US, UK and EU FATCA, Investment Sanctions and Their Impact on Retirement Funds

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Agenda

- US FATCA withholding and why non-US retirement funds should care
  - Retirement plan exemptions
  - Claiming exemptions – Form W-8BEN-E
  - Governance Issues
  - Individual FATCA reporting
- UK FATCA
- EU FATCA
- Investment Sanctions
  - EU
  - US (OFAC)
  - UK

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US FATCA

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History of FATCA

- **US FATCA enacted in 2010** as part of the Hiring Incentives to Restore Employment Act
- To ensure that US taxpayers are not evading tax through the use of concealed financial accounts in foreign jurisdictions
- FATCA establishes a regime under which **"Foreign Financial Institutions" ("FFIs") must agree to report certain information to the IRS about US taxpayers' accounts**
- If an FFI does not agree to make the disclosure, it becomes subject to **30% withholding** tax on most types of US source investment income
- Separately, **individual US taxpayers must report foreign accounts** (including foreign deferred compensation) with US tax returns

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History, cont'd

- In **February, 2012, draft US Treasury regulations published**, and an extensive consultation process followed.

- Draft regulations included certain foreign retirement fund exemptions, but those were generally not considered sufficient.

- Numerous groups engaged the IRS and the Treasury Department seeking amendments to exempt such plans from the ambit of FATCA.

- **Final regulations were issued in January 2013 with substantially revised foreign retirement fund exemptions.**

- **U.S Treasury began entering into Intergovernmental Agreements (IGAs) regarding FATCA** with a number of countries. These now often address application to retirement and other funds.

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Two Levels of Reporting

FATCA targets non-compliance by US taxpayers with foreign accounts, and does so at two levels

Entity Level Reporting

→Foreign financial institutions must report to the IRS on financial accounts held by US taxpayers or foreign entities in which US taxpayers hold a substantial ownership interest, or be subject to a 30% withholding tax on most types of US source income

Individual Reporting

→Individual US taxpayers must report certain foreign financial accounts and offshore assets

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Entity Level Reporting

What is a "foreign financial institution"?

- Includes any non-US entity that holds financial assets for the account of others as a substantial portion of its business
  - a definition the US interprets to include retirement plans

- An entity generally holds financial assets for the account of others as a substantial portion of its business if the entity's gross income attributable to holding financial assets and related financial services equals or exceeds 20 percent of the entity's gross income during the most recent three year period

- Note: If an FFI has no US source income, it may not care

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Entity Level Reporting

- In order to avoid withholding, FFIs **(that are not exempt)** may register with the IRS and agree to report to the IRS certain information about their US accounts, including accounts of certain foreign entities with substantial US owners ("Participating FFIs" or "PFFIs")

- **In IGA countries, reporting is instead done to the local tax authority**, which then shares the information with the IRS (but a reporting FFI must still register on the IRS website to get a GIIN)

- **PFFIs must perform extensive due diligence on all accountholders** to determine any indicia of US ownership
  - See IRS Rev. Proc. 2014-13 and 38 (PFFI Agreement) for non-IGA countries
  - See Annex I to the IGA for IGA countries
  - May be required to withhold 30% on certain payments to accountholders who do not provide information (pass-thru withholding) beginning in 2017

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Some Key Implementation Dates

January 1, 2014: FATCA registration portal opened for registration

July 1, 2014: FATCA FDAP withholding requirements went into effect **BUT 2014 and 2015 are a "good faith" transition period**

December 31, 2014: US Withholding Agents, PFFIs must document preexisting entity accounts identified as Prima Facie FFIs

March 31, 2015: PFFIs begin to report US account information with respect to 2014

June 30, 2015: PFFIs must document preexisting high value individual accounts by June 30, 2015 (One year from effective date if became a PFFI after July 1, 2014)

July 1, 2015: PFFIs begin withholding on US FDAP payments to recalcitrant accounts

Sept. 30, 2015: Foreign tax authorities under IGAs start reporting US account information to US (subject to terms of the IGA)

June 30, 2016: PFFIs to have completed all due diligence

January 1, 2017: Gross proceeds withholding, pass-through withholding begins (unless delayed)

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Why non-US Retirement Funds Should Care

1. **30% withholding on FDAP** paid to FFIs which are not registered PFFIs

   FDAP is US source fixed or determinable, annual or periodical gains, profits, or income. Examples include:
   •Dividends
   •Interest
   •Real property income, such as rents, other than gains from the sale of real property
   •Royalties

2. **Gross proceeds withholding beginning in 2017**. Gross proceeds refers to the gross proceeds from the sale or other disposition of any property of a type which can produce FDAP

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Benefit Plan Exemptions

There are two general categories of exempt non-US retirement and benefit plans:

1. Exemptions under Intergovernmental Agreements (IGA)

2. FATCA Regulation Exemptions

a) Tax treaty
b) Broad participation
c) Narrow participation
d) Similar to 401(a) plan
e) Investment vehicles/pension funds exclusively for retirement funds

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Benefit Plan Exemptions
General Structure of IGA Exemptions

IGA exemptions fall into two categories:

1. **"Exempt Beneficial Owners"** to whom no withholding will be made (if the fund claims its exemption)
2. **Funds held by FFIs not treated as financial "accounts"** – thus the PFFI does not have to do due diligence on the accountholder (this includes both certain retirement savings accounts and certain non-retirement accounts)

IGAs drafting so far has begun with the regulatory exemptions – with or without the tax treaty exemption, depending on whether a tax treaty exists – under each of these categories, **then added additional retirement funds and accounts by name**, either for clarity or because one of the regulatory exemptions does not apply

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Retirement Plan Exemptions – FATCA Regulations
Tax Treaty Exemption

Treaty-qualified retirement fund.

- A fund established in a country with which the United States has an income tax treaty in force, provided that the fund is entitled to benefits under such treaty on income that it derives from sources within the United States (or would be entitled to such benefits if it derived any such income) as a resident of the other country that satisfies any applicable limitation on benefits requirement, and is operated principally to administer or provide pension or retirement benefits

- This means a fund that would receive tax relief on interest and dividends under an applicable tax treaty with the US (e.g., lower dividend and interest withholding rate), subject to the limitation of benefits provisions, which is a broader definition than just corresponding plans.

Retirement Plan Exemptions – FATCA Regulation Broad Participation Exemption

<u>Broad participation retirement funds</u>

- Funds established to provide retirement, disability, or death benefits for current or former employees of one or more employers in consideration for services rendered, provided that the fund:
  1. does not have single beneficiary with a right to more than five percent of the fund's assets;
  2. is subject to government regulation and "provides annual information reporting about its beneficiaries to the relevant tax authorities in the country in which the fund is established or operates"; and
  3. is (i) exempt from tax on investment income in its home jurisdiction, (ii) made up of more than 50% employer contributions or (iii) distributions or withdrawals are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions) or penalties apply to distributions or withdrawals made before such specified events

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Retirement Plan Exemptions – FATCA Regulations
Narrow Participation Exemption

Narrow participation retirement funds

- A fund established to provide retirement, disability, or death benefits to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers, provided that:
  1. it has fewer than 50 participants;
  2. it is sponsored by one or more employers;
  3. employee and employer contributions to the fund are limited by reference to earned income and compensation of the employee;
  4. participants that are not residents of the country in which the fund is established or operated are not entitled to more than 20 percent of the fund's assets; and
  5. the fund is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in the country in which the fund is established or operates

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Retirement Plan Exemptions – FATCA Regulation Investment Vehicles/Pension Fund Exemption

Investment vehicles exclusively for retirement funds:

- A fund established exclusively to earn income for the benefit of one or more retirement funds of Exempt Beneficial Owners

Pension fund of an exempt beneficial owner:

- A fund established and sponsored by an exempt beneficial owner to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees of the exempt beneficial owner or provided to such beneficiaries or participants in consideration of personal services performed for the exempt beneficial owner

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Individual Account Exemptions

“Retirement savings accounts” are treated as **not being “financial accounts”** under FATCA where the account is:

1. Subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits)
2. Tax-favored;
3. Annual information reporting is required to the relevant tax authorities with respect to the account;
4. Withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and
5. Either

   (i) Annual contributions are limited to $50,000 or less, or

   (ii) There is a maximum lifetime contribution limit to the account of $1,000,000 or less

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Individual Account Exemptions

"Non-retirement savings accounts" are treated as **not being "financial accounts"** under FATCA where the account is:

1. Subject to regulation as a savings vehicle for purposes other than retirement;
2. Tax favored;
3. Subject to withdrawal rules which stipulate that certain criteria "related to the purpose of the savings account (for example educational or medical benefits)"; and
4. Annual contributions are limited to $50,000 or less.

- Note: These are not necessarily an exemption from 30% withholding – these are exemptions for the FFI holding the account not to treat it as a "financial account" – for example, not to have to do due diligence on it

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Claiming FATCA Exemption: Form W-8BEN-E

- (IRS) has issued the final version of Form W-8BEN-E for claiming exemptions from FATCA withholding and it is available online at irs.gov
- Some plans may fit under multiple exemption categories – instructions not always clear

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If not exempt, should you register?

- FFIs may register with the IRS online and enter into agreement to do due diligence on all account holders and report to IRS (or their local tax authority under an IGA) certain information about their US accounts (Rev. Proc. 2014-13, 38, Annex I to the IGA)
- Will be required to withhold 30% on certain payments to certain "recalcitrant account holders" who do not provide information beginning in 2015 (or close their accounts)
- Burdens of being a PFFI may well outweigh any benefit for retirement or welfare funds

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Governance Issues

1. US investments by a non-US retirement fund – is the plan minimizing the possibility of FATCA withholding by filing W-8BENs with US withholding agents?
2. If the non-US plan is using financial institutions for investing pension funds should you be confirming those service providers institutions are minimizing FATCA liabilities on the plan's behalf?
3. Governance concerns for the multinational entity with responsibilities for global benefits

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UK TAX INFORMATION SHARING ("UK FATCA")

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UK TAX INFORMATION SHARING

General principle – taxpayers should not evade tax by holding money/assets in overseas territories (i.e. outside tax residence) and failing to declare income and/or gains

Historically, there have been provisions for bi-lateral information sharing under tax information and sharing agreements and ad hoc agreements (e.g. with Switzerland)

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UK TAX INFORMATION SHARING

Where are we now?

- 24 March 2015 – International Tax Compliance Regulations 2015 (“**ITC**”)
- Provides for information collection and sharing in respect of 4 regimes:
  - US FATCA
  - Crown Dependencies and Overseas Territories (“**CDOT**”) – requires FATCA type information to be provided to HMRC
  - OECD Standard for Automatic Exchange of Financial Information in Tax Matters – implemented via Competent Authority Agreements (“**CAA**”) and the Common Reporting Standards (“**CRS**”)
  - EU Directive on Administrative Co-operation (“**DAC**”) – intended to ensure a common adoption approach across the EU – it will remove the need for member states to agree CAA’s with each other under CRS

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UK TAX INFORMATION SHARING

Key Dates

- ITC regulations in force 15 April 2015
- FATCA ITC 15 April 2015
- DAC/CRS 1 January 2016
- CDOT will fall away as the Crown Dependencies and Overseas Territories implement CRS

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UK TAX INFORMATION SHARING

- The overall aim is to ensure as much similarity as possible between the relevant regimes (i.e. FATCA & CRS) so as to reduce administrative burden on Financial Institutions
- FATCA information sharing obligation relates to US nationals/residents but has impacted on a worldwide basis because of the “withholding penalty”
- CRS & DAC are not limited – the intent is to “maintain the integrity of tax systems” and prevent offshore tax evasion. It applies to entities as well as individuals
- CRS includes Definitions; Types of information to exchange; Time and manner of exchange; and Confidentiality of data and safeguards which must be respected
- 98 plus regimes have committed to implement CRS swiftly and half of these are “early adopters” who have agreed to begin exchange of information by September 2017

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UK TAX INFORMATION SHARING

Unlike FATCA, ITC (& CRS/DAC) do not impose withholding charges although there are administrative penalties under the ITC for failure to comply with "Reporting Obligations"

Under ITC, UK "Reporting Financial Institutions" will collect relevant information and report this to HMRC (the UK tax authority)

HMRC then passes required information to applicable tax authority outside the UK

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UK TAX INFORMATION SHARING

Reporting Financial Institutions in the UK

- Must under ITC:
  - Establish and maintain arrangements to identify reportable accounts
  - Identify territory in which account holder or controller is resident for purposes of income or corporation tax or similar taxes
  - Apply the due diligence procedures set out in the relevant agreements (i.e. FATCA / CRS / DAC)
  - Comply with annual reporting requirements to HMRC

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UK TAX INFORMATION SHARING

How are Pension Plans affected?

- If a pension/retirement plan meets an "exemption" criteria it:
  - Is not treated as a Reporting Financial Institution (i.e. It would not have to transfer information to HMRC for FATCA/CRS/DAC)
  - Its investment managers would not be required to report information about the pension plan

What are the exemptions?

- A pension plan may be exempt:
  - Under an Intergovernmental Agreement ("**IGA**")
  - Under FATCA or CRS (i.e. under the Broad/Narrow definitions in FATCA/CRS).
  - Under a relevant Double Tax Treaty and possibly related memoranda

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UK TAX INFORMATION SHARING

Concerns were expressed that some types of plan might not be "exempt" e.g. Self Invested Pension Plans ("**SIPPs**") these are covered for example in the Cayman/UK CAA as they qualify as "Pension Schemes or other arrangements registered with HMRC under Part 4 of the Finance Act 2004". The Cayman CAA also specifically exempts the UK Pension Protection Fund as no doubt will all other CAAs concluded

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UK TAX INFORMATION SHARING Governance Concerns

Pension Plans should:

- Identify with their advisers jurisdictions where investments are held
- Confirm applicable regime and relevant exemptions. Where a CAA is not yet in place determine with the advisers who will be responsible for monitoring and advising on the implementation timetable
- Determine what information, if any, may be required to confirm / claim exemptions and make sure that the relevant actions are taken in good time
- In practice the information and exemption confirmation process will likely be incorporated as general ‘on-boarding’ along with KYC and AML procedures

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EU FATCA

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Council Directive 2014/107/EU

- Automatic exchange of information within the European Union in the field of taxation
- Implementation by EU Member States by the end of 2015
- First exchange of information: 2017 (excl. Austria) with regard to information of the year 2016
- Consistent with *Common Reporting Standards (CRS)* from the OECD and (largely) consistent with FATCA

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EU FATCA

- ALL Reporting Financial Institutions have to participate
    - No “non-participating” financial institutions

- No withholding charges of 30 %

- Similar (or identical) exemptions that may be applicable to retirement and benefit plans

Reporting Financial Institutions

- Reporting Financial Institutions disclose information to the national authorities on an annual basis
  - Within a period of 9 months following the relevant year
  - Before: due diligence requirements

- Similar definition of "Reporting Financial Institutions"
  - **investment fund**
  - **insurance company**
    - **Cash Value Insurance Contract or Annuity Contract**

- Similar definition of "Reportable Accounts"
  - Account that is maintained by a Member State Reporting Financial Institution and is held by one or more Reportable Persons (resident of another member state) or by a Passive NFE with one or more Controlling Persons that is a Reportable Person

Non-reporting Financial Institutions

- Non-reporting Financial Institutions do not have to disclose information/no due diligence requirements
    - a Broad Participation **Retirement Fund**;
    - a Narrow Participation **Retirement Fund**;
    - a **Pension Fund** of a Governmental Entity, international organization or Central Bank.

Broad participation retirement fund

A fund established to provide retirement, disability, or death benefits to beneficiaries who are current or former employees of one or more employers in consideration for services rendered, provided that the fund:

- does not have a single beneficiary with a right to more than **5 %** of the fund's assets;
- is **subject to government regulation** and provides information reporting to the tax authorities; and
- satisfies at least **one of the following** requirements:
  - the fund is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, due to its status as a retirement or pension plan;
  - the fund receives at least 50 % of its total contributions (other than transfers of assets from other plans described in subparagraphs B(5) through (7) or from retirement and pension accounts described in subparagraph C(17)(a)) from the sponsoring employers;
  - distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to other retirement funds described in subparagraphs B(5) through (7) or retirement and pension accounts described in subparagraph C(17)(a)), or penalties apply to distributions or withdrawals made before such specified events; or
  - contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed, annually, an amount denominated in the domestic currency of each Member State that corresponds to USD 50 000, applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

Narrow participation retirement fund

A fund established to provide retirement, disability, or death benefits to beneficiaries who are current or former employees of one or more employers in consideration for services rendered, provided that:

- the fund has **fewer than 50 participants**;
- the fund is **sponsored by one or more employers** that are not Investment Entities or Passive NFEs;
- the employee and employer **contributions** to the fund (other than transfers of assets from retirement and pension accounts described in subparagraph C(17)(a)) **are limited by reference to earned income and compensation** of the employee, respectively;
- **participants** that are **not residents of the Member State** in which the fund is established are **not entitled to more than 20 % of the fund's assets**; and
- the fund is **subject to government regulation** and provides information reporting to the tax authorities.

“Governmental” Pension Fund

A fund established by a Governmental Entity, International Organisation or Central Bank to provide retirement, disability, or death benefits to beneficiaries or participants who are current or former employees, or who are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the Governmental Entity, International Organisation or Central Bank.

Exempted accounts

- Exempted accounts do not have to be disclosed
  - a retirement or pension account that satisfies several requirements

Pension accounts - requirements

A retirement or pension account that satisfies **the following requirements**:

- the account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits;
- the account is tax-favoured;
- information reporting is required to the tax authorities with respect to the account;
- withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and
- either (i) annual contributions are limited to an amount denominated in the domestic currency of each Member State that corresponds to USD 50 000 or less; or (ii) there is a maximum lifetime contribution limit to the account of an amount denominated in the domestic currency of each Member State that corresponds to USD 1 000 000 or less, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

EU Investment Sanctions

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Legal basis: article 215 TFEU

- Interruption or reduction of the EU's economic and financial relations with one or more third countries, where such restrictive measures are necessary to achieve the objectives of the Common Foreign and Security Policy

- Freezing of funds and economic resources, ban on provision of certain services, embargo on arms,…

Measures

- Restrictive measures in force
  - Countries: Afghanistan (Taliban), Belarus, Iran, North Korea, Russian Federation, Syria,…
  - Terrorist groups, f.e. Al Qaeda
- Some measures may be relevant for pension funds
  - Investment restrictions (direct or indirect)
  - Member/beneficiary is subject to sanctions
- One example

EU Sanctions - Russia

- EU nationals and companies may no longer buy or sell new bonds, equity or similar financial instruments with a maturity exceeding 30 days, issued by:
  - five major state-owned Russian banks, their subsidiaries outside the EU and those acting on their behalf or under their control (f.e. Gazprom bank).
  - major Russia energy companies and
  - major Russian defense companies.
- Services related to the issuing of such financial instruments, e.g. brokering, are also prohibited.
- EU nationals and companies may not provide loans to the above-mentioned companies.

UK Investment Sanctions

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UK Investment Sanctions

- UK sanctions regime
  - UN sanctions
  - EU sanctions – Common Foreign and Security Policy
  - Domestic sanctions – suppression/prevention of terrorists/terrorist acts

- Foreign and Commonwealth Office – responsible for sanctions policy
  - HM Treasury responsible for the implementation of financial sanctions
  - Department for Business Industry & Skills for trade sanctions

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UK Investment Sanctions

- The UK maintains a “Consolidated List” of individuals and entities who are subject to sanctions:

  - “Asset Freezing”:
    - Dealing with funds
    - Dealing with “economic resources”
  - Criminal offence to make funds available (knowingly or with reasonable cause to suspect) to a “Designated Person” whether directly or indirectly

- Licences may be granted to permit transactions to/from/with or on behalf of a “Designated Person”.

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UK Investment Sanctions

- Otherwise a criminal offence is committed:
  - In respect of individuals they may be subject to fines and/or imprisonment of up to 2 years for UN/EU sanctions breaches and up to 7 years in respect of terrorist activity
  - Corporate entities are subject to fines
- No offence is committed if the person/entity did not know and had no reasonable cause to believe that the person/entity was on the "Consolidated List"

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UK Investment Sanctions

- UK Pension Plans could be exposed:
  - By reason of investment dealings/transactions
  - As a result of a plan member and/or beneficiary being subject to sanctions because they are in a sanctioned country or because they are on the "Consolidated List"

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UK Investment Sanctions

- Investment dealing and transactions:
  - UK Pension Plans generally have appointed Investment Managers
  - Investment Management Agreements will typically set out agreed investment parameters and require the manager to comply with/applicable law in relation to investments
- Possibly more exposure/risk in cases where there is a "direct investment e.g. as a shareholder in a private equity SPV which holds/owns a business – in such cases there may be a need for specific restrictions/constraints on management and the operation of subsidiaries
- In each case consider:
  - Whether existing representations and undertakings are appropriate
  - Whether some form of continuing certification is appropriate
  - Consider whether audits are appropriate

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UK Investment Sanctions

Plan Member and Beneficiary issues

- Where an individual is on the Consolidated List they can still be a Plan Member or Beneficiary
- If a Plan Member is to continue as an active member a specific licence will be required to permit continuing contributions whether employer or employee
- If the Plan Member is or is about to be in receipt of benefits or payments are to be made to a beneficiary again a specific licence will be required to permit payment – in general this would be to a specific UK bank account

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UK Investment Sanctions

- Pension Plans should have arrangements in place sufficient to identify if a member is on the Consolidated List – in practice if the person is a member by virtue of their employment the Employer will need a licence to pay wages and provide benefits and could reasonably be expected to notify the plan

- Where a beneficiary is “caught” by the sanctions regime it may be because he/she is a designated person or because they are resident in a jurisdiction subject to sanctions where there are restrictions on asset transfers

- When payments are due details of beneficiaries including country of residence should be obtained and checked.

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US Investment Sanctions (Office of Foreign Asset Control)

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US Office of Foreign Asset Control (OFAC) What does OFAC do?

- OFAC administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States

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Who must comply with OFAC regulations?

- All US persons must comply with OFAC regulations, including all US citizens and permanent resident aliens regardless of where they are located, all persons and entities within the US, all US incorporated entities and their foreign branches
- For some programs, all foreign subsidiaries owned or controlled by US companies must comply. And certain programs also require foreign persons in possession of US origin goods to comply

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Benefit Plan Guidance

- In defining “Foreign Financial Institutions” and “Iranian Financial Institutions”, OFAC expressly included “employee benefit plans” in both definitions [77 Fed. Reg. 66920]
- OFAC has informally stated that employee benefit plans have OFAC compliance requirements with respect to:
  - Investments and other transactions
  - Payments to participants and beneficiaries

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Program Overview

- **Currently 26 sanctions programs**
  - Some are country focused: Iran, Cuba, Sudan, etc.
  - Some are individual focused: e.g., Magnitsky Sanctions, Counter Narcotics Trafficking Sanctions, Counter Terrorism Sanctions, Transnational Criminal Organizations, and Foreign Sanctions Evaders
  - Others are sector focused: e.g., Russian Sanctions
- **Sanctions generally apply in two ways:**
  - "Blocks" assets and transactions involving the assets or interests of entities or individuals (e.g., assets of Bank Rossiya, Al Qaeda, or Bashar Al-Assad)
  - Prohibits types of transactions (e.g., the importation of Syrian oil, transactions related to new debt or equity of some Russian financial sector companies)

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Program Overview (Cont.)

- OFAC may grant licenses to permit otherwise prohibited transactions
- Penalties for noncompliance or violations:
  - Up to $20 million and 30 years imprisonment and civil penalties of up to $1,075,000 or twice the amount of the underlying transaction

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Sanctions Program Example: Russian Sanctions

- There are currently five types of sanctions imposed on Russia as a result of its actions in Ukraine:
  - Russian individuals and companies have been added to OFAC's "specially designated national" list
  - US Persons are prohibited from providing financing or dealing in new debt with a maturity of more than 30 days or new equity of certain Russian financial sector companies
  - US Persons are prohibited from providing financing or dealing in new debt with a maturity of more than 90 days of certain Russian energy sector companies
  - US Persons are prohibited from providing financing or dealing in new debt with a maturity of more than 30 days of certain Russian defense and material sector companies
  - US Persons are prohibited from providing certain assistance to Russian energy exploration and production efforts

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Plan Compliance Guidelines for US Plans

- Create or update OFAC compliance program
- Enter into contracts with service providers to provide assistance (and to warrant to their compliance)
- Monitor existing service providers, investments, and participant and beneficiary lists
- If you determine that you are engaging in a prohibited transaction: (1) determine if there is an applicable license, and, if not, (2) notify OFAC and block the transaction
- Continue monitoring OFAC for developments

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QUESTIONS?

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