

## The UK's 'son of FATCA' for the Crown Dependencies

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On Friday it was reported by [International Tax Review](#) that the UK was seeking to impose what is known as a 'son of FATCA' provision on the UK's Crown Dependencies. The report was based on a leaked document, which I have seen.

Over the weekend three questions have been suggested to me. The first is that I should share the document: I won't.

The second is to suggest that my claims on what is happening are not true. I disagree. [Jersey has now confirmed that the leak is correct](#). My interpretation was right on this issue.

The third is to say that I should not have been involved in this.

I've already answered the first point, now let me deal with the next two, in reverse order.

Normally I stay clear of leaks unless they have very clear public purpose. On this occasion I commented because I do think there was a public purpose. As [International Tax Review noted](#), last week the government said in response to a report from the International Development Committee that they had no intention of imposing FATCA equivalent disclosure on the UK's Crown Dependencies. We now know that was not true. There was, therefore, a public interest reason for disclosing and discussing this document now. That is why I decided to be involved. I think that is already justified. I hope the IDC now ask for a full explanation as to why they were given a misleading answer.

There is also public interest in Jersey in the way that the government is seeking to achieve its goal of FATCA compliance. [Last week Jersey claimed its foreign policy independence from the UK](#). If there's one thing the document I have seen suggests it is that Jersey really has no choice in this matter.

So let me now turn to the second issue, given that we now know that this issue is real and that the document I saw is seeking full and open information from the Crown

Dependencies, as I suggested. First of all, let me make clear that what follows is my interpretation. It is always possible others will not agree. I have never yet a legally written document on which there has been unanimity as to interpretation, and this one is complex. The message is however clear and unambiguous, in my opinion.

First, the document provides for full FATCA style open exchange of information between the Crown Dependencies and the UK. That exchange is not restricted to data to be supplied to the USA under FACTA; if there was any doubt on this point it is covered by there being a separate requirement that the Crown Dependencies supply to the UK in addition to all other data to be exchanged annually that information they will also supply to the USA under the terms of FATCA. Curiously, that requirement is time limited. The requirement to undertake full information exchange is not.

And for the sake of doubt, when I say full information exchange I mean just that. This draft agreement requires that the Crown Dependencies extensively audit (as detailed at some length in the draft) their data sources to ensure all accounts (a term very widely defined) can be linked to beneficial owners (again very widely defined to ensure loopholes such as trusts without beneficiaries and settlements without settlors are considered) so that full automatic exchange can take place annually. Enhanced procedures for high value accounts are included. Nothing I can see anywhere in the draft restricts this provision to data intended for onward supply to the USA: this is a demand for full data exchange for the benefit of the UK.

In that case the suggestion that the UK is not looking at a 'son of FATCA' seems wrong and a misrepresentation. That is exactly what is being worked on. And whilst I am not saying I have done a completely rigorous review for loopholes, right now the draft agreement anticipates obvious problems as far as I can see that might be exploited to prevent exchange. This is no half-hearted effort.

In that case what is intended has to be surmised next. As has been suggested to me, the UK negotiating stance is that this must be agreed to by each Crown Dependency (and maybe Overseas Territory) as a condition of the UK agreeing their FATCA legislation. [It would seem that Jersey have also confirmed this now](#). That certainly makes a mockery of Jersey's recent claim to be independent. I certainly see this as possible, and such unsubtle approaches have, I know, been taken with all the Crown Dependencies and especially Jersey before now.

The alternative explanation is that in practice the UK is assuming responsibility for FATCA compliance in the Crown Dependencies, and so are demanding all the data go the UK so that its derivation can be checked. Candidly, given the time limited demand that the Crown Dependencies supply the UK with their own extraction of the data they intend to supply under FATCA I think that unlikely.

Last, it could be that the US is not happy to accept Crown Dependency assurances or even capacity on this issue. This is plausible: their tax information exchange

agreements do, I think, all pre-date the period when they had capacity granted to them by the UK to conclude such arrangements. They may therefore be asking that the UK stand as guarantor in this arrangement.

What I do know with certainty though is that whatever the reason, the UK is exploiting this situation to shatter the secrecy of the Crown Dependencies. In due course I expect it to do the same to the Overseas Territories. An then a major step forward in breaking tax haven secrecy will have been made. Of course, if the UK then made that data available to all double tax agreement partners even more would have been achieved.

And that might sound far fetched, but I do not wholly rule that out now.

And given that transparency is at the heart of what is required, I think a little openness by all sides now would be welcome.