Guidance for companies, trusts and partnerships on completing a self-certification form

In order to combat tax evasion by both individuals and businesses, the UK and many other countries have entered into agreements to exchange information on offshore accounts.

This means that financial institutions must ask customers opening accounts to provide information. They then need to report certain information on overseas customers to the tax authorities.

What this means for your business

When your business opens an account, you need to complete a self-certification with details of the business's residence for tax purposes. You also need to provide other information to enable the financial institution to determine whether it needs to report on accounts held by your business.

The types of organisations which require this information include:

- banks
- building societies
- fund platforms and other providers of funds
- some types of insurance company.

What happens next

Financial institutions share information on their overseas customers with the local tax authority which then passes it to the relevant overseas tax authority.

For example, if your business is resident in the US but has a UK bank account, the UK bank will pass information about the business and its account (both balances and income) to HMRC. HMRC then shares this with the IRS. If your business is resident in the UK and has invested in a Jersey fund, information about the business and its investments will be passed to HMRC.

If you have any questions about completing a self-certification or any other concerns about the impact of automatic exchange of information, you should seek tax advice.

Contents

Automatic exchange of financial account information

The UK has rules to apply automatic exchange of financial account information under four different regimes:

- the US Foreign Account Tax Compliance Act (FATCA)
- agreements with the Crown Dependencies and Overseas Territories
- the OECD Common Reporting Standard
- the EU Directive for Administrative Cooperation.

The rules are not identical, but have many similarities.

Who needs to complete a self-certification?

Financial institutions need to collect information from both individuals (natural persons) and entities (legal persons) for whom they maintain financial accounts. This allows them to determine whether they need to report on the person and the person's accounts to the local tax authority.

Entities are companies, trusts and partnerships, and are generally referred to as organisations in this guidance.

Separate guidance is available for individuals.

Information to be provided on the self-certification

When an organisation opens an account with a financial institution, it needs to complete a self-certification giving details of residence for tax purposes.

The organisation must also provide information to enable the financial institution to determine whether it needs to report on the account being opened. The organisation opening the account may therefore be asked to classify itself as one of the following:

- UK financial institution or participating jurisdiction financial institution
- participating foreign financial institution
- non-participating foreign financial institution
- deemed compliant foreign financial institution
- exempt beneficial owner
- active non-financial entity
- passive non-financial entity.

You can find further detail on each of these types of organisation below.

Residence

Most organisations are resident for tax purposes in only one country. However some are resident in more than one. In this case, an organisation needs to provide details of each country of residence on the self-certification. Information can then be shared with all relevant tax authorities.

Each country has its own rules on residence. A company is resident in the UK if it is incorporated in the UK or centrally managed and controlled in the UK. A partnership is resident in the UK if the control and management of its business takes place in the UK, or the partnership registers with and submits partnership tax returns to HMRC. A trust is resident in the UK where most or all of the trustees are resident in the UK. Where some, but not all, of the trustees are UK tax resident, then the trust is resident in the UK if the settlor is both resident and domiciled in the UK for tax purposes.

If a branch is completing a self-certification, it has one country of residence, which is the country where it is located.

Taxpayer identification number

The taxpayer identification number is the unique identifier assigned to the organisation by the tax authority in the organisation's country of residence. In the UK this is the Unique Taxpayer Reference number, which is issued by HMRC.

Some jurisdictions do not issue taxpayer identification numbers. In this case, organisations may use a business or company registration code or number.

If an organisation is resident in more than one jurisdiction, it must provide taxpayer identification numbers for each.

Reportable person/ specified person/ exempt beneficial owner

Financial institutions need to report on accounts held by:

- reportable persons resident in another country or
- certain organisations which are not financial institutions (known as passive non-financial entities) and which have one or more controlling persons that is a reportable person resident in another country.

(You can find more information about passive non-financial entities below.)

An organisation is a reportable person if it is an organisation other than:

- a corporation the stock of which is regularly traded on one or more established securities markets
- any corporation that is a related entity of a corporation described in (i)
- a governmental entity
- an international organisation
- a central bank or
- a financial institution.

Individuals are also reportable persons.

Specified person is the FATCA equivalent of reportable person. The definition is slightly more precise. Instead of mentioning a financial institution, it refers to:

- a bank
- a real estate investment trust
- regulated investment company
- a common trust fund
- a broker
- a dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options)

- certain retirement plans (in the UK these are UK registered pension schemes under Part 4 of the Finance Act 2004 and certain non-registered pension arrangements, including arrangements with overseas pension funds).

Exempt beneficial owner

For FATCA purposes, the following types of entity are referred to as exempt beneficial owners:

- a governmental entity
- an international organisation
- a central bank or
- certain retirement plans.

Financial institution

An entity is a financial institution if it is one of the following four types:

- custodial institution
- depository institution
- investment entity
- specified insurance company.

Custodial institution – An entity that holds, as a substantial portion of its business, financial assets for the account of others. A substantial portion is where the entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20% of the entity's gross income during the shorter of:

(i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made, and
(ii) the period since it commenced business.

Depository institution – An entity that accepts deposits in the ordinary course of a banking or similar business.

Investment entity – An entity:

a) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:
    - trading in money market instruments (cheques, bills, certificates of deposit, derivatives etc), foreign exchange, interest rate and index instruments, transferable securities, or commodity futures trading,
    - individual and collective portfolio management, or
    - otherwise investing, administering, or managing financial assets or money on behalf of other persons.
b) the gross income of which is primarily attributable to investing, reinvesting, or trading in financial assets, and which is managed by a depository institution, a custodial institution, a specified insurance company, or an investment entity described in a).

For self-certification purposes, investment entities may need to provide additional information. For example, an investment entity resident in a country that has not adopted the OECD's Common Reporting Standard for automatic exchange of financial account information may need to provide self-certifications for all controlling persons.

Specified insurance company – An 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 cash value insurance contract or an annuity contract.

Holding companies and treasury centres of financial groups

Not all entities that carry on activities as a holding company or as a treasury centre are financial institutions.

An entity which is within a financial group and which carries out the following activities is a financial institution:

- a holding company whose primary activity includes the holding of (directly or indirectly) all or part of the outstanding stock of one or more related entities that are financial institutions
- a treasury centre whose primary activity includes entering into hedging and financing transactions with or for related entities that are financial institutions for one or more of the following reasons:
    - managing the risk of price changes or currency fluctuations with respect to property that is held or to be held by related entities
    - managing the risk of interest rate changes, price changes, or currency fluctuations with respect to borrowings made or to be made by related entities
    - managing the risk of interest rate changes, price changes, or currency fluctuations with respect to assets or liabilities to be reflected in financial statements of related entities
    - managing the working capital of related entities by investing or trading in financial assets solely for the account and risk of such related entities
    - acting as a financing vehicle for borrowing funds for use by related entities.

A holding company or treasury centre that is part of a non-financial group is a financial institution if it was formed in connection with or is used by a collective investment scheme, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in financial assets.

Classification of financial institutions based on residence

UK financial institution or participating jurisdiction financial institution

A UK financial institution is:

- a financial institution that is resident in the UK (but any branch located outside the UK is excluded), or
- a branch of a financial institution that is not resident in the UK, if the branch is located in the UK.

Participating jurisdiction financial institution is similarly defined in relation to the participating jurisdiction. A participating jurisdiction is a jurisdiction which has agreed to automatic exchange of information.

For FATCA purposes, these similar terms are used:

- partner jurisdiction refers to a jurisdiction which has agreed to automatic exchange of information with the US
- foreign financial institution is a non-US financial institution.

A UK financial institution or participating jurisdiction financial institution that is not a non-reporting financial institution is required to collect information from customers and report to the local tax authority.

Further classification of financial institutions for FATCA purposes

Participating foreign financial institution

Some countries have not entered into an agreement for automatic exchange of information with the US. A participating foreign financial institution is a financial institution resident in such a country which has directly entered into an agreement with the Internal Revenue Service (IRS) in the US to identify US account holders and report on their accounts.

Non-participating foreign financial institution

A non-participating foreign financial institution is a financial institution which:

- is resident in a country which has not entered into an agreement for automatic exchange of information with the US
- has not entered into an agreement with the IRS to identify US account holders and report on their accounts, and
- is not exempt.

A financial institution which is a non-participating foreign financial institution faces a 30% withholding tax on certain US source payments made to it.

Deemed compliant foreign financial institution

A foreign financial institution which meets certain criteria is referred to as a deemed compliant foreign financial institution. Such a financial institution generally does not need to register with the IRS or carry out due diligence or report.

Categories of deemed compliant financial institution include:

- registered deemed compliant financial institution
- certified deemed compliant financial institution
- owner documented financial institution
- local client base financial institution.

Registered deemed compliant financial institution

For a foreign financial institution to be a registered deemed compliant financial institution, it needs to register with the IRS. A UK financial institution which is a registered deemed compliant financial institution must submit annual returns to HMRC.

There are various types of registered deemed compliant financial institution:

Non-reporting member of participating foreign financial institution group – This category applies to financial institutions that are part of a participating foreign financial institution group and that implement policies and procedures to close or transfer any reportable accounts to other group members.

Qualified collective investment vehicle – This category applies to regulated funds that are owned through participating foreign financial institutions or directly by large institutional investors (eg, pension funds) not typically subject to FATCA withholding or reporting.

Restricted fund – This category applies to funds which impose prohibitions on the sale of units in the fund to specified US persons, non-participating financial institutions and passive non-financial foreign entities with controlling US persons and where the fund meets certain requirements.

Qualified credit card issuer – This category applies to organisations that are financial institutions solely because they are credit card issuers, and which meet certain conditions.

Sponsored investment entity – This category typically applies to funds that have authorised their fund managers to carry out the due diligence and reporting obligations.

Certified deemed compliant financial institution

A foreign financial institution which is a certified deemed compliant financial institution does not need to register with the IRS.

There are various types of certified deemed compliant financial institution:

Non-registering local bank – This category applies to small regulated local banks, credit unions and similar entities that are primarily depository institutions, and may operate without a profit. They must not have a fixed place of business outside of the UK (although this does not include a location that is not advertised to the public and from which the financial institution performs solely administrative support functions).

Financial institution with only low value accounts – The financial institution must not be an investment entity, and must not:

- have any financial accounts exceeding $50,000
- have more than $50m in assets on its balance sheet, or
- have more than $50m in assets on its consolidated balance sheet where it is in a group with related entities.

(See below for more on investment entities.)

Sponsored closely held investment vehicle – This category is very similar to that for sponsored investment entities (see above), but is specifically for closely held funds.

Owner documented foreign financial institution

Owner documented foreign financial institutions are closely held passive investment vehicles that are investment entities, and where meeting the due diligence and reporting obligations would be onerous, given the size of the entity. A financial institution must agree to undertake reporting on behalf of the owner documented foreign financial institution. Other conditions must also be met.

Local client base financial institution

This category applies to regulated financial institutions that do not have overseas branches and do not solicit customers overseas. Further conditions must also be met. A local client base financial institution may need to register with the IRS.

Further information

You can obtain more information on deemed compliant foreign financial institutions from the IRS website: http://www.irs.gov/Businesses/Corporations/Information-for-Foreign-Financial-Institutions.

International organisations

International organisations are:

- 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

Non-financial entities

If an organisation is not a financial institution, it is a non-financial entity (NFE). Organisations that are NFEs are further classified as either passive or active.

Slightly different terminology is used for FATCA purposes. A non-US entity which is not a financial institution is referred to as a non-financial foreign entity (NFFE). An NFFE is either an active NFFE or a passive NFFE.

An organisation is a passive NFE if it is not an active NFE or a type of investment entity. Organisations that are passive NFEs are required to complete self-certifications both for themselves and for each controlling person. A controlling person is a natural person (ie, an individual) who exercises control over the organisation.

An active NFE is an NFE that meets any of the following criteria:

(i) Less than 50 per cent of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income (such as dividends, interest, royalties, annuities and rent) and less than 50 per cent of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
(ii) The stock of the NFE is regularly traded on an established securities market or the NFE is a related entity of an entity the stock of which is traded on an established securities market;
(iii) The NFE is a governmental entity, an international organization, a central bank, or an entity wholly owned by one or more of these;
(iv) Substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or 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 NFE does not qualify for this status if the NFE functions (or holds itself out) as an 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;

(v) The NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organization of the NFE;

(vi) The NFE 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;

(vii) The NFE 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

(viii) The entity is a non-profit NFE.

An entity is a non-profit NFE if it is an NFE which meets all of the following criteria:

(i) It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;

(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

(iv) its income or assets;

(v) The applicable laws of the NFE's country of residence or the NFE's formation documents do not permit any income or assets of the NFE 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 NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and

(vi) The applicable laws of the NFE's country of residence or the NFE's formation documents require that, upon the NFE'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 NFE's country of residence or any political subdivision thereof.