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New legislation gives Guernsey Revenue Service new powers and extends FATCA/CRS reporting

JULY 2021

The States of Guernsey today approved new legislation giving the Revenue Service significant new powers, creating new obligations in relation to international tax reporting and allowing UK taxes to be collected in Guernsey.

The Income Tax (Guernsey) (Amendment) Ordinance, 2021 (the **Ordinance**) amends the existing Income Tax (Guernsey) Law, 1975.

The Ordinance:

- empowers the Revenue Service to conduct site visits to Guernsey businesses;
- broadens the scope of the local FATCA/CRS registration regime to apply to any local financial institution;
- empowers the Revenue Service to regulate compliance with the FATCA/CRS regime; and
- allows HMRC to require the Guernsey Revenue Service to collect UK tax debts on its behalf.

Site visits

The Revenue Service will now have the power to enter any business premises to inspect the premises and any documents therein. Before conducting a site visit the Revenue Service will have to give seven days' notice or obtain the consent of the business. The Revenue Service will also have the power to conduct site visits without notice or consent, if it first obtains the approval of a Judge.

Any employee could commit a criminal offence by obstructing or failing to provide reasonable assistance to the Revenue Service during a site visit. There are also certain classes of document which a business can (and should) refuse to show the Revenue Service (legally privileged documents and documents relating the conduct of tax-related appeals). To avoid these issues, it is important that businesses have a policy in place and train their staff how to conduct themselves in case of site visits by the Revenue Service.

FATCA/CRS regulation

Registration with the Revenue Service

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Reporting Financial Institutions have been registering and reporting through the Revenue Service's IGOR online reporting system since 2015.

The Ordinance now requires that any entity which constitutes a Financial Institution in Guernsey under the local FATCA/CRS regulations* (**Relevant Institutions**) must register with the Revenue Service and file an annual validation.

This extends the registration requirement to include the following Relevant Institutions, regardless of whether they have reporting obligations of their own under the FATCA/CRS regulations:

- **custodial institutions**, which can include brokers, custodial banks, nominee companies and clearing organisations;
- **depository institutions;**
- **investment entities**, which can include trusts, sponsored entities, investment advisers, investment managers and collective investment vehicles; and
- **specified insurance companies**.

At the point of registration, the Relevant Institution will have to specify what classification it falls under in the FATCA/CRS regulations and provide any other information or documents required by the Revenue Service.

There will then be a rolling obligation to keep that information up-to-date and submit an annual validation each February.

Notifications and Revenue Service responses

Where a Relevant Institution is required under the FATCA/CRS regulations to rely on self-certification by its account holders, and is unable to obtain that self-certification or has reasonable grounds to suspect that a self-certification is (or has become) incorrect or unreliable, it must now notify the Revenue Service.

In response to a notification, the Revenue Service may require further information, and can order that the Relevant Institution not make any transfer or other dealing in respect of that account holder (**Freezing Order**).

Freezing Orders take effect in spite of any contractual or other obligation you might owe to your account holders. Therefore, it is important that any reporting Relevant Institution's terms and conditions are reviewed, and if necessary updated to account and make provision for, to avoid legal action from affected clients.

Revenue Service directions and inspectors

The Revenue Service will now have the power to give directions to any Relevant Institution which appear '*necessary or desirable for the purposes of securing compliance with international tax provisions*'. Breach of these directions would be a criminal offence.

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If a Relevant Institution has, or is reasonably suspected of having, contravened international tax provisions, the Revenue Service may appoint, or require the Relevant Institution to appoint, an "inspector". The inspector must then investigate the Relevant Institution's compliance with international tax provisions and any directions given by the Revenue Service, and oversee any remedial measures required to bring the Relevant Institution into compliance, then report back to the Revenue Service.

Relevant Institutions may commit a criminal offence if they refuse to assist inspectors, provide documents or answer questions.

The costs of the inspector and their investigation must be borne by the Relevant Institution, unless they are unreasonable or unreasonably incurred.

Appeals

Decisions by the Revenue Service to give directions, appoint inspectors, request further information or make Freezing Orders can be appealed to the Guernsey Tax Tribunal.

Collection of UK tax debts

The Ordinance also implements article 27 of the UK – Guernsey Double Taxation Agreement and Protocol (**DTA**).

This part of the DTA dictates that HMRC in the UK and the Revenue Service in Guernsey will each collect taxes on behalf of the other. This overrides the general position in law that a state will not enforce a foreign tax debt.

Under the Ordinance, if HMRC issues an "Instrument Permitting Enforcement" to Guernsey's Revenue Service in respect of a UK tax debt, the Revenue Service will have to pursue it for collection. The Instrument Permitting Enforcement will be taken as irrebuttable proof of its contents in any proceedings, and tax-payers will not be able to challenge the merits of the tax debt it relates to in the Guernsey courts. Instead they will have to dispute the claim in the UK.

These arrangements relate to any tax or duty imposed under UK law, including income tax, corporation tax, capital gains tax, VAT, and excise duties.

The changes in the Ordinance explicitly grant powers to replicate this arrangement with other jurisdictions, if similar international tax agreements are concluded with them.

Conclusion

The Ordinance represents a major shift in the role of the Revenue Service, making it an empowered regulator for FATCA/CRS reporting and beginning a relationship where it will operate on behalf of the HMRC in collecting UK tax debts.

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Businesses will need to ensure that they have the necessary policies and training in place to deal with a site visit by the Revenue Service: protecting privileged documents, while ensuring that their staff do not commit one of the new criminal offences created by the Ordinance.

Relevant Institutions should respond to the Ordinance by revisiting their terms and conditions to ensure that they won't breach their contracts with customers if they have to comply with Freezing Orders or directions from the Revenue Service.

Collas Crill Compliance, led by Sandra Lawrence, can assist in ensuring that your policies and procedures account for the new challenges brought on by the Ordinance, and Collas Crill's cross-departmental Risk and Regulatory team specialises in advising businesses who are facing investigation or enforcement from their regulator.

If you have any questions about the effect of the Ordinance on your business or your customers, please don't hesitate to get in touch with one of the key contacts on the right.

* The Income Tax (Approved International Agreements) (Implementation) (Untied Kingdom and United States of America) Regulations, 2014 (as amended) and the Income Tax (Approved International Agreements) (Implementation) (Common Reporting Standard) Regulations, 2015 (as amended)

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