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28 September 2012

Manager
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Dear Sir/Madam,

Intergovernmental Agreement to Implement FATCA

The ABA welcomes the opportunity to comment on the feasibility and desirability of an Intergovernmental Agreement (IGA) between Australia and the United States for the implementation of the U.S. *Foreign Account Tax Compliance Act* (FATCA). The ABA has been a supporter of the IGA concept since the early days of the FATCA regulatory development process and recommends that an agreement be concluded as soon as practicable, based on the "Model 1" reciprocal framework.

The ABA raised a number of serious concerns with the initial FATCA proposals.

For example, banks do not generally hold and would need to obtain the information required by FATCA from both new and existing customers.

Obtaining the information would be costly and would cause inconvenience to many customers; but most importantly, the collection, use and disclosure of the FATCA information and the possible closing of some accounts raised a number of significant issues with Australian privacy and anti-discrimination law.

Although some domestic reforms may still be required to allow our members to report FATCA information to the ATO, an IGA would:

- Reduce the exposure to or eliminate legal issues and mitigate the impact of collecting, using and disclosing new personal information;
- Remove withholding on Australian institutions and significantly reduce the obligation on Australian financial institutions to withhold on certain account holders under the draft regulations;
- Allow greater reliance on existing Anti-Money Laundering and Counter Terrorism Financing (AML/CTF) customer identification processes; and
- Reduce the need to build systems for overlapping reporting to the IRS and the ATO.

In addition, the model IGA under consideration provides a workable mechanism to exempt entities/products that pose a low risk of tax evasion but would otherwise be caught by FATCA, especially

complying superannuation entities, and contains an enduring mechanism to quarantine branches/affiliates in jurisdictions that cannot participate in FATCA due to conflict of laws.

For the Australian Government, an IGA would strengthen the U.S.-Australia alliance, and demonstrate the commitment of the Australian Government in the fight against global tax evasion. It would also provide the ATO with information (under reciprocity arrangements) on U.S. taxpayers that it presently does not receive.

While an IGA offers significant benefits, there are some key issues to be considered in the drafting of an Australia/U.S. agreement. The attachments to this letter provide Treasury with a very detailed analysis of the IGA, and include supporting information for Treasury's use.

We understand that the U.S. would prefer to follow the published model agreement as closely as possible. Following are the critical issues which the ABA believes need to be addressed in the Australia/U.S. IGA or the implementation of any domestic legislation to effect the IGA.

Precedence

Confirmation is needed that Foreign Financial Institutions (FFIs) are able to comply with the Regulations and not the IGA where they believe the terms of the Regulations are more favourable. It will be important to analyse the final Regulations when they are available, identify areas where the Regulations are more favourable, and then either have those favourable terms specifically included in the Australia/U.S. IGA or a rule that the provisions of the Regulations may be followed as opposed to those in the IGA where the Regulations are more favourable.

Timing and Transition

Where a Memorandum of Understanding/Joint Statement (MOU) is issued by the U.S. Treasury and the Australian Treasury that an IGA is to be pursued, confirmation is sought that FFIs can develop their FATCA programs in accordance with the terms of the IGA based on that understanding.

The MOU should include transitional arrangements to allow the partner country FFIs to be treated as deemed compliant should the IGA not be concluded before the relevant obligation dates.

In the event that the U.S. Treasury will only provide the necessary certainty based on a signed IGA, the ABA recommends that the Australian Government executes an IGA as soon as practicable.

Clarification of registration procedures

For multinational financial institutions which have operations in IGA and non-IGA countries, clarification is required in relation to the precise requirements for registration, entering into separate FFI agreements and compliance with obligations, for branches not covered by the relevant IGA (with the home country of the parent company).

Standard of Self Certification

The IGA should afford flexibility in relation to the required form of the self-certification so as to reduce the burden of compliance and confusion for the general public. In particular, we would appreciate confirmation that a self-certification is not required to be in prescribed forms and made under penalty of perjury.

Account aggregation

Although the IGA contains rules for aggregating account balances, the provisions that deal with the exemptions from due diligence for accounts under a certain balance do not themselves explicitly state the requirement for the FFI to aggregate balances of other accounts held by the account holder. For new Individuals the threshold determination should be based on the account opening balance.

As will be noted in the detail provided in this submission, analysis of the IGA requires examination of a large number of technical considerations, the expertise on which will be found within industry. The ABA proposes the formation of a technical working group from the financial sector, convened by Treasury, the members of which could assist Treasury with operational knowledge and expertise, and could be the channel for access to further information as required. It is recommended that this working group include ABA, FSC, Abacus and ASFA representatives and other interested parties. The ABA has worked with the other industry bodies in the development of this submission.

Yours sincerely,



Tony Burke

Attachments

A: Analysis of obligations

B: Proposed list of exemptions to be considered for Model IGA

C: Glossary of terms

Attachment A: Analysis of Obligations

IGA Reference	Reporting	Competent Authority	Withholding/Non compliant	Question/ Assumption
A. Article 1. Definitions (Page 2)	IRS will publish a list identifying all Partner Jurisdictions			When and how often will it be refreshed?
A. Article 2: Exchange of information (page 8)	<p>1. US Reportable Account Report:</p> <ul style="list-style-type: none"> a. Name, Address, TIN of specified US person A/C holder b. For non US entity with specified US person “controlling persons”, Name, Address, US TIN (if any) of entity and controlling persons c. Account number d. Name/ID no. of Reporting FI e. Account Balance/Value (End of Calendar Year - EOY or other reporting period) f. Custodial: Total gross: interest, dividends, other income, sale of property proceeds g. Depository: Total gross interest h. Other A/C: Total gross amount paid (incl. redemptions) <p>2. United States reciprocal report (Reporting FIs):</p> <ul style="list-style-type: none"> a. Name, Address, TIN for FATCA partner resident A/C Holder b. Account number c. Name/ID No. of Reporting FI d. Gross interest e. Gross US source dividends f. Gross other US source income 			<ul style="list-style-type: none"> 1. What if transaction data is not able to be broken down into these transaction categories? 2. Assume that Owner documented FFIs are no longer required to be reported. 3. Additional Due Diligence obligation to include High Value “US Reportable Accounts” – this will require the addition of data for each year’s reporting. 4. Will the US Reciprocal reporting only be undertaken by US-FIs (in accordance with reporting FI definition) or will US Branches of P-FFIs also be required to provide this reporting? 5. Assume that closed/transferred accounts are excluded from reporting requirements <ul style="list-style-type: none"> a) for first year reporting as due diligence will not have commenced b) for ongoing years as this is not covered in the IGA. 6. Will filing extensions be available as per draft regulations 1.1471-4(d)(3)(vii)? 7. Address: For individual; assume residential address or if not held, customer mailing or account statement address. 8. Address: For entity; assume registered office address or if not held, entity mailing or account statement address. 9. How long will report data/output need to be retained? 10. Although IGA allows for alternative timings,

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				<p>this results in different report run dates and processes for multi nationals in IGA/non IGA jurisdictions. If an Australian tax year time frame is adopted, will data be required to be captured as at 30 June 2013 or 2014, rather than EOY 2013?</p> <p>11. Assume that Australian legislation will cover FIs to report the information locally without the need to update existing terms and conditions.</p> <p>12. Under 2 (5) (B) (Page 8) – should this refer to asset type rather than property?</p> <p>13. Under 2 (7) (Page 9) – first line should be amended to: (in the case of any financial account...)</p>
<p>B. Article 3: Time and Manner of Exchange of Information</p>	<p>1. General reporting:</p> <p>a. Amount/characterisation of payments: principles of local tax law</p> <p>b. Identification of report currency</p> <p>c. TIN exchange not required if not held – can replace with date of birth</p> <p>d. Exchange within 9 months of EOY except for year 2013 which can be exchanged by 30 Sept 2015 (Assume Govt to Govt exchange date not FI submission date)</p> <p>2. US reportable Account Report:</p> <p>a. 2013 and 2014: include 1a – 1e from A: Article 2</p> <p>b. 2015 year: add transaction requirements 1f – 1h from A: Article 2 except for Gross Proceeds</p> <p>c. 2016 year: add gross proceeds transactions</p> <p>3. United States reciprocal report:</p>	<p>Competent Authority Agreement:</p> <p>Competent authorities of partner and US will enter into agreement following mutual agreement procedure (Convention/TIEA) to:</p> <ul style="list-style-type: none"> • Establish procedures for info exchange • Prescribe rules/procedures for compliance enforcement • Provide for confidentiality/other protections/limitations of information use 		<p>1. From an entity perspective, what do we provide if we don't hold a TIN as there is no DOB (is it blank or date of incorporation?)</p> <p>2. ATO may have some specific requirement that will change our reporting outputs. Will reporting period also change to align with Aust/NZ tax years (see note at Article 2/10 re impact)?</p> <p>3. Amount and characterisation of payments should be updated to include "balance/value and payments". Assume that the definition at 1.1471-4(d)(4)(iii)(A) does not apply under an IGA and that existing methods of calculating balances or values will suffice.</p> <p>4. Will reporting still be required on IRS form (consistency of report output across IGA/non IGA jurisdictions) to reduce solution effort.</p> <p>5. It is recommended that a technical working group (chaired by Treasury) be established to enable FIs to be part of the process for</p>

IGA Reference	Reporting	Competent Authority	Withholding/Non compliant	Question/ Assumption
	<p>a. Commence all reporting from 2013</p> <p>4. Not required to obtain and include TIN in the exchanged information...</p>			<p>agreeing procedures and rules for information exchange, compliance enforcement and aligning current reporting frameworks under the Competent Authority Agreement.</p> <p>6. Will the calendar year apply to the identification/threshold classification of accounts, and the term “reportable year” to the reporting on relevant accounts to take into account different jurisdictions’ reporting timeframes?</p> <p>7. Re obtaining information under Article 3 para 4 – recommend removal of “obtain and” from the last sentence as we should not have to obtain DOBs but extract (ie, we don’t want to go back and ask DOBs where we don’t have them).</p>
<p>C. Article 4: Application of FATCA to Partner FI</p>	<p>Transitional NP-FFI Reporting:</p> <p>a. Name of each NP-FFI</p> <p>b. Aggregate amount of payments made in 2015 and 2016</p> <p>2. US Reportable Account Report:</p> <p>a. Include accounts held by recalcitrants as per Article 2 data and Article 3 timing (Assume that this replaces pooled reporting information)</p>		<p>1. Treatment of reporting FI:</p> <p>Except where enforcement action is undertaken, FI will be compliant and not subject to withholding if reporting under Articles 2 and 3 completed and:</p> <p>a. Identifies US reportable A/Cs annually</p> <p>b. All required information is reported</p> <p>c. Reporting is in timeframe and manner required</p> <p>d. Transitional NP-FFI reporting is completed</p> <p>e. Complies with registration requirements</p> <p>f. For QI, WFP or WFT (assuming primary WH resp.) withhold 30% of US Source Withholdable payment to NP-FFI</p> <p>g. Reporting FI (not described in 1f above) provides information to immediate payor of US Source Withholdable payment to enable withholding/reporting on NP-FFI</p>	<p>1. For transitional reporting, is this the total deposits to an account each year or is this payments made by the FFI? If the latter, this will be more difficult to extract than “total credit” processed to account.</p> <p>2. Assume that recalcitrant pooled reporting no longer required but now included in US Account Reporting.</p> <p>3. Assume that recalcitrant financial accounts only to be reported (ie non financial accounts not required).</p> <p>4. If contact needs to be made by the IRS with a recalcitrant account holder who is reported in the US person report, will this be done through the relevant FI to manage the customer experience? Many of these “recalcitrants” could be Australian tax residents who have not responded to FI requests.</p> <p>5. What definition applies for recalcitrants under an IGA?</p>

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			<p>2. Recalcitrant rules: Provided recalcitrant accounts are reported with all data in the "US Reportable Account Report":</p> <ul style="list-style-type: none"> • Withholding on recalcitrants is not required • Closure of recalcitrant accounts is not required <p>3. Retirement Plans:</p> <ol style="list-style-type: none"> 1. Retirement plans described in Annex II will be treated as deemed compliant/EBO 2. Rules: <ol style="list-style-type: none"> (i) entity must be established/located in/regulated by partner country or (ii) predetermined/contractual/legal arrangement operated to provide pension/retirement benefits or earn income for providing such benefits under partner laws and (iii) regulated contributions, distributions, reporting, sponsorship, taxation. <p>4. Deemed Compliant Treatment:</p> <ol style="list-style-type: none"> 1. Non-reporting partner FIs will be treated as Deemed Compliant or EBO <p>5. Compliant FIs with NP-FFI "Related Entities": If requirements at 1 are met, or entity is described in 3 or 4, these will continue to be considered compliant even if they have an affiliate entity or branch that cannot comply due to jurisdictional law (and as such is an NP-FFI) if:</p> <ol style="list-style-type: none"> 1. The related entity/branch is treated as a NP-FFI for reporting/ withholding 2. The related entity/branch identifies itself as NP-FFI 3. It identifies/reports its US accounts to extent permitted under relevant country 	<ol style="list-style-type: none"> 6. When do account holders become recalcitrant ie can grace periods be applied for both new/pre-existing individual and entity ie 90 days in all cases? 7. Assume timeframes for any withholding obligations under an IGA will align with FATCA regulations? 8. Assume that no withholding will be required by the IGA FI, even for payments to NP-FFIs in non-partner countries? 9. How will grandfathering apply for an IGA FI (if at all) and if it does apply, will this align to the regulation date for capturing relevant grandfathered obligations? 10. What are the registration requirements under an IGA? Same as draft regulations to enable one process? Or will registration be with the local regulatory body? 11. What information does the reporting FI need to provide to the immediate payor of US Source withholdable payment? Can this be based on most recent account classification and assessment? How is this done per payment when most transaction processing is automated? 12. What happens for withholding if transaction processing does not have sufficient information to identify US Source withholdable payments (ie country of origin, type of payment? Does the regulation relating to knowledge custody and control apply? Is the obligation on the immediate US Payor to request necessary information from the FI as necessary? 13. No detailed statements regarding self managed super funds have been provided. These should be covered under the Deemed Compliant retirement plans.

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			<p>laws</p> <ol style="list-style-type: none"> 4. It does not solicit US accounts from Non Resident accountholders 5. It does not solicit accounts held by NP-FFIs not established in same country 6. Entity is not used to circumvent the FATCA agreement or regulation obligations 	<ol style="list-style-type: none"> 14. Will the specific rules and definitions for Deemed Compliant status also be included in the Annex II or will these be drawn from Draft Regulations definitions? 15. The requirement to report on all payments to NPFFI would require due diligence to be performed on all customers and investors, including those that do not hold financial accounts with the FFI. This requirement should be restricted to payments in relation to financial accounts that are within the scope of FATCA due diligence as required under Annex I. 16. As the IGA does not cover offshore branches of Australian FFI, the IGA should clarify whether there is a need to enter into separate FFI agreements with the IRS in respect of the offshore branches or whether registration would suffice. 17. The management of registration and obligations for multinational financial institutions requires clarification. A financial institution may need to meet the obligations under an IGA in some countries while still needing to adhere to the more complex requirements of the Regulations in other countries that are not in IGA jurisdictions 18. Under Article 4, it is assumed that no withholding by a partner FFI is required unless this is a Qualified Intermediary. This assumes that the partner country will enact legislation to allow for withholding tax to be collected for the IRS.
<p>D. Article 5: Collaboration on Compliance and Enforcement</p>		<p>1. Minor and Administrative Errors:</p> <ol style="list-style-type: none"> a. Terms to be agreed in Competent Authority Agreement (as per Article 3.1a-c) b. Competent Authority can inquire direct with Reporting FI 		<ol style="list-style-type: none"> 1. We recommend that FIs feed into this process to via the establishment of a technical working group chaired by Treasury. 2. What is the expected timeframe to negotiate the content of the Competent Authority Agreement? 3. The Competent Authority Agreement should

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		<p>on admin/minor errors re incorrect/incomplete reporting or agreement infringements (notification of direct FI contact can be required in the agreement)</p> <p>2. Significant Non Compliance:</p> <p>a. Significant non-compliance with Agreement obligations will be notified to the Competent Authority (for the party concerned), who must apply its domestic law (including penalties) to address the non compliance</p> <p>b. For Reporting FI, if enforcement actions do not resolve non compliance (within 18 months of notification), U.S. will treat the FI as a NP-FFI (updated into IRS list of NP-FFIs)</p> <p>3. Reliance on Third Party Service Providers:</p> <p>a. Authority may allow Reporting FIs to rely on third party service providers to fulfil their obligations, but FI remains responsible</p> <p>4. Avoidance Prevention:</p> <p>a. Authorities will implement requirements to prevent FIs from adopting practices intended to circumvent the reporting under this agreement</p>		<p>allow for direct contact with FIs on minor/administrative errors via the nomination of a contact person for each FI.</p> <p>4. If a Related Entity FI (i.e. one owned by a Reporting FI in an IGA jurisdiction) is in a Non IGA jurisdiction and the Related Entity FI does not comply with related entity rules (NP-FFI), what impact will this have on the compliant status of the Reporting FI?</p> <p>5. Assume that the Reporting FI Entity registration will still exist but will this be to the IRS direct or via the local regulatory body?</p> <p>6. What are the implications of treating an FI as a NP-FFI in an IGA jurisdiction? Will other FIs have to withhold on relevant passthru payments made to that FI? Will FIs have to check the list to identify these entities? How frequently will updates be issued and how often will FIs be obligated to check the list and compare against customer base and/or FI dealings?</p> <p>7. Avoidance prevention should be limited to FIs implementing internal procedures to minimise additional work effort.</p>

IGA Reference	Reporting	Competent Authority	Withholding/Non compliant	Question/ Assumption
<p>D. Article 6: Mutual commitment to continue to enhance Effectiveness of Information Exchange and Transparency</p>	<p>1. Reciprocity:</p> <p>a. US Government acknowledges need to achieve equivalent levels of reciprocal info exchange and to further improve transparency/ enhance exchange relationship by pursuing adoption of regulations/ supporting legislation to achieve equivalent exchange</p> <p>2. Development of Common Reporting and Exchange Model:</p> <p>a. Parties commit to working with other partners (and OECD/EU on adapting the terms of Agreement to a common model for automatic exchange of information, including development of reporting and due diligence standards for FIs</p> <p>3. Documentation and Reporting of TINs (post 2017):</p> <p>For pre-existing accounts maintained as at 1 January 2014:</p> <p>a. US commits to establish by 1 January 2017 (for 2017 reporting onwards) rules to obtain and report the partner TIN of account holders or reportable accounts</p> <p>b. Partner commits to establish by 1 January 2017 (for 2017 reporting onwards) to obtain the U.S. TIN of each specified US Person for US Reportable Accounts Reporting</p>		<p>1. Treatment of Passthru Payments/Gross Proceeds:</p> <p>a. Parties commit to work together to develop a practical/effective alternative to achieve policy obligations for foreign passthru payment and gross proceeds withholding that minimises the compliance burden</p>	<p>1. Item 2 specifically calls out other partners (and OECD/EU) to adapt terms of Agreement to a common model for automatic information exchange, including development of reporting and due diligence standards for FIs. Does this mean the Due Diligence procedures are not yet final? Will Aust/NZ have the opportunity to influence?</p> <p>2. Partner commitment to obtain US TIN for specified US persons. Does this mean that W-9 forms will still be considered valid if they do not contain a US TIN prior to 1/1/2017?</p> <p>3. Australian FIs will need to be involved in the development of a workable approach for dealing with the policy obligations of foreign passthru payments/gross proceeds. Article 7 states consultation will be completed on Article 6 prior to 31 December 2016. Any changes will require sufficient system change lead times. Is it intended that withholding on gross proceeds (currently 1/1/15) and foreign passthru payments (currently 1/1/17) will be postponed?</p> <p>4. Para 4 of Article 6 commits the partner country to establish rules for the collection and reporting of US TIN, notwithstanding that paragraph 4 of Article 3 provides a carve out for pre-existing accounts where a DOB is available. Clarification is sought as to whether it is a requirement to collect US TIN from pre-existing accounts after 2017.</p>
<p>E. Article 7: Term of Agreement</p>		<p>1. Completion of internal procedures:</p> <p>a. Parties will notify in writing</p>		<p>1. Entry into force needs to allow for FIs within the jurisdiction to meet the relevant procedures/ obligations. How long will Joint Statement negotiation take? How long to</p>

IGA Reference	Reporting	Competent Authority	Withholding/Non compliant	Question/ Assumption
		<p>when necessary internal procedures have been completed for entry into force.</p> <p>2. Entry into force:</p> <p>a. Agreement will enter into force on the later of 1 January 2013, or the date of the later of internal procedure notification.</p> <p>3. Termination:</p> <p>a. Agreement continues in force until terminated</p> <p>b. Either party can terminate by written notice. Effective on the first day of the month following expiration of a 12 month period (from notification date)</p> <p>4. Further amendment consultation:</p> <p>a. Parties will consult prior to 31 December 2016 to reflect progress on the commitments set forth in Article 6 and to make necessary Agreement amendments.</p>		<p>agree on IGA terms? What transitional arrangements will be in place to ensure FIs do not have to comply with Regulations obligations in the interim</p> <p>2. Transitional arrangements should be made to explicitly state that while the countries are negotiating the final form of the agreement in good faith, the partner country FFI should be treated as deemed compliant after the relevant obligation dates.</p> <p>3. Termination needs to consider a period of grace for FIs within the jurisdiction to revert to regulations requirements. Time period to comply may be insufficient to develop technology, process and procedure changes etc. Suggest a minimum of 18 months to make system changes.</p>

Due Diligence *(Identifying and reporting: US Reportable Accounts and NP-FFI Transactions)

IGA Reference	Amount:	Applies to:	Details	Treatment	Questions/ Assumptions
General: A			Reporting FATCA Partner FI must: Identify US Reportable Accounts and Accounts held by NP-FFIs in accordance with Annex I		
General: B			For purpose of the Agreement: <ol style="list-style-type: none"> 1. All dollar amounts shall be read to include the equivalent in non US currencies 2. The balance of value of an account will be determined as at the last day of the calendar year or other appropriate reporting period 3. Balance or value threshold determination at last day of calendar year to be made as at the last day of the reporting period that ends within that calendar year 3. Subject to the Individual High Value accounts requirements, an account will be treated as a US Reportable Account beginning as at the date it is identified as such by following the Due Diligence procedures. 4. US Reportable Account should be reported annually in the calendar year following the year in which the information relates (unless otherwise provided) 		Re Item 2, does this apply for New Account Due Diligence? It is not a practical solution to the problem.
General: C			FATCA Partners may allow their Reporting FATCA Partner FIs to rely on the procedures in the regulations to establish US Reportable Accounts and accounts held by a NP-FFI		<ol style="list-style-type: none"> 1. Will all FIs need to follow the same procedures, or will there be flexibility to apply regulations or IGA procedures as appropriate? 2. Can different procedures be followed for individuals versus entities, ie could individuals fall under the regulations but entities under the IGA?

IGA Reference	Amount:	Applies to:	Details	Treatment	Questions/ Assumptions
1. NEW INDIVIDUAL ACCOUNTS: (opened on or after 1 January 2014) Page 22					
A. Assess new Individual: Thresholds	USD \$50K or under	Depository account held by Individual	Not required to be reviewed, identified or reported as a "US Reportable account"		<ol style="list-style-type: none"> 1. Assumed this means a new depository account does not need to be reviewed, identified or reported unless it exceeds \$50K at the end of the relevant year. If correct, does this mean any due diligence for depository accounts (including collection of self-certification) does not occur upon account opening but at the end of the relevant year? This needs to be made clearer 2. Assume the \$50K threshold needs to be checked at the end of each calendar year.
	USD \$50K or under	Cash Value Insurance Contract held by an Individual	Not required to be reviewed, identified or reported as a "US Reportable account"		Questions as per depository accounts above
B. Due Diligence on other new Individual Account	USD \$50K and above	Financial accounts (assumed)	Upon account opening, Reporting Partner FFI must: <ol style="list-style-type: none"> a. Obtain self-certification (may be part of account open documentation) that allows the FI to determine whether the account holder is a US Resident for tax purposes (a US citizen is considered a US Resident for tax purposes even if the account holder is also a tax resident of another country). For example, this may include "I certify I am not a US Resident for tax purposes" and/or "are you a resident of another country for tax 		<ol style="list-style-type: none"> 1. The stated objective of the IGA alternative due diligence procedures is to simplify the process of due diligence and align with the requirements of local AML/LYC procedures. The requirement for self-certification could be onerous for all partner country FFIs. Further, the requirement for attestation for US tax status of all Australian consumers or the need to complete US-styled tax declaration forms under the penalties of perjury could be confusing for the general public. It is recommended that the nature and standard of "self-certification" should be

IGA Reference	Amount:	Applies to:	Details	Treatment	Questions/ Assumptions
			<p>purposes?"</p> <p>b. Confirm the reasonableness of the self-certification against the information obtained by the FI in connection with the account opening, including documentation collected for AML/KYC Procedures</p> <p>c. If the self-certification establishes the account holder is a US for tax purposes, the FI must obtain the US TIN (Form W-9 or other similar agreed form) and report the account as US.</p>		<p>clarified to minimise burden and confusion for the general public.</p> <p>2. Self certification in addition to a reasonableness test is more onerous than the obligations under the draft regulations for a review of US Indicia. Draft IGA should reduce rather than increase the obligations. This has a broad impact on the entire customer base rather than being limited to only those customers who are suspected of being US. The customer experience will be adversely affected.</p> <p>3. What self certification is sufficient for this purpose? A specific statement re the account holder's US Tax residency status, or a more general question to request details of all tax residency status? What are the implications of asking a general question? Does the self-certification need to be made under penalty of perjury. Is a verbal self-certification sufficient?</p> <p>4. If a customer is opening multiple accounts at the same time, will one certification suffice?</p> <p>5. What is an FI to do if self-certification is not confirmed by a check of account opening documentation? Is this treated as a change in circumstances? IGA appears to be silent on this point, and specifically, what is required to be obtained from the account holder, (depending on what is found in the documents).</p> <p>6. Self-certification only after US indicia found in application/documentation supplied for onboarding would be a preferred option (so as not to apply to all customers where there is little or no likelihood of US Tax</p>

IGA Reference	Amount:	Applies to:	Details	Treatment	Questions/ Assumptions
					<p>Status)</p> <ol style="list-style-type: none"> 7. An alternative form of self-certification is to allow by way of inclusion in the terms and conditions the requirements for the consumer to inform the FFI of their US status, if relevant, rather than requiring the accountholder to make attestation using US tax forms or other similarly agreed forms. 8. It is imperative that the self-certification process should be simple and not burdensome for the vast majority of Australians who do not have any connection with the US. 9. Is a reasonableness check only a review for US Indicia? Any broader review would be time consuming and more onerous than the draft regulations. 10. The reasonableness test relies on information obtained in connection with the account opening. For a pre-existing customer opening a new account, additional documentation is not necessarily collected. Assume that that a further reasonableness test is not required. 11. Where an FI cannot rely on initial self-certification (because of a change in circumstances), the FI is to collect a valid self-certification. It is not clear what 'valid' means in this context. Does it require another self-certification (and is this under penalty of perjury)? Does it require supporting forms and/or documentation? 12. Does a grace period still apply? 13. Can we move away from US tax forms if we are under an IGA and rely on AML/KYC

IGA Reference	Amount:	Applies to:	Details	Treatment	Questions/ Assumptions
					<p>documents as sufficient confirmation of non US status?</p> <p>14. It is noted that the existing standard for substitute form for W-8BEN is very strict and it is a requirement that the substitute form must :</p> <ul style="list-style-type: none"> • Contain the penalties of perjury statement; and • Cannot require the customer to make declarations on matters not related to the certification. It needs to be a standalone form and not part of an account opening form. <p>15. If W-8BENs are still required, these should not expire and should be able to be relied upon unless there is a change in circumstance.</p> <p>16. If a TIN is not provided is the W-9 valid?</p> <p>17. If the declaration is part of Terms and Conditions when opening an account, does this mean the document does not expire as per AML/KYC?</p> <p>18. How do customers self certify for phone or online applications? Is a verbal statement acceptable or is some sort of IVR or other selection required?</p> <p>19. Assume that documents are not required to be retained in line with Australian AML/KYC identity verification obligations.</p> <p>20. When a new account is opened for a pre-existing customer before the pre-existing account due diligence is completed, if the relevant obligations have been attended to, and status confirmed, the pre-existing account should be able to be classified based on the new account result rather than needing to contact the customer again to classify the pre-existing account (unless different indicia are located during</p>

IGA Reference	Amount:	Applies to:	Details	Treatment	Questions/ Assumptions
					the electronic search)
2. PRE-EXISTING INDIVIDUAL ACCOUNTS: (opened as at 31 December 2013) Page 16					
A. Assess pre-existing Individual: Thresholds	USD \$50K or under (as at 31 December 2013)	Financial accounts (assumed)	Not required to be reviewed, identified or reported as a "US Reportable account"		<ol style="list-style-type: none"> 1. Assume that this applies to the financial account total. 2. Assume that if the balance meets the threshold as at 31 Dec 2013, no further checking of the account is required (besides a check as to whether it exceeds the High Value threshold at the end of subsequent calendar years).
	USD \$250K or under (as at 31 December 2013)	Cash Value Insurance Contracts and Annuity Contracts held by an Individual	Not required to be reviewed, identified or reported as a "US Reportable account"		Assume that if the balance meets the threshold as at 31 Dec 2013, no further checking of the account is required (besides a check as to whether it exceeds the High Value threshold at the end of subsequent calendar years).

<p>2. PRE-EXISTING INDIVIDUAL ACCOUNTS: (opened as at 31 December 2013) Page 17</p>					
<p>B. Complete electronic search for US Indicia (by 31 December 2015)</p>	<p>“Lower Value Accounts”: - USD \$50K and above (but less than USD \$1M) (as at 31 December 2013)</p>	<p>Financial accounts (excluding Cash value)</p>	<p>The Reporting Partner FI must review electronically searchable data for any of the following US Indicia:</p> <ul style="list-style-type: none"> a. US Citizen or Resident Account holder b. US Place of Birth (Unambiguous) c. Current US Mailing or Residence address (incl. US PO Box or US “in care of”) d. Current US telephone number e. Standing instructions to transfer funds to an account maintained in the US f. Currently effective “Power of Attorney” or “Signatory Authority” granted to a person with a US Address g. “In care of” or “Hold Mail” sole address (For lower value assessment, an in care of outside the US will not be treated as a US indicium) 	<p>If US Indicia are found, account must be treated as a “US Reportable Account” (unless the FI decides to obtain further supporting forms or documentation from the account holder)</p> <p>If no US Indicia are found in the electronic search, no immediate action is required</p>	
	<p>- USD \$250K and above (but less than USD \$1M) (as at 31 December 2013)</p>	<p>Cash Value Insurance Contracts and Annuity Contracts</p>			
<p>C. US Indicia found and FI elects to contact customer for documentation (by 31 December 2015)</p>	<p>As Above</p>	<p>“Lower Value Accounts” where US Indicia was found in electronic search</p>	<p>The FI is not required to treat an account as a “US Reportable Account” if the FI obtains or has previously reviewed (and maintains a record of) the following documents (as appropriate for Indicia type):</p> <ul style="list-style-type: none"> a. US Place of Birth (unambiguous): <ol style="list-style-type: none"> 1. Self certification that Account Holder is not a US Citizen/resident for tax purposes (Form W-8 or similar agreed form), 2. Non US Passport or other government issue ID evidencing the Account Holder’s non US citizenship/nationality and 	<p>If the documents are held or obtained, then account is not required to be treated as a “US Reportable Account”. If not held, then account must be reported.</p>	<ol style="list-style-type: none"> 1. If paper based, assume that current AML/KYC retention periods will apply. 2. Can “reasonable explanation” be verbal? If not verbal, what format is required, and is this required under penalty of perjury? 3. Assume that some countries will not have Government Issued ID. 4. The collection, storage and access to Australian tax file numbers (TFNs) are restricted by Privacy Regulations. TFNs are currently required on the W-8 forms

			<p>3. Copy of Certificate of Loss of Nationality <u>or</u></p> <p>4. Reasonable explanation of the reason why:</p> <ol style="list-style-type: none"> a. A certificate is not held despite renouncing citizenship b. Account Holder did not obtain US citizenship at birth <p>b. US Mailing/Residence address, only US Telephone numbers held:</p> <ol style="list-style-type: none"> 1. Self certification that Account Holder is not a US Citizen/resident for tax purposes (Form W-8 or similar agreed form), <u>and</u> 2. Non US Passport or other government issue ID evidencing the Account Holder's non US citizenship/nationality <p>c. Standing Instructions to A/C in US:</p> <ol style="list-style-type: none"> 1. Self certification that Account Holder is not a US Citizen/resident for tax purposes (Form W-8 or similar agreed form), <u>and</u> 2. Documentary Evidence to establish non US status (any of the following): <ol style="list-style-type: none"> a. Certificate of Residence issued by local tax official of the country Account Holder claims to be resident b. Authorised Government ID that includes the individuals name c. Financial Statement, Third party credit report, bankruptcy filing, US SEC report <p>d. Current Power of Attorney/Signature Authority (granted to person with US Address), "in care of" or "hold mail" sole address, US and local telephone numbers held:</p> <ol style="list-style-type: none"> 1. Self certification that Account Holder is not a US Citizen/resident for tax purposes (Form 		<p>and need to be considered as part of the IGA, for a possible law change.</p>
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			W-8 or similar agreed form), or 2. Documentary evidence (assumed to be same as above) establishing Account Holders non US status		
2. PRE-EXISTING INDIVIDUAL ACCOUNTS: ENHANCED REVIEW (Cont.) Page 19-20					
D. Complete electronic search for High Value Accounts	“High Value Accounts”: - USD \$1M and above (as at 31 December 2013)	Financial accounts (excl. Cash value)	The Reporting Partner FI must review electronically searchable data for any of the following US Indicia: a. US Citizen or Resident Account holder b. US Place of Birth (Unambiguous) c. Current US Mailing or Residence address (incl. US PO Box or US “in care of”) d. Current US telephone number e. Standing instructions to transfer funds to an account maintained in the US f. Currently effective “Power of Attorney” or “Signatory Authority” granted to a person with a US Address g. “In care of” or “Hold Mail” sole address (For lower value assessment, an in care of outside the US will not be treated as US indicia)	If US Indicia is found, account must be treated as a “US Reportable Account” (unless the FI decides to obtain further supporting forms or documentation from the account holder) If no US Indicia is found in the electronic search, assess whether sufficient data is held and apply Relationship Manager (RM) Enquiry. If sufficient data held, then no paper search is required, but if not, the paper search must be completed at G.	Assume that account holder data to be searched.
		Cash Value Insurance Contracts and Annuity Contracts			
E. Assess High Value Data Sufficiency	As Above	“High Value Accounts” to determine if paper based search is required in addition to	If the Reporting FI’s electronically searchable information contains the following data, then a paper based search is not required in addition to the electronic search: a. Nationality/Residence status of Account	If this information is held, no paper based search is required for High Value Accounts	1. The data requirement does not match the search criteria. They should be identical. 2. The Standing Instructions criteria require a more expansive coverage of local transfers, but search criteria are US which

		electronic search	<p>Holder</p> <p>b. Residence and Mailing Address of Account Holder</p> <p>c. Telephone number</p> <p>d. Standing Instructions to transfer funds in the account to another account (including an account at another branch of the FI or another FI)</p> <p>e. "In care of" or "hold mail" address of Account Holder</p> <p>f. Power of Attorney or Signatory Authority for account</p>		has no relationship to local payments?
F. Complete Relationship Manager Enquiry (Actual knowledge of US persons)	As above	"High Value Accounts"	<p>The Reporting Partner FI must determine:</p> <p>a. Accounts that have an RM assigned (including accounts aggregated with the A/C)</p> <p>b. If the RM has actual knowledge the Account Holder is a Specified US Person</p>	For all High Value Accounts, treat any accounts identified by the RM as held by a Specified US Person, as "US Reportable Accounts".	<p>1. If no contact is made with the customer to verify before reporting, an incorrect treatment could be applied. What are the ramifications of reporting incorrectly?</p> <p>2. Assume that RMs will be "correct" unless notified otherwise by client or Competent Authority.</p>
G. Complete search of paper based records	As above	"High Value Accounts"	<p>If the electronically searchable databases do not include fields for and capture of all the information covered at row E, the Reporting FI must review the:</p> <p>1. Current Customer Master File and the following documents (to the extent they are not held in the Customer Master File):</p> <p>a. Most recent Documentary Evidence collected for A/C</p> <p>b. Most recent Account Opening contract or documentation</p> <p>c. Most recent Documentation obtained by the FI for AML/KYC/Other regulatory purposes</p> <p>d. Power of Attorney or Signature Authority forms (currently in effect)</p> <p>e. Standing Instructions to transfer funds (currently in effect)</p>	<p>If US Indicia is found, account must be treated as a "US Reportable Account" (unless the FI decides to obtain further supporting forms or documentation from the account holder)</p> <p>If no US Indicia is found in the paper based search and RM Inquiry does not identify the Account Holder as a Specified US Person, then no immediate action is required.</p>	<p>1. Should be a limit to "most recent" documents. Suggest within currently held files at the FFI and within 3 years currency.</p> <p>2. What if documents cannot be located (e.g. old depository accounts)? Access to paper based documentation can be difficult and costly if document recall is required.</p> <p>3. Assume that we only rely on documents that we have on file, with no requirement to get new documents).</p>

H. Completion date	As above	“High Value Accounts”	All High Value review procedures must be completed by 31 December 2014	If an account is identified as a “US Reportable Account”, the first report must include the information for both the 2013 and 2014 years.	Assume that status must be back captured into the report for the year of customer identification? This will result in manual intervention of report output.
I. Accounts that have undergone enhanced review do not need to be repeated in subsequent years	As above	“High Value Accounts” that have already been through an “enhanced review process”	If a Reporting Partner FI has completed the enhanced review of a High Value account, the procedures are not required to be reapplied to the same account in subsequent years.	Enhanced review should not be reapplied to the same accounts	RM inquiry should only be applied every 3 years, not yearly.
3. INDIVIDUAL ACCOUNTS: MAINTENANCE					
A. New Individual Account Holder “Change in Circumstances”	Above new individual exclusion thresholds	Any new financial account not already excluded under a threshold amount	If a maintenance activity occurs that might indicate a change in circumstances (eg awareness of US Indicia update), the FI must ensure the self certification provided by the Account Holder at account opening is not incorrect or unreliable. If the original self certification is incorrect or unreliable, obtain a new “valid” self certification to establish whether the account holder is a US Citizen/Resident for tax purposes, or if unable to obtain, the FI must treat the account holder as a “US Reportable Account”.	Either obtain fresh self certification or treat as “US Reportable Account”	<ol style="list-style-type: none"> 1. Assume a change in circumstances in this respect is only US Indicia. 2. What is a new ‘valid’ self certification in this context? 3. What is the grace period for changes in circumstances? 4. If an existing accountholder, with no US indicia, opens a new account, does self-certification need to occur for all subsequent accounts? Under AML/KYC, customer identification is carried out on a customer level, rather than based on each individual account opening 5. What is the determination date of a change in circumstances? Could it be at the event or at the end of the year?
B. Pre-existing Individual	Above pre-existing exclusion thresholds	Any pre-existing financial account not already excluded under a threshold	If a maintenance activity occurs that might indicate a change in circumstances (eg awareness of one or more US Indicia being associated with the account), the FI must either	Treat as “US Reportable Account” or elect to obtain verifying documents.	<ol style="list-style-type: none"> 1. What is considered a change in circumstances in this respect? Only US Indicia? 2. What is the grace period for changes in

		amount (including those accounts previously assessed as High Value)	treat the account as a "US Reportable Account" or elect to obtain verifying documents as per row 2.C (this document) to determine how the account should be treated.		circumstances?
C. Pre-existing Individual accounts retest to identify High Value Accounts	Retest accounts to determine those over \$1M (as at end of each subsequent year)	Pre-existing accounts previously under a threshold Pre-existing accounts previously over threshold but not previously treated as High Value	Identify any accounts that exceed the High Value balance threshold (but have not previously undergone an Enhanced Review). Complete the High Value Enhanced review (refer 2D-2I) within 6 months of the end of previous calendar year.	If the enhanced review results in an account being treated as a "US Reportable account", then the account must be included in the report for the calendar year in which it was identified as a High Value account (as well as subsequent years).	<ol style="list-style-type: none"> 1. The result of Item 1 is that the reporting from FIs can never be finalised until after mid-year eg 2015 calendar year report must have High Value added to it by end of 6 month timeframe, but the balance, transaction and other data would need to have been extracted at the end of the 2015 year. 2. Is the retest for all accounts considered "below threshold" and accounts considered "lower value"?
D. Annual RM Knowledge Test: Identify Indicia change	High Value accounts	High Value accounts	Reporting Partner FI must implement procedures to ensure that a Relationship Manager identifies any change of circumstances for a High Value account eg new mailing address in the US or other Indicia update. If identified, required documentation must be obtained as appropriate for the US Indicia.	Treat the account as appropriate for the Indicia type and documentation obtained.	Unrealistic to have the RM responsible for such procedures. Ongoing electronic identification of maintenance that results in US Indicia should be sufficient. This could be completed, say, quarterly or half yearly as a check.
4. NEW ENTITY ACCOUNTS: (opened on or after 1 January 2014) Page 26					Will thresholds also be available for new entities in line with pre-existing due diligence?

A. Determination only for certain new entity types	NA	Accounts held by entities opened on or after 1 January 2014	<p>The Reporting Partner FI must determine whether the account holder is:</p> <ul style="list-style-type: none"> i. Specified US person ii. FATCA Partner FI or Partner Jurisdiction FI iii. Participating-FFI, Deemed Compliant FFI, EBO or Excepted FFI (as those terms are defined in the regulations) or iv. Active NFFE or Passive NFFE 	Classify as appropriate entity type based on certification/documents provided in Due Diligence steps.	<ol style="list-style-type: none"> 1. Is any grace period applied for new entity account opening? 2. Some entity classifications are duplicated between Item iii (draft regulations definition) and Active NFFE (IGA): how can correct classifications be determined or will the definitions in the final regulations be updated to reflect the changes in the IGA eg Excepted FFIs, Exempt Beneficial Owners etc are listed separately and are then duplicated in the Active NFFE definition?
B. Documentation for certain new entity types	NA	Accounts held by entities opened on or after 1 January 2014	<p>The Reporting Partner FI can reasonably determine the status of the following entity types based on information that is either publicly available or already held by the FI:</p> <ul style="list-style-type: none"> i. Active NFFE ii. FATCA Partner FI or Partner Jurisdiction FI <p>For all other entity types, a self certification must be obtained from the Account Holder to establish the Account Holders status.</p>		<ol style="list-style-type: none"> 1. ATO captures the type of business. Will this be made available to FI's to enable an easier assessment, and will this be sufficient to enable an assessment of status? 2. In reasonably determining that an entity is an Active NFFE, must the publicly available information/information already held demonstrate all aspects of the Active NFFE definition, or is it sufficient for the publicly available information to show, for example, an active business registration only, rather than the actual nature of business? For some businesses, there would be no publicly available information which verifies all of (1) that there is an active business (2) that it is a non-financial business AND (3) that it is a non US entity 3. What is the definition of "publicly available"? 4. Does information include internally completed CIP forms where information may not be supported by documentation? Form is stored as evidence. 5. If the customer provides a self certification for Active NFFEs, FATCA Partner Financial Institutions or Partner Jurisdiction

					<p>Financial Institutions, is this acceptable in lieu of the FI accessing information held or publicly available?</p> <p>6. What format does self certification take for an entity – account opening docs are not covered in the IGA? Is this to be taken under penalty of perjury?</p>
C. Treatment based on new entity type: reportable types	NA	Accounts held by entities opened on or after 1 January 2014	<p>The Reporting Partner FI must treat the entity Account Holder according to the following types:</p> <ol style="list-style-type: none"> Specified US person: “Treat as US Reportable Account” Passive NFFE: Apply existing AML/KYC procedures to identify “Controlling Persons” and then determine whether any “Controlling Person” is a US Citizen/Resident based on a self certification from the account holder or the controlling person. If there are any US “Controlling Persons”, then the account should be treated as a “US Reportable Account”. 	Treat as “US Reportable Account”	<ol style="list-style-type: none"> What happens when a Controlling person is a US listed entity? Assume natural person means individual only and no other controlling persons are required to be assessed or reported. Are we now required to capture beneficiaries / settlers for trusts (controlling persons)? Assume that if we do not collect today we do not need to collect tomorrow, eg assume reliance on existing AML/KYC only.
D. Treatment based on new entity type: non-reportable types Note: NP-FFI transitional reporting is still required			<p>If the account is one of the following, then it is not a “US Reportable Account” and reporting is not applicable:</p> <ol style="list-style-type: none"> US Person (but not a Specified US Person) FATCA Partner FI or Partner Jurisdiction FI Participating-FFI, Deemed Compliant FFI, EBO. Excepted FFI (as those terms are defined in the regulations) Active NFFE Passive NFFE where none of the “Controlling Persons” is a US Citizen/Resident NP-FFI (including a FATCA Partner FI or Partner Jurisdiction FI that has been identified by the IRS as a NP-FFI due to 	<p>Don’t treat as “US Reportable Account”.</p> <p>For Item 6 where a FATCA Partner FI or Partner Jurisdiction FI has been identified by the IRS as a NP-FFI due to significant non compliance, payments to the NP-FFI must be reported in the transitional transaction reporting requirements.</p>	Assume that withholding does not apply to NP-FFIs in this case, only transitional reporting?

			significant non compliance)		
5. PRE-EXISTING ENTITY ACCOUNTS: (opened as at 31 December 2013) Page 23					
A. Determination only for certain new entity types	NA	Accounts held by entities opened on or after 1 January 2014	The Reporting Partner FI must apply the pre-existing entity account rules and procedures to identify: i. "US Reportable Accounts" ii. Accounts held by NP-FFIs		Assume self certification of nature of business is sufficient for classification
B. Pre-existing entity account threshold: not subject to review	USD \$250k or less (as at 31 December 2013)	Financial Accounts (assumed)	Not required to be reviewed, identified or reported as US Reportable Accounts until account balance exceeds USD \$1M		
C. Pre-existing entity account threshold: subject to review	Greater than USD \$250k (as at 31 December 2013)	Financial Accounts (assumed)	Must be reviewed in accordance with the Due Diligence procedures (refer E) to determine whether the account is held by: i. One or more Specified US Persons ii. Passive NFFEs with one or more "Controlling Persons" who are US Citizens/Residents iii. NP-FFIs		
D. Pre-existing entity account: accounts for which reporting is required	Greater than USD \$250k (as at 31 December 2013)	Financial Accounts (assumed)	Only accounts held by one or more entities that meet the following criteria are to be treated as " US Reportable Accounts ": i. Specified US Persons ii. Passive NFFEs with one or more		It is assumed the draft regulations obligations in relation to: a. document expiry, b. capture of date/received/reviewed by c. validity of documentation

			<p>“Controlling Persons” who are US Citizens/ Residents</p> <p>Accounts held by NP-FFIs will be treated as accounts for which aggregate payments are required to be reported under the Transitional NP-FFI reporting for 2015 and 2016.</p>		<p>are no longer required and that existing requirements for AML/KYC will suffice. IGA appears silent on this.</p>
<p>E. Detailed review Procedures</p>	<p>Greater than USD \$250k (as at 31 December 2013)</p>	<p>Financial Accounts (assumed)</p>	<p>A. Review information maintained for regulatory or customer relationship purposes (including information collected for AML/KYC) to determine whether the entity account holder is a:</p> <ol style="list-style-type: none"> 1. US Person: Relevant information includes a US Place of Incorporation/ organisation or a US address. If the information indicates a US person, account must be treated as a “US Reportable Account” unless the Account Holder provides a self certification that it is not a “Specified US person”, or FI uses publicly available information or information already held to reasonably determine that the account holder is not a “Specified US Person” 2. Financial Institution (non US): If information held indicates an FI, the account is not a “US reportable account”. <p>B. Determine Non-Participating FFI:</p> <ol style="list-style-type: none"> a. If Account Holder is a FATCA Partner FI or a Partner Jurisdiction FI, no further review, identification or reporting is required for the account, unless the FI is being treated by the IRS as a NP-FFI due to significant non compliance. b. If Account Holder is not a FATCA Partner FI or Partner Jurisdiction FI, then the account must be treated as an NP-FFI if: <ol style="list-style-type: none"> i. a self certification (Form W-8 or 	<p>Only US person entities will be treated as “US Reportable Accounts” unless entity provides a self certification that it is not a “Specified US Person” (or FI uses information to assess not specified US person).</p> <p>NP-FFIs are required to have their transactions reported as transitional reporting for 2015 and 2016 years.</p> <p>P-NFFE with Controlling Persons who are citizens/residents of the US should be treated as a US Reportable account</p>	<ol style="list-style-type: none"> 1. Assume that this applies to aggregate of financial accounts. 2. Are vostros out of scope under IGA as FI's are non-reportable (might have to classify but not report) 3. What is a self certification for Item 1 if information is insufficient to make a determination? 4. What is to be collected for FIs in different countries under an IGA? Is there an EIN for a country or an EIN per FI as per regulations? 5. For Item B, Assume that this is also based on the same review of information as per A. 6. Will there be multiple W-8BEN forms, ie one for regulations and one for IGA, or will the substantial ownership test be altered to match the controlling person's residency/citizenship assessment?

			<p>similar agreed form) has not been provided to confirm the entity is a Certified Deemed Compliant FFI, EBO or Excepted FFI (as those terms are defined in relevant regulations), or</p> <p>ii. a Participating FFI or Registered Deemed Compliant FFI identification number cannot be verified on a published IRS FFI list.</p> <p>C. Remaining Entities: For entities not identified as US Persons or FIs, the following must be determined (using the guidance provided below, however the order can change):</p> <p>a. Identify whether the entity has “Controlling Persons” by relying on information collected and maintained for AML/KYC</p> <p>b. Identify whether the entity is a “Passive NFFE” by obtaining self certification from the Account Holder on W-8, W-9 or similar agreed form unless the FI holds information or information is publicly available to determine it is an A-NFFE</p> <p>c. Whether any of the entity’s “Controlling Persons” are US Citizens/ Residents and have an account balance of over USD\$1M, by</p> <p>i.</p> <p>ii. obtaining a self certification on Form W-8, W-9 or other similar agreed form from either the Account Holder or the “Controlling Person”</p>		
F. Completion date	Greater than USD \$250k (as at 31 December 2013)	Financial Accounts(assumed)	All review procedures must be completed by 31 December 2015		

5. ENTITY ACCOUNTS: MAINTENANCE					
A. Pre-existing Entity accounts retest to identify High Value Accounts	Retest accounts to determine those over \$1M (as at end of each subsequent year)	Pre-existing accounts previously under a threshold	Identify any accounts that exceed the High Value balance threshold and complete the required review (refer 5E) within 6 months of the end of previous calendar year.		RM enquiry should only be applied every 3 years and not annually.
B. Pre-existing Entity accounts change of circumstance	Above pre-existing exclusion thresholds	Any pre-existing financial account not already excluded under a threshold amount (including those accounts previously assessed as High Value)	If a maintenance activity occurs that might indicate a change in circumstances (and reason to know that the self certification or other documentation is unreliable or incorrect) the FI must complete the required review (refer 5E) to determine the status of the account.		
Special Rules and Definitions – Page 30 – special Aggregation rule	c. Account Balance Aggregation 3. Special Aggregation Rule Applicable to RMs				Assume that it will not be necessary to aggregate across FIs (even if they are part of an affiliated group) for the RM test/query.

Attachment B – Proposed list of exemptions to be considered for Model IGA

No.	Product/Entity Name:	Plain Language description of the product/financial account or entity type	Supporting Reasons for exemption	Tax/Legal references & specific exemption criteria (to be incl. in IGA)	Type of exemption: EBO, DC-FFI, Exempt product/account, other	Any other supporting comments/criteria relevant to proposed exemption
A.	Entities					
1.	Regulated Pension and Superannuation Entities	Pension and superannuation funds that are regulated by governmental authorities (incl. Tax Authorities) supervising the activities of the funds	US Retirement Funds are exempt under FATCA, with definitions restricted to the US. May also be current under existing US TAX Treaty agreements. EG UK.	Dependent on existing Treaty agreements	Exempt Beneficial Owners	Align other country definitions of Retirements and/or pension entities to US definition
2.	Dormant or Non-trading entities awaiting windup	Non-operating entities waiting to be wound up.	No operating activities that will incur many payments (if any) in particular US payments.		Excepted entities	
3.	Holding companies of FIs and FFIs who have no customers or US sourced income		No activities that give rise to any payments including US FDAP or Passthru payments.		Excepted Entities or Certified Deemed Compliant - Non Reporting entities	
4.	Non-profit Organization (incl. Government approved charities)	<p>Certain non-profit organizations are income tax exempt. These include:</p> <ul style="list-style-type: none"> • Endorsed charities; • Endorsed Income tax exempt fund; and • Other non-profit organisations fit within the requirements of tax exemptions. <p>Charities and income tax exempt funds must be endorsed by the ATO for income tax exemption. Other organizations are also tax exempt if they are not charity or income tax exempt funds:</p> <p>These include:</p> <ul style="list-style-type: none"> • Community Service Organizations • Cultural Organizations • Public education institutions • Employment Organizations • Health Organizations 	<ul style="list-style-type: none"> • Australian not-for-profits organizations should be treated as either exempt beneficial owner or deemed compliant financial institutions for purposes of section 1471. • To the extent that an organization is accepted by the ATO as being income tax exempt, or endorsed as a charity or income tax exempt fund, such organization should be accepted as bona fide exempt organizations 	Organizations that are exempt from income tax under sec. 50-5 of the Income Tax Assessment Act 1997.	Exempt Beneficial Owner or deemed compliant	

No.	Product/Entity Name:	Plain Language description of the product/financial account or entity type	Supporting Reasons for exemption	Tax/Legal references & specific exemption criteria (to be incl. in IGA)	Type of exemption: EBO, DC-FFI, Exempt product/account, other	Any other supporting comments/criteria relevant to proposed exemption
		<ul style="list-style-type: none"> • Resource Development Organizations • Scientific Organizations • Sporting Organizations <p>These organizations are self-assessed in respect of their income tax exempt status.</p> <p>The government announced its intention to establish a new independent statutory agency to regulate non-profit organizations, the Australian Charities and Not-for-profits Commission and will commence operations from October 2012. Initially, the Commission will focus on the determination of charitable status.</p>				
5.	Managed Investment Trust	<p>A Managed Investment Trust is defined under Income Tax Assessment Act 1997.</p> <p>For a trust to qualify as a MIT in relation to an income year, the following criteria (set out in <u>subsection 12-400(1)</u>) must be satisfied:</p> <ul style="list-style-type: none"> • Either the trustee must be an Australian resident or the central management and control of the trust must be in Australia at or before the time of the first fund payment in relation to the income year. • The trust must not be: <ul style="list-style-type: none"> ○ a trading trust (in the case of a unit trust) in relation to the income year, or ○ carrying on or able to control a trading business (in the case of other trusts) at any time in the income year. • A significant proportion of the investment management activities in respect of all specified assets of the trust must be carried out in Australia throughout the income year. • At the time of the first fund payment, the trust must be a MIS (as defined by section 9 of the Corporations Act). • At the time of the first fund payment, the trust must 	<ul style="list-style-type: none"> • Although Australian MIT can accept U.S. residents as unit holders, but non-resident unit holders are subject to reporting and withholding tax in respect of Australian source payments. • The granting of deemed compliant status for funds that do not actively solicit overseas investors can provide a relief for the Australian funds industry from the compliance burden of FATCA. • If certain safeguards are required, the additional criteria can include: <ul style="list-style-type: none"> • 95% accounts by value held by residents; and • Certain restrictions on provision of accounts on specified U.S. persons not residents of Australia. 	An entity that is a MIT for the purposes of Income Tax Assessment Act 1997.	Deemed Compliant	

No.	Product/Entity Name:	Plain Language description of the product/financial account or entity type	Supporting Reasons for exemption	Tax/Legal references & specific exemption criteria (to be incl. in IGA)	Type of exemption: EBO, DC-FFI, Exempt product/account, other	Any other supporting comments/criteria relevant to proposed exemption
		<p>be either a registered MIS or a MIS that meets additional requirements and is not required to be registered.</p> <ul style="list-style-type: none"> • The trust must satisfy a relevant 'widely held' requirement in relation to the income year. • The trust must not be 'closely-held' at any time in the income year, and • If the trust is an unregistered MIS, it must satisfy licensing requirements at the time of the first fund payment. <p>Specified assets</p> <p>The specified assets are assets that, at any time in the income year, are:</p> <ul style="list-style-type: none"> • situated in Australia • taxable Australian property, or • shares, units or interests listed for quotation in the official list of an approved stock exchange in Australia. <p>Licensing requirements</p> <p>A trust will satisfy the licensing requirements if it is operated or managed by:</p> <ul style="list-style-type: none"> • the holder of an Australian Financial Services Licence • an authorised representative of the holder of an Australian Financial Services Licence • an entity that would be required under the Corporations Act to hold a financial services licence but for subsection 5A(4) of that Act (state controlled entities), or • an entity that is a wholly-owned subsidiary of such an entity and that would be required to hold a financial services licence but for an instrument 	<ul style="list-style-type: none"> • Any further restrictions should not impose a large administrative burden on MITs in performing due diligence. 			

No.	Product/Entity Name:	Plain Language description of the product/financial account or entity type	Supporting Reasons for exemption	Tax/Legal references & specific exemption criteria (to be incl. in IGA)	Type of exemption: EBO, DC-FFI, Exempt product/account, other	Any other supporting comments/criteria relevant to proposed exemption
		<p>issued by ASIC.</p> <p>Although a MIT is a flow through vehicle and not subject to tax, unit holders are subject to tax in respect of their share of their present entitlement to trust income, whether distributed or not.</p> <p>Further, a payment by a MIT is subject to MIT withholding in respect of payments that are not referable to dividends, interest or non taxable capital gains. Dividends and interest component of a fund payment are subject to separate withholding tax. The MIT withholding tax rate is 15% in relation to payments to U.S. residents.</p> <p>A MIT is required to report to the ATO in respect of all payments made to resident and non-resident unit holders.</p>				
6.	Venture Capital Limited Partnership	<p>Under Income Tax Assessment Act 1997, tax concession is available to 4 types of limited partnership investing in venture capital:</p> <ul style="list-style-type: none"> • Venture Capital Limited Partnerships • Early Stage Venture Capital Partnerships; • Australian Venture Capital Fund of Funds; and • Venture Capital Management Partnerships. <p>These funds can only invest in eligible venture capital investments.</p> <p>These limited partnerships can be formed under the laws of Australia or under the laws of Canada, France, Germany, Japan, the UK or the US (or other prescribed countries). A partner can be a resident of any country that has a tax treaty with Australia. Eligible venture capital partners are required to be registered with Innovation Australia.</p>	<ul style="list-style-type: none"> • Limited partnerships are the preferred vehicle for Venture Capital investments worldwide. • Venture Capital partnerships are tax favoured investment. • Foreign investors that are exempt from tax in their country of residence qualify for the capital gains tax exemption. The exemption is also available to foreign investors that own no more than 10% of a limited partnership. 	Limited Partnerships registered under the Venture Capital Act 2002 and satisfy the requirements of sec. 118-425 of the Income Tax Assessment Act 1997.	Deemed compliant FFI or tax favoured product for investors that qualify for exemption under s. 118-420 of the Income Tax Assessment Act.	
7.	Employee Share Schemes	An employee share scheme is a scheme under which ESS interests in a company are provided to employees,	Equivalency of CSOPs to UK/US IGA ESS provide a significantly	Income Tax Assessment Act (1997), namely:	Deemed Compliant FFI and/or EBO	This is equivalent to the UK Company Share Option Plans

No.	Product/Entity Name:	Plain Language description of the product/financial account or entity type	Supporting Reasons for exemption	Tax/Legal references & specific exemption criteria (to be incl. in IGA)	Type of exemption: EBO, DC-FFI, Exempt product/account, other	Any other supporting comments/criteria relevant to proposed exemption
		<p>or associates of employees, (including past or prospective employees) of: (a) the company; or (b) subsidiaries of the company; in relation to the employees' employment.</p> <p>An employee share trust, for an employee share scheme, is a trust whose sole activities are:</p> <p>(a) obtaining *shares or rights in a company; and</p> <p>(b) ensuring that * ESS interests in the company that are beneficial interests in those shares or rights are provided under the employee share scheme to employees, or to * associates of employees, of:</p> <p>(i) the company; or</p> <p>(ii) a subsidiary of the company; and</p> <p>(c) other activities that are merely incidental to the activities mentioned in paragraphs (a) and (b).</p>	<p>low risk of evasion from US taxes. The contributions to the scheme represent remuneration for the employee in respect of employment and hence relatively low value on an account holder basis.</p>	<ul style="list-style-type: none"> Employee Share Scheme as being a scheme that meets the definition in Section 83A-10(2) of the ITAA 1997; and Employee Share Trust as being a Trust that meets the definition in Section 130-85(4) of the ITAA 1997. 		<p>(under Schedule 4 of the Income Tax (Earnings and Pensions) Act 2003 included in Annexure 2 of the UK/US IGA.</p>
8.	Securitisation Trust	<p>A securitisation vehicle is a special purpose vehicle which is used to package a portfolio of relatively illiquid assets into marketable securities that are sold into the capital markets. The assets that are securitised include residential and commercial mortgages, lease receivables and other illiquid assets.</p> <p>The vehicle would normally acquire the assets from the originators, eg a bank, and would raise funds from investors by the issuance of debt securities.</p> <p>The securities can be issued domestically or overseas.</p>	<ul style="list-style-type: none"> Securitisation trusts are very common vehicles in Australia as Australia has one of the largest securitisation markets in the world. Securitisation vehicles are normally cash flow neutral and do not have resources to fund additional administrative burden of performing due diligence. Debt issuance can be traded in secondary markets or be eligible for repo. There could be difficulties in identifying the beneficial owners of the 	<p>Securitisation vehicle as defined under sec. 820-942 of the Income Tax Assessment Act 1997</p>	Deemed compliant	Securitisation Trust

No.	Product/Entity Name:	Plain Language description of the product/financial account or entity type	Supporting Reasons for exemption	Tax/Legal references & specific exemption criteria (to be incl. in IGA)	Type of exemption: EBO, DC-FFI, Exempt product/account, other	Any other supporting comments/criteria relevant to proposed exemption
			<p>debt interests.</p> <ul style="list-style-type: none"> Deemed compliant status should be granted to securitisation vehicles which are not intended to be marketed to the U.S. markets. 			
9.	Listed Investment Company	<p>A Listed Investment Company (LIC) is an Australian resident that is required to be listed in the Australian Stock Exchange and with 90% of the market value of its assets consists of permitted investments, being equity investments, financial instruments or active assets to derive income. Australian resident non-company shareholders receive a special LIC discount concession on the capital gains proportion of any dividends. For non-residents, the special benefits are not available and are subject to full dividend withholding tax (subject to treaty relief), on the unfranked portion of any dividends.</p>	<ul style="list-style-type: none"> A LIC is a tax favoured investment product. A LIC is prima facie a FFI as its business is investment in permitted securities. Although a LIC is required to be listed in the Australian Stock Exchange, being an exchange designated under the Limitation of Benefits article with the U.S., it may not necessarily satisfy the turnover test stated in the draft regulations. As a LIC is a listed "closed fund", it does not actively solicit new investors. However, as it is a listed product, it cannot restrict its investors to resident shareholders. A LIC only receives concession treatment on its distribution if it satisfies the requirements of the s. 115-290 Income Tax Act 1997. The tax concession is only available for resident 	<p>A Listed Investment Company that satisfy the requirements of sec. 115-290 of the Income Tax Assessment Act 1997.</p>	<p>Certain other Tax-Favoured Accounts or Products</p>	

No.	Product/Entity Name:	Plain Language description of the product/financial account or entity type	Supporting Reasons for exemption	Tax/Legal references & specific exemption criteria (to be incl. in IGA)	Type of exemption: EBO, DC-FFI, Exempt product/account, other	Any other supporting comments/criteria relevant to proposed exemption
			<p>shareholders.</p> <ul style="list-style-type: none"> Given the non-concessional nature of return, a LIC is not a vehicle for tax avoidance by non-residents. A LIC is required to be reported to the Australian Taxation Office in respect of distributions made to all shareholders and withholding tax withheld on non-residents. 			
B.	Products					
1.	Regulated Superannuation and Pension fund products	WRAP Accounts, Superannuation Savings, etc.	<ul style="list-style-type: none"> Given that Regulated Pension and Superannuation Fund entities are exempt, products should also be included 	Dependent on existing Treaty agreements	Exceptions – Certain Savings Accounts	Align other country definitions of Retirements and/or pension fund accounts to US definition
2.	Mortgage offset accounts	Depository accounts that are linked to home loans. Interest on the home loan is calculated on the difference between the outstanding loan less the balance of the offset account.	<ul style="list-style-type: none"> Although mortgage offset accounts are technically depository accounts, they must always be linked to a loan, which is not a financial account under FATCA Offset accounts minimise interest payments under the mortgage and present low tax evasion risk. 	N/A	Exempt product	Since the nature of offset accounts is their balance is always less than the loan balance, the overall account's value (i.e. mortgage and offset accounts) is always in debit. When the mortgage is paid out, offset accounts are switched back to regular depository accounts and it is at this point that they will fall under the financial account definition
3.	Superannuation-linked Insurance products	Insurance products that are linked to superannuation	<ul style="list-style-type: none"> Since these insurance products are only available if linked to superannuation, they should be excluded as part of the superannuation 	N/A	Exempt product	If such insurance products are offered without superannuation, they would be caught. We are only proposing exemption when the insurance is linked to

No.	Product/Entity Name:	Plain Language description of the product/financial account or entity type	Supporting Reasons for exemption	Tax/Legal references & specific exemption criteria (to be incl. in IGA)	Type of exemption: EBO, DC-FFI, Exempt product/account, other	Any other supporting comments/criteria relevant to proposed exemption
			exemption. <ul style="list-style-type: none"> As a package, these products present a low risk of tax evasion 			superannuation and offered as a package.
5.	First Home Saver Account	First Home saver accounts are special account to save for the deposit in buying a first home. The features include: <ul style="list-style-type: none"> Eligibility for persons not having previously owned a dwelling in Australia as their main residence. The accountholder is required to provide the tax file number to the account provider. The government contributes equal to 17% of contribution up to a maximum cap (\$935 for 2012). There is an annual statutory account balance cap and no contributions can be made to the account above the cap limit. The funds can only be used to buy or build a new home or contribute to a mortgage. All interest earned on the accounts are tax exempt. However, the account provider is taxed at 15% on any earnings. 	<ul style="list-style-type: none"> These are special tax favoured accounts to encourage Australians to save for their first home. These accounts can only be opened by persons providing their Australian tax file number to the account providers. Therefore, non-residents with no presence in Australia cannot open this account. The earnings on the accounts are taxed to the account provider. 	These accounts are established under the First Home Saver Accounts Act 2008	Exempt Product	
6.	Statutory Trust Accounts	Statutory accounts are accounts opened by legal, conveyancing and real estate professions who are required to hold client monies in trust to meet their specific State/Territory and industry based legislative obligations. In accordance with legislative requirements, no credit interest is paid to the accountholder. Interests earned are paid to the relevant government or industry body.	<ul style="list-style-type: none"> These are accounts that can only be opened by certain professions to deposit client money. These accounts do not earn interest for the accountholders and interests earned are paid to the relevant Government or industry bodies. The same account could be used by the same professional on account for a large number of clients and 	Statutory accounts regulated under the relevant legislations: ACT <ul style="list-style-type: none"> <i>Legal Profession Act 2006</i> <i>Agents Act 2003</i> NSW <ul style="list-style-type: none"> <i>Legal Profession Act 2004</i> <i>Property, Stock and Business Agents Act</i> 	Exempt Product	

No.	Product/Entity Name:	Plain Language description of the product/financial account or entity type	Supporting Reasons for exemption	Tax/Legal references & specific exemption criteria (to be incl. in IGA)	Type of exemption: EBO, DC-FFI, Exempt product/account, other	Any other supporting comments/criteria relevant to proposed exemption
			<p>the accountholder is not the beneficial owner of the money. This would make the due diligence process extremely complex as the accountholder would continuously be required to disclose to the bank as to the details of clients.</p>	<p>2002</p> <ul style="list-style-type: none"> • <i>Conveyancers Licensing Act 2003</i> <p>NT</p> <ul style="list-style-type: none"> • <i>Legal Profession Act</i> • <i>Agents Licensing Act</i> • <i>Unit Titles Act</i> <p>Queensland</p> <ul style="list-style-type: none"> • <i>Legal Profession Act 2007</i> • <i>Property Agents and Motor Dealers Act 2000</i> <p>South Australia</p> <ul style="list-style-type: none"> • <i>Legal Practitioners Act 1981</i> • <i>Conveyancers Act 1994</i> <p>Tasmania</p> <ul style="list-style-type: none"> • <i>Legal Profession Act 2007</i> • <i>Property Agents and Land Transactions Act 2005</i> • <i>Conveyancing Act 2004</i> <p>Victoria</p> <ul style="list-style-type: none"> • <i>Legal Profession Act 2004</i> • <i>Conveyancers Act 2004</i> <p>Western Australia</p> <ul style="list-style-type: none"> • <i>Legal Profession Act 2008</i> • <i>Real Estate and Business Agents Act 1978</i> 		

No.	Product/Entity Name:	Plain Language description of the product/financial account or entity type	Supporting Reasons for exemption	Tax/Legal references & specific exemption criteria (to be incl. in IGA)	Type of exemption: EBO, DC-FFI, Exempt product/account, other	Any other supporting comments/criteria relevant to proposed exemption
				<ul style="list-style-type: none"> Settlement Agents Act 1981 		
7.	Education Savings Plan	The Education Savings Plan to assist with pre-school, primary, secondary and many university and TAFE courses.	<p>A plan designed to provide educational funding.</p> <p>The plan operates as a 'scholarship plan' under tax laws, which means it offers certain advantages not generally available through other savings and investment products</p>		Exempt product	
8.	Youth Saver Accounts	Deposit accounts only available to children	<ul style="list-style-type: none"> Children pose low risk of evasion Due diligence processes are robust in identifying that account holder is under 18 		Exempt product	
9.	Tertiary Saver Accounts	Deposit accounts only available to full-time tertiary students	<ul style="list-style-type: none"> Tertiary students pose a low risk of tax evasion Due diligence processes are robust in ensuring that the account holder is enrolled in a tertiary institution 		Exempt product	
10.	Employee Share Schemes	An employee share scheme is a scheme under which ESS interests in a company are provided to employees, or associates of employees, (including past or prospective employees) of: (a) the company; or (b) subsidiaries of the company; in relation to the employees' employment.	<ul style="list-style-type: none"> ESS provide a significantly low risk of evasion from US taxes. The contributions to the scheme represent remuneration for the employee in respect of employment and hence relatively low value on an account holder basis. 	<p>Income Tax Assessment Act (1997), namely:</p> <ul style="list-style-type: none"> Employee Share Scheme as being a scheme that meets the definition in Section 83A-10(2) of the ITAA 1997; and Employee Share Trust as being a Trust that meets the definition in Section 130-85(4) of the ITAA 1997. 	Exempt Product	

Attachment C: Glossary of Terms

Term or Abbreviation	Definition / Description	Additional Information	Questions/Assumptions
Account Holder	<p>The person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account.</p> <p>In the case of a Cash Value Insurance Contract or an Annuity Contract, The Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holders are any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract.</p> <p>Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.</p>		<p>For trusts, should the trustee or the trust be assessed when both parties are listed as holders of an account?</p>
Active NFFE	<p>Any NFFE that meets any of the following criteria:</p> <ol style="list-style-type: none"> a) Less than 50 percent of the NFFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 percent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income; b) The stock of the NFFE is regularly traded on an established securities market or the NFFE is a Related Entity of an Entity the stock of which is traded on an established securities market; c) The NFFE is organized in a U.S. Territory and all of the owners of the payee are bona fide residents of that U.S. Territory; d) The NFFE is a non-U.S. government, a government of a U.S. Territory, an international organization, a non-U.S. central bank of issue, or an Entity wholly owned by one or more of the foregoing; e) Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, and providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an NFFE will not qualify for this status if the NFFE functions (or holds itself out) as an 		<p>The definitions for this classification include classifications that are covered in the draft regulations, but some of the definitional content is different eg Excepted FFI for certain non FIs in process of liquidating has a 5 year requirement in the IGA but a 3 year requirement in the Draft regulations.</p> <p>These definitions should all be consistent, particularly for multinationals operating in both IGA & non IGA jurisdictions ie there should not be subtle differences in the requirements unless for an entirely unique IGA classification.</p> <p>It is confusing to use the same naming convention but apply different definitions for IGA versus regulations. Suggest that this be simplified eg:</p> <p>Suggested Classification: IGA Non Reportable NFFE IGA Excepted NFFE</p> <p>This classification seems to include the following classifications (but with some definitional differences from the draft regulations):</p> <ul style="list-style-type: none"> • <i>Active NFFE</i> • <i>Publicly Traded NFFE</i>

Term or Abbreviation	Definition / Description	Additional Information	Questions/Assumptions
	<p>investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;</p> <p>f) The NFFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;</p> <p>g) The NFFE primarily engages in financing and hedging transactions with or for Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; or</p> <p>h) The NFFE meets all of the following requirements:</p> <ol style="list-style-type: none"> i. It is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes; ii. It is exempt from income tax in its country of residence; iii. It has no shareholders or members who have a proprietary or beneficial interest in its income or assets; iv. The applicable laws of the Entity's country of residence or the Entity's formation documents do not permit any income or assets of the Entity to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the Entity's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the Entity has purchased; and v. The applicable laws of the Entity's country of residence or the Entity's formation documents require that, upon the Entity's liquidation or dissolution, all of its assets be distributed to a governmental Entity or other non-profit organization, or escheat to the government of the 		<ul style="list-style-type: none"> • <i>Excepted Territory NFFE</i> • <i>Exempt Beneficial Owners (excludes retirement plans):</i> Non US Govt, US Territory Govt, International Org, Non US central bank, entity wholly owned by one or more of the foregoing • <i>Excepted FFI:</i> Certain non financial entities liquidating/reorganising • <i>Excepted FFI:</i> Certain hedging/financing companies • <i>Excepted FFI:</i> Certain non financial holding company • <i>Certified Deemed Compliant:</i> Non-Profit Organisation

Term or Abbreviation	Definition / Description	Additional Information	Questions/Assumptions
	Entity's country of residence or any political subdivision thereof.		
Aggregation of Entity Accounts	For purposes of determining the aggregate balance or value of accounts held by an Entity, a Reporting [FATCA Partner] Financial Institution will be required to take into account all accounts held by Entities that are maintained by the Reporting [FATCA Partner] Financial Institution, or Related Entities, to the extent that the Reporting [FATCA Partner] Financial Institution's computerized systems link the accounts by reference to a data element such as client number or taxpayer identification number and allow account balances to be aggregated.		Presume Account definition applies from 1.1471-1(b)(1)(i) ie Financial accounts only
Aggregation of Individual accounts	For purposes of determining the aggregate balance or value of accounts held by an individual, a Reporting [FATCA Partner] Financial Institution will be required to aggregate all accounts maintained by the Reporting [FATCA Partner] Financial Institution, or Related Entities, but only to the extent that the Reporting [FATCA Partner] Financial Institution's computerized systems link the accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances to be aggregated. Each holder of a jointly held account will be attributed the entire balance or value of the jointly held account for purposes of applying the aggregation requirements described in this paragraph.		Presume Account definition applies from 1.1471-1(b)(1)(i) ie Financial accounts only Definition is different from the draft regulations and references "related entity" rather than member of its expanded affiliate group. Will the definitions be consistent in the regulations? Assumed that aggregation activity is only where systems already have this functionality ie system development is not required to meet this obligation
AML/KYC Procedures	Customer due diligence procedures of a Reporting [FATCA Partner] Financial Institution pursuant to the anti-money laundering or similar requirements of [FATCA Partner] to which such Reporting [FATCA Partner] Financial Institution is subject.		
Annuity Contract	A contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.		Definition different from draft regulations.
Cash Value	The greater of (1) The amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (2) The amount the policyholder can borrow under or with regard		Definition different from draft regulations.

Term or Abbreviation	Definition / Description	Additional Information	Questions/Assumptions
	<p>to the contract. Notwithstanding the foregoing, the term "Cash Value" does not include an amount payable under an Insurance Contract as:</p> <ol style="list-style-type: none"> 1. A personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against; 2. A refund to the policyholder of a previously paid premium under an Insurance Contract (other than under a life insurance contract) due to policy cancellation, decrease in risk exposure during the effective period of the Insurance Contract, or arising from a redetermination of the premium due to correction of posting or other similar error; or 3. A policyholder dividend based upon the underwriting experience of the contract or group involved. 		
Cash Value Insurance Contract	An Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value greater than \$50K.		
Competent Authority	<ol style="list-style-type: none"> (1) in the case of the United States, the Secretary of the Treasury or his delegate; and (2) in the case of [FATCA Partner], [] 		
Controlling Persons	<p>The natural persons who exercise control over an entity. In the case of a trust, such term means:</p> <ul style="list-style-type: none"> • the settlor, • the trustees, the protector (if any), • the beneficiaries or class of beneficiaries, and • any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term "Controlling Persons" shall be interpreted in a manner consistent with the Recommendations of the Financial Action Task Force. 		Current KYC/AML obligations do not necessarily require collection of the details/documents of the beneficiaries etc. Assumed that whatever is collected now is acceptable under the IGA and no additional assessment will be required unless a self certification is specifically called for in the obligations.
Currency Translation Rule	For purposes of determining the balance or value of accounts denominated in a currency other than the U.S. dollar, a Reporting [FATCA Partner] Financial Institution must convert the dollar threshold amounts described in this Annex I into such currency using a published spot rate determined as of the last day of the calendar year preceding		For reporting purposes, it would be simpler to extract the EOY data and the EOY spot rate on the same day rather than retain the spot rate from the previous year for a full 12 months.

Term or Abbreviation	Definition / Description	Additional Information	Questions/Assumptions
	the year in which the Reporting [FATCA Partner] Financial Institution is determining the balance or value.		
			Note applicable to account definitions: There are subtle differences in the account /institution definitions. Will these be consistent with the regs or different?
Custodial Account	An account (other than an Insurance Contract or Annuity Contract) for the benefit of another person that holds any financial instrument or contract held for investment (including, but not limited to, a share or stock in a corporation, a note, bond, debenture, or other evidence of indebtedness, a currency or commodity transaction, a credit default swap, a 5 swap based upon a nonfinancial index, a notional principal contract, an Insurance Contract or Annuity Contract, and any option or other derivative instrument).		
Custodial Institution	Any entity that holds, as a substantial portion of its business, financial assets for the account of others. An entity holds financial assets for the account of others as a substantial portion of its business if the entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 percent of the entity's gross income during the shorter of: (i) the three-year period that ends on the December 31 (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the entity has been in existence.		
Depository Account	Includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. A Depository Account also generally includes an amount held by an insurance company under an agreement to pay or credit interest thereon.		
Depository Institution	Any entity that accepts deposits in the ordinary course of a banking or similar business. 1. A certificate of residence issued by an appropriate tax official of the country in which the payee claims to be a resident. 2. With respect to an individual, any valid identification issued by an authorized government body (for example, a government or agency thereof, or a municipality), that includes the		

Term or Abbreviation	Definition / Description	Additional Information	Questions/Assumptions
	<p>individual's name and is typically used for identification purposes.</p> <p>3. With respect to an Entity, any official documentation issued by an authorized government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the country (or U.S. Territory) in which it claims to be a resident or the country (or U.S. Territory) in which the Entity was incorporated or organized.</p> <p>4. With respect to an account maintained in a jurisdiction with anti money laundering rules that have been approved by the IRS in connection with a QI agreement (as described in relevant U.S. Treasury Regulations), any of the documents other than a Form W-8 or W-9 referenced in the jurisdiction's attachment to the QI agreement for identifying individuals or entities.</p> <p>5. Any financial statement, third-party credit report, bankruptcy filing, or U.S. Securities and Exchange Commission report.</p>		
Documentary Evidence	<p>For purposes of Annex I, acceptable documentary evidence includes any of the following:</p> <p>1. A certificate of residence issued by an appropriate tax official of the country in which the payee claims to be a resident.</p> <p>2. With respect to an individual, any valid identification issued by an authorized government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes.</p> <p>3. With respect to an Entity, any official documentation issued by an authorized government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the country (or U.S. Territory) in which it claims to be a resident or the country (or U.S. Territory) in which the Entity was incorporated or organized.</p> <p>4. With respect to an account maintained in a jurisdiction with anti money laundering rules that have been approved by the IRS in connection with a QI agreement (as described in relevant U.S. Treasury Regulations), any of the documents</p>		<p>Documentary evidence removes the requirement for address. Assume this will also be updated in regulations.</p>

Term or Abbreviation	Definition / Description	Additional Information	Questions/Assumptions
	<p>other than a Form W-8 or W-9 referenced in the jurisdiction's attachment to the QI agreement for identifying individuals or entities.</p> <p>5. Any financial statement, third-party credit report, bankruptcy filing, or U.S. Securities and Exchange Commission report.</p>		
Entity	A legal person or a legal arrangement such as a trust.		
Equity Interest	In the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership. In the case of a trust that is a Financial Institution, an Equity Interest means an interest held by a person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Specified U.S. Person will be treated as being a beneficiary of a foreign trust if such Specified U.S. Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.		
FATCA Partner	means [].		Assumed Country
[FATCA Partner] Financial Institution	<p>(i) any Financial Institution resident in [FATCA Partner], but excluding any branches of such Financial Institution that are located outside [FATCA Partner], and</p> <p>(ii) any branch of a Financial Institution not resident in [FATCA Partner], if such branch is located in [FATCA Partner].</p>		
[FATCA Partner] Reportable Account	<p>means a Financial Account maintained by a Reporting U.S. Financial Institution if:</p> <p>(i) in the case of a Depository Account, the account is held by an individual resident in [FATCA Partner] and more than \$10 of interest is paid to such account in any given calendar year; or</p> <p>(ii) in the case of a Financial Account other than a Depository Account, the Account Holder is a resident of [FATCA Partner], including entities that certify that they are resident in [FATCA Partner] for tax purposes, with respect to which U.S. source income that is subject to reporting under chapter 3 or chapter 61 of subtitle A of the U.S. Internal Revenue Code is paid or credited.</p>		
[FATCA Partner] TIN	A [FATCA Partner] taxpayer identifying number.		For certain jurisdictions, privacy regulation issues will need to be assessed in relation to the TIN.
Financial Account	An account maintained by a Financial Institution, and includes:		

Term or Abbreviation	Definition / Description	Additional Information	Questions/Assumptions
	<p>(1) in the case of an entity that is a Financial Institution solely because it is an Investment Entity, any equity or debt interest (other than interests that are regularly traded on an established securities market) in the Financial Institution;</p> <p>(2) in the case of a Financial Institution not described in subparagraph 1(s)(1) above, any equity or debt interest in the Financial Institution (other than interests that are regularly traded on an established securities market), if</p> <p>(i) the value of the debt or equity interest is determined, directly or indirectly, primarily by reference to assets that give rise to U.S. Source Withholdable Payments, and</p> <p>(ii) the class of interests was established with a purpose of avoiding reporting in accordance with this Agreement; and</p> <p>(3) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a non investment linked, non transferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit provided under an account, product, or arrangement identified as excluded from the definition of Financial Account in Annex II. Notwithstanding the foregoing, the term "Financial Account" does not include any account, product, or arrangement identified as excluded from the definition of Financial Account in Annex II.</p>		

Term or Abbreviation	Definition / Description	Additional Information	Questions/Assumptions
Financial Institution	Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.		<p>Change in terminology from the draft regulations. The greatest difference arises for investment entities and vehicles which has been broadened under the IGA. The following types of entities may now be captured that were not previously regarded as FIs under the draft regulations:</p> <ul style="list-style-type: none"> • entities that purely hold and invest in cash and do not engage in investment; • pure financial advisers - to the extent they could be managing their client's portfolio or managing/administering funds on behalf of their clients; • portfolio managers - while not holding funds for others, such entities are most likely engaging in 'portfolio management' and/or administering funds or money for others; • stock brokers and fund investment advisers • entities that invest in asset classes not captured by FATCA - e.g. real estate - on the basis that they are investing on behalf of other persons <p>Assumed family trusts and other investment vehicles that are not run as a business and do not engage in activities on behalf of customers are outside the scope of FI under the IGA and would be treated as Passive NFFEs.</p>
Insurance Contract	A contract (other than an Annuity Contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.		
Investment Entity	<p>Any entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the 3 following activities or operations for or on behalf of a customer:</p> <p>(1) Trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;</p> <p>(2) Individual and collective portfolio management; or</p>		Refer Financial Institution

Term or Abbreviation	Definition / Description	Additional Information	Questions/Assumptions
	(3) Otherwise investing, administering, or managing funds or money on behalf of other persons. This subparagraph 1(j) shall be interpreted in a manner consistent with similar language set forth in the definition of "financial institution" in the Financial Action Task Force Recommendations.		
IRS	The U.S. Internal Revenue Service.		
NFFE	Any Non-U.S. Entity that is not an FFI as defined in relevant U.S. Treasury Regulations, and also includes any Non-U.S. Entity that is resident in [FATCA Partner] or other Partner Jurisdiction and that is not a Financial Institution		Assume regulations will be updated to reflect the IGA as some definitions have been altered for the various types of NFFEs. (Current definitions in draft regulations are different)
Non participating Financial Institution	A non participating FFI, as that term is defined in relevant U.S. Treasury Regulations, but does not include a [FATCA Partner] Financial Institution or other Partner Jurisdiction Financial Institution other than a Financial Institution identified as a Non participating Financial Institution pursuant to paragraph 2 of Article 5.		What is the required treatment of NP-FFI classification under Para 2 of Article 5?
Non-Reporting [FATCA Partner] Financial Institution	Any [FATCA Partner] Financial Institution, or other entity resident in [FATCA Partner], that is identified in Annex II as a Non-Reporting [FATCA Partner] Financial Institution or that otherwise qualifies as a deemed-compliant FFI, an exempt beneficial owner, or an excepted FFI under relevant U.S. Treasury Regulations.		
Non-U.S. Entity	An Entity that is not a U.S. Person.		
Partner Jurisdiction	A jurisdiction that has in effect an agreement with the United States to facilitate the implementation of FATCA.	The IRS will publish a list identifying all partner jurisdictions	
Partner Jurisdiction Financial Institution	(i) Any Financial Institution resident in a Partner Jurisdiction, but excluding any branches of such Financial Institution that are located outside the Partner Jurisdiction, and (ii) Any branch of a Financial Institution not resident in the Partner Jurisdiction, if such branch is located in the Partner Jurisdiction.		
Passive NFFE	Any NFFE that is not an Active NFFE.		
Pre-existing Account	A Financial Account maintained by a Reporting Financial Institution as of December 31, 2013.		
Related Entity	Another Entity if either Entity controls the other Entity, or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50 percent of the vote or value in an Entity. Notwithstanding the foregoing, [FATCA Partner] may treat an Entity as not a Related Entity of another Entity if the two		

Term or Abbreviation	Definition / Description	Additional Information	Questions/Assumptions
	Entities are not members of the same expanded affiliated group as defined in section 1471(e)(2) of the U.S. Internal Revenue Code.		
Reportable Account	A U.S. Reportable Account or a [FATCA Partner] Reportable Account, as the context requires.		
Reporting [FATCA Partner] Financial Institution	Any [FATCA Partner] Financial Institution that is not a Non-Reporting [FATCA Partner] Financial Institution.		
Reporting Financial Institution	A Reporting [FATCA Partner] Financial Institution or a Reporting U.S. Financial Institution, as the context requires.		
Reporting U.S. Financial Institution	(i) any Financial Institution that is resident in the United States, but excluding any branches of such Financial Institution that are located outside the United States, and (ii) any branch of a Financial Institution not resident in the United States, if such branch is located in the United States, provided that the Financial Institution or branch has control, receipt, or custody of income with respect to which information is required to be exchanged under subparagraph (2)(b) of Article 2 of this Agreement.		Assume this includes US Branches of P-FFI's?
Specified Insurance Company	Any entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Financial Account.		
Special Aggregation Rule Applicable to Relationship Managers	For purposes of determining the aggregate balance or value of accounts held by a person to determine whether an account is a High Value Account, a Reporting [FATCA Partner] Financial Institution shall also be required, in the case of any accounts that a relationship manager knows or has reason to know are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts.		
Specified U.S. Person	A U.S. Person, other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a member of the same expanded affiliated group, as defined in section 1471(e)(2) of the U.S. Internal Revenue Code, as a corporation described in clause (i);		

Term or Abbreviation	Definition / Description	Additional Information	Questions/Assumptions
	<ul style="list-style-type: none"> (iii) the United States or any wholly owned agency or instrumentality thereof; (iv) (iv) any State of the United States, any U.S. Territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing; (v) any organization exempt from taxation under section 501(a) or an individual retirement plan as defined in section 7701(a)(37) of the U.S. Internal Revenue Code; (vi) any bank as defined in section 581 of the U.S. Internal Revenue Code; (vii) any real estate investment trust as defined in section 856 of the U.S. Internal Revenue Code; (viii) any regulated investment company as defined in section 851 of the U.S. Internal Revenue Code or any entity registered with the Securities Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-64); (ix) any common trust fund as defined in section 584(a) of the U.S. Internal Revenue Code; (x) any trust that is exempt from tax under section 664(c) of the U.S. Internal Revenue Code or that is described in section 4947(a)(1) of the U.S. Internal Revenue Code; (xi) a dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State; or (xii) a broker as defined in section 6045(c) of the U.S. Internal Revenue Code. 		
United States	The United States of America, including the States thereof, but does not include the U.S. Territories. Any reference to a "State" of the United States includes the District of Columbia.		
U.S. Person	<p>A U.S. citizen or resident individual, a partnership or corporation organized in the United States or under the laws of the United States or any State thereof, a trust if</p> <ul style="list-style-type: none"> (i) a court within the United States would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust, 		

Term or Abbreviation	Definition / Description	Additional Information	Questions/Assumptions
	and (ii) (ii) one or more U.S. persons have the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the United States. This subparagraph 1(ff) shall be interpreted in accordance with the U.S. Internal Revenue Code.		
U.S. Reportable Account	A Financial Account maintained by a Reporting [FATCA Partner] Financial Institution and held by one or more Specified U.S. Persons or by a Non-U.S. Entity with one or more Controlling Persons that is a Specified U.S. Person. Notwithstanding the foregoing, an account will not be treated as a U.S. Reportable Account if such account is not identified as a U.S. Reportable Account after application of the due diligence procedures in Annex I.		
U.S. Source Withholdable Payment	Any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income, if such payment is from sources within the United States. Notwithstanding the foregoing, a U.S. Source Withholdable Payment does not include any payment that is not treated as a withholdable payment in relevant U.S. Treasury Regulations.		
U.S. Territory	American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands.		
U.S. TIN	A U.S. federal taxpayer identifying number.		

The following definitions should be added to the IGA:

Reporting: Address for Individuals

Reporting: Address for Entities

Reporting: Account number

Recalcitrants

Grace Period

Publicly Available

Self Certification

Valid

Change in circumstances