



United States of America No. 2 (2013)

Exchange of Notes

between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America
Updating and Amending the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA done at London on 12 September 2012

Washington, 3 June 2013 and 7 June 2013

[The Exchange of Notes is not in force]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
June 2013*

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EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA UPDATING AND AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA TO IMPROVE INTERNATIONAL TAX COMPLIANCE AND TO IMPLEMENT FATCA DONE AT LONDON ON 12 SEPTEMBER 2012.

No. 1

British Embassy, Washington to United States Department of State.

British Embassy

Washington D.C

Note No: 044 / 2013

The Embassy of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the United States Department of State and refers to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA, signed on 12 September 2012 (“the Agreement”) which has not yet entered into force.

Following discussions between the Competent Authorities of the United Kingdom of Great Britain and Northern Ireland and the United States of America, the Embassy of the United Kingdom of Great Britain and Northern Ireland proposes, on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland that the Agreement be amended by deleting Annex II and replacing it with the following:

“ANNEX II

NON-REPORTING UK FINANCIAL INSTITUTIONS AND PRODUCTS

General

This Annex II may be updated by a mutual agreement entered into between the Competent Authorities of the United Kingdom and the United States: (1) to include additional entities, accounts, and products that present a low risk of being used by U.S. Persons to evade U.S. tax and that have similar characteristics to the entities, accounts, and products identified in this Annex II as of the date of entry into force of the Agreement; or (2) to remove entities, accounts, and products that, due to changes in circumstances, no longer present a low risk of being used by U.S. Persons to evade U.S. tax. Procedures for reaching such a mutual agreement may be included in the mutual agreement described in paragraph 6 of Article 3 of the Agreement.

I. **Exempt Beneficial Owners.** The following categories of institutions are Non-Reporting United Kingdom Financial Institutions that are treated as exempt beneficial owners for purposes of section 1471 of the U.S. Internal Revenue Code:

A. **UK Governmental Organisations, any political subdivision of the UK Government or any wholly owned agency or instrumentality of any one or more of the foregoing including:**

- The Devolved Administrations as per:
 - the Northern Ireland Act 1998 (updated by The Northern Ireland (St Andrews Agreement) Acts 2006 & 2007, and the Northern Ireland Act 2009)
 - the Scotland Act 1998
 - the Government of Wales Act 2006
- Local Government Authorities as per:
 - Section 33 of the Local Government Act 2003
 - the Local Government Act (NI) 1972 (as amended by The Local Government (Miscellaneous Provisions) Act (NI) 2010 and Local Government Finance Act (NI) 2011)
 - the Local Government etc. (Scotland) Act 1994

- the Local Government (Wales) Act 1994

B. **Central Bank**

The Bank of England and any of its wholly owned subsidiaries.

C. **International Organisations**

Any UK office of:

- The International Monetary Fund
- The World Bank
- The International Bank for Reconstruction and Development
- The International Finance Corporation
- The International Finance Corporation Order, 1955 (SI 1955 No.1954)
- The International Development Association
- The Asian Development Bank
- The African Development Bank
- The European Community
- The European Coal and Steel Community
- The European Atomic Energy Community
- The European Investment Bank
- The European Bank for Reconstruction and Development
- The OECD Support Fund
- The Inter-American Development Bank

D. **Retirement Funds**

- Any pension scheme or other retirement arrangement established in the United Kingdom and described in Article 3 (General Definitions) of the Convention, including pension funds or pension schemes covered by IRS Announcement 2005-30, 2005-1 C.B. 988, on the Mutual Agreement on U.K. Pension Agreements.
- The UK Pension Protection Fund

II. **Deemed-Compliant Financial Institutions.** The following categories of institutions are Non-Reporting United Kingdom Financial Institutions that are treated as deemed-compliant FFIs for purposes of section 1471 of the U.S. Internal Revenue Code:

A. **Charitable Organisations**

- Any entity registered as a charity with the Charity Commission of England and Wales
- Any entity registered with HMRC for charitable tax purposes
- Any entity registered as a charity with the Office of the Scottish Charity Regulator
- Any Community Amateur Sports Club if registered as such with HMRC

B. **Financial Institutions with a Local Client Base**

1. Any Financial Institution, including, but not limited to, any of the entities listed in this subparagraph 1, that meets the requirements of subparagraph 2, below:

- **Credit Unions** - a body corporate registered under the Industrial and Provident Societies Act 1965 as a credit union in accordance with the Credit Unions Act or a body corporate registered under the Credit Unions (Northern Ireland) Order 1985 or a body corporate registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 as a credit union
- **Industrial and Provident Societies** - an industrial and provident society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 (c. 12)
- **Friendly Societies** - a friendly society within the meaning of the Friendly Societies Act 1992 (c. 40)
- **Building Societies** - a building society incorporated or deemed to be incorporated under the Building Societies Act 1986 (c. 53)
- **Mutual Societies** - as defined in the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007
- **Community Interest Companies** – as defined in the Community Interest Company (Amendment) Regulations 2009.
- **Investment Trust Companies** - an Investment Trust Company where approved under Section 1158 of the Corporation Tax Act 2010 (CTA) and meets the requirements of The Investment Trust (Approved Company) (Tax) Regulations 2011 (S.I. 2011 No.2999)

- **Venture Capital Trusts** – a Venture Capital Trust where approved as such by HM Revenue and Customs under Chapter 3 Income Tax Act 2007.

2. A Financial Institution meets the requirements of this subparagraph 2 if it meets all of the following requirements:

a). The Financial Institution must be licensed and regulated under the laws of the United Kingdom;

b). The Financial Institution does not have a fixed place of business outside the United Kingdom. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the Financial Institution performs solely administrative functions.

c). The Financial Institution must not solicit account holders outside the United Kingdom. For this purpose, a Financial Institution shall not be considered to have solicited account holders outside of the United Kingdom merely because it operates a website, provided that the website does not specifically indicate that the Financial Institution provides accounts for or services to nonresidents or otherwise target or solicit U.S. customers or account holders. A Financial Institution will also not be considered to have solicited customers or account holders outside its country of incorporation or organisation merely because it advertises in print media or on a radio or television station that is distributed or aired primarily within its country of incorporation or organisation but is also incidentally distributed or aired in other countries, provided that the advertisement does not indicate that the Financial Institution maintains accounts for or provides services to nonresidents and does not otherwise target or solicit U.S. customers or account holders.

d). The Financial Institution must be required under the tax laws of the United Kingdom to perform either information reporting or

withholding of tax with respect to accounts held by residents of the United Kingdom;

- e). At least 98 percent of the accounts by value provided by the Financial Institution must be held by residents (including residents that are entities) of the United Kingdom or another Member State of the European Union;
- f). Subject to subparagraph 2(g), below, beginning on January 1, 2014, the Financial Institution does not provide accounts to (i) any Specified U.S. Person who is not a resident of the United Kingdom (including a U.S. Person that was a resident of the United Kingdom when the account was opened but subsequently ceases to be a resident of the United Kingdom), (ii) a Nonparticipating Financial Institution, or (iii) any Passive NFFE with Controlling Persons who are U.S. citizens or residents;
- g). On or before January 1, 2014, the Financial Institution must implement policies and procedures to monitor whether it provides any account held by a person described in subparagraph 2(f), and if such an account is discovered, the Financial Institution must report such account as though the Financial Institution were a Reporting United Kingdom Financial Institution or close such account;
- h). With respect to each account that is held by an individual who is not a resident of the United Kingdom or by an entity, and that is opened prior to the date that the Financial Institution implements the policies and procedures described in subparagraph 2(g), above, the Financial Institution must review those accounts in accordance with the procedures described in Annex I applicable to Preexisting Accounts to identify any U.S. Reportable Account or account held by a Nonparticipating Financial Institution, and must close any such accounts that were identified, or report on such accounts as though the Financial Institution were a Reporting United Kingdom Financial Institution; *and*

- i). Each Related Entity of the Financial Institution that is a Financial Institution must be incorporated or organized in the United Kingdom and, with the exception of any Related Entity that is a retirement fund described in paragraphs A through D of section II of this Annex II must meet the requirements set forth in this paragraph.

- j) The Financial Institution must not have policies or practices that discriminate against opening or maintaining Financial Accounts for individuals who are Specified U.S. Persons and residents of the United Kingdom.

C Certain Collective Investment Vehicles

In the case of an Investment Entity that is a collective investment vehicle regulated under the laws of the United Kingdom:

a) if all of the interests in the collective investment vehicle (including debt interests in excess of \$50,000) are held by or through one or more Financial Institutions that are not Nonparticipating Financial Institutions, such collective investment vehicle will be treated as a deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code, and the reporting obligations of any Investment Entity (other than a Financial Institution through which interests in the collective investment vehicle are held) will be deemed fulfilled with respect to interests in the collective investment vehicle; or

b) if the collective investment vehicle is not described in paragraph (a), consistent with paragraph 3 of Article 5 of the Agreement, if the information required to be reported by the collective investment vehicle under the Agreement with respect to interests in the collective investment vehicle is reported by the collective investment vehicle or another Investment Entity, the reporting

obligations of all other Investment Entities required to report with respect to the interests in the collective investment vehicle will be deemed fulfilled with respect to such interests.

D **Trustee-Documented Trusts**

A trust established in the United Kingdom to the extent that the trustee of the trust is a Reporting U.S. Financial Institution, Reporting Model 1 FFI, or Participating FFI and reports all information required to be reported pursuant to the Agreement with respect to all U.S. Reportable Accounts of the trust.

III. **Exempt Products.** The following categories of accounts and products established in the United Kingdom and maintained by a United Kingdom Financial Institution shall not be treated as Financial Accounts, and therefore shall not be U.S. Reportable Accounts, under the Agreement:

A. **Certain Retirement Accounts or Products**

- Pension schemes registered with HMRC under Part 4 of the Finance Act 2004, and non registered pension arrangements where the annual contributions are limited to £50,000 and funds contributed cannot be accessed before the age of 55 except in circumstances of serious ill health.
- Those that are UK-registered pension arrangements (including authorised payments) as set out in the Finance Act 2004 that are excluded from the definition of Financial Account pursuant to Article 1(s)(3) of the Agreement.
- An account maintained in the United Kingdom excluded from the definition of Financial Account under an agreement between the United States and another Partner Jurisdiction to facilitate the implementation of FATCA, provided that such account is subject to the same requirements and oversight under the laws of such other

Partner Jurisdiction as if such account were established in that Partner Jurisdiction and maintained by a Partner Jurisdiction Financial Institution in that Partner Jurisdiction.

- **Immediate Needs Annuities** qualifying as such under Section 725 Income Tax (Trading and Other Income) Act 2005.

B. **Certain Other Tax-Favoured Accounts or Products**

- **Individual Savings Accounts (ISAs)** - as defined in the Individual Savings Account Regulations 1998 (SI 1998 No.1870) and subsequent Amendment Regulations
- **Junior ISAs** - as defined in the Individual Savings Account Regulations 1998 No.1870, and subsequent Amendment Regulations
- **Child Trust Funds** - as defined in the Child Trust Funds Act 2004 and subsequent Amendment Regulations
- **Premium Bonds** - where issued by NS&I (UK National Savings and Investments)
- **Children's Bonus Bonds** - where issued by NS&I (UK National Savings and Investments)
- **Fixed Interest Savings Certificates** - where issued by NS&I (UK National Savings and Investments)
- **Index Linked Savings Certificates** - where issued by NS&I (UK National Savings and Investments)
- **Tax Exempt Savings Plans** - where issued by a friendly society within the meaning of the Friendly Societies Act 1992 (c. 40)
- **Save As You Earn Share Option Schemes** - approved by HMRC under Schedule 3 Income Tax (Earnings and Pensions) Act 2003
- **Share Incentive Plans** - approved by HMRC under Schedule 2 Income Tax (Earnings and Pensions) Act 2003
- **Company Share Option Plans** - approved by HMRC under Schedule 4 Income Tax (Earnings and Pensions) Act 2003"

If this proposal is acceptable to the Government of the United States of America, the Embassy of the United Kingdom of Great Britain and Northern Ireland further

proposes that this Note together with the United States Department of State's affirmative Note of reply shall constitute an agreement between our two Governments which shall enter into force on the date on which the Agreement enters into force under Article 10.1, namely on the date of the second note by which the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America notify each other that they have completed their necessary internal procedures for entry into force of the Agreement.

The Embassy of the United Kingdom of Great Britain and Northern Ireland avails itself of this opportunity to renew to the United States Department of State the assurances of its highest consideration.

3 June 2013

No. 2

United States Department of State to British Embassy, Washington

The Department of State refers to the Embassy of the United Kingdom of Great Britain and Northern Ireland's Note no. 044/2013 dated June 3, 2013, proposing to amend the Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland to Improve International Tax Compliance and to Implement FATCA, signed September 12, 2012 ("the Agreement") which reads as follows:

[As in Note No. 1]

The Department confirms that the foregoing proposals are acceptable to the Government of the United States of America and this Note of reply and Note no 044/2013, dated June 3, 2013 from the Embassy shall constitute an agreement between our two Governments amending the Agreement which shall enter into force on the date on which the Agreement enters into force pursuant to Article 10.1.

Department of State.
Washington,

June 7, 2013



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