, 2014 respectively, the release of the updated Guidance Notes supersedes the draft guidance notes which were originally published in July 2014 by the ITA. Following the Model 1B IGA, the terms of the US Agreement mandate the required information on reportable accounts be submitted to the BVI ITA, which in turn will transmit it to the US Treasury Department each year. The BVI legislation related to the implementation of the US and UK Agreements is the Mutual Legal Assistance (Tax Matters) Act, 2003 (as amended), the Mutual Legal Assistance (Tax Matters) (No. 4) Order, together referred to as the BVI Regulations. A further Order is scheduled to be issued by the BVI Ministry of Finance in 2015, as part of the legislation, providing for the specific penalties for breach of the requirements and formalizing the change in reporting deadlines.

The BVI Guidance Notes, issued to provide practical assistance in relation to the US and UK Agreements, reflected a certain number of changes from the draft version issued in 2014. Included in these changes are the deadline for submission, detail on the enrolment and filing of the reportable information to the ITA, and additional definitions and guidance related to the UK Agreement. While

the guidance notes are not part of the BVI Regulations and do not have force of law, they constitute important practical references for successful implementation of information exchanges.

Under BVI legislation, a BVI Financial Institution is categorized as either a Reporting British Virgin Islands Financial Institution or a Non-Reporting British Virgin Islands Financial Institution, two mutually exclusive classifications. Non-Reporting British Virgin Islands Financial Institutions are ones that meet the exemptions set forth in Annex II of the US Agreements, otherwise known as the deemed compliant, owner documented, or exempt beneficial owner exemptions. The first step to FATCA compliance one has to undertake is an entity classification exercise pursuant to the various definitions set forth in the BVI Regulations.

Under the updated Guidance Notes, the deadline for submissions by Reporting British Virgin Islands Financial Institutions of the required information on reportable accounts for 2014 has been extended to June 30, 2015. Reporting for subsequent years will be required by May 31st of each year. Submission to the BVI ITA will be done through a web-based application, the BVI Financial Account Reporting System (BVIFARS), exclusively. The system will allow Reporting Financial Institutions to submit their filings either by manually entering information into BVIFARS in a single filing or uploading an XML file (i.e. US FATCA XML Schema established by the Internal Revenue Service ("IRS")).

Access to the BVIFARS portal is expected to be available to the public from April 15, 2015. Reporting British Virgin Islands Financial Institutions that have registered with the IRS and obtained a Global Intermediary Identification Number (GIIN), including sponsoring entities, will be required to enroll first with BVIFARS before accessing the submission system. Enrolment is a one-time process with each application requiring approval by the BVI ITA. Each financial institution or sponsoring entity is allowed a primary user and up to 4 secondary users. The International Tax Authority will not verify the information submitted by financial institutions, but will monitor compliance with the local legal requirements and will enforce the BVI Regulations in case of non-compliance. Penalty may be imposed for non-compliance with the BVI Regulations.

Looking further down the road to a world where tax information is more freely exchanged between governments, the OECD Common Reporting Standard ("CRS") was developed on the same principles of transparency and global exchange of information as FATCA. The BVI has already committed to the implementation of CRS as an early adopter, responding to a timetable for exchanging information starting in 2017. These newly released BVI guidance notes, the BVI Regulations, and BVIFARS were all developed with these new world international standards in mind.

We recommend you review the updated Guidance Notes and understand the effect on your business. Deloitte has a local FATCA leadership team which is part of Deloitte's global FATCA center of excellence, with a deep understanding of the operational and regulatory implications of FATCA. Together we can guide you through the entity classification, outline the FATCA obligations and compliance path, and advise on enhancements to data collection and the reporting process.

Useful links

Updated BVI FATCA Guidance Notes

http://www.bvi.gov.vg/sites/default/files/guidance_notes_20-3-15_-_final_2.pdf

BVIFARS (Access to the BVIFARS portal is expected to be available to the public from April 15, 2015)

<http://www.bvi.gov.vg/fars>

US FATCA XML Schema guidance from the IRS

<http://www.irs.gov/Businesses/Corporations/FATCA-XML-Schemas-and-Business-Rules-for-Form-8966>

For more information please [click here](#) or please contact:

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