

IRS proposes welcome changes to FATCA

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Financial institutions with US clients will be interested to hear that the IRS has proposed changes to certain requirements under the Foreign Account Tax Compliance Act (FATCA). The changes are intended to address comments received from the IRS from various interested parties and should reduce the burden on reporting financial institutions.

Perhaps the most helpful change for Guernsey financial institutions which are potentially caught by FATCA, is the clarification of the definition of an "investment entity". Currently, an entity is considered an investment entity if its gross income is primarily attributable to investing, reinvesting or trading in financial assets and it is managed by another financial institution. Under the proposed regulation, an entity will not be managed by another entity if the first-mentioned entity invests all or a part of its assets in another entity that is a mutual fund, an exchange traded fund or a collective investment entity that is widely held and is subject to investor-protection regulation. This carve out will not generally apply if there is a discretionary mandate, in effect an agreement whereby the financial institution manages and invests a client's funds in accordance with the client's goals.

The clarifications are consistent with OECD guidance interpreting the definition of a "managed by" investment entity under the Common Reporting Standard.

Other changes in the proposed regulation will:

- Remove withholding on payments of gross proceeds;
- Defer withholding on foreign passthru payments;
- Eliminate withholding on certain insurance premiums;
- Provide guidance for withholding agents on certain due diligence requirements; and
- Provide guidance on refunds and credits of amounts withheld.

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