HMRC International Exchange of Information Manual

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This document was created on 8 July 2016 and is correct as of that date. We will aim to keep this document up-to-date with any changes as far as possible, but please bear in mind that it is a static document and the online version referred to above is definitive.

User instructions

The full contents are listed on the following pages. To search the document, hit CTRL F and enter search term or item no.
International Exchange of Information Manual

Guidance for staff involved with international exchange of information under the UK's international exchange agreements. Currently only series IEIM400000 has been published as the remaining series are still work in progress, but will be published when finalised.

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IEIM400010 Automatic Exchange of Information: Background

IEIM400015 Status of Guidance

The CRS is imposed in Europe via the European Directive on Administrative Cooperation (DAC), as a result it is DAC which governs the obligations imposed on Reporting Financial Institutions in the UK. The UK guidance on CRS cannot extend or restrict the scope of CRS as implemented by the DAC as to do so would go beyond what HMRC is permitted to do.

All Reporting Financial Institutions are required to carry out the due diligence processes for identifying Reportable Accounts as set out in the DAC. The DAC draws heavily on the CRS, in that applying the due diligence processes in the DAC will allow a Reporting Financial Institution to identify Reportable Accounts for Account Holders that are resident in CRS Reportable Jurisdictions outside of the EU. This means that for UK reporting purposes it is the application of the DAC that takes precedence over the CRS.

Clause 13 of the DAC states:-

*“In implementing this Directive, Member States should use the Commentaries on the Model Competent Authority Agreement and Common Reporting Standard, developed by the OECD, as a source of illustration or interpretation and in order to ensure consistency in application across Member States. Union action in this area should continue to take particular account of future developments at OECD level.” *

It follows that should the Courts need to interpret how any element of the DAC applies they will turn to the Commentaries on the Model Competent Authority Agreement and Common Reporting Standard as the primary source of interpretation. This means that if Financial Institutions have doubts about how any element of the DAC applies their first point of reference for guidance should be to the CRS Commentaries. The UK Guidance is secondary to this and assists with using the Commentaries by summarising and bringing together some of the main issues and to deal with any UK specific areas where the CRS allows for a degree of optionality as well as highlighting differences in approach between the DAC, FATCA and the Crown Dependencies and Overseas Territories reporting regimes.

Additional guidance can be found on the OECD Automatic Exchange Portal, including the CRS Implementation Handbook, which is a practical guide for government officials and financial institutions, and a list of CRS-related Frequently Asked Questions (FAQs).

IEIM400020 AEOI Regimes

Globalisation of the financial sector now makes it much easier for individuals and entities to hold money and assets outside of their jurisdiction of tax residence. While the great majority comply with their tax obligations there are some who will use the availability of offshore financial structures to evade tax.
Automatic exchange of financial account information is about improving transparency in the fight against tax evasion and in so doing protecting the integrity of the tax systems of the participating jurisdictions. The UK is party to a number of international agreements designed to provide tax administrations with details of financial accounts and assets, owned by individuals and entities that are resident for tax purposes in their jurisdiction, but which are held by financial institutions in the other territory.

For this to work the UK Government has introduced legislation that imposes obligations on the UK financial sector to review and collect details of accounts held by persons that are tax resident elsewhere and report this to HMRC for onward transmission under the exchange of information articles in the various treaties and conventions to which the UK is party. In return, those jurisdictions supply HMRC with similar information on UK tax resident individuals and entities holding accounts with their Financial Institutions.

The UK now has legislation in place for automatic exchange of financial account information under four different regimes:

1. The United States Foreign Account Tax Compliance Act – FATCA [see IEIM400040]
2. The Crown Dependencies and Gibraltar Regulations – CDOT [see IEIM400060]
3. The Common Reporting Standard developed by the OECD – CRS [see IEIM400080]
4. The EU Directive on Administrative Cooperation in Tax Matters – DAC [see IEIM400100]

The UK is also party to a number of non-reciprocal automatic exchange of information agreements under which the UK receives information but is not obliged to report to the other jurisdictions.

Going forward it is expected that, with the exception of the FATCA agreement, all of the UK’s obligations in this area will be under the CRS or the DAC as the Crown Dependencies and Overseas territories have signed Competent Authority Agreements with the UK to exchange information under those agreements from 2017 meaning that reporting under CDOT will be relatively short-lived. All the regimes have significant common requirements, this guidance manual will therefore concentrate on the requirements of the DAC and the CRS and highlight the differences that apply under the other two regimes.

HMRC is responsible for ensuring that UK Financial Institutions comply with their obligations under the relevant legislation. This guidance is intended to provide HMRC staff with an understanding of the requirements that UK Financial Institutions must fulfil to comply with those obligations and to aid businesses that may have responsibilities to review, collect and report information under the regulations. It is also intended as a reference source for Financial Institutions and tax professionals for use alongside the Commentaries to the CRS.

**IEIM400040 Financial Accounts Tax Compliance Act (FATCA)**

In 2010 the United States of America enacted the Foreign Account Tax Compliance Act provisions (FATCA) which are contained in the HIRE Act 2010. These provisions are aimed at reducing tax evasion by US citizens and entities.
FATCA requires Financial Institutions outside the USA to pass information about their USA customers to the US tax administration, the Internal Revenue Service. The legislation allows for a 30% withholding tax to be applied to the US source income of any non-US Financial Institution that fails to comply with this requirement. This caused a number of issues for UK Financial Institutions not least of which was how they could comply with the requirements of FATCA without breaching data protection restrictions.

On 12 September 2012 the UK and the USA signed a Treaty to implement FATCA in the UK – “The UK-US Agreement to Improve International Tax Compliance and to Implement FATCA” (the US IGA). Legislation at section 222 Finance Act 2013 provides HM Treasury with powers to make regulations to give effect to this and other similar agreements. The US IGA was brought into force by the The International Tax Compliance (United States of America) Regulations 2014, which were subsequently incorporated into the International Tax Compliance Regulations 2015 (SI 2015/878). These regulations impose obligations on UK Financial Institutions to identify, capture and report information to HMRC on financial accounts held by US citizens and entities. Provided these Financial Institutions comply with the requirements of the legislation they will not be subject to the 30% withholding tax on US source income.

**Interaction with US Regulations**

The UK regulations implement the IGA as it has effect from time to time. The Agreement now has different effect in the following respects since it was signed in September 2012.

Annex II has been updated by a mutual agreement entered into between the competent authorities of the UK and the US (made under the mechanism in Article 8 of the Agreement). The changes result in a wider scope of institutions and products effectively exempt from the FATCA requirements, and provide greater clarity on the categories of institutions which are Non-Reporting UK Financial Institutions under the Agreement. The Agreement is now also to be read as if it contained the changes announced by the US on 12 July 2013 with regard to the revised timeline regarding the implementation of FATCA (Notice 2013-43). Where appropriate these changes are reflected in the current UK regulations that came into force on 15 April 2015. Businesses and their advisers should note that where the UK regulations refer to actions or requirements in the Agreement the relevant text should also be read accordingly. For example when undertaking the appropriate due diligence in respect of a pre-existing entity account, Section IV paragraph B of Annex 1 of the Agreement should be read as if the relevant date therein refers to 30 June 2014 and not 31 December 2013.

A Financial Institution must apply the UK regulations in force at the time with reference to the published HMRC guidance. However where a Financial Institution identifies an alternative element of the US regulations or alternative element of a different Intergovernmental Agreement that it feels it would like to apply then it should contact HMRC to discuss the issue.

If the US authorities subsequently amend the underlying US regulations to introduce additional or broader exemptions, HMRC will consider whether to incorporate these changes into its regulations or guidance. HMRC will publish any updates on its dedicated automatic exchange of information webpage and make any subsequent changes to the regulations or guidance as required.
IEIM400060 The Crown Dependencies and Overseas Territories (CDOT)

The Crown Dependencies of Guernsey, the Isle of Man and Jersey and the UK Overseas Territories of Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Montserrat and the Turks & Caicos Islands have all entered into agreements with the UK to automatically exchange information on financial accounts see IEIM401500.

Of these, the agreements with the three Crown Dependencies and with Gibraltar are reciprocal thus imposing obligations on UK Financial Institutions to collect, maintain and report information to HMRC on financial accounts held by individuals and entities resident for tax purposes in those territories. The regulations that require this are [The International Tax Compliance (Crown Dependencies and Gibraltar) (Amendment) Regulations 2015](http://www.legislation.gov.uk/uksi/2014/520/made) (SI 2015/873).

The agreements with the remaining six Overseas Territories are non-reciprocal meaning that while HMRC will receive information from these territories there is no requirement for reporting in the opposite direction. Montserrat have, however, indicated that they will be exchanging on a reciprocal basis with the UK under the Common Reporting Standard.

As all the CDOT jurisdictions are adopting the Common Reporting Standard the reports due in 2017 under both regimes in respect of the 2016 reportable period will overlap to an extent. Transitional arrangements will be put in place through amended regulations so that reporting happens in respect of reportable accounts without duplication. The basic principle will be that whichever reporting regime requires more reporting that is the regime under which an account will be reported, see IEIM400555.

IEIM400080 Common Reporting Standard (CRS)

The Common Reporting Standard (CRS) is the result of the drive by the G20 nations to develop a global standard for the automatic exchange of financial account information. Developed by the OECD, the CRS aims to maximise efficiency and reduce costs for Financial Institutions by drawing heavily on the approach taken to implementing FATCA.

There are some distinct differences between the two systems, driven to a large extent by the multilateral nature of the CRS compared to FATCA and the US specific features of FATCA, such as tax residency in the USA including citizenship and the FATCA withholding tax which introduces additional features into the reporting process that are not needed when implementing the CRS.

In October 2014, 45 jurisdictions signed a multilateral competent authority agreement to start exchanging information using the CRS framework from 2017. A further 4 signed the same agreement with a commitment to start exchanging information in 2018. Since then more jurisdictions have either signed the multilateral competent authority agreement, or made a commitment to automatic exchange, such that approaching 100 jurisdictions have indicated that they will exchange information on financial accounts. The regulations that require UK Financial Institutions to collect, maintain and report information for exchange with these jurisdictions are The International Tax Compliance Regulations 2015.
The current list of participating jurisdictions for automatic exchange under both the CRS and the DAC can be found at IEIM402340.

**IEIM400100 EU Directive on Administrative Cooperation (the DAC)**

Following delivery of the CRS by the OECD in June 2014 the European Union immediately started work on incorporating it into an EU Directive to make automatic exchange of financial account information mandatory between EU Member States. The amendments to the EU Directive on Administrative Cooperation came into force on 5 January 2015.

The CRS contains a number of options that are open to jurisdictions to apply if they choose. The EU Member States came to agreement on which of those should be incorporated into the DAC and therefore applicable across the EU. In addition, some points that arose in the commentary to the CRS that are considered to be necessary for the effective implementation of CRS have been incorporated into the DAC.

The regulations that require UK Financial Institutions to collect, maintain and report information for exchange with EU Member States are The International Tax Compliance Regulations 2015.

**IEIM400120 How it Works**

The International Tax Compliance Regulations 2015 and the International Tax Compliance (Crown Dependencies and Gibraltar) (Amendments) Regulations 2015 work in the same way to bring into effect the obligations that financial institutions have to report details of accounts to HMRC for exchange with other jurisdictions.

Whether the obligations are for the purposes of FATCA, the CDOT IGAs, the CRS or the DAC the basic process is the same:

*Use this link to view diagram showing process for reporting details of accounts to HMRC*

Each of these steps is described in the following guidance and the differences in approach under each of the regimes identified.

**IEIM400140 The Wider Approach**

The ‘wider approach’ enables Reporting Financial Institutions to capture and maintain information on the tax residence of Account Holders irrespective of whether or not that Account Holder is a reportable person for any given reportable period. The due diligence procedures in each of the agreements governing automatic exchange are designed to identify accounts which are held by the residents of the jurisdictions with which the UK is committed to exchange information. However, the number of these jurisdictions is not fixed and there is an expectation that under the CRS more jurisdictions will reach agreement with the UK over time. As a result, the regulations applying the
due diligence rules have been designed to adopt a wider approach to recording the territory in which a person is tax resident irrespective of whether that territory is a Reportable Jurisdiction at the time that the regulations come into force.

Financial Institutions are required to identify the territory in which an Account Holder or a Controlling Person is resident for income tax or corporation tax purposes, or for the purposes of any other tax of a similar character that has been imposed by that territory, and to maintain this information for a period of 6 years from the end of the period in which the due diligence process is carried out. This effectively enables the financial institution to ‘future proof’ their processes such that when a new jurisdiction is added to the list of Reportable Jurisdictions the work in identifying where existing customers are resident has already been carried out. Reducing the number of times that due diligence processes have to be carried out should result in lower costs for the Financial Institutions in complying with their obligations. Financial Institutions will only need to revisit the determination of tax residence in those cases where there has been a change of circumstance.

The main concern is to provide Financial Institutions with the legal cover they require in the context of data protection law. The regulations impose an obligation on Financial Institutions without any discretion on their part to collect this information. In such circumstances it is the legislator that must consider the question of proportionality for Data Protection Act purposes. The obligation to identify the territory in which an Account Holder is tax resident and to maintain that information for 6 years from the end of the year in which the due diligence arrangements have been applied provides the necessary data protection cover for financial institutions to comply with their obligations. Financial Institutions are permitted to apply the same due diligence standards that are required to be applied to Account Holders resident in a reportable CRS jurisdiction to all Account Holders regardless of country of residence. This includes collecting information on country of residence and TINs for Account Holders, and entity classification, if relevant.
IEIM400500 Timetable

IEIM400510 Inter-Governmental Agreement dates

The various agreements entered into by the UK in respect of automatic exchange of information have different dates for when types of account come into scope and when first reporting must be completed.

The table below sets out the dates for each of the regimes.

<table>
<thead>
<tr>
<th></th>
<th>FATCA</th>
<th>CDOT</th>
<th>CRS</th>
<th>DAC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-existing financial accounts to be subjected to due diligence procedures are those in existence as at:</td>
<td>30 June 2014</td>
<td>30 June 2014</td>
<td>31 December 2015</td>
<td>31 December 2015</td>
</tr>
<tr>
<td>New financial accounts requiring self-certification by the customer are those opened on or after:</td>
<td>1 July 2014</td>
<td>1 July 2014</td>
<td>1 January 2016</td>
<td>1 January 2016</td>
</tr>
<tr>
<td>Information to be reported by financial institutions to HMRC in respect of the first reporting period on or before:</td>
<td>31 May 2015</td>
<td>31 May 2016[i]</td>
<td>31 May 2017</td>
<td>31 May 2017</td>
</tr>
<tr>
<td>Information to be exchanged by HMRC with partner jurisdictions on or before:</td>
<td>30 September 2015</td>
<td>30 September 2016</td>
<td>30 September 2017</td>
<td>30 September 2017</td>
</tr>
</tbody>
</table>

Subsequent reporting periods ending on 31 December each year are reportable to HMRC by the 31 May next following for exchange by 30 September. Not all financial account information is reportable in the first reporting period. Details of what is to be reported under each regime and when can be found at:

IEIM400520 for FATCA
IEIM400540 for CDOT
IEIM400580 for DAC

[i] Reports for the period ending 31 December 2014 and the year ending 31 December 2015 are both reportable to HMRC in 2016.
IEIM400520 FATCA reporting

The table below sets out the information that is to be reported to HMRC for each reporting year in respect of the Intergovernmental Agreement between the UK and the USA. Reporting is required to HMRC by 31 May next following the reporting year for which the information is required.

Reporting year to 31 December 2014

In respect of each specified US person either:

- holding a Reportable Account, or
- as a Controlling Person of an entity account.

Information to be reported:

- Name
- Address
- US Tax Identification Number (or Date of Birth for pre-existing accounts where the TIN is not in the records of the Reporting Financial Institution) (Note: If the Reporting Financial Institution does not hold details of either the TIN or date of birth in its records nothing needs to be reported for years up to and including 2016. For 2017 onwards the Financial Institution is required to obtain the TIN for each Specified US Person.).
- Account number or functional equivalent.
- Name and identifying number of Reporting Financial Institution.
- Account balance or value.

Reporting year to 31 December 2015

As 2014 plus the items listed below.

In respect of:

- Custodial Accounts

Information to be reported:

- Total gross amount of interest.
- Total gross amount of dividends.
- Total gross amount of other income paid or credited to the account.

In respect of:

- Depository Accounts

Information to be reported:

- The total amount of gross interest paid or credited to the account in the calendar year or other reporting period.
In respect of:

- Other Accounts

Information to be reported:

- The total gross amount paid or credited to the account including the aggregate amount of redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

**Reporting year to 31 December 2016**

As 2015 plus the items listed below.

In respect of:

**Custodial Accounts**

Information to be reported:

- The total gross proceeds from the sale or redemption of property paid or credited to the account.

**2017 onwards**

- All of the above.

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**IEIM400540 CDOT reporting**

The table below sets out the information that is to be reported to HMRC for each reporting year in respect of the Intergovernmental Agreements between the UK and the Crown Dependencies and Overseas Territories. Reporting is required to HMRC by 31 May next following the reporting year for which the information is required except for 2014 which is reportable on or before 31 May 2016.

**Reporting year to 31 December 2014**

In respect of each specified CDOT person either:

- Holding a Reportable Account, or
- As a Controlling Person of an entity account.

Information to be reported:

- Name
- Address
- Date of Birth (for an individual) (Note: Date of birth is not required to be reported for pre-existing accounts for calendar years before 2017 if the Financial Institution does not already hold that information, and for new accounts it is not mandatory to be reported, but the Financial Institution must make reasonable efforts to obtain.)
• Social Security Number or National Insurance Number as specified in the relevant IGA. (Note: Social security number is not required to be reported for pre-existing accounts for calendar years before 2017 if the Financial Institution does not already hold that information.)
• Account number or functional equivalent.
• Name and identifying number of Reporting Financial Institution.
• Account balance or value.

**Reporting year to 31 December 2015**

As 2014 plus the items listed below.

In respect of:

• Custodial Accounts

Information to be reported:

• Total gross amount of interest.
• Total gross amount of dividends.
• Total gross amount of other income paid or credited to the account.

In respect of:

• Depository Accounts

Information to be reported:

• The total amount of gross interest paid or credited to the account in the calendar year or other reporting period.

In respect of:

• Other Accounts

Information to be reported:

• The total gross amount paid or credited to the account including the aggregate amount of redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

**Reporting year to 31 December 2016**

As 2015 plus the items listed below.

In respect of:

• Custodial Accounts
Information to be reported:

- The total gross proceeds from the sale or redemption of property paid or credited to the account.

2017 onwards

Note: As the CDOT jurisdictions are committed to exchange under the CRS from 2017 onwards the transitional arrangements are expected to ensure that all reporting will be under the CRS for exchanges in 2018 onwards.

- All of the above.

IEIM400550 CDOT to CRS Transition

Reporting under the Crown Dependency and Overseas Territories (CDOT) arrangement will begin in 2016 for information relating to the years 2014 and 2015; for the Crown Dependencies and Gibraltar the arrangements are reciprocal, so the UK will need to provide data on the residents of these jurisdictions. In 2017 the UK and all of the Crown Dependencies and Overseas Territories will adopt the CRS. Current non-reciprocal arrangements will continue, except in the case of Montserrat which will change to a reciprocal basis.

There are items that would be reportable under the CDOT arrangement for 2017 which are not within the CRS, and terms within the CRS which would lead to more reporting than under the CDOT arrangement. In order to ease the transition, arrangements will be put in place to ensure that, while there is overlap in the period covered by the IGAs and the CRS, there is no need for duplicate reporting. The rule to follow will be that wherever the IGA or the CRS requires more reporting in the transition year of 2017, then the “more” should be reported.

Example:

- In 2017 the CRS does not require reporting of lower value pre-existing individual accounts and pre-existing entity accounts unless identified. The due diligence processes to identify these can run until 31 December 2017; the due diligence required by the IGA for these accounts will have been completed, consequently all CDOT reportable lower-value pre-existing accounts will need to be reported in 2017.

- What should be reported in respect of low value accounts in 2017 is therefore what is required under the IGA since that is “more”; where the accounts would be reportable under both regimes the report under the IGA will satisfy the requirement to report under the CRS.

The practical effect of this approach is that for 2016, reporting is done under the IGA requirements. For 2017, there is a mix under IGA and CRS requirements. Then, from 2018 onwards it is just the requirements of the CRS that apply. However, at no time will there be a need to report the same thing twice. Where Reportable Accounts have been identified and reported under the IGA, they will be deemed to have been identified and reported for the purposes of the CRS. To achieve this we will
be amending the UK implementing legislation to make provision for this deeming. We will be recommending the other jurisdictions involved to do likewise.

There will be one AEOI Schema, which will allow for reporting under either the IGAs or CRS and should help with this approach.

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**IEIM400555 CDOT to CRS Transition Detailed Guidance**

The first reports under the CDOT IGAs happen in 2016 in respect of both of the years 2014 and 2015, with different due diligence for pre-existing accounts (and hence different accounts and details from accounts) applying to each year. Reporting in 2017 for the 2016 calendar year will then add the final details.

The first report in 2016 under the CDOT IGAs will include:

- All new accounts opened after 1 July 2014 (subject to reporting thresholds [see IEIM402565]; and
- Pre-existing high value individuals’ accounts as the due diligence for such accounts must have been completed by 30 June 2015 (as set out in Article 3 and Annex 1 to the IGAs).
- Those pre-existing lower value individual accounts and pre-existing entity accounts that have been identified as reportable in 2014 or 2015.

Once identified as reportable accounts, these accounts continue to be reported annually thereafter, subject to account closure or a change of circumstance making them non-reportable.

For the remaining pre-existing accounts the due diligence procedures must be completed by 30 June 2016 in preparation for first reporting in 2017.

The first reports under the CRS happen in 2017 and will include:

- All new accounts opened on or after 1 January 2016;
- Pre-existing high value individuals’ accounts in existence at 31 December 2015 that have not been previously identified as reportable accounts under the CDOT IGAs; and
- Any other reportable accounts that are identified as reportable in 2016, including closed accounts which were open at the end of 2015.

The transition in 2016, 2017, and 2018

The due diligence processes Financial Institutions carry out in 2016 may be under both the IGAs and the CRS, as the due diligence procedures under the IGAs do not need to be fully completed until 30 June 2016 while the CRS procedures commence on 1 January 2016. As indicated above, HMRC will only require the data to be reported once whichever regime identifies the account as reportable, and reporting can be done in 2017 using the CRS schema.

2017 is the year where there is overlap between reporting under the IGA and the CRS.

From 2018 onwards, reporting is purely under the CRS.
For 2017, as set out above, what should be reported is the maximum of what is required by the CRS or the IGA for that year. This meets both the purpose of the IGAs and the CRS.

This means that the accounts which need to be reported in 2017, in addition to what is required under the IGA, are those accounts identified as reportable under the CRS but not reportable under the IGA. These will include, for example, accounts where an election has been made to exclude accounts below a specified amount from review, identification and reporting under the IGA [see IEIM402570].

For new accounts opened on or after 1 January 2016, Financial Institutions may rely on CRS due diligence processes to identify Specified CDOT Persons.

All accounts identified as reportable by 31 December 2016 must be reported in 2017 irrespective of the regime under which they were identified.

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**IEIM400570 EU Savings Directive to CRS Transition**

The obligations on Financial Institutions to report information under The Reporting of Savings Income Regulations 2003 (S.I.2003/3297), which implemented the EU Savings Directive (EUSD) 2003/48/EC (as amended), will end following the repeal of the EUSD by Directive 2015/2060/EU, brought into force on 8 December 2015. Without the Directive on which they are dependent, The Reporting of Savings Income Regulations 2003 will have no meaning. They will be formally repealed on the same basis as the Directive in 2016. This will include a savings provision for obligations under them in respect of the reporting years, ending with the tax year to 5 April 2016.

In accordance with the terms of Directive 2015/2060/EU, the UK reporting obligations under the EUSD and the regulations will continue in respect of the reporting year ended 5 April 2016, after which they will cease except in so far as obligations in relation to reporting years until that date remain unsatisfied.

The last reporting year under the EUSD is therefore the UK tax year ending 5 April 2016. There will be a legal obligation on Financial Institutions to report information in respect of that year, however in order to minimise the costs to business HMRC will accept returns that end effectively on 31 December 2015 in addition to those which continue to supply information up to 5 April 2016.

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**IEIM400580 CRS/DAC Reporting**

The timetable under both CRS and the DAC is the same. The table below sets out the information that is to be reported to HMRC for each reporting year in respect of the Directive on Administrative Cooperation governing automatic exchange of information between the UK and the other EU Member States. Reporting is required to HMRC by 31 May next following the reporting year for which the information is required.
Reporting year to 31 December 2016 onwards

In respect of each reportable person either:

Holding a Reportable Account, or

As a Controlling Person of an entity account

Information to be reported:

- Name
- Address
- Jurisdiction of residence
- Tax Identification Number (TIN) [see IEIM402040]
- Date of Birth [see IEIM402080]
- Place of Birth [see IEIM402180]
- Account number or functional equivalent.
- Name and identifying number (if any) of Reporting Financial Institution.
- Account balance or value.

In respect of:

Custodial Accounts

Information to be reported:

- Total gross amount of interest.
- Total gross amount of dividends.
- Total gross amount of other incom paid or credited to the account.
- The total gross proceeds from the sale or redemption of property paid or credited to the account.

In respect of:

Depository Accounts

Information to be reported:

- The total amount of gross interest paid or credited to the account in the calendar year or other reporting period.

In respect of:

Other Accounts

Information to be reported:

- The total gross amount paid or credited to the account including the aggregate amount of redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.
IEIM400600 Financial Institutions

IEIM400610 Introduction

The various UK regulations for automatic exchange of financial account information impose obligations on UK Financial Institutions to collect and maintain information about the residence, and in the case of the USA the citizenship as well, of individuals and entities for whom they maintain financial accounts. Under the ‘wider approach’ [see IEIM400140] they are required to keep that information in respect of all Account Holders for a period of 6 years and to report it to HMRC to the extent that it is reportable under one of the agreements.

There are four categories of Financial Institution common to each of the agreements –

- Custodial Institution [see IEIM400640]
- Depository Institution [see IEIM400740]
- Investment Entity [IEIM400760], and
- Specified Insurance Company [IEIM400840]

Under the US FATCA Regulations, other definitions of Financial Institution exist but these are not Reporting Financial Institutions for FATCA purposes [see IEIM400630].

Each category of Financial Institution is determined by set criteria. Where an entity does not meet the definition of financial institution in any of the categories then it will be classified as Non-Financial Entity (NFE) [see IEIM404040] or, for FATCA purposes, a Non-Financial Foreign Entity (NFFE).

Throughout this guidance references to NFE should be read as including a reference to NFFE unless otherwise specified.

Where an entity falls within the definition of one of the above categories the financial institution will be classified either as a Reporting Financial Institution or a Non-Reporting Financial Institution (NRFI). The definition of NRFI varies between the different regimes such that a NRFI for FATCA may be a Reporting Financial Institution for the CRS. The definitions of NRFI for each regime can be found at [see IEIM400920] onwards.

IEIM400620 UK Financial Institutions

The various UK regulations for automatic exchange of financial account information impose obligations on UK Financial Institutions.

A UK Financial institution is any Financial Institution resident in the UK, as well as any branch of a non-resident Financial Institution located in the UK.

In many cases whether or not a Financial Institution is resident in or located in the UK will be clear, but there may be situations where this is less obvious.

In these cases HMRC will look to determine the entity’s status for the various automatic exchange of information agreements from the tax residence of the entity. If the Financial Institution is resident
for tax purposes in the UK, then HMRC will regard the Financial Institution as within the scope of the UK Agreement.

For these purposes, resident for tax purposes in the UK means the following:

**For a company**

- If the company is incorporated in the UK or centrally managed and controlled in the UK. For example, a UK incorporated subsidiary of a foreign banking group will be a UK tax resident entity.

**For a company not resident in the UK under the above test**

- Where it is within the charge to corporation tax if, and only if, it carries on a trade in the UK through a permanent establishment in the UK. For example, a UK branch of a foreign bank that trades through a permanent establishment in the UK will be UK tax resident.

**For trusts**

- For CDOT, CRS and DAC purposes, if one or more of the trustees are resident in the UK for tax purposes then the trust is UK resident unless the trust is resident for tax purposes in another jurisdiction with which the UK automatically exchanges financial account information and the trust reports details of Reportable Accounts to that jurisdiction.
- For FATCA purposes a trust will be regarded as resident in the UK for reporting purposes where most or all of the trustees are resident in the UK for tax purposes. Where some of the trustees, but not all are UK tax resident, then the Trust is also to be treated as UK resident if the settlor is both resident and domiciled in the UK for tax purposes.

**For partnerships**

- If the control and management of the business of the partnership takes place in the UK, or the partnership registers with and submits Partnership Tax Returns to HMRC.

If an entity is dual resident, such that it is resident in the UK and also in another country, it will still need to apply the UK legislation in respect of any Reportable Accounts maintained in the UK.

Entity Classification Elections made to the IRS are irrelevant for determining whether an entity is in scope for the agreements.

Subsidiaries and branches of UK tax resident Financial Institutions that are located outside of the UK are not UK Financial Institutions. However, where such subsidiaries and branches act as introducers of business to a UK Financial Institution resulting in the financial accounts being held and maintained by the UK Financial Institution then the UK Financial Institution will be required to undertake the appropriate due diligence procedures and report the details of the accounts to HMRC.
IEIM400630 Holding Companies and Treasury Centres

Regulation 1.1471-5(e)(1)(v) of the US Treasury Regulations has as a final category of Financial Institution “an entity that is a holding company or a treasury company”, but that definition of “Financial Institution” does not determine the meaning of “Foreign Financial Institution” (FFI) where there is a relevant agreement such as that between the UK and US to implement FATCA. Removing these categories of UK Financial Institution from the UK Regulations aligns the UK position for FATCA with that of most other countries as well as the Crown Dependencies and Oversea Territories agreements and DAC/CRS. It also clarifies the position of holding companies and finance companies for non-financial groups (groups with no other Financial Institutions), and reduces compliance burdens for some businesses.

However, because the previous definition of a UK Financial Institution included relevant holding companies and treasury companies some holding company members of financial groups would have registered with the IRS as the Lead Financial Institution of an Expanded Affiliated Group (EAG) for FATCA purposes.

HMRC understands that reversing the registration and re-registering an entire group with new GIINs would be onerous, and an additional and unnecessary administrative burden for such groups. Furthermore for some groups identifying a new Lead Financial Institution would be difficult and could cause difficulties with counter-parties.

If an entity registered as a Lead Financial Institution also comes within the definition of a UK Financial Institution under one of the remaining four categories then they will continue to be defined and treated as a UK Financial Institution – this may be the case, for example, for treasury companies where they also come within the definition of an investment entity. Where that is not the case, HMRC are content for an entity that has already registered as a Lead Financial Institution to choose to use the extended definition of financial institution included in the US Treasury Regulations (which as noted above includes the concept of “relevant holding companies” and “treasury centres of financial groups”), should they wish to do so. For FATCA, where an alternative element of the US Regulations or an alternative element of a different intergovernmental agreement is identified that an entity considers is beneficial then HMRC will consider the matter. In the circumstances described, a holding company or finance company of a financial group that does not come within the one of the remaining four types of UK Financial Institution will not have any UK Reportable Accounts and will therefore have no UK obligations, and treating itself as an Financial Institution for the purposes of registration with the IRS does not frustrate the intentions of FATCA or AEOI generally. HMRC is therefore content for entities to take that approach if they wish.

Entities should determine whether they are a financial group by reference to the FATF definition:

“Financial group means a group that consists of a parent company or of any other type of legal person exercising control and coordinating functions over the rest of the group for the application of group supervision under the Core Principles, together with branches and/or subsidiaries that are subject to AML/CFT policies and procedures at the group level”.

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IEIM400640 Custodial Institution

IEIM400650 Introduction

A Custodial Institution is an entity that holds, as a substantial portion of its business, financial assets for the account of others.

In this context, a substantial portion is taken as being at least 20% of the entity’s gross income that is attributable to holding financial assets and providing related financial services in the shorter of:

- Its last three accounting periods, or
- The period since it commenced business.

Income attributable to holding financial assets and providing related financial services includes the following:

- Custody, account maintenance and transfer fees;
- Commissions and fees earned from executing and pricing securities transactions;
- Income earned from extending credit to customers;
- Income earned from contracts for differences and as the bid-ask spread of financial assets;
- Fees for providing financial advice;
- Fees for providing clearance and settlement services.

Where an entity has no operating history at the time its status as a custodial institution is being assessed, it will be regarded as a Custodial Institution if it expects to meet the gross income threshold based on its anticipated functions, assets and employees. Consideration must be given to any purpose or function for which the entity is licensed or regulated (including those of any predecessor).

There may be circumstances where an entity holds financial assets for a customer where the income attributable to holding the financial assets or providing related financial services either belongs or is otherwise paid to a connected party such as another company in the same group of companies. This may be because the entity holds assets for a customer of a connected party, or simply that any consideration is paid to a connected party, either as an identifiable payment or as one element of a consolidated payment. In that case the attributable income should be taken account of when applying the 20% test.

Where an entity holds financial assets that are the property of a connected person, for example a company may hold the financial assets of some or all members of the group to which it belongs, and no or nominal fees are paid for that service, that is fees less than would apply on a commercial basis, consideration should be given to what would have been paid by an arm’s length customer when applying the 20% test.
**IEIM400660 Execution Only Broker**

An execution only broker that simply executes trading instructions or receives and transmits such instructions to another executing broker will not hold financial assets for the account of others so will not be a Custodial Institution. However, such a broker may be a Financial Institution if it falls with the definition of an Investment Entity [see IEIM400760].

**IEIM400680 Central Securities Depository**

In the UK a Central Securities Depository (CSD) will not be treated as maintaining financial accounts. The participants of UK securities settlement systems that hold interests recorded in the CSD are either Financial Institutions in their own right, or they access the system through a Financial Institution (a sponsor), or are not subject to reporting obligations. It is these Financial Institutions that maintain the accounts and it is these participants and/or sponsors that are responsible for undertaking any reporting obligations.

For example, members of the CREST securities settlement system (CREST system) operated by Euroclear UK & Ireland Limited (EUI), or the Financial Institution that accesses the CREST system on their behalf, are responsible for i) ensuring that the relevant member is compliant and ii) any reporting required by the agreement in respect of securities held by means of the CREST system. EUI acting as the CSD is not required to undertake any due diligence and reporting required by the agreement in respect of such securities.

This treatment will also apply to a UK entity which is a direct or indirect subsidiary used solely to provide services ancillary to the business operated by that CSD or CSD Related Entity.

The relationship between the securities settlement system and its participants is not a financial account and accordingly the CSD and any CSD Related Entity is not required to undertake any reporting required in connection with interests held by, or on behalf of, participants.

Notwithstanding the foregoing, the CSD may act as a third party service provider [see IEIM402000] and report on behalf of such participants in respect of reportable interests.

**IEIM400700 Trusts**

Trusts are treated as entities by all of the agreements for automatic exchange of information.

A trust can be either a financial institution or a Non-Financial Entity. Where a trust meets one of the definitions for being a Financial Institution [see IEIM400600] it is most likely to be an Investment Entity [see IEIM400760] but it may, alternatively, meet the requirements for being a Custodial Institution [see IEIM400640].

For example, shares held in trust may be in a Custodial Account [see IEIM402200] and therefore subject to reporting by the trust as the Custodial Institution that holds the account. This may be the
case where a trust such as an Employee Benefit Trust continues to hold financial assets, such as shares, for an employee after they have been granted.

Where an Employee Benefit Trust holds shares for the future benefit of employees, but the shares are not allocated, then under most circumstances this right to a future allocation would not fall to be a custodial account. Similarly, when shares are allocated and the trustee is directed to transfer the assets as soon as reasonably possible to the beneficiary, a broker, a custodian, etc., then the trust will not be treated as maintaining a financial account for the duration of time it takes to complete the transfer.

Further guidance on trusts can be found at http://www.hmrc.gov.uk/manuals/ihtmanual/ihtm42900.htm

IEIM400720 Fund Nominees

Distributors in the legal chain of ownership

Distributors that hold legal title to assets on behalf of customers and are part of the legal chain of ownership of interests in Collective Investment Schemes are Financial Institutions. In most cases they will be Custodial Institutions because they will be holding assets on behalf of others.

Fund nominees, fund intermediaries and fund platforms will nevertheless still be Financial Institutions because they would otherwise be within the definition of Investment Entity [see IEIM400760]. In this case the financial accounts will be those maintained by the distributor, and the distributor will be responsible for ensuring it meets its obligations in respect of those accounts.

Fund nominees, fund intermediaries and fund platforms should be treated as Custodial Institutions unless specific factors indicate that their businesses are better characterised as falling within the definition of an Investment Entity. Normally, the primary business of a fund nominee, fund intermediary or fund platform will be to hold financial assets for the account of others.

For the purpose of aggregating accounts [see IEIM403560] to determine whether any pre-existing custodial accounts are high value accounts [see IEIM402900], a Custodial Institution will need to consider all the financial accounts held with them by each customer even though the underlying interests are in different Collective Investment Schemes.

IEIM400740 Depository Institution

A Depository Institution is an institution that accepts deposits in the ordinary course of a banking or similar business.

HMRC will regard a person carrying out an activity in the UK that is a regulated activity for the purposes of the Financial Services and Markets Act 2000 by virtue of Article 5 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (accepting deposits) as a Depository Institution.
Entities within this definition will include entities regulated in the UK as a savings or commercial bank, a credit union, industrial and provident societies and building societies. In considering Article 5, HMRC will apply the relevant exclusions contained therein – for example, insurance brokers and solicitors would not be expected to fall within this definition. However in considering whether an entity is conducting banking or similar business, it will be the actual activities that the entity carries out that will be determinative.

The definition of a ‘banking or similar business’ is contained in the US Treasury Regulations for FATCA reporting purposes at section 1.1471-5(e) (2), and this definition also applies for CRS reporting purposes. An entity is considered to be engaged in a banking or similar business if, in the ordinary course of its business with customers, the entity accepts deposits or other similar investments of funds and regularly engages in one or more of the following activities:

1. Makes personal, mortgage, industrial or other loans or provides other extensions of credit;
2. Purchases, sells, discounts or negotiates accounts receivable, instalment obligations, notes, drafts, cheques, bills of exchange, acceptances or other evidences of indebtedness;
3. Issues letters of credit and negotiates drafts drawn thereunder;
4. Provides trust or fiduciary services;
5. Finances foreign exchange transactions; or
6. Enters into, purchases, or disposes of finance leases or leased assets.

Entities that solely provide asset based finance services, such as a factoring or invoice discounting business, or that accept deposits from persons solely as collateral or security pursuant to a sale or lease of property, a loan secured by property or a similar financing arrangement, between such entity and the person making the deposit, will not be Depository Institutions.

Entities that facilitate money transfers by instructing agents to transmit funds, including the provision of merchant’s payments accounts, but do not finance the transactions, will not be considered to be engaged in banking or similar business as this is not seen as accepting deposits.

**IEIM400750 Electronic Money Institutions**

Entities that issue payment cards that can be pre-loaded with funds to be spent at a later date, may not be Depository Institutions provided certain conditions are met.

Electronic Money Institutions authorised under the Electronic Money Regulations 2011 (EMR), which implements the European Union Electronic Money Directive (2009/110/EC) (EMD) in the UK, are not deposit takers for the purposes of the EU Capital Requirements Directive (2013/36/EU) (CRD). Issuing electronic money (e-money) in exchange for funds, i.e. providing an e-money account in which to hold funds, does not constitute deposit taking. Consequently, Electronic Money Institutions will not fall within the definition of Depository Institution, which requires deposits to be accepted in the ordinary course of a banking or similar business.

Similarly, Payment Institutions authorised under the Payment Services Regulations 2009 (PSR), which implements the European Union Payment Services Directive (2007/64/EC) (PSD) in the UK, are not deposit takers for the purposes of the CRD. Any funds received by Payment Institutions from
payment service users with a view to the provision of payment services does not constitute deposit taking. Consequently, Payment Institutions will not fall within the definition of Depository Institution, which requires deposits to be accepted in the ordinary course of a banking or similar business.

The EMD applies to ‘payment service providers that issue electronic money.’ It specifically excludes providers of ‘specific pre-paid instruments, designed to address precise needs that can be used only in a limited way, because they allow the electronic money holder to purchase goods or services only in the premises of the electronic money issuer or within a limited network of service providers under direct commercial agreement with a professional issuer, or because they can be used only to acquire a limited range of goods or services.’ This exclusion includes prepaid store cards, membership cards, public transport cards, and meal vouchers.

The definition of electronic money within the EMD covers ‘all situations where the payment service provider issues a pre-paid stored value in exchange for funds, which can be used for payment purposes because it is accepted by third persons as a payment.’

The EMD, at recital 13, specifically excludes the issuing of electronic money from constituting a deposit taking activity for the purposes of the Banking Consolidation Directive (which has now been consolidated into the Capital Requirements Directive):

‘The issuance of electronic money does not constitute a deposit-taking activity pursuant to Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions, in view of its specific character as an electronic surrogate for coins and banknotes, which is to be used for making payments, usually of limited amount and not as means of saving.’

The recital goes on to confirm conditions applying to electronic money institutions:

‘Electronic money institutions should not be allowed to grant credit from the funds received or held for the purpose of issuing electronic money. Electronic money issuers should not, moreover, be allowed to grant interest or any other benefit unless those benefits are not related to the length of time during which the electronic money holder holds electronic money. The conditions for granting and maintaining authorisation as electronic money institutions should include prudential requirements that are proportionate to the operational and financial risks faced by such bodies in the course of their business related to the issuance of electronic money, independently of any other commercial activities carried out by the electronic money institution.’

Credit card issuers may meet the conditions to be a Qualified Credit Card Issuer which will make them a Non-reporting Financial Institution (see IEIM400970).
**IEIM400760 Investment Entity**

**IEIM400770 Introduction**
An entity will be an Investment Entity if it meets either one of the following two sets of criteria.

**Activity Based Investment Entity**
An entity will be an Investment Entity if it primarily conducts as a business for or on behalf of a customer one or more of the following activities or operations:

- Trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.).
- Foreign exchange.
- Exchange, interest rate and index instruments.
- Transferable securities.
- Commodity futures trading.
- Individual and collective portfolio management.
- Otherwise investing, administering or managing funds or money on behalf of other persons.

An entity will be regarded as primarily conducting these activities or operations as a business if its gross income from conducting these activities is at least 50% of its total gross income during the shorter of:

- The three year period ending on 31 December in the year preceding that in which its status as an investment entity is to be determined; or
- The period in which the entity has been in existence.

**Managed Investment Entity**
An entity will be an investment entity if it is managed by a Financial Institution [see IEIM400600] and meets the financial assets test as described below.

An entity is managed by a Financial Institution if that Financial Institution performs, either directly or through another service provider, any of the activities described in the section above (activity based investment entity) on behalf of the entity. An entity is not regarded as managed by a financial institution if that Financial Institution does not have discretionary authority to manage the entity’s assets either in whole or in part.

An entity may be managed by a mix of other entities and individuals. If one of the entities so involved in the management of the entity is a Financial Institution within the meaning of the agreements then the entity meets the requirements for being managed by a Financial Institution.

An entity meets the financial assets test if its gross income is primarily attributable to investing, reinvesting or trading in financial assets. This is a similar test to that in the section above requiring that at least 50% of its income is attributable to investing, reinvesting or trading in financial assets in the shorter of:
• The three year period ending on 31 December in the year preceding that in which its status as in investment entity is to be determined; or
• The period in which the entity has been in existence.

Some examples of how the definition of Investment Entity is applied are included in this manual at [see IEIM400780].

Certain types of entity can be complex and thus care must be taken when applying the definition of investment entity to them. Additional guidance is available for these at:

• Trusts IEIM400800
• Charities IEIM400790
• Partnerships IEIM400860
• Personal investment companies IEIM400880
• Securitisation vehicles IEIM400900

An entity would generally be considered to fall within one of the categories of Investment Entity if it functions or holds itself out as a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buy-out fund or any similar investment vehicle established with an investment strategy of investing, reinvesting or trading in financial assets.

An entity that primarily conducts as a business investing, administering, or managing non-debt, direct interests in real property on behalf of other persons, such as a real estate investment trust, will not be an Investment Entity.

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**IEIM400780 Examples**

The following examples illustrate the application of the tests described at [see IEIM401160].

**Investment advisor**

Advice Co Ltd, provides advice on and discretionary management of securities held by a number of clients. The securities meet the definition for being financial assets. Almost 80% of the gross income of Advice Co Ltd for the last three years has come from providing such services. Advice Co Ltd primarily conducts a business of managing financial assets on behalf of clients and is, therefore, an Investment Entity.

**Entity carrying on business managed by a Financial Institution**

Investment Fund X primarily invests in equities on behalf of customers. Fund X is managed by Invest Co Ltd, a Financial Institution. Fund X was formed two years ago since which it has earned 90% of its income from these activities. Fund X is an Investment Entity because it primarily conducts as a business one or more of the relevant activities or operations for or on behalf of a customer. It is not relevant that it is managed by a Financial Institution as it is an Investment Entity by virtue of its business activities.
**Entity managed by a Financial Institution**

Investment Partnership LLP is a vehicle set up to invest its members’ contributions in financial assets, it invests in its own right and has no customers. The LLP is managed by Invest Co Ltd, a Financial Institution. The LLP has been investing for several years and its income is derived exclusively from its investment activities. As the LLP is managed by a Financial Institution and at least 50% of its income in the last three years is primarily attributable to investing, reinvesting or trading in financial assets it will be an Investment Entity.

**Entity managed by a Foreign Financial Institution**

The facts are the same as in the example above, except that Investment Partnership LLP is managed by Invest Co GmbH, a German Financial Institution. The fact that the LLP is managed by a Financial Institution resident in another jurisdiction does not alter its status. It will be an Investment Entity, because it is managed by a Financial Institution and more than 50% of its gross income is primarily attributable to investing, reinvesting or trading in financial assets.

**Entity managed by an individual**

Ben, an individual, runs a business providing advice to clients on investments in financial assets and has discretionary authority to manage financial assets on behalf of clients. One of his clients is a company, Z Ltd that has earned more than 50% of its gross income in the last three years from investing, reinvesting and trading in financial assets. Ben primarily conducts investment-related activities on behalf of clients. Ben is not an Investment Entity because he is an individual. Z Ltd, however, is nonetheless an Investment Entity because it primarily conducts as a business one or more of the relevant activities or operations for or on behalf of a customer (note: in practice, it is unlikely that such an entity would appoint an individual to manage its assets).

**Family trust managed by an individual**

See above: if Ben managed the assets of a family trust, the trust would not be an Investment Entity as it is not primarily conducting as a business one or more of the relevant activities or operations for or on behalf of a customer, and although its gross income is primarily attributable to investing, reinvesting, or trading in financial assets, it is not an entity that is managed by a Financial Institution (because Ben, as an individual, cannot be a Financial Institution). (Note: in practice, a trust holding assets on behalf of a family arrangement will typically appoint a company or partnership to manage its assets but some family trusts may instead appoint a suitably qualified individual).

**Family trust with a corporate trustee**

The ABC family trust’s gross income is primarily attributable to investing, reinvesting or trading in financial assets. The trust was set up on the advice of a law firm and that firm’s own corporate trustee is the trustee of the trust. The corporate trustee acts for the law firm’s clients without itself charging any fees to the clients. Even though the corporate trustee does not charge, it is a Financial Institution by virtue of being an Investment Entity. Its Related Entity (the law firm) is charging the clients for the corporate trustee’s services of managing assets, the corporate trustee therefore primarily conducts as a business, for or on behalf of a customer, the prescribed activities. This in turn means that the ABC family trust is also an Investment Entity.
**EIM400790 Charities**

A charity, or other not for profit association, may fall within the definition of an Investment Entity where it is managed by a Financial Institution and more than 50% of its income comes from investing in financial assets. Relevant income would include interest, dividends, royalties, annuities and other income from investing in financial assets.

**Managed Investment Entity**

An entity will be an Investment Entity if it is managed by a Financial Institution [see IEIM400600] and meets the financial assets test as described below.

An entity is managed by a Financial Institution if that Financial Institution performs, either directly or through another service provider, any of the activities described in IEIM400780 (Activity Based Investment Entity) on behalf of the entity. An entity is not regarded as managed by a Financial Institution if that Financial Institution does not have discretionary authority to manage the entity’s assets either in whole or in part.

An entity may be managed by a mix of other entities and individuals. If one of the entities involved in the management of the entity is a Financial Institution within the meaning of the agreements then the entity meets the requirements for being managed by a Financial Institution.

An entity meets the financial assets test if its gross income is primarily attributable to investing, reinvesting or trading in financial assets. This is a similar test to that in the section above requiring that at least 50% of its income is attributable to investing, reinvesting or trading in financial assets in the shorter of:

- The three year period ending on 31 December in the year preceding that in which its status as in investment entity is to be determined; or
- The period in which the entity has been in existence.

**Charities**

Where a charity is a Financial Institution it will need to carry out due diligence processes on the financial accounts that it holds. These will be the equity and debt interests held in the charity, see IEIM401700 for further details.

Where a charity does not fall within the definition of a Financial Institution it will be a Non-Financial Entity (NFE). Non-profit NFES are specifically included within the definition of active-NFE where they are registered with The Charity Commission for England and Wales or The Office of the Scottish Charity Regulator, or are a Community Amateur Sports Club; and are registered with HMRC for charitable tax purposes. This means there is no requirement to ‘look through’ a charity under the rules for passive NFES [see IEIM403480] to identify controlling persons, where that charity is an account holder of a Financial Institution.

**FATCA only**

Under the FATCA agreement with the USA all charities are excluded from reporting under the exemption for non-profit organisations [see IEIM401000].
IEIM400800 Trusts

Trusts are treated as entities by all of the agreements for automatic exchange of information.

A trust can be either a Financial Institution or a Non-Financial Entity (NFE). Where a trust meets one of the definitions for being a Financial Institution [see IEIM400600] it is most likely to be an Investment Entity [see IEIM400760] but it may, alternatively, meet the requirements to be a Custodial Institution [see IEIM400640]. A trust is unlikely to be regarded as an activity based Investment Entity because trusts generally do not carry on businesses for or on behalf of customers. Trusts are more likely to be managed Investment Entities but must meet both the tests to be within this category of Financial Institution, that is, its gross income must be primarily derived from investing, reinvesting or trading in financial assets and it must be managed by a Financial Institution.

The test of being managed by a Financial Institution will be met where the trust or its activities are being professionally managed. A trust is professionally managed where either one or more of the trustees is a Financial Institution or the trustees have appointed a discretionary fund manager who is a Financial Institution to manage the trust’s assets. For a more detailed description of what constitutes management by a Financial Institution please see the guidance at IEIM400820.

If the trust is not professionally managed in this way, and does not meet any of the other definitions of Financial Institution, it will be a Non-Financial Entity [see IEIM404040]. For example, where the trustees of a trust are individuals (and therefore not Financial Institutions) and the trust holds a Depository Account [see IEIM401540] with a Financial Institution, and that Financial Institution does not have discretion to manage the account or the funds in the account, then the trust will not be an Investment Entity. As cash is not a financial asset, where the trust only holds a Depository Account it will not be an Investment Entity, even if it is professionally managed, as the Financial Institution does not manage financial assets of the trust.

IEIM400820 Trusts Managed by a Financial Institution

A trust is typically regarded as being managed by a Financial Institution where either one or more of the trustees is a Financial Institution [see IEIM400600] or the trustees have appointed a Financial Institution, such as a discretionary fund manager, to manage the trust’s assets or to manage the trust.

Does a Financial Institution Manage the Trust?

A Financial Institution will manage the trust where it has been appointed by the trustees to carry out the day to day functions of the trust on behalf of the trustees. This goes beyond managing the investment of the trust’s assets and includes other management functions that the trustees have to perform but which are contracted to the Financial Institution.

Does a Financial Institution Manage the Financial Assets of the Trust?

A Financial Institution manages the financial assets of the trust where it has discretion to manage the investments or investment strategy for the assets. This will usually be where the trust has
appointed a discretionary fund manager to manage their portfolio or a part thereof. The appointment of a discretionary fund manager will be evidenced by an agreement between the parties that provides for discretionary management.

Where the trustees of a trust invest in retail investments and the trustees make the decision on what investments to make, the arrangement will not amount to discretionary management. The Glossary of Definitions in the Financial Services Handbook defines both retail investment and retail investment activity.

The Society for Trust and Estate Practitioners (STEP) in conjunction with the Law Society for England and Wales and The Institute of Chartered Accountants in England and Wales (ICAEW) have produced a series of questions and a supporting flowchart that may be useful when considering the status of a trust. Please note that use of this flowchart will in no way take the place of HMRC guidance and it should be used as a supplementary tool only.

Any information accessed from the link above should not be reported as representing the official views of HMRC or of its employees. The opinions expressed and arguments employed are those of the authors.

IEIM400825 Collective Investment Schemes

A Collective Investment Scheme is an entity that will, by its nature, fall within the definition of Investment Entity [see IEIM400760]. This will include entities that fall within the meaning of Collective Investment Schemes for the purpose of the Financial Services and Markets Act and will also include any UK resident company that is:

- an investment trust for the purposes of the Corporation Taxes Acts (see Section 1158 of the Corporation Tax Act 2010),

Although an Investment Trust Company (ITC) or a Venture Capital Trust (VCT) will be a Reporting UK Financial Institution it will not generally need to report on its shares and securities for the purposes of either the FATCA or CDOT IGAs. Under both FATCA and CDOT, equity and debt interests in an Investment Entity that are regularly traded on an established securities market are not financial accounts. ITC and VCT shares are invariably listed on the London Stock Exchange. Further details on the meaning of ‘regularly traded on an established securities market’ can be found at [see IEIM403230].

The regularly traded exemption is not available under the CRS and DAC regimes, consequently the equity and debt interests in ITC and VCT, along with any other Collective Investment Scheme that is listed on a recognised securities market, will be financial accounts and reportable if held by a Reportable Person.
IEIM400830 Platforms

Platforms and other Distributors of Funds

Fund distributors, which may include:

- Financial advisers,
- Fund platforms,
- Wealth managers,
- Brokers (including execution-only brokers),
- Banks,
- Building societies; and
- Members of an insurance group,

can all fall within the definition of Investment Entity because of their role in distributing a Collective Investment Scheme.

There are two different types of fund distributors:

- Those that act as an intermediary in holding the legal title to the Collective Investment Scheme (such as a nominee); and
- Those that act on an advisory only basis.

Where a customer appears on a Collective Investment Scheme’s register, the responsibility to report on that customer lies with the Scheme. As shown in the following example, if a customer invests in a Collective Investment Scheme via a fund platform, the responsibility to report on the customer may lie with the platform.

Example

Fund platforms typically hold legal title to Collective Investment Scheme interests on behalf of their customers (the investors) as nominees. The customers access the platform in order to buy and sell investments and to manage their investment portfolio. The platform will back the customers’ orders with holdings in the Collective Investment Scheme, and possibly other assets. But only the platform will appear on the shareholders’ register of the Collective Investment Scheme. Where this is the case the platform will be responsible for reporting on its financial accounts.

Where financial advisers’ activities do not go beyond the provision of investment advice to their customers and/or acting as an intermediary between the Collective Investment Scheme, or fund platform and the customer, then they will not hold legal title to the assets and therefore are not in the chain of legal ownership of a Collective Investment Scheme. Such financial advisers will not be regarded as the Financial Institution that maintains the financial account in respect of the accounts they advise on. Financial advisers may nevertheless be asked by Financial Institutions to provide assistance in identifying Account Holders and obtaining self-certifications [see IEIM403140].

For example, financial advisers will often have the most in-depth knowledge of the investor and direct access to the customer so will be best placed to obtain self-certifications. However, as above, such advisory only distributors are not regarded as Financial Institutions and they will only have
obligations pursuant to contractual agreements with those Financial Institutions where they act as a third party service provider in relation to those financial accounts.

In practice, reliance on third parties for account identification and self-certification should work in a similar manner to Regulation 17 of the Money Laundering Regulations 2007.

A platform may have a ‘mixed business’ i.e. it acts as an adviser or ‘pure intermediary’ between the investor and the underlying Financial Institution (such as a Collective Investment Scheme), on behalf of some customers. In addition, it also holds legal title to interests on behalf of other customers. In the case where legal title is held, the platform will be a Financial Institution with a reporting obligation in respect of those interests.

From the platform’s perspective it will not be treated as maintaining those accounts where it acts as an adviser or pure intermediary. This is consistent with the treatment of a Central Securities Depository [see IEIM400680].

**Dormant Funds**

When a fund is closed but there remain residual debtors and recovery actions are being pursued, the fund will be not an Investment Entity for the purposes of this Agreement.

**IEIM400835 Reporting on a Collective Investment Scheme**

The diagram below illustrates how the account identification and reporting obligations under the Regulations could work for Collective Investment Schemes.

**Use this link to view CIS reporting diagram**

Depending on how the fund is structured, various entities may fall within the definition of Investment Entity. The fund itself will need to determine which entity carries out the obligations to identify, verify and report on account holders that are reportable under the various regimes, by reference to its own governance structure and contractual arrangements.

**Example**

Authorised funds in the UK (which are Authorised Unit Trusts, Open-Ended Investment Companies, and Tax-Transparent Funds) are required to have a fund manager that acts as operator of the fund and is normally assigned responsibility for fulfilling the regulatory obligations of the fund.

Therefore, the fund manager will normally have responsibility for compliance with the obligations in relation to the financial accounts of the fund. In turn, fund operators typically use third party service providers to provide fund administration, including maintaining records of investors, account balances and transaction services provided by the transfer agent. In these cases the fund manager might appoint the third party service provider to fulfil account identification and reporting requirements as they will have the necessary records.

The fund’s account identification and reporting obligations apply only to its immediate account holders. It is required to identify all direct individual Account Holders pursuant to the due diligence
obligations outlined in this guidance. Any indirect individual account will be held through a Financial Institution (for example a platform or other nominee), and the fund’s obligation is to identify the direct Account Holder (such as the Financial Institution) only. In turn the intermediary Financial Institution will have its own obligation to identify and report on its Account Holders.

In the diagram the fund would only need to identify any direct individual Account Holders (shown on left hand side), and the Financial Institutions on the share register. It would be required to report information on any of these that are Reportable Persons under the regimes.

In turn Custodial Institutions that act as distributors (and not the fund) would be required to identify and report on their direct Account Holders. The fund has no obligation to identify and report on accounts held indirectly through other Financial Institutions.

IEIM400840 Specified Insurance Company

A Specified Insurance Company is an entity that is an insurance company, including a holding company in an insurance group, that writes products classified as Cash Value Insurance Contracts [see IEIM401640] or Annuity Contracts [see IEIM401680] or makes payments with respect to such contracts.

An insurance company that only offers general insurance or term life insurance business will not be a Specified Insurance Company and therefore will not be treated as a Financial Institution under any of the agreements for automatic exchange of information, it will instead be classified as an NFE. The same applies to a reinsurance company that only provides indemnity reinsurance contracts.

An insurance broker that sells Cash Value Insurance or Annuity Contracts on behalf of insurance companies is part of the payment chain and will not be a Specified Insurance Company unless obliged to make payments to the Account Holder under the terms of the Cash Value Insurance Contract or Annuity Contract.

For the purposes of all of the agreements for automatic exchange of information, regulatory and business reserves, taxed as trading income, held by a General Insurance Company should be classified as active rather than passive assets, and income arising on those assets should be classified as active income [see IEIM404020].

Regulatory and business reserves include:

1. assets backing insurance liabilities, and
2. assets in excess of (1) held to meet regulatory requirements.

The same treatment, for the same reasons, applies to Lloyd’s trust entities holding regulatory and business reserves for general insurance business; these reserves should also be classified as active assets producing active income. It follows that such entities will generally be Active NFEs. This treatment is appropriate given the function of trust entities within the overall Lloyd’s structure and is consistent with how a similar business organised as a single corporate entity would be treated for the purposes of the agreements.
IEIM400860 Partnerships

All partnerships, including general partnerships, limited partnerships and limited liability partnerships, are treated as entities by all of the agreements for automatic exchange of information. Therefore, for all purposes of this guidance, a partnership is to be treated as if it were an entity with separate legal personality.

A partnership can be either a Financial Institution or an NFE. To determine the status of the partnership you should consider whether or not it meets any of the definitions of Financial Institution [see IEIM400600]. If it does not it will be an NFE [see IEIM404040].

IEIM400880 Personal Investment Companies

Personal investment companies may come within the definition of Investment Entity [see IEIM400760]. This is most likely to occur where either the personal investment company itself is, or its financial assets are, managed by a Financial Institution [see IEIM400600].

IEIM400900 Securitisation Vehicles

Securitisation structures are typically legally remote from the entity in relation to which the risks and rewards of the structure are associated. Typically, a securitisation structure will include an issuing entity, funding entity, seller, mortgage trustee and often counterparties.

Each entity within the structure must be considered to see whether it meets the definition of a Financial Institution [see IEIM400600]. A securitisation vehicle that is a Financial Institution will need to consider if it has any financial accounts [see IEIM401500] that may be reportable.

For FATCA there is a specific treatment of certain limited securitisation vehicles established prior to 17 January 2013. Details can be found here.

Example of a securitisation programme.

Cash Flows:

1. Mortgage customer makes their regular monthly mortgage payment to Bank A plc.
2. Bank A plc identifies the appropriate special purpose vehicle (SPV) that the cash belongs to and pays the cash to that entity, say, a trust.
3. Once a month on the distribution date the trust pays cash to the funding company.
4. The funding company pays cash on payment date to Bank B.
5. Bank B passes the cash to Euroclear or Clear Stream, the exchanges on which the bonds are held.
6. Euroclear and Clear Stream pass the cash to the custodian bank who then credits the bondholders’ accounts. Bondholders then draw on their cash at the custodian bank.

The above scenario provides the following reporting obligations:
• Mortgages are not within the financial account definition so there is no financial account with Bank A Plc and therefore no reporting requirement in relation to them.
• Steps 3 to 5 involve payments made between Financial Institutions and as such there is no need for any of these payments to be reported. The trust though may have reporting requirements if any of its Controlling Persons are Reportable Persons.
• In step 6 the custodian will have financial accounts in which the bonds are held and as such the custodian will need to identify if it has any Reportable Accounts. Where it does, it must perform the necessary reporting [see IEIM402520].

IEIM400920 Non-Reporting Financial Institutions (NRFI)

IEIM400925 Introduction

All the automatic exchange of information regimes exclude certain Financial Institutions from being Reporting Financial Institutions. Such Financial Institutions are not required to identify, collect or report information about Reportable Persons.

These institutions are identified in Annex II of the IGA with the USA for FATCA purposes and Annex II of the IGAs with the Crown Dependencies and Gibraltar for CDOT reporting.

For the CRS and the DAC the only Non-Reporting Financial Institutions are those specifically defined in Section VIII Paragraph B of the Standard and Annex I of the Directive respectively. The UK has not defined in domestic law any Financial Institutions excluded by reference to Sub-paragraph B (1)(c) of Section VIII of the CRS or the DAC (Low-risk Non-Reporting Financial Institutions).

There are a number of differences between the regimes in this respect. The guidance that follows shows which Non-Reporting Financial Institutions are common to all regimes and which are specific to particular regimes.

IEIM400930 Government Entity

Government entities are Non-Reporting Financial Institutions (NRFI) for all the regimes.

It is a defined term in the CRS and the DAC and any entity that falls within the definition is a NRFI. Government entity means the government of a jurisdiction, any political subdivision of a jurisdiction, or any wholly owned agency or instrumentality of a jurisdiction or any one or more of the foregoing (each, a “Government entity”). This category is comprised of the integral parts, controlled entities and political subdivisions of a jurisdiction.

The IGA with the USA and those with the CDOT jurisdictions treat 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 as NRFI – essentially the same definition as for the CRS and DAC. The IGAs then go on to specify certain entities that are included in this definition, these being –

• The Devolved Administrations as per:
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 etc. (Scotland) Act 1994
  - The Local Government (Wales) Act 1994

Other examples of entities that would be within these definitions would include Government financing programmes and agencies which may provide loans directly or insure or guarantee loans granted by commercial lenders where this is intended to promote international trade and development.

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**IEIM400940 International Organisations**

International organisations are Non-Reporting Financial Institutions (NRFI) for all the regimes.

It is a defined term in the CRS and the DAC and any entity that falls within the definition is a NRFI. International organisation means any international organisation or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organisation (including a supranational organisation):

1. That is comprised primarily of governments;
2. That has in effect a headquarters or substantially similar agreement with the UK; and
3. The income of which does not inure to the benefit of private persons.

The IGA with the USA and those with the CDOT jurisdictions define these by reference to an exhaustive list which comprises any UK office of:

- The International Monetary Fund
- The World Bank
- The International Bank for Reconstruction and Development
- The International Finance Corporation
- 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

If any International organisation with a UK office is identified that meets the CRS and DAC definition, but which is not included in the IGA list, you should contact the CTIS International Relations and Exchange of Information policy team with responsibility for automatic exchange agreements.

IEIM400950 Central Bank

The Central Bank of a jurisdiction is a Non-Reporting Financial Institution (NRFI) for all the regimes. It is a defined term in the CRS and the DAC and any entity that falls within the definition is a NRFI. The IGA with the USA and those with the CDOT jurisdictions define Central Bank by reference to the entity that fulfils that function in the UK. As there is no other UK entity that fulfils that role the Central Bank for all regimes is defined as The Bank of England and any of its wholly owned subsidiaries.

IEIM400960 Retirement Funds

The definition of retirement fund differs between the various regimes. It will be necessary for entities that are pension schemes or similar retirement arrangements to consider each of the definitions separately although the expectation is that most will be Non-Reporting Financial Institutions (NRFI) under all of them.

FATCA

Under the US IGA, retirement funds are defined by reference to the UK/US Double Taxation Agreement. Pension scheme is defined as any plan, scheme, fund, trust or other arrangement established in the UK which is:

1. Generally exempt from income taxation in the UK; and
2. Operated principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements.

This will include all UK pension schemes or other arrangements registered with HMRC under Part 4 of the Finance Act 2004, including those deemed registered by HMRC. The Pension Protection Fund is also listed as a NRFI.

Pension funds or pension schemes covered by IRS Announcement 2005-30, 2005-1 C.B. 988, on the Mutual Agreement on UK Pension Agreements are also included. Details of these can be found at http://www.irs.gov/irb/2005-18_IRB/ar10.html#d0e1440
CDOT

For these IGAs all UK pension schemes or other arrangements registered with HMRC under Part 4 of the Finance Act 2004, including those deemed registered by HMRC, are NRFI. The Pension Protection Fund is also listed as a NRFI.

CRS and DAC

There are three categories of retirement fund defined as NRFI

1. Pension Fund of a government entity, international organisation or Central Bank – this covers pension funds of those entities that are themselves NRFI under these categories.
2. Broad participation retirement funds – these are pension funds where no single beneficiary is entitled to more than 5% of the fund’s assets, are subject to regulation and provide information reporting to HMRC and satisfy at least one of four requirements (the fund is tax favoured; most contributions come from sponsoring employers; distributions or withdrawals are tied to specified events; and contributions by employees are limited by amount, generally by reference to earned income). As UK registered pension funds are subject to reporting and are tax favoured, where the condition that no single beneficiary can receive more than 5% of the fund’s assets is met the fund will be a NRFI.
3. Narrow participation retirement funds – these are pension funds with fewer than 50 participants. The sponsoring employer must not be an Investment Entity [see IEIM400600] or a Passive NFE [see IEIM404040] and contributions to the fund by both the employer and employee are limited by reference to the earned income or compensation of the employee. Any participant of the fund who is not UK resident cannot be entitled to more than 20% of the fund’s assets and the fund must be regulated in the UK and report information to HMRC.

If a pension fund does not meet any of these definitions it may still not have anything to report if the pensions that it provides are within the definition of excluded products at IEIM401720.

The UK Pension Protection Fund is a NRFI for CRS and DAC purposes. It is a statutory corporation set up by Act of Parliament and is answerable to Parliament through the Secretary of State at the Department of Work and Pensions, as such it is a Government entity [see IEIM400930].

IEIM400970 Qualified Credit Card Issuers

Qualified Credit Card Issuers (QCCI) are Non-Reporting Financial Institutions (NRFI) for all the regimes.

A QCCI is an entity that:

- is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when the customer makes a payment in excess of the outstanding balance on the card due and does not immediately return the overpayment to the customer; and
• implements policies and procedures either to prevent a customer deposit in excess of $50,000 or to ensure that any customer deposit in excess of $50,000 is refunded to the customer within 60 days.

To qualify as a NRFI the policies and procedures need to be in place before the date from which the due diligence procedures under each regime come into effect. This is 30 June 2014 for the FATCA and CDOT regimes and 31 December 2015 for CRS and the DAC.

Where a Financial Institution is not a QCCI within this definition but issues credit cards or electronic money as part of its business, the financial accounts that result may not be reportable if they meet the conditions to be an excluded account [see IEIM401720].

IEIM400980 Collective Investment Vehicles

Certain Collective Investment Vehicles (CIV) are Non-Reporting Financial Institutions (NRFI) but the definitions vary between the regimes. It will be necessary for entities that are CIV, and that are Investment Entities [see IEIM400760], to consider each of the definitions separately to determine if they are NRFI for one or more of the regimes.

FATCA

Under the US IGA, the CIV must be regulated as such under UK law. If all of the interests in the CIV are held by or through one or more financial institutions [see IEIM400600] that are not Non-Participating Financial Institutions [see IEIM402360] then the CIV will be a NRFI.

Under the IGA UK Financial Institutions are permitted to use certain definitions of deemed compliant Financial Institutions, which are NRFI, that appear in the US Regulations. One such Deemed Compliant Financial Institution is a Qualified Collective Investment Vehicle (see Section 1471-5 (f)(i)(C)).

The term Qualified Collective Investment Vehicles (QCIV) applies to investment entities that are owned solely through participating Financial Institutions or directly by large institutional investors (e.g. pension funds) not typically subject to FATCA withholding or reporting.

A QCIV must itself be an Investment Entity and must be regulated as a CIV in the UK and every other country in which it operates. A fund is considered to be regulated if its manager is regulated with respect to the fund in all of the countries in which the investment fund is registered and in all of the countries in which the investment fund operates.

A QCIV’s investors can be equity investors, direct debt investors with an interest greater than $50,000 and other financial account holders but are limited to Participating Foreign Financial Institutions, registered Deemed Compliant Foreign Financial Institutions, retirement plans classified as exempt beneficial owners, US Persons that are not Specified US Persons, non-reporting IGA Foreign Financial Institutions, or other exempt beneficial owners.

Each member of a group of Related Entities [see IEIM404000] must be a Participating Foreign Financial Institution, a Registered Deemed Compliant Foreign Financial Institution, a sponsored...
Foreign Financial Institution, a Non-Reporting IGA Foreign Financial Institution or an Exempt Beneficial Owner.

A QCIV is in the category of registered Deemed Compliant Financial Institution, so any entity seeking to take advantage of this category will still need to register with the IRS and obtain a GIIN.

CDOT

Under the CDOT IGAs, the CIV must be regulated as such under UK law. If all of the interests in the CIV are held by or through one or more Reporting Financial Institutions [see IEIM402100] then the CIV will be a NRFI.

CRS and DAC

The term used here for treating a CIV as a NRFI is an Exempt Collective Investment Vehicle. The CIV must be an Investment Entity that is regulated in the UK as a CIV. It will then qualify to be a NRFI if all the interests in the CIV are held by or through individuals or entities that are not Reportable Persons [see IEIM403440] except where that person is a Passive NFE [see IEIM404040] with Controlling Persons [see IEIM403480] who are Reportable Persons.

If a CIV has issued shares in bearer form such that the beneficial owners of the shares cannot be identified, it may still qualify as an Exempt CIV if the following conditions are met:

1. The CIV has not issued, and does not issue, any physical shares in bearer form after 31 December 2015;
2. The CIV retires all such shares upon surrender;
3. The CIV performs the due diligence procedures required under the CRS or DAC, and reports information where a Reportable Person is identified, when the bearer shares are presented for redemption or other payment; and
4. The CIV has in place policies and procedures to ensure that such shares are redeemed or immobilised as soon as possible, and in any event prior to 1 January 2018.

IEIM400990 Trustee Documented Trust

Trustee-documented trusts are Non-Reporting Financial Institutions (NRFI) for all the regimes.

A trustee-documented trust is a trust that is a financial institution [see IEIM400600] where the trustee of the trust is itself a Reporting Financial Institution [see IEIM402100] and reports all the information required in respect of the Reportable Accounts [see IEIM401520] of the trust. In such a case, the trust itself becomes a Non-Reporting Financial Institution and the trustee Financial Institution must report the information that the trust would otherwise have reported. The trustee must identify, when reporting, the trustee-documented trust in respect of which it fulfils the reporting and due diligence obligations.
IEIM401000 FATCA only

IEIM401005 Introduction

Under FATCA, Non-Reporting Financial Institutions (NRFI) are categorised as Deemed Compliant Financial Institutions. UK Financial Institutions can be within this category by satisfying the requirements set out in Annex II of the IGA which covers:

I. Non-profit organisations [see IEIM401000]: Under the agreement these are to be regarded as Deemed Compliant Financial Institutions and will not have any reporting requirements in relation to any financial accounts that they may hold. This applies to:
   • 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
   • Financial Institutions with a Local Client Base [see IEIM401020] which will have a reduced reporting requirement if they meet the relevant criteria.

II. Alternatively an entity can be a Deemed Compliant Financial Institution by satisfying the requirements in the US regulations for being a:
   • Registered Deemed Compliant Financial Institution
   • Certified Deemed Compliant Financial Institution, or
   • Owner Documented Financial Institutions.

In terms of Deemed Compliant Financial Institutions, only a registered Deemed Compliant Financial Institution or in certain circumstances a Local Client Base Financial Institution, are required to register with the IRS.

IEIM401010 NRFI: Non-Profit Organisations

Where a non-profit organisation is a Financial Institution, which is most likely to happen if it falls within the definition of Investment Entity [see IEIM400760 and IEIM400780] by virtue of having its financial assets managed by a Financial Institution, it is potentially in scope as a Reporting Financial Institution for CDOT and CRS/DAC reporting.

Under FATCA, such non-profit organisations are Deemed Compliant Financial Institutions and are not required to register with the IRS or report to HMRC.

Under both CDOT and CRS/DAC such non-profit organisations are required to carry out due diligence processes to identify and report on any Reportable Persons. Where the non-profit organisation is not a Financial Institution it will be a NFE. Under all three regimes the effect is to treat the NFE as active [see IEIM404040]. They are specifically defined as active under FATCA and CRS/DAC and the Controlling Persons are exempted from being reported on under CDOT.
IEIM401020 Local Client Base

There are 10 criteria that must all be met before a Financial Institution can be treated as a Local Client Base Financial Institution. A Financial Institution should self-assess whether it meets these criteria and maintain appropriate records to support its self-assessment. The criteria are:

a) The Financial Institution must be licensed and regulated under the laws of the UK. For example this would include where a Financial Institution is an authorised person under Section 31 FSMA 2000 or where closed ended investment companies qualify as an investment trust company under s1158 of the Corporation Tax Act 2010, or as a venture capital trust under part 6 Income Tax Act 2007.

b) The Financial Institution must have no fixed place of business outside the UK other than where the location outside of the UK houses solely administrative functions and is not publicly advertised to customers. This applies even if the fixed place of business is within a jurisdiction that has entered into an agreement with the US with regard to FATCA.

c) The Financial Institution must not solicit potential financial Account Holders outside the UK. For this purpose, a Financial Institution shall not be considered to have solicited such customers outside the UK merely because it operates a website, provided that the website does not specifically indicate that the Financial Institution provides accounts or services to non-UK residents or otherwise target or solicit US customers.

A Financial Institution will also not be considered to have solicited potential financial Account Holders outside the UK if it advertises in either print media or on a radio or television station and the advertisement is distributed or aired outside the UK, as long as the advertisement does not specifically indicate that the Financial Institution provides services to non-residents. Also a Financial Institution issuing a prospectus will not, in itself, amount to soliciting financial Account Holders, even when it is available to US persons in the UK. Likewise, publishing information such as reports and accounts to comply with the Listing Rules, Disclosure Rules and Transparency or AIM rules to support a public listing or quotation of shares will not amount to soliciting customers outside the UK.

d) The Financial Institution is

- required under the tax laws of the UK to perform information reporting, such as the reporting required under Schedule 23 FA 2011 or the withholding of tax with respect to accounts held by residents of the UK, or
- is required to identify whether account holders are resident in the UK as part of the AML/KYC procedures.

For insurance products the following reporting or taxing regimes will apply to this section:

- Chargeable events reporting regime.
- Income minus Expense Regime (I-E).
• Basic rate tax deducted from the interest portion of a Purchased Life Annuity.

e) At least 98 per cent of the accounts by value, provided by the Financial Institution must be held by people who reside in the UK or another member state of the European Union.

The 98 per cent threshold can include the accounts of US persons if they are resident within the UK. It applies to both individual and entity accounts.

A Financial Institution will need to assess whether it meets this criteria annually. The measurement can be taken at any point of the preceding calendar year for it to apply to the following year, as long as the measurement date remains the same from year to year.

f) Subject to subparagraph g) below, beginning on 1 July 2014, the Financial Institution does not provide financial accounts to:

• Any Specified US Person who is not a resident of the UK (including a US person that was a resident of the UK when the account was opened, but subsequently ceases to be a resident of the UK),
• A Non-Participating Financial Institution, or
• any Passive NFFE with Controlling Persons who are US citizens or resident for tax purposes who are not resident in the UK.

Where a Local Client Base Financial Institution provides financial accounts to US citizens who are resident in the UK, these financial accounts do not need to be reported to HMRC unless the Account Holder subsequently ceases to be a resident of the UK.

g) On or before 1 July 2014, the Financial Institution must implement policies and procedures to establish and monitor whether it provides (meaning opens and maintains) financial accounts to the persons described in subparagraph (f) above. If any such financial account is discovered, the Financial Institution must either report that account as though the Financial Institution were a reporting UK Financial Institution, or close the account, or transfer the account to a Participating Foreign Financial Institution, Reporting Model 1 Foreign Financial Institution or a US Financial Institution.

This means that even if financial accounts have been provided to Specified US Persons, a Non-Participating Financial Institution or any Passive NFFE with Controlling Persons who are US citizens or residents prior to the 1 July 2014, the Financial Institution can still be a Financial Institution with a local client base provided that the appropriate reporting is carried out.

h) With respect to each financial account that is held by an individual who is not a resident of the UK or by an entity, and that is opened prior to the date that the Financial Institution implements the policies and procedures described in subparagraph (g) above, the Financial Institution must review those accounts in accordance with the procedures applicable to pre-existing accounts, described in Annex I of the Agreement, to identify any US Reportable
Account or financial account held by a Non-Participating Financial Institution. Where such accounts are identified, they must be closed, or transferred to a participating Foreign Financial Institution, Reporting Model 1 Foreign Financial Institution or a US Financial Institution or the Financial Institution must report those accounts as if it were a Reporting UK Financial Institution.

This allows a Financial Institution with a local client base to maintain its status whilst reporting on relevant financial accounts that were opened prior to the adoption of the requirements set out in this section. This means that where a Local Client Base Financial Institution has a Reportable Account then it is required to register and report (or close) the account.

i) Each Related Entity of the Financial Institution, where the Related Entity is itself a Financial Institution must be incorporated or organised in the UK and must also meet the requirements for a Local Client Base Financial Institution with the exception of a retirement plan classified as an Exempt Beneficial Owner.

j) The Financial Institution must not have policies or practices that discriminate against opening or maintaining accounts for individuals who are Specified US Persons and who are residents of the UK.

### IEIM401040 US Regulations Exemptions

Under the terms of the IGA with the US, UK Financial Institutions can take advantage of exemptions from reporting afforded by the US FATCA regulations. To do this a UK Financial Institution must either be a Registered Deemed Compliant Financial Institution [see IEIM401060] or a certified Deemed Compliant Financial Institution [see IEIM401140].

### IEIM401060 Registered Deemed Compliant Financial Institutions

The Registered Deemed Compliant categories are as follows:

- Non-reporting members of participating FFI groups [see IEIM401080]
- Qualified Collective Investment Vehicles [see IEIM400980]
- Restricted Funds [see IEIM401060]
- Qualified Credit Card Issuers [see IEIM400970]
- Sponsored Investment Entities [see IEIM401120]

A UK Financial Institution that qualifies for one of the Registered Deemed Compliant Categories will need to obtain a GIIN from the IRS.
A non-reporting member of a participating FFI group can be a Registered Deemed Compliant Financial Institution by virtue if the US regulations at §1471-5 (f)(1)(i)(D).

This allows a Financial Institution to be treated as Registered Deemed Compliant if it meets the following requirements:

- By the later of 30 June 2014 or the date it obtains a GIIN, the Financial Institution implements policies and procedures to allow for the identification and reporting of:
  - Pre-existing US reportable accounts
  - US reportable accounts opened on or after 1 July 2014
  - Accounts that become US reportable accounts as a result of a change of circumstance
  - Accounts held by NPFI’s

- After the Financial Institution has carried out the required review of accounts opened prior to implementing the appropriate policies and procedures, the Financial Institution identifies the account as a US Reportable Account, or becomes aware of a change in circumstance of the Account Holder’s status such that the account becomes a US Reportable Account,

then within six months of either of the above events, the Financial Institution closes the account or transfers it to a Model 1 Financial Institution, Participating Financial Institution or US Financial Institution or reports the account to HMRC.

A restricted fund can be a Registered Deemed Compliant Financial Institution by virtue of the US regulations at §1471-5 (f)(1)(i)(D).

Investment Entities are eligible for restricted fund status where they impose prohibitions on the sale of units in the fund to Specified US Persons, Non-Participating Financial Institutions and Passive NFFEs with Controlling US Persons and where the fund meets the following requirements:

- The Financial Institution is a Financial Institution solely because it is an Investment Entity, and it is regulated as an investment fund in the UK and in all of the countries in which it is registered and in all of the countries in which it operates. A fund will be considered to be regulated as an investment fund for purposes of this paragraph if its manager is regulated with respect to the fund in all of the countries in which the investment fund is registered and in all of the countries in which the investment fund operates.
- Interests issued directly by the fund are redeemed by or transferred by the fund rather than sold by investors on any secondary market.
- Interests that are not issued directly by the fund are sold only through distributors that are Participating Financial Institutions, Registered Deemed Compliant Financial Institutions, non-registering local banks, or restricted distributors. A distributor includes an underwriter,
broker, dealer, or other person who participates, pursuant to a contractual arrangement with the financial institution, in the distribution of securities and holds interests in the Financial Institution as a nominee.

- The Financial Institution ensures that by the later of 30 June 2014 or six months after the date it registers as a Deemed Compliant Financial Institution, that each agreement that governs the distribution of its debt or equity interests, prohibits sales and other transfers of debt or equity interests in the Financial Institution (other than interests that are both distributed by and held through a Participating Financial Institution) to Specified US Persons, Non-Participating Financial Institutions, or Passive NFFEs with one or more substantial US owners.

- In addition, by that date, the Financial Institution’s prospectus and all marketing materials must indicate that sales and other transfers of interests in the Financial Institution to Specified US Persons, non-Participating Financial Institutions, or Passive NFFEs with one or more substantial US owners are prohibited unless such interests are both distributed by, and held through, a Participating Financial Institution.

- The Financial Institution ensures that by the later of 30 June 2014, or six months after the date the Financial Institution registers as a Deemed Compliant Financial Institution, each agreement entered into by the Financial Institution that governs the distribution of its debt or equity interests requires the distributor to notify the Financial Institution of a change in the distributor’s Chapter 4 status within 90 days of the change.

- The Financial Institution must certify to HMRC with respect to any distributor that ceases to qualify as a distributor, the Financial Institution will terminate its distribution agreement with the distributor, or cause the distribution agreement to be terminated, within 90 days of notification of the distributor’s change in status and, with respect to all debt and equity interests of the Financial Institution issued through that distributor, will redeem those interests, convert those interests to direct holdings in the fund, or cause those interests to be transferred to another compliant distributor within six months of the distributor’s change in status.

- With respect to any of the Financial Institution’s pre-existing direct accounts that are held by the beneficial owner of the interest in the Financial Institution, the Financial Institution reviews those accounts in accordance with the procedures (and time frames) applicable to pre-existing accounts to identify any US account or account held by a Non-Participating Financial Institution. Notwithstanding the previous sentence, the Financial Institution will not be required to review the account of any individual investor that purchased its interest at a time when all of the Financial Institution’s distribution agreements and its prospectus contained an explicit prohibition of the issuance and/or sale of shares to US entities and US resident individuals. A Financial Institution will not be required to review the account of any investor that purchased its interest in bearer form until the time of payment, but at such time will be required to document the account.

- By the later of 30 June 2014, or six months after the date the Financial Institution registers as a Deemed Compliant Financial Institution, the Financial Institution will be required to certify to HMRC either that it did not identify any US account or account held by a Non-Participating Financial Institution as a result of its review or, if any such accounts were identified, that the Financial Institution will either redeem such accounts, transfer such
accounts to an affiliate or other Financial Institution that is a Participating Financial Institution, Reporting Model 1 Financial Institution, or US Financial Institution.

• By the later of 30 June 2014 or the date that it registers as a Deemed Compliant Foreign Financial Institution, the Foreign Financial Institution implements the policies and procedures to ensure that it either:

1. does not open or maintain an account for, or make a withholdable payment to, any Specified US Person, Non-Participating Financial Institution, or Passive NFFE with one or more Controlling Persons who are citizen or resident in the US and, if it discovers any such accounts, closes all accounts for any such person within six months of the date that the Financial Institution had reason to know the Account Holder became such a person; or

2. reports on any account held by, or any withholdable payment made to, any Specified US Person, Non-Participating Financial Institution, or Passive NFFE with one or more Controlling Persons who are citizen or resident in the US to the extent and in the manner that would be required if the Financial Institution were a Participating Financial Institution.

For a Financial Institution that is part of a group of Related Entities, all other Financial Institutions in the group of Related Entities are Participating Financial Institutions, Registered Deemed Compliant Financial Institutions, sponsored Financial Institutions, non-reporting IGA Financial Institutions, or Exempt Beneficial Owners.

IEIM401120 Sponsored Investment Entity

A Sponsored Investment Entity can be a Registered Deemed Compliant Financial Institution by virtue if the US regulations at §1471-5 (f)(1)(i)(F).

A Sponsored Investment Entity is an entity that has a contractual arrangement for its due diligence and reporting responsibilities to be carried out by a sponsoring entity.

A sponsoring entity (typically a fund manager) is an entity that is authorised to manage the sponsored Financial Institution (typically a fund, or a sub-fund that is an investment entity but is not a US qualified intermediary, withholding foreign partnership or withholding foreign trust) and to enter into contracts on behalf of the sponsored Financial Institution. A sponsor must register with the IRS as a sponsoring entity, and must, where a sponsored entity has Reportable Accounts, register each of the funds or sub-funds it manages (or a subset of these) with the IRS as “Sponsored Entities”.

A sponsor must undertake all FATCA compliance on behalf of the sponsored funds (and, where appropriate, outsource FATCA compliance obligations to third party service providers). This will include, for example, account identification and documentation. A sponsor will need to ensure that new investors in the funds it manages are appropriately documented for FATCA purposes (and this will typically be done by a transfer agent, acting as a third party service provider).

Where there is a sponsor/sponsored entity relationship the legal responsibility for undertaking the required due diligence and reporting remains that of the sponsored entity.
Where a sponsor acts on behalf of a range of funds, the classification of an account as a new account or a pre-existing account can be done by reference to whether the account is new to the sponsor (fund manager) and not the fund (but see comment below in relation to offshore funds and multiple service providers). This prevents a fund manager from having to seek FATCA documentation from the same Account Holder repeatedly, where that Account Holder is invested in more than one of the sponsored funds. Where a sponsor is able to link accounts in this manner, the accounts will need to be aggregated for the purpose of determining whether the accounts exceed the de minimis for reporting [see IEIM403560].

A sponsor will then report to HMRC on all the Account Holders of the funds it manages.

**Reporting of sponsored offshore funds**

In practice a fund manager will act for funds located in a number of jurisdictions. When acting as sponsor, the fund manager will need to act on behalf of the sponsored fund ranges independently, with respect to each tax authority in which the funds are domiciled.

**Example 1**

A UK fund manager manages fund ranges in UK and IGA Country 1. The UK manager can register as sponsor for all or some of the funds in each of these jurisdictions. The sponsor would;

- Report to HMRC on behalf of the UK fund range, and
- would report to the tax authorities in IGA Country 1 on behalf of the funds domiciled there.

**Example 2**

As above, but in addition the UK fund manager manages funds in a non-IGA country. Additionally the fund manager will need to report to the US on behalf of funds domiciled in non-IGA countries.

**Multiple service providers**

Similarly, a fund manager may use different transfer agents for different fund ranges within the same country. In such cases the fund manager itself cannot know whether an existing Account Holder in one of the fund ranges opens a new account in the other fund range. This in itself should not preclude the same fund manager from acting as a sponsor for both fund ranges. It does mean that the full benefits of sponsoring (such as not re-documenting existing account holders when they make new investments) might not be realised where different service providers are used.

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**IEIM401140 Certified Deemed Compliant Financial Institutions**

Under the IGA with the US, UK Financial Institutions can be treated as Non-Reporting Financial Institutions if they meet the requirements of the US FATCA regulations to be treated as Certified Deemed Compliant Financial Institutions. Certified Deemed Compliant Financial Institutions are not required to register with the IRS or obtain a GIIN.

The following are the categories of Certified Deemed Compliant Financial Institutions:
• Non-registering local banks [see IEIM401160]
• Financial Institutions with only low value accounts [see IEIM401170]
• Sponsored closely held investment vehicles [see IEIM401180]
• Owner documented financial institutions [see IEIM401200]
• Limited life debt investment entities [see IEIM401220]
• Excepted inter-affiliate FFI [see IEIM401240]
• Investment advisers and investment managers [see IEIM401260]

IEIM401160 Non-Registering Local Banks

Non-Registering Local Banks can be treated as Non-Reporting Financial Institutions by virtue of the US regulations at §1471-5-(f)(2)(i).

Non-Registering Local Banks are generally small regulated local banks, credit unions and similar entities that are primarily Depository Institutions; they may operate without a profit.

They must not have a fixed place of business outside of the UK; this does not include a location that is not advertised to the public and from which the Financial Institution performs solely administrative support functions.

Non-Registering Local Banks must have policies and procedures prohibiting the solicitation of customers outside the UK. There is also a limit on the total assets that can be held of $175 million in assets for single entity and ($500 million total for a group of related entities).

Any Related Entities of the Non-Registering Local Bank must also satisfy these requirements.

IEIM401170 Low Value Banks

Financial Institutions with only low value accounts can be treated as Non-Reporting Financial Institutions by virtue of the US regulations at §1471-5-(f)(2)(ii).

To qualify as a Non-Reporting Financial Institution by virtue of having only low value accounts the Financial Institution must not:

• be an Investment Entity,
• have any financial accounts exceeding $50,000,
• have more than $50 million in assets on its balance sheet at the end of its most recent accounting year, and
• have more than $50 million in assets on its consolidated or combined balance sheet where it is in a group with Related Entities.
IEIM401180 Sponsored Closely Held Investment Vehicles

Sponsored closely held investment vehicles can be treated as Non-Reporting Financial Institutions by virtue of the US regulations at §1471-5-(f)(2)(iii).

This category of deemed compliant is very similar to a Sponsored Investment Entity under the Registered Deemed Compliant Financial Institution category. The requirements to qualify are as follows.

- The Financial Institution must be an Investment Entity that is not a US qualified intermediary, withholding foreign partnership or withholding foreign trust.
- The Financial Institution is required to have a contractual arrangement with a sponsoring entity that is a Participating Financial Institution, Reporting Model 1 Financial Institution or US Financial Institution that is authorised to manage the Financial Institution and enter into contracts on its behalf under which the sponsoring entity agrees to all due diligence, withholding and reporting responsibilities that the Financial Institution would have if it were a Reporting Financial Institution.
- The sponsored vehicle does not hold itself out as an investment vehicle for unrelated parties; and the sponsored vehicle has 20 or fewer individuals that own its debt and equity interests (disregarding interests owned by Participating Financial Institutions, Deemed Compliant Financial Institutions and an equity interest owned by an entity that is 100% owner and itself a sponsored closely held investment vehicle).
- The sponsoring entity will have to register with the IRS as a sponsoring entity (it doesn’t need to register the sponsored entities) and perform the duties of a Participating or Model 1 Reporting Financial Institution with respect to the sponsored entity.

IEIM401200 Owner Documented Financial Institution

Owner-documented financial institutions (ODFI) can be treated as Non-Reporting Financial Institutions by virtue of the US regulations at §1471-5-(f)(2)(iii).

In general, ODFI classification is intended to apply to closely held passive investment vehicles that are Investment Entities by virtue of being managed by a Financial Institution, where meeting the obligations under the US agreement would be onerous given the size of the entity. The ODFI must provide the Financial Institution reporting on its behalf with all of the required information and documentation to enable that reporting to happen. The ODFI must also agree to notify the other Financial Institution if there is a change in circumstances.

An ODFI must satisfy the following requirements:

- It must not maintain a financial account for any Non-Participating Financial Institution; and
- It must not be owned by, nor be a member of a group of Related Entities with any Financial Institution that is a Depository Institution, Custodial Institution or Specified Insurance Company.
The Financial Institution undertaking obligations on behalf of the ODFI must agree to report the information required on any Specified US Persons but will not need to report on any indirect owner of the owner documented entity that holds its interest through a Participating Foreign Financial Institution, Model 1 Financial Institution, a Deemed Compliant Foreign Financial Institution (other than an ODFI), an entity that is a US person, an Exempt Beneficial Owner, or an excepted NFFE.

IEIM401220 Limited Life Debt Investment Entity

To mirror the categories in the U.S. regulations certain term limited securitisation vehicles using ‘special purpose vehicles’, created to hold debt until maturity or until liquidation of the vehicle will be regarded as Certified Deemed Compliant Financial Institutions.

To qualify for this transitional relief the securitisation vehicle must have been established prior to 17 January 2013 and meet both the definition of a securitisation company in CTA10/S623 and the specified conditions set out in The Taxation of Securitisation Companies Regulations 2006 (SI2006/3296).

See IEIM400900 for a general commentary on securitisation vehicles.

IEIM401240 Excepted Inter-Affiliate Foreign Financial Institution

To mirror the categories in the U.S. regulations certain group companies (likely to be holding companies or treasury centres of international groups) will be regarded as Certified Deemed Compliant Financial Institutions.

This category applies to an entity that is a member of a Participating FFI group if-

a) The entity does not maintain financial accounts (other than accounts maintained for members of its expanded affiliated group);

b) The entity does not hold an account with or receive payments from any withholding agent other than a member of its expanded affiliated group;

c) The entity does not make withholdable payments to any person other than to members of its expanded affiliated group that are not limited FFIs or limited branches; and

The entity has not agreed to report under §1.1471-4(d)(1)(ii) or otherwise act as an agent for chapter 4 purposes on behalf of any Financial Institution, including a member of its expanded affiliated group.

Participating FFI group

A participating FFI group is

- an expanded affiliated group that includes one or more participating FFIs;
- an expanded affiliated group in which one or more members of the group is a Reporting Model 1 FFI and each member of the group that is an FFI is a Registered Deemed-Compliant
FFI, Non-Reporting IGA FFI, limited FFI, or retirement fund described in §1.1471-6(f) [these are the Exempt Beneficial Owner categories of retirement fund].

**Participating FFI**

A Participating FFI is an FFI that has agreed to comply with the requirements of an FFI agreement, including an FFI described in a Model 2 IGA that has agreed to comply with the requirements of an FFI agreement. The term participating FFI also includes a QI branch of a U.S. Financial Institution, as long as the branch is not a Reporting Model 1 FFI.

**IEIM401260 Investment Advisers and Investment Managers**

Under the terms of the IGA, investment advisers and investment managers may fall to be Financial Institutions [see IEIM400600] solely because they render investment advice to, or on behalf of a customer for the purposes of investing, managing or administering funds deposited in the name of the customer.

An Investment Entity [see IEIM400760] established in the United Kingdom that is a Financial Institution solely because it:

1. Renders investment advice to, and acts on behalf of, or
2. Manages portfolios for, and acts on behalf of,

a customer for the purposes of investing, managing, or administering funds deposited in the name of the customer with a Financial Institution other than a Non-Participating Financial Institution will be regarded as a Certified Deemed Compliant Financial Institution.

**IEIM401280 CDOT Only: CDOT Credit Unions**

Non-Registering Local Banks are treated as Non-Reporting Financial Institutions for FATCA purposes but with the exception of credit unions are Reporting Financial Institutions for CDOT purposes.

Credit unions are Non-Reporting Financial Institutions for CDOT reporting. They will have no due diligence or reporting obligations.

A credit union is a body corporate registered under any of the following:

- The Industrial and Provident Societies Act 1965 as a credit union in accordance with the Credit Unions Act
- The Credit Unions (Northern Ireland) Order 1985
- The Industrial and Provident Societies Act (Northern Ireland) 1969 as a credit union.
IEIM401300 Non-Participating Financial Institutions

FATCA Only

A Non-Participating Financial Institution (NPFI) is a Financial Institution that is not FATCA compliant. This non-compliance arises either where:

- the Financial Institution is located in a jurisdiction that does not have an Intergovernmental Agreement with the US and the Financial Institution has not entered into a FATCA agreement with the US that requires direct reporting of information to the IRS, or,
- the Financial Institution is classified by the IRS as being a NPFI following the conclusion of the procedures for significant non-compliance being undertaken [see IEIM405040]. In this case a UK Financial Institution will only be classed as an NPFI where there is significant non-compliance with the UK legislation and, after a period of enquiry, that non-compliance has not been addressed to HMRC’s satisfaction. In such circumstances the UK Financial Institution’s details may be published electronically by the IRS and the Financial Institution will cease to be covered by the Agreement.

Reporting Financial Institutions that make payments to NPFIs will have reporting obligations in respect of the 2015 and 2016 reporting periods.
IEIM401500 Financial Accounts

IEIM401505 Introduction

A financial account is an account maintained by a Financial Institution. Only accounts that fall within any of the 5 categories of financial account defined by the various automatic exchange of information agreements need to be reviewed. Where such an account is held by a Reportable Person [see IEIM402010] it becomes a Reportable Account [see IEIM401520].

The 5 categories of financial account that need to be reviewed are:

- **Accounts**
  - Financial Institution that is Generally Considered to Maintain Them

- **Depository Accounts**
  - The Financial Institution that is obligated to make payments with respect to the account (excluding an agent of the Financial Institution).

- **Custodial Accounts**
  - The Financial Institution that holds custody over the assets in the account.

- **Equity and debt interests in investment entities.**
  - The Investment Entity that maintains the equity or debt Interest.

- **Cash Value Insurance Contracts**
  - The Financial Institution that is obligated to make payments with respect to the contract.

- **Annuity Contracts**
  - The Financial Institution that is obligated to make payments with respect to the contract.

Certain financial accounts are seen to be low-risk of being used to evade tax and are specifically excluded from needing to be reviewed. Details of these excluded accounts are at [see IEIM401720].

The definition of a financial account does not extend to shareholdings on an issuer’s share register nor debenture/loan stock holdings (including shareholdings which have been the subject of an acquisition, as a result of which the original share register no longer exists). However shareholdings and loan/debenture stock holdings by a Financial Institution can be ‘financial instruments/contracts’ and are reportable if held in a Custodial Account.

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IEIM401510 Executing Brokers and Placing Agents

Where a Financial Institution is acting as an executing broker, and simply executing trading instructions, or receiving and transmitting such instructions to another executing broker, (either through a recognised exchange, multilateral trading facility or non EU equivalent of such, a clearing organisation or on a bilateral basis) then the Financial Institution will not be required to treat the facilities established for the purposes of executing a trading instruction, or receiving and transmitting such instructions, as a financial account under the agreement. In these cases the
Financial Institution acting as custodian will be responsible for performing due diligence procedures and reporting where necessary.

It is also possible that a Financial Institution acting as an executing broker may be subject to failed trades and find themselves with the legal ownership of the asset that they intended to broker. In this case neither the holding of the asset, nor any resultant claims (market claims such as the passing of entitlement on dividend and coupon payments, claims compensated through a clearing house, securities depository etc.) will lead to a financial account being established by the executing broker.

In certain circumstances “placing agents” will typically acquire shares for a 2-3 day period (maximum 7 days) and hold these as nominee for an underlying investor. The placing agent will also have cash funds deposited by the investor for a similar period. The two would ultimately be matched and the shares delivered to the designated custodian of the investor. To eliminate the creation of a series of Custodial Accounts which would open and close in a 2-3 day window and therefore be potentially reportable such funds will not be regarded as financial accounts provided that;

- The account is established and used solely to secure the obligation of the parties to the transaction.
- The account only holds the monies appropriate to secure an obligation of one of the parties directly related to the transaction, or a similar payment, or with a financial asset that is deposited in the account in connection with the transaction.
- The assets of the account, including the income earned thereon, is paid or otherwise distributed for the benefit of the parties when the transaction is completed.

IEIM401520 Reportable Account

Once a Financial Institution has identified the financial accounts it maintains it needs to review those accounts to identify whether any of them are Reportable Accounts as defined in any of the automatic exchange agreements. If identified as a Reportable Account it must be reported to HMRC.

A Reportable Account is an account held by one or more Reportable Persons [see IEIM402010] or by a Passive NFE [see IEIM404040] with one or more Controlling Persons [see IEIM403400] that is a Reportable Person.

IEIM401540 Depository Account

A Depository Account includes any commercial current, savings, time or thrift account, or any account evidenced by a certificate of deposit, investment certificate, thrift certificate, certificate of indebtedness, or other similar instrument where cash is placed on deposit with an entity engaged in a banking or similar business. Being engaged in a banking or similar business is explained at IEIM400740.

A Depository Account does not have to be an interest bearing account.
A Depository Account will not include issuing e-money in exchange for funds pursuant to the Electronic Money Regulations 2011, or any funds received from customers with a view to the provision of unregulated payment products that fall within the statutory exclusions provided in the Electronic Money Regulations 2011 or Payment Services Regulations 2009.

A Depository Account can include a credit balance on a credit card, for example where a purchase has been refunded, provided the credit card has been issued by a credit card company engaged in a banking or similar business.

Credit cards will not be reportable as Depository Accounts if the credit card issuer meets the conditions to be a Qualified Credit Card Issuer and is therefore a Non-Reporting Financial Institution [see IEIM400970]. Similarly, where a Financial Institution does not satisfy the requirements to be a Qualified Credit Card Issuer, but accepts deposits when a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility, it may still not have to report the account as a Depository Account if it qualifies as an excluded account [see IEIM401880].

For FATCA and CDOT reporting, a threshold is available at the option of the Financial Institution to restrict reporting of Depository Accounts to accounts with a balance in excess of an amount equivalent to US$50,000 [see IEIM402565]. Where this option is exercised by the Financial Institution there is no need to review, identify or report any Depository Account with a balance or value of $50,000 or less.

IEIM401580 Custodial Account

A Custodial Account is an account (other than an Insurance Contract or Annuity Contract) for the benefit of another person that holds one or more financial assets.

A Cash Value Insurance Contract or an Annuity Contract is not considered to be a Custodial Account, but these could be assets held in a Custodial Account. Where they are assets in a Custodial Account, the insurer will only need to provide the custodian with the balance or value of the Cash Value Insurance Contract.

A Custodial Account does not include Financial Instruments or contracts (for example, a share or stock in a corporation) held in a nominee sponsored by the issuer of its own shares, which are in every other respect analogous to those held on the issuer’s share register.

IEIM401600 Collateral

Custodial Accounts are accounts which are maintained for the benefit of another, or arrangements pursuant to which an obligation exists to return cash or assets to another.

Transactions which include the collection of margin or collateral on behalf of a counterparty may fall within the definition of Custodial Account. The exact terms of the contractual arrangements will be relevant in applying this interpretation. However, if collateral is provided on a full title transfer basis, so that the collateral holder becomes the full legal and beneficial owner of the collateral during the
term of the contract, this will not constitute a Custodial Account for the purposes of the automatic exchange agreements.

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**IEIM401620 Syndicated Loans**

Where a borrower requires a large or sophisticated facility, or multiple types of facility, this is commonly provided by a group of lenders, known as a syndicate, under a syndicated loan agreement.

To facilitate the process of administering the loan on a daily basis, one member of the syndicate is typically appointed as Agent. The Agent’s role is to act as the agent for the lenders and to coordinate and administer all aspects of the loan once the loan agreement has been executed, including acting as a point of contact between the borrower and the lenders in the syndicate and monitoring the compliance of the borrower with the terms of the facility.

The Agent performs exclusively operational functions. For example, the borrower makes all payments of interest and repayments of principal and any other payments required under the loan agreement to the Agent and the Agent then distributes these monies to the syndicate members as required by the syndicate agreement. Similarly, the lenders advance funds to the borrower through the Agent. The terms of a syndicated loan agreement usually entitle the Agent to undertake the roles described above in return for a fee.

In these circumstances the participation of a lender in a syndicated loan, where a UK Financial Institution is the agent acting for and on behalf of the syndicate, does not lead to the creation of a Custodial Account [see IEIM401580] held by the agent.

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**IEIM401640 Cash Value Insurance Contract**

A Cash Value Insurance Contract is an investment product that has an element of life insurance attached to it. The life insurance element is often small compared to the investment element of the contract. General insurance products such as property or motor insurance, and term life insurance that do not carry any investment element are not financial accounts.

A Cash Value Insurance Contract is an insurance contract where the policyholder is entitled to receive payment on surrender or termination of the contract. An insurance contract will also be a Cash Value Insurance Contract where the policyholder can borrow against the contract, for example by using the contract as collateral for borrowing, the contract being acceptable as collateral because of the associated cash value. Examples of the type of insurance product that will be cash value insurance products and those that will not can be found at [see IEIM401660].

Other types of general insurance may be used as collateral, for example key man insurance, but these are not cash value insurance contracts because the collateral is not reliant on any payment on surrender or termination of the contract. Rather the collateral is based on the assignment of the benefits of the contract to the lender in the event that the contingency insured against comes about.
The cash value of such a contract is the greater of:

1. The amount that the policyholder is entitled to receive on the surrender or termination of the contract without reduction for any surrender charge or loans outstanding against the policy, for example, where the policyholder receives an annual statement of the value of the policy that will be the cash value in that year, and
2. The amount the policyholder can borrowed against or with regard to the policy. Note that the policyholder does not need to have pledged the account as collateral for borrowing for this second test to apply. It is the amount that the policyholder could expect to borrow against the Cash Value Insurance Contract should they choose to use it as collateral for a loan.

The cash value does not include any amount payable under an insurance contract:

1. Solely by reason of the death of an individual insured under a life insurance contract;
2. As a personal injury, sickness or other benefit providing indemnification of an economic loss arising from an event that has been insured against;
3. As a refund of premium due to the cancellation or termination of an insurance contract, a reduction in the amount insured or a correction of a posting or similar error in relation to the premium
4. As a policyholder dividend, other than a termination dividend, provided that the insurance contract pays only the benefits in b) above. A policyholder dividend is the return of premium, under the terms of the policy, resulting from an excess of income over losses and expenses.
5. As a return of an advance premium or premium deposit for an insurance contract where the premium is payable at least annually. In this case the advance premium or premium deposit must not exceed the amount due as the next annual premium payable under the contract.

IEIM401660 Examples

The type of UK insurance products that are most likely to be cash value insurance products are:

- Investment bonds – life insurance policies in which the policyholder invests either a lump sum or makes regular payments which go into a variety of investment funds with the aim of delivering an investment return.
- Capital redemption bonds – policies under which one or more fixed sums are paid to an insurer under a contract pursuant to which one or more specified amounts are paid out at a later time based on an actuarial computation.
- Deferred annuities in the accumulation phase – a deferred annuity delays distribution of payments until some point in the future after the accumulation phase has passed. The accumulation phase begins when the contract is entered into and ends after a specified period of time during which premiums are payable. Pension annuities that fall within the excluded products list [see IEIM401720] are not reportable.
- Maximum Investment Plans and savings back life assurance policies – regular premium life assurance policies generally carrying a relatively small amount of life cover. The premiums
are pooled by the insurer to enable investment through a fund manager with a view to generating a return on the investment.

- **Insurance “wrapper” products** – insurance contracts, such as private placement life insurance, where the assets are held in an account maintained by a Financial Institution and managed in accordance with a personalised investment strategy or under the control or influence of the policyholder, owner or beneficiary of the contract.

Cash Value Insurance Contracts do not include general insurance policies or term life insurance contracts including:

- Indemnity insurance contracts between insurance companies.
- Policies indemnifying against economic loss arising from specified circumstances, for example personal injury, theft, etc.
- Micro insurance contracts that do not have a cash value.

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### IEIM401680 Annuities

An Annuity Contract is 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. For UK purposes this covers all annuities as outlined in the Insurance Policyholder Taxation Manual (IPTM).

The following are not considered to be reportable Annuity Contracts for automatic exchange of information purposes:

- Pension annuities – these are excluded products, see [see IEIM401720],
- Immediate needs annuities as described at IPTM6205 – these are excluded products, see [see IEIM401720]
- Periodic payment orders.

Reinsurance of Annuity Contracts between insurance companies are not annuities.

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### IEIM401700 Equity and Debt Interests

Equity and debt interests are financial accounts only to the extent that they are interests in an Investment Entity [link IEIM400760].

Where an entity is an Investment Entity solely because it acts on behalf of a customer by investing, managing or administering financial assets in the name of the customer, the debt and equity interest in the Investment Entity are not financial assets provided it renders only investment advice to, or manages portfolios for, the customer.

An equity interest may vary depending on the nature of the Investment Entity. In the case of an Investment Entity that is a partnership an equity interest is either a capital or profits interest in the partnership.
In the case of a trust an equity interest is any interest held by a person who is treated as a settlor or beneficiary of all or any part of the trust, or any other natural person exercising ultimate effective control over the trust [see IEIM403400].

- A Reportable Person [see IEIM403440] will be treated as being a beneficiary of a trust if such a person has the right to receive a mandatory distribution from the trust. This distribution can be received either directly or indirectly, for example through a nominee; or
- Receives a discretionary payment from the trust. Again this receipt can be either directly or indirectly from the trust.

**IEIM401720 Excluded Accounts**

**IEIM401740 Introduction**

All the regimes for automatic exchange of information allow for various categories of account to be excluded from being reportable financial accounts. These are excluded because they have been identified as carrying a low risk of use for tax evasion, generally because of the regulatory regimes under which they function.

In the Intergovernmental Agreements between the UK and the USA, Crown Dependences and Overseas Territories, the excluded accounts are listed in Annex II of each agreement [CDOT/ USA].

For reporting under the Common Reporting Standard and the EU Directive on Administrative Cooperation in Tax Matters, the list of excluded accounts can be found in the CRS and the DAC, details of the conditions for being an excluded product for both are included in the commentary to the CRS. Certain products are specifically excluded by UK domestic legislation in Schedule 2 of the International Tax Compliance Regulations 2015 (SI878/2015) as amended by The International Tax Compliance (Amendment) Regulations 2015 (SI1839/2015). The agreements for automatic exchange provide for the list of excluded accounts to be updated, either to allow for other low risk products to be added or to remove products that are no longer regarded as low risk.

**IEIM401760 Retirement and Pension Accounts**

All retirement accounts and products established under a:

- UK registered pension scheme under Part 4 of the Finance Act 2004; and
- Non-registered pension arrangement, including arrangements with overseas pension funds, where
  - Annual contributions are limited to £50,000; and
  - The funds contributed cannot be accessed before the age of 55, except in circumstances of serious ill health
- Immediate needs annuity qualifying as such under Section 725 Income Tax (Trading and Other Income) Act 2005.
are in Annex II of the US and CDOT IGAs and are specifically listed as excluded accounts in Schedule 2 of the International Tax Compliance Regulations 2015. Consequently these are excluded accounts under all the regimes. Financial Institutions will have no reporting obligations in respect of these accounts or products. For clarification this applies to both the accumulation and decumulation phases of a pension scheme, contract or arrangement.

**Registered Pension Scheme**

A registered pension scheme is a pension scheme or contract that is registered with or deemed registered with HMRC. Any pension scheme or contract which had tax approval on 5 April 2006 (or whose tax approved status was granted on or after 6 April 2006, but was backdated so that the scheme was in effect approved on 5 April 2006) automatically became a registered pension scheme from 6 April 2006.

A deferred annuity “buy-out” contract which secures benefits which have arisen under a registered pension scheme is treated as a registered pension scheme from the date it is purchased.

**Accumulation and Decumulation Phase**

The accumulation phase is the accumulation of savings (or accrual of benefit) in a registered pension scheme or other pension arrangement.

The decumulation phase is the use of those accumulated funds to take a pension for the remainder of the individual’s or their dependant’s life.

“Pension” is defined under Section165 (2) Finance Act 2004, to include an annuity or income withdrawal as well as a pension that is paid directly from the pension scheme.

**Example**

A trust based pension scheme purchases a Trustee Investment Plan (TIP) from a Reporting UK Insurance company. As the TIP is purchased by a Non-Reporting Financial Institution the Reporting UK Insurance Company is not required to review or report on the account.

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**IEIM401780 Cross Border Pensions**

When a UK Financial Institution (regulated in the UK and subject to UK laws) writes or holds pension business outside of the UK directly, that is, not through a permanent establishment in the country where the business is written, this will not be a financial account if:

- the pension is an excluded account in a partner jurisdiction under the domestic laws implementing the Common Reporting Standard or EU Directive on Administrative Cooperation in Tax Matters (as appropriate) or is included as an exempt product under a FATCA Agreement between that partner jurisdiction and the USA or is included as an exempt product in Annex III of any of the agreements between the UK and the Crown Dependencies and Overseas Territories, and
• the account or product written by the UK Financial Institution is subject to the same requirements and oversight under the laws of such partner jurisdiction as if such account or product were established in that partner jurisdiction and maintained by a partner jurisdiction Financial Institution in that partner jurisdiction.

Example

A UK insurance company directly writes pension business into the Netherlands but it has no permanent establishment in the Netherlands. The pension account that is offered fully complies with Dutch pension and tax law, and consequently would be exempt for EU Directive purposes as well as under the Dutch/US IGA if the financial account was held by a Dutch based insurance company.

If the account or product does not meet these criteria then this will be a non-registered pension in the UK. It may still be an exempt account if:

• Annual contributions are limited to £50,000; and
• The funds contributed cannot be accessed before the age of 55, except in circumstances of serious ill health.

IEIM401800 'Holloway' Contracts

A ‘Holloway’ contract is a with-profits permanent health insurance contract where the profits element is designed to provide an annuity on retirement. Such contracts issued by a friendly society within the meaning of the Friendly Societies Act 1992 (c. 40) will not be reportable accounts where, as well as providing permanent health benefits, the additional investment benefits:

a) are derived from surpluses accrued by the friendly society and apportioned to policyholders; and
b) are payable to policyholders on retirement, death, or as otherwise specified by contractual provisions or individual society rules for example, disability of the policyholder.

IEIM401820 Tax Favoured Accounts

The following accounts or products are not to be treated as financial accounts, these accounts will not therefore be subject to the due diligence procedures and are not reportable accounts:

• 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 SI 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).
• Share Incentive Plans – as regulated under Part 1 Schedule 8 FA 2014*.
• Save As You Earn Share Option Schemes - as regulated under Part 2 Schedule 8 FA 2014*.
• Company Share Option Plans - as regulated under Part 3 Schedule 8 FA 2014*.
• Immediate Needs Annuities – qualifying as such under Section 725 Income Tax (Trading and Other Income) Act 2005.

*The Share Option Schemes and Profit Sharing Schemes approved by HMRC under Schedule 9 Income and Corporation Taxes Act 1988 and the approved schemes in the Income Tax (Earnings and Pensions) Act 2003, which subsumed the earlier legislation, have been replaced by the Employee Share Schemes legislation in Schedule 8 Finance Act 2014. Schemes approved under the earlier legislation are also regarded as excluded products.

IEIM401840 Estate Accounts

An account that is held solely by the estate of a deceased person will not be a financial account where the Financial Institution that maintains the account is in possession of a formal notification of the Account Holder’s death. The formal notification would include a copy of the deceased’s death certificate, a copy of the coroner’s interim certificate or a copy of the deceased’s will. The account must be treated as having the same status as prior to the Account Holder’s death until such documentation has been provided.

Once the documentation has been provided the account is not reportable in the year of the Account Holder’s death or any subsequent year.

IEIM401860 Escrow Accounts

An Escrow Account is an account held by a third party on behalf of the beneficial owner of the money in the account. Such accounts are excluded accounts where they are established in connection with any of the following:

a) A court order, judgement or other legal matter on which the third party is acting on behalf of the underlying beneficial owner for example, an account held by a law firm appointed by the Court of Protection to look after the affairs of a vulnerable person.

b) A sale, exchange, or lease of real or personal property where it also meets the following conditions:
• The account holds only the monies appropriate to secure an obligation of one of the parties directly related to the transaction, or a similar payment, or with a financial asset that is deposited in the account in connection with the transaction.
• The account is established and used solely to secure the obligation of the parties to the transaction.
• The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the parties when the transaction is completed.
• The account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and
• The account is not associated with a credit card account.

c) An obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time.
d) An obligation of a Financial Institution solely to facilitate the payment of taxes at a later time.

Accounts provided by a non-financial intermediary acting in that capacity (such as non-legal escrow type accounts) that meet the conditions above will also be excluded accounts.

Periodic payment orders in connection with an escrow account are not considered to be Reportable Annuity Contracts [see IEIM401680].

Where the financial account does not meet the conditions above please see IEIM401870.

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**IEIM401870 Undesignated and Designated Accounts**

**Undesignated Accounts**

Where a financial account (held by a non-financial intermediary such as a solicitor) does not meet the conditions in IEIM401860, but is an account, holding on a pooled basis, and the funds of underlying clients of the non-financial intermediary where:

• the only person listed or identified on the financial account with the Financial Institution is the non-financial intermediary; and
• the non-financial intermediary is not required to disclose or pass their underlying client or clients’ information to the Financial Institution for the purposes of AML/KYC or other regulatory requirements

then, providing both these conditions are met, the Financial Institution is only required to undertake the due diligence procedures in respect of the non-financial intermediary.

**Designated Accounts**

A designated client account is an account held with a Financial Institution, operated by a non-financial intermediary where the underlying client or clients of the intermediary are listed or can be identified by the Financial Institution. Where the underlying client is identified as a Reportable
IEIM401880 Qualifying Credit Cards with Unreturned Overpayments

A Financial Institution that does not satisfy the requirements to be a Qualified Credit Card Issuer [see IEIM400970] but which accepts deposits when a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility may treat such Depository Accounts as excluded accounts if the following criteria are met:

1. The account exists solely because a customer makes a payment in excess of the outstanding balance due on the card and the Financial Institution does not immediately return the overpayment to the customer; and
2. The credit card issuer has implemented policies and procedures either to prevent a customer deposit in excess of an amount equivalent to US$50,000 or to ensure that any customer deposit in excess of an amount equivalent to US$50,000 is refunded to the customer within 60 days.

The policies and procedures have to be implemented on or before the following dates:

- For FATCA – 30 June 2014
- For CDOT – 30 June 2014
- For CRS/DAC – 31 December 2015.

IEIM401900 Low Value Dormant Accounts

For the purposes of the CRS and the DAC, where a dormant account as defined for the purposes of the residence address test [see IEIM402740] has a balance that does not exceed an amount equivalent to US$1,000 it can be an excluded account during the dormancy period if the Financial Institution elects to treat it as such.

The election should be notified to HMRC via the Automatic Exchange of Information Portal as part of the Financial Institution’s return of information. An election is still required even where the Financial Institution has no other information to return.

IEIM401920 Segregated Accounts

Segregated accounts are accounts in which the customer’s funds are held separate from the funds of the broker or Financial Institution acting for them.

Where an investment manager [see IEIM401280] is appointed to provide direct investment management services by the legal owner of assets, as segregated accounts, then these accounts are not financial accounts of the investment manager, but may be treated as custodial accounts [see
of a Custodial Institution [see IEIM400640]. In such cases the investment manager will need to treat the investors as its Account Holders as there is no interposing fund.

In determining whether an investment manager is acting as a Custodial Institution, cases where an investment manager also holds assets on behalf of clients must be taken into account as reporting will also be required on those accounts where the investment manager falls within the definition of a Custodial Institution.

There will be situations where an investment manager does not hold custody for its customers (e.g. investment managers who arrange for custody as agent on their customers’ behalf or where the custody accounts are pooled nominee accounts) but holds the information required for due diligence and reporting.

The investment manager will be the Reporting Financial Institution for those accounts by virtue of its status as an Investment Entity where:

- it alone has direct knowledge of its customers and their accounts and
- it carries out the AML/KYC procedures on those accounts.

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**IEIM401940 Wealth Management, Fully Disclosed Clearing and Settlement**

Where wealth management services are provided it is common for Financial Institutions to enter into arrangements designed to facilitate the clearing and settlement of security transactions utilising a third party provider’s ‘IT’ systems, specifically those that interface with the international securities settlement and clearing systems (clearing firms).

A tri-partite relationship between the underlying customer, the broker/wealth manager and the clearing firm is created, by virtue of the fact that the broker has entered into a fully disclosed clearing relationship with the clearing firm on its own behalf, and is also acting as the agent of its underlying client.

Where a broker/wealth manager has opened an account (or sub-accounts) with the clearing firm in the name of its underlying client, and fulfils all verification, due diligence and reporting requirements on them, then the financial accounts remain the responsibility of the broker/wealth manager and not the clearing firm.

The broker/wealth manager may appoint the clearing firm as a service provider to undertake the reporting on its behalf.

The broker/wealth manager will be the client of the clearing house. Where the clearing house is a Reporting Financial Institution it is the broker/wealth manager that is the person for which it maintains a financial account and will undertake reporting and classification accordingly.

The term broker/wealth manager in respect of fully disclosed clearing and settlement would include any Financial Institution who acts on behalf of the underlying investor in respect of executing, placing or transmitting orders and would therefore include financial advisers if their business is more than simply advisory.
IEIM402000 Reportable Information

IEIM402005 Introduction

The agreements for automatic exchange of information require specific information to be reported in respect of Account Holders who are identified by Financial Institutions [see IEIM400600] as holding Reportable Accounts [see IEIM401520].

Under all of the agreements the following information is required from Financial Institutions in respect of any person identified as holding Reportable Accounts:

- Name
- Address [see IEIM402020]
- Taxpayer Identification Number or similar (TIN) [see IEIM402040]
- Jurisdiction to which the information is reportable [see IEIM402060]
- The account number (or a functional equivalent in the absence of an account number) [see IEIM402080]
- The name and identifying number of the Reporting Financial Institution [see IEIM402100]
- The account balance or value as of the end of the calendar year or other appropriate period [see IEIM402120].

For the Crown Dependencies and Overseas Territories and the Common Reporting Standard (CRS) agreements, Financial Institutions must also report

- Date of birth of individuals

For CRS agreements, Financial Institutions must also report

- Place of birth of individuals [see IEIM402180] subject to certain conditions.

There are also additional reporting requirements depending on the type of account that is being reported on. The additional items for Custodial Accounts are dealt with at IEIM402200 and IEIM402220, depository accounts at IEIM402240 and other types of account at IEIM402260.

IEIM402010 Reportable Account Holders

The different regimes define the Reportable Account Holders in different ways but the objective in each case is the same – to identify whether the Account Holder is linked to the jurisdiction receiving the information in a way that indicates that they may be subject to taxation in that jurisdiction.

FATCA

Under the US IGA, Financial Institutions are required to carry out due diligence procedures to identify Account Holders who are Specified US Persons. A US person is a US citizen or resident individual, a partnership or corporation organised in or under the laws of the United States (or any state thereof) and trusts falling within the jurisdiction of the US courts or where one or more US persons have the authority to control the administration of the trust.
Specified US Persons then include all of these subject to a list of exemptions in Article 1 (gg) of the IGA. This covers corporations, the stock of which is regularly traded on recognised securities markets (and their affiliates), and a number of entities largely mirroring the list of Non-Reporting Financial Institutions [see IEIM400920] specified in the IGA. In addition, certain brokers and dealers in securities, commodities or derivative financial instruments are exempt.

CDOT

The CDOT IGAs also use the concept of specified persons. A specified CDOT person is a person or entity who is resident for tax purposes in Guernsey, Isle of Man, Jersey (the CDs) or Gibraltar (an OT) respectively. Corporations with regularly traded stock (and their affiliates) are exempt as under the FATCA IGA as are locally registered brokers and dealers in securities, commodities or derivative financial instruments, the Non-Reporting Financial Institutions in the IGA and Depository Institutions.

Custodial Institutions, Specified Insurance Companies and Investment Entities (where any of these do not fall within the exemptions above) are not excluded, therefore if any such entities are specified CDOT persons their accounts are reportable.

However any account held by a Financial Institution [see IEIM403360 and IEIM403440] that is not resident in a CDOT jurisdiction is not a Reportable Account.

CRS and DAC

The CRS and the DAC use the concept of a Reportable Person rather than a specified person but the outcome is similar. A Reportable Jurisdiction person (reportable member state person for the DAC) is an individual or entity that is resident under the tax laws of the Reportable Jurisdiction or, for an entity that has no residence for tax purposes, the jurisdiction in which its place of effective management is situated.

Once again any corporations (plus affiliates) with regularly traded stock are excluded as are government entities, international organisations, Central Banks and all Financial Institutions.

One difference arises for brokers and dealers in securities, etc., as these are in scope as reportable persons unless they fall within one of the definitions of Financial Institution [see IEIM400600].

IEIM402015 Residence

Individuals

In most circumstances, an individual will be tax resident in the country (or other jurisdiction) where they live and work. If an individual files a tax return or pays tax in a country, including direct payment of employment taxes, then they are likely to be a tax resident there.

However, in special cases where an individual has ties to more than one jurisdiction that individual may be ‘dual resident’, a tax resident of more than one country or jurisdiction. For example, the USA, always treats their citizens as tax resident regardless of where they are living. This means that a US citizen is always a US tax resident, even if they are living and working in the UK and also UK tax
resident. Where an individual is tax resident in more than one Reportable Jurisdiction then any accounts will be Reportable Accounts for each jurisdiction where they are tax resident.

If an individual is not certain where they are tax resident then they should refer to HMRC guidance or ask their tax adviser.

**Entities**

In most circumstances, an entity will be tax resident where it is incorporated and is managed and controlled (although this will depend on the domestic legislation of that jurisdiction).

If the entity is not managed and controlled in the same place that it is incorporated then the entity may be ‘dual resident’, a tax resident of more than one country or jurisdictions.

A Reportable Entity also includes entities that are typically tax transparent (partnerships, trusts, etc). For reporting purposes, an entity will be held to be ‘tax resident’ in the jurisdiction in which its place of effective management is situated, e.g. a partnership managed and controlled in the UK will be ‘tax resident’ in the UK even though the taxable persons are the partners rather than the partnership itself.

If an entity is not certain where they are tax resident then they should refer to HMRC guidance or ask their tax adviser.

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**IEIM402020 Address**

**Individual Account Holders**

Where the Reportable Person [see IEIM402010] is an individual who is an Account Holder [see IEIM402000] or is a Controlling Person of a Passive NFE [see IEIM404040], the address to be reported is the individual’s current residence address. If the Financial Institution does not hold this address in its records then it should report the mailing address it has on file for that person.

In general, an ‘in-care-of’ address or a post office box is not a residence address. A post office box that forms part of an address that also includes details such as a street, apartment or suite number or a rural route such that a place of residence can be clearly identified can be accepted as a residence address. In special circumstances such as that of military personnel an ‘in-care-of’ address may constitute a residence address.

**Entity Account Holders**

Where the Reportable Person is an entity the address to be reported is the address that the Financial Institution holds on file for that entity.

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**IEIM402040 Tax Identification Number**
The taxpayer identification number (TIN) is the unique identifier assigned to the Account Holder by the tax administration in the Account Holder’s jurisdiction of tax residence. It is a unique combination of letters and/or numbers used to identify an individual or entity for the purposes of administering the tax laws of that jurisdiction.

Any identifier assigned by a jurisdiction of source, for example, for identifying a person whose income has been subject to withholding tax at source, should not be reported.

Some jurisdictions do not issue a TIN and where that is the case there will be nothing to report unless they use other high integrity numbers with an equivalent level of identification. For individuals these include:

- Social security number
- National insurance number
- Citizen or personal identification code or number
- Resident registration number

For entities, jurisdictions may use a business/company registration code or number where no TIN has been issued.

Some jurisdictions that issue TINs have domestic law that does not require the collection of the TIN for domestic reporting purposes, Australia for example. In such cases the Reporting Financial Institution is not required to collect the TIN for those jurisdictions.

The OECD will produce a guide to the structure and form of TINs used by tax administrations including those where domestic collection of the TIN is not required. This will be published on the OECD website.

The TIN, or TIN equivalent, must be reported for all new accounts [see IEIM403140] where issued.

For pre-existing accounts [see IEIM402640] the TIN is reportable to the extent that it is already held in records maintained by the Reporting Financial Institution [see IEIM402300] or the Reporting Financial Institution is otherwise obliged to collect it.

The TIN will become a mandatory item for reporting for FATCA in respect of pre-existing accounts for the 2017 reporting year onwards. The same applies under the CDOT IGA but it is expected for the 2017 reporting year onwards that all reporting in respect of CDOT jurisdictions will be in accordance with the CRS.

For the CRS and DAC, where the TIN is not held in respect of pre-existing accounts the Reporting Financial Institution must use reasonable efforts to obtain it [see IEIM402320] by the end of the second calendar year following the year in which the accounts are identified as Reportable Accounts [see IEIM401520]. Not all jurisdictions issue a TIN, or functional equivalent, to all individuals or entities; where a TIN has not been issued to an individual or entity there is an exception from the requirement to report a TIN. If and when a jurisdiction starts issuing TINs the exception no longer applies and the TIN would be required to be reported if the Financial Institution obtains a self-certification that contains such a TIN, or otherwise obtains such a TIN.
As Reportable Persons may be resident in more than one jurisdiction they may have two or more TINs that the Financial Institution must report.

**FATCA**

The TIN to be reported for FATCA purposes is the US Federal Taxpayer Identification Number.

**Crown Dependencies and Overseas Territories Agreements**

For Gibraltar the identifier to be reported for individuals is a social security number.

For Guernsey the identifier to be reported for individuals is a social security number.

For the Isle of Man the identifier to be reported for individuals is a national insurance number.

For Jersey the identifier to be reported for individuals is a social security number.

**United Kingdom**

For most individuals in the UK the TIN will be their National Insurance Number.

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**IEIM402060 Jurisdiction**

The UK regulations apply the wider approach that requires Financial Institutions to retain data on the jurisdiction of residence of Account Holders irrespective of whether or not that jurisdiction is a Reportable Jurisdiction [see IEIM402340].

Financial Institutions [see IEIM400600] must carry out the due diligence procedures required [see IEIM402500] and where a person is identified as a Reportable Person [see IEIM402010] include the jurisdiction of residence in the return of information to HMRC. Where a Reportable Person is identified as having more than one Reportable Jurisdiction of residence the Financial Institution is required to report all of the identified Reportable Jurisdictions to HMRC.

The jurisdictions of residence identified as a result of carrying out the due diligence procedures are without prejudice to any residence determination made by the Financial Institution for any other tax purpose.

Reportable Account data is to be sent to HMRC where the Account Holder is a Specified US Person, a specified CDOT person or otherwise a resident of a Reportable Jurisdiction [see IEIM402340].

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**IEIM402080 Account Number**

The account number to be reported is the unique identifying number or code that the Reporting Financial Institution has assigned to the Reportable Account. This will include identifiers such as bank account numbers and policy numbers for insurance contracts as well as other non-traditional unique identifiers. The unique identifier should be sufficient to enable the Financial Institution to identify the Reportable Account in future.
Where there is not a unique identifying number or code the Financial Institution should report any functional equivalent that they use to identify the account. This may include non-unique identifiers that relate to a class of interests, which, along with the name of the Account Holder, enable the account to be identified.

Exceptionally, if the Reportable Account does not have any form of identifying number or code the Financial Institution should report a description of the account sufficient to identify the account held by the named Account Holder in future.

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IEIM402100 Reporting Financial Institution

The Reporting Financial Institution [see IEIM400600] must report its name and identifying number. This is to enable the jurisdiction receiving the information to easily identify the source of it in the event that they have any follow-up questions in respect of the data reported.

All UK Financial Institutions that are in scope for FATCA are required to register with the US Internal Revenue Service and obtain a Global Intermediary Identification Number (GIIN). The GIIN will be required as an identifying number for FATCA reporting. Where a Financial Institution is reporting under any of the other automatic exchange of information agreements it must either report a GIIN or confirm it does not hold one.

In addition, the Financial Institution will need to report a UK identifying number. This will take the form of either the unique taxpayer reference number (UTR) issued by HMRC to persons making annual tax returns or the national insurance number (NINO) of the person filing the information with HMRC. If neither an UTR nor a NINO is held then the person making the report will need to confirm that this is the case.

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IEIM402120 Account Balance or Value

The Reporting Financial Institution [see IEIM402100] must report the balance or value of Reportable Financial Accounts [see IEIM401520] as of the end of the reporting period [see IEIM400520 for FATCA, IEIM400540 for CDOT, IEIM400580 for DAC/CRS] each calendar year. This will be 31 December in each year unless it is not possible or usual to value an account at that date. If that is the case then that value at the normal valuation point for the account that is nearest to 31 December should be used. The value of the account should be reported in the currency in which the account is denominated.

In general, the balance or value to be reported is that which the Financial Institution calculates for the purpose of reporting to the Account Holder. Where the balance or value of an account is nil or a negative amount, for example where an account is overdrawn, the Financial Institution must report the balance or value as nil.

For Cash Value Insurance Contracts or Annuity Contracts the amount to be reported is the cash value or surrender value of the contract.
For an equity interest in an Investment Entity the amount to be reported is the value calculated by the Financial Institution for the purpose that requires the most frequent determination of value.

For a debt interest in an Investment Entity the balance or value is the principal amount of the debt.

The balance or value of an account must not be reduced by any liabilities or obligations incurred by an Account Holder with respect to the account or any of the assets held in the account.

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**IEIM402140 Joint Accounts**

Each holder of a jointly held account is attributed the entire balance or value of the joint account as well as the entire amounts paid or credited to the account.

For example, where a jointly held account has a balance or value of £60,000 and one of the Account Holders is resident in Jersey, the amount attributable to that person in the report to Jersey will be £60,000.

If both Account Holders in the above example were resident in Jersey then each would be attributed £60,000 in the report to Jersey.

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**IEIM402160 Multiple Jurisdictions**

Where a Reportable Person [see IEIM402010] is either an Account Holder [see IEIM402000] or the Controlling Person of a Passive NFE [see IEIM403400] and is identified as having more than one jurisdiction of residence, the entire balance or value of the Reportable Account, as well as the entire amount paid or credited to the Reportable Account must be reported to each jurisdiction of residence of the Account Holder or Controlling Person.

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**IEIM402170 Account Closure**

The information to be reported when an account is closed depends on the regime under which the report is made.

An account is regarded as closed according to the normal operating procedures of the Reporting Financial Institution that are consistently applied for all accounts that it maintains. For example, an equity interest in an Investment Entity [see IEIM401700] would be considered closed when that interest is terminated by the transfer, surrender, redemption or cancellation of the interest or the liquidation of the entity.

An account with a balance or value equal to zero or which is negative will not be a closed account solely by reason of such a balance or value.

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**FATCA & CDOT Reporting**
In all cases the account balance or value immediately before closure must be reported.

In the case of a Depository [see IEIM401540] or Custodial Account [see IEIM401580] closed or transferred in its entirety by an Account Holder during a calendar year the reportable information shall be:

- The payments and income paid or credited to the account during the calendar year up to the point of closure or transfer; and
- The amount or value withdrawn or transferred from the account in connection with the closure or transfer of the account.

In the case of a Cash Value Insurance Contract that has been fully surrendered during the calendar year the Specified Insurance Company will need to report:

- The total amount paid out to the Account Holder or nominated person at the close of the account. This will include any amount of interest following maturity where the amount is awaiting payment.

In the case of a purchased life annuity, if the annuitant has died or the term has ended, the Specified Insurance Company will have no further reporting requirement if the annuitant died at a time before the annual payment has been made.

The process for closing accounts will differ between institutions and between different products and accounts. The intention is to capture the amount withdrawn from the account in connection with the closure process, as opposed to the account balance at the point of closure given there is an expectation the balance will be reduced prior to point of closure. For these purposes it is acceptable for the Financial Institution to:

- record the balance or value within five business days of when they receive instructions from the Account Holder to close the account; or
- record the most recent available balance or value that is obtainable following receipt of instructions to close the account, where a Financial Institution is unable to record the balance or value at the time of receiving instructions to close the account. This may include a balance or value that predates the instructions to close the account if this is the balance or value that is the most readily available.

For accounts that close as a result of switching to another bank, the balance calculated as the transferable balance as part of the BACs account switching service.

**CRS & DAC Reporting**

When an account is closed the Reporting Financial Institution [see IEIM402100] must report the fact of the closure but is not required to report the balance or value of the account at closure. Any amounts paid or credited to the account in the reporting period up to the date of closure remain reportable [see IEIM402220 to IEIM402260].

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**IEIM402175 Account Ceases to be Reportable**

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If, as a result of a change of circumstance, an Account Holder ceases to be a Reportable Person [see IEIM402010] then the account will cease to be a Reportable Account in the year in which the change of circumstance is identified by the Reporting Financial Institution.

As reporting is based on the status of accounts in existence at the end of the reportable period such accounts will not be reportable for the period in which the change of circumstance occurs. This is different to the reporting required when an account held by a Reportable Person is closed during a reportable period [see IEIM400520 for FATCA, IEIM400540 for CDOT, IEIM400580 for DAC/CRS].

IEIM402180 Place and Date of Birth

Place of Birth

The place of birth to be reported is the town or city and country of birth of the Reportable Account holder.

The requirement to report place of birth is subject to the condition at Annex I Section I Paragraph E of the CRS and the DAC, however, as this is closely linked to reporting under the EU Savings Directive (EUSD) its relevance will be restricted to reporting to other member states. This makes place of birth a reportable item only where the Reporting Financial Institution is required to obtain and report it either under UK domestic law or under a European Union legal instrument in effect or that was in effect on 5 January 2015 being the date that the DAC came into force for automatic exchange of financial account information.

In effect this will only apply where the Reporting Financial Institution is currently reporting place of birth information to HMRC under the EUSD. Any Reporting Financial Institution that has no obligations under the EUSD is not required to report place of birth.

Where the Reporting Financial Institution is in scope for EUSD reporting there is a further condition that has to be met before the place of birth is reportable under the DAC. Place of birth only needs reporting if it is available in the electronically searchable data maintained by the Reporting Financial Institution.

The reference to an EU legal instrument ‘that was in effect on 5 January 2015’ is a reference to the EUSD. The EUSD has been repealed as the requirements of that Directive have been overtaken by the DAC. What this means is that where place of birth information has been captured in the electronic data systems of the Reporting Financial Institution for EUSD purposes that information must be retained and reported under the DAC even though the EUSD has been repealed. Our interpretation of the DAC is that the provisions in Annex 1 E do not have the effect of placing a continuing requirement, after the repeal of the EUSD, to collect and report place of birth for new accounts, on those Financial Institutions previously required to do so by the EUSD.

Some Financial Institutions obtain place of birth information as part of their security protocols, for example, as personal information about the Account Holder that can be used for verifying their identity should they contact the Financial Institution by telephone or on-line. As this information has
not been obtained for any domestic or EU regulatory purposes the Reporting Financial Institution should not report place of birth from this information.

As only Reporting Financial Institutions in scope for EUSD are able to report place of birth under the DAC, any processes that they currently apply to separate place of birth information collected for EUSD reporting purpose from that collected for other non-regulatory reasons should be maintained for DAC reporting.

**Date of Birth**

The date of birth is reportable for all new accounts [see IEIM403120]. It is only reportable for pre-existing accounts [see IEIM402640] to the extent that it is already held in records maintained by the Reporting Financial Institution [see IEIM402300] or the Reporting Financial Institution is otherwise obliged to collect it. Where the date of birth is not held in respect of pre-existing accounts the Reporting Financial Institution must use reasonable efforts [see IEIM402320] to obtain it by the end of the second calendar year following the year in which the accounts are identified as Reportable Accounts [see IEIM402520].

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**IEIM402200 Custodial Account**

In addition to the general reporting requirements [see IEIM402000], where the Reportable Account is a Custodial Account the information to be reported for each Reporting Period [see IEIM400520 for FATCA, IEIM400540 for CDOT, IEIM400580 for DAC/CRS] is:

- The total gross amount of interest paid or credited to the account
- The total gross amount of dividends paid or credited to the account
- The total gross amount of other income generated with respect to the assets held in the account paid or credited to the account. Other income for this purpose means any amount that would be considered income for the purposes of the *Income Tax Acts 2007* other than interest or dividends.
- The total gross proceeds [see IEIM402220] from the sale or redemption of financial assets paid or credited to the account.

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**IEIM402220 Gross Proceeds**

A Custodial Institution [see IEIM400640] is required to report the total gross proceeds from the sale or redemption of financial assets held in a Custodial Account [see IEIM401620] during the reporting period [see IEIM400520 for FATCA, IEIM400540 for CDOT, IEIM400580 for DAC/CRS]. This is without regard to whether or not the Account Holder [see IEIM403300] would be subject to tax in the UK on the sale or redemption of the financial asset.

The total gross proceeds from the sale or redemption of a financial asset is the total amount credited to the account of the person entitled to the payment without regard to any sums netted off against the payment to satisfy outstanding liabilities. For example, a loan used to fund acquisition of
the asset may be repaid from the proceeds of sale. This must not be deducted from the amount reportable.

Commissions and fees paid with respect to the sale or redemption of the asset may be taken account of in arriving at the gross proceeds of sale.

Where the financial asset that is sold or redeemed is an interest bearing debt obligation the gross proceeds should include any interest that has accrued between interest payment dates.

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**IEIM402240 Depository Account**

In addition to the general reporting requirements [see IEIM402000], where the reportable account is a depository account the information to be reported for each reportable period [see IEIM400520 for FATCA, IEIM400540 for CDOT, IEIM400580 for DAC/CRS] is the gross amount of interest paid or credited to the account during that period.

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**IEIM402260 Other Accounts**

In addition to the general reporting requirements [see IEIM402000], in the case of any account other than a Depository Account [see IEIM402240] or a Custodial Account [see IEIM402200] the information to be reported for each reporting period [see IEIM400520 for FATCA, IEIM400540 for CDOT, IEIM400580 for DAC/CRS] is the total gross amount of income paid or credited to the Account Holder [see IEIM403300] in the reporting period with respect to which the Reporting Financial Institution [see IEIM402100] is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the reporting period.

For Cash Value Insurance Contracts this will include any part surrenders taken throughout the policy year.

For a purchased life annuity it will include any amounts paid or credited to the policy holder.

Where a deferred annuity is not converted into a purchased life annuity at the end of the accumulation phase and the Account Holder takes the surrender value of the contract instead, the amount paid as the surrender value is the amount to be reported.

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**IEIM402280 Currency**

All amounts to be reported by the Reporting Financial Institution must identify the currency in which they are denominated.

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**IEIM402300 Paper and Electronic Records**
The records of a Financial Institution include both paper and electronic records that the Financial Institution maintains for the purpose of keeping Account Holder information available for use in the business. This includes information such as the customer master file necessary to maintain contact with the Account Holder and information for satisfying AML/KYC procedures.

Information is not regarded as maintained by the Financial Institution if it has been archived and is not used by the business, for example there may be regulatory requirements that documents are kept for a minimum period before they can be destroyed but are otherwise not used by the business. Only when such information is retrieved by the Financial Institution from the archive so that it can be used by it will the information be regarded as maintained.

Electronic records are available for use by the Financial Institution to the extent that they are electronically searchable. This means information maintained by the Financial Institution that is stored in the form of an electronic database against which standard queries in programming languages, such as Structured Query Language, may be used. Information, data or files are not electronically searchable merely because they are stored in an image retrieval system such as portable document format (pdf.) or as scanned documents.

Financial Institutions should rely on the IT systems they have in place at the time the electronic searches are carried out, they are not expected to build systems to carry out electronic searches solely for the purpose of reporting under their automatic exchange of information obligations.

**IEIM402320 Reasonable Efforts to Obtain**

Where a Financial Institution does not hold information in its records [see IEIM402300] on either the Account Holder’s taxpayer identification number [see IEIM402040] or date of birth [see IEIM402180] it is expected to make reasonable efforts to obtain the information by the end of the second calendar year following the year in which the account is identified as reportable.

Reasonable efforts require genuine attempts to obtain the information and would include all or any of the following:

- Contacting the Account Holder by mail, in-person or telephone and could include requests made as part of other documentation;
- Electronic contact such as facsimiles or e-mail;
- Reviewing electronically searchable information maintained by a related entity in accordance with the aggregation principles [see IEIM406560].

Reasonable efforts do not require the closing, blocking or transferring of an account, nor conditioning or otherwise limiting its use, simply because the Account Holder does not comply with a request for this information.

Reasonable efforts may continue to be made after the above mentioned period if the Financial Institution so chooses.
**IEIM402340 Reportable Jurisdictions**

The following territories are the Reportable Jurisdictions for each of the regimes.

**FATCA**

United States of America

**CDOT**

Gibraltar, Guernsey, Isle of Man and Jersey.

**DAC**

Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.

Andorra, Liechtenstein, Monaco, San Marino and Switzerland have, or will enter into, agreements with the European Union to report and receive information in accordance with the DAC.

These jurisdictions are all participating jurisdictions for CRS purposes as well.

**CRS**

Formal agreements to report financial account information have yet to be concluded with other jurisdictions for automatic exchange of information under CRS competent authority agreements. The UK regards the jurisdictions that have made a commitment to exchange under the CRS as participating jurisdictions for the purposes of the UK regulations. However, these jurisdictions will not become Reportable Jurisdictions until the UK has concluded agreements that require the UK to send information to them under the CRS. The participating jurisdictions are:

Albania, Anguilla, Antigua & Barbuda, Argentina, Aruba, Australia, The Bahamas, Barbados, Belize, Bermuda, Brazil, British Virgin Islands, Brunei Darussalam, Canada, Cayman Islands, Chile, China, Colombia, Cook Islands, Costa Rica, Curacao, Dominica, Faroe Islands, Ghana, Gibraltar, Greenland, Grenada, Guernsey, Hong Kong, Iceland, India, Indonesia, Isle of Man, Israel, Japan, Jersey, Korea, Macao, Malaysia, Marshall Islands, Mauritius, Mexico, Montserrat, New Zealand, Niue, Norway, Qatar, Russian Federation, St. Kitts & Nevis, St Lucia, St Vincent & the Grenadines, Samoa, Saudi Arabia, Seychelles, Singapore, Saint Maarten, South Africa, Trinidad & Tobago, Turkey, Turks & Caicos Islands, United Arab Emirates and Uruguay.

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**IEIM402360 Non-Participating Financial Institutions**
Where a Reporting Financial Institution makes payments to Non-Participating Financial Institutions (NPFI) [see IEIM401300], it is required to report the name and the aggregate value of all payments made to each Non-Participating Financial Institution for the years 2015 and 2016.

This obligation was included as a temporary solution to the requirement to withhold on ‘foreign passthru payments’ which is included in the US provisions. Under the US IGA a UK Financial Institution is not subject to withholding providing that it complies with its due diligence and reporting obligations.

The payments that are to be reported are:

a) US source payments made to an NPFI paid in respect of a financial account in connection with a securities lending transaction, sale-repurchase transaction, forward, future, option, swap, or similar transaction which are directly or indirectly contingent upon or determined by reference to, the payment of interest or a dividend from US sources; and

b) Non-US source interest paid on a financial account held by a NPFI

c) Non-US source dividends paid on a shareholding held in a financial account held by a NPFI

d) Non-US source payments, to a NPFI, that are the proceeds or benefits of a Cash Value Insurance Contract or Annuity Contract.

Exceptions

The following do not need to be reported:

1. Any payments made that are not in respect of a financial account held by the Financial Institution;
2. Payments for the following:
   • services (including wages and other forms of employee compensation (such as stock options)),
   • the use of property,
   • office and equipment leases,
   • software licenses,
   • transportation,
   • freight,
   • gambling winnings,
   • awards, prizes or scholarships, and
   • interest on outstanding accounts payable arising from the acquisition of goods or services.;
3. Payments where the Reporting Financial Institution has only a passive role in the payment process and:
   • has no knowledge of the facts that give rise to the payment, or
   • has no control over the payment, or
   • has no custody of the property which relates to the payment (e.g. processing a cheque or arranging for the electronic transfer of funds on behalf of one of its customers, or receives payments credited to a customer’s account), or
   • does not have custody of property which relates to the payment.
4. Capital markets payments in c) above that are not directly traceable to a US source.

**Reporting**

A payment will be treated as being made when an amount is paid or credited to an NPFI.

- Only the aggregate amount of foreign reportable payments made to the payee during the calendar year need to be reported.
- Where the payments described in c) above, cannot be separately identified as being the equivalent of a U.S. source interest or dividend income then the entire amount of the payment made in relation to that transaction is to be reported.
- The amount of income to be aggregated is the net amount of the income payment made, there is no requirement to consider amounts withheld, or
- Alternatively the Financial Institution may report the aggregate number of accounts held by NPFIs and the aggregate amount of reportable payments paid to such accounts.

**IEIM402380 Dividends Paid by a Financial Institution**

Dividend payments made by a Financial Institution to its shareholders will only be reportable where the shareholding is held in a financial account of a Non-Participating Financial Institution.

Shareholdings of a Financial Institution, other than shareholdings or equity interest in certain Investment Entities [see IEIM401700], are not deemed to be financial accounts in their own right and as such where a payment is made directly to an investor who is an NPFI, the payment will not be reportable.

*Use this link to view diagram that shows examples of where the reporting for dividend payments requirement will apply.*

**IEIM402400 US Withholdable Payments**

Financial Institutions will also need to report up the payment chain when a Non-Participating Financial Institution is the recipient of specific US source payments. This requirement will fall on Financial Institutions other than those that have elected to act as qualifying intermediaries with primary withholding responsibility, withholding foreign partnerships or withholding foreign trusts.

Where such a financial institution pays, or acts as an intermediary for the payment of, a US source withholdable payment to a Non-Participating Financial Institution, the Financial Institution is required to provide information to the “immediate payor” of that income. The immediate payor is the person with withholding and reporting obligations to the US authorities.

The information that must be provided in respect of the payment is that required for withholding and reporting to occur.
IEIM402500 Due Diligence

IEIM402505 General Requirements

Due diligence requirements apply for ‘new’ accounts [see IEIM403120] and ‘pre-existing’ accounts [see IEIM402640].

The Regulations for all the automatic exchange of information of financial account regimes require Financial Institutions to identify and maintain information on the tax residence of Account Holders, irrespective of whether or not they are tax resident in a Reportable Jurisdiction [see IEIM402340]. This is referred to as the ‘wider approach’ [see IEIM400140]. Financial Institutions are required to carry out due diligence procedures on financial accounts that they hold in order to establish if the person holding the account is tax resident in a jurisdiction with which the UK has agreed to automatically exchange information. For automatic exchange with the USA under FATCA the Financial Institution must establish whether the person is tax resident in the USA or, for individuals, is a citizen of the USA irrespective of where they are resident.

If the Account Holder [see IEIM402015] is identified as being tax resident in any of the jurisdictions with which the UK has agreed to exchange information on a reciprocal basis then they are a Reportable Person [see IEIM403440] and the account is a Reportable Account [see IEIM401520]. An account is treated as a Reportable Account as of the date it is identified as such pursuant to the due diligence procedures that Financial Institutions must follow. The requirement to apply due diligence procedures for pre-existing accounts is subject to certain options that Financial Institutions may elect to apply such that accounts below de minimise thresholds are not subject to review [see IEIM402565].

IEIM402510 Notifying Account Holders

In accordance with regulation 10 of the 2015 Regulations there is a requirement for reporting Financial Institutions to notify each individual Reportable Person or individual Specified U.S. Person that information relating to that person which is required to be reported under regulation 6 will be reported to HMRC and may be transferred to the government of another territory in accordance with a relevant agreement. The notification must be made by 31 January in the calendar year following the first year in which the account held by the individual is a Reportable Account maintained by the Reporting Financial Institution (for example – if an account is first identified as a Reportable Account for the 2019 calendar year then the customer must be notified by 31 January 2020). This requirement is intended to provide good time for the notification to be provided to customers ahead of their data being sent to HMRC (in principle, a Financial Institution may send its
report for the preceding calendar year to HMRC at any time after 1 January but in practice and based on FATCA reporting very few report substantially earlier than 31 May).

The notification may be made either in a direct communication to the Account Holder, such as a monthly or annual account statement, or by way of general communications such as updates to terms and conditions, and in either case may be made electronically or by paper communication. It may also be included in the self-certification or account opening documentation. Note that this is a ‘one-off’ requirement and there is no requirement to repeat the process once completed for a particular account.

Separately to the process described above, a Finance Bill 2015 clause provides powers for HMRC to require financial intermediaries (which includes Financial Institutions) and tax advisers to write to customers to tell them about automatic exchange of information, disclosure opportunities and penalties for failing to declare liabilities relating to offshore financial accounts. HMRC will be consulting on the clause prior to the expected introduction of regulations in early 2016; the proposals are intended to be targeted at specific customer groups, rather than being a general requirement to notify all customers as described above.

IEIM402520 Reportable Account

An account is treated as a Reportable Account [see IEIM401520] from the date it is identified as such pursuant to the due diligence procedures that the Financial Institution is required to follow. Information must be reported annually to HMRC on that account in the calendar year following the year to which the Reportable Information [see IEIM402000] relates.

Once an account has been identified as a Reportable Account it remains so until there is a change that takes the account out of the definition of Reportable Account. This can happen in a number of ways:

- The Account Holder ceases to be a Reportable Person [see IEIM403440].
- The account is closed or transferred to another Financial Institution in its entirety (where it may become a Reportable Account by that business) [see IEIM402170].
- The account becomes an excluded account [see IEIM401720].
- The Reporting Financial Institution becomes a Non-Reporting Financial Institution [see IEIM400920].

While the account remains a Reportable Account it must be reported even where the balance or value of the account is zero or negative. It also remains reportable where nothing has been credited to or in respect of the account during the appropriate reportable period [see IEIM400520 for FATCA, IEIM400540 for CDOT, IEIM400580 for DAC/CRS].

When an account ceases to be a Reportable Account it no longer needs to be reported, but where the account is closed information with respect to that account must be reported until the date of closure.
IEIM402540 Reportable Account: Examples

The following examples illustrate the circumstances where an account becomes or ceases to be a Reportable Account.

1. Account becomes reportable – a Financial Institution carries out due diligence procedures on lower value pre-existing accounts as at 31 December 2015 for CRS purposes between 1 January 2016 and 31 December 2017. On 22 March 2017 the Financial Institution identifies an account that belongs to an individual resident in Italy. The account is a Reportable Account from that date. Information on that account is reportable for the full calendar year 2017, the first report being made in 2018 and annually thereafter.

2. Account reportable after change of circumstance – a new account is opened by an individual on 20 June 2016. The self-certification provided by the individual on opening the account shows that the individual is tax resident in the UK. The account is not a Reportable Account. On 13 September 2018 the individual notifies the Financial Institution of a move to Germany to work and provides the Financial Institution with a residential address in Hanover. This provides an indicia of tax residence in Germany which is a change of circumstance [see IEIM403200]. The account becomes a Reportable Account from that and is reportable for the full calendar year 2018, the first report being made in 2019 and annually thereafter.

3. Account ceases to be reportable – the Account Holder of the account in example 1 above notifies the Financial Institution that they have moved permanently to the UK and are resident there for tax purposes with effect from 17 April 2019. As a result, the individual ceases to be a Reportable Person. As the account ceases to be a Reportable Account in the calendar year 2019 no report from the Financial Institution is required in 2020 or any subsequent calendar year unless the account becomes reportable once again.

4. Account is closed – a Reportable Account is closed by the Account Holder on 14 August 2018. The Financial Institution must report in 2019 that the account has been closed along with information in respect of that account for the period from 1 January 2018 to the date of closure. The amount of information will depend on the regime under which reporting occurs [see IEIM402170].

5. Account ceases to be reportable and is then closed – the Account Holder in example 3 above closes the account with the Financial Institution on 11 October 2019. As the closure occurred after the account ceased to be reportable, information with respect to the closure of the account is not required to be reported in 2020.

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IEIM402560 Balance or Value of Account

The balance or value of a Reportable Account is part of the reportable information [see IEIM402000] that is to be automatically exchanged. It is also relevant for other purposes such as the due diligence procedures for pre-existing entity accounts [see IEIM403240] and the account aggregation rules [see IEIM403560].

The balance or value of the Reportable Account is to be determined as of the last day of the appropriate reporting period [see IEIM400520 for FATCA, IEIM400540 for CDOT, IEIM400580 for
DAC/CRS]. If the balance or value of the account requires conversion from one currency to another the guidance at [see IEIM403560] should be considered.
IEIM402565 Reporting Thresholds

The Intergovernmental Agreements with the USA and the Crown Dependences and Overseas Territories allow for certain thresholds below which a Financial Institution is not required to review, identify or report accounts to HMRC, thus removing the accounts from the need to carry out due diligence. With one exception, pre-existing entity accounts (see IEIM403260), such thresholds do not apply to reporting under the Common Reporting Standard.

The UK regulations require all accounts to be the subject of due diligence and possible reporting but give Financial Institutions the option to elect to apply the thresholds to exempt certain accounts from this requirement. The election can be made in respect of some or all of the following categories of Financial Account and can also be applied to clearly identifiable groups of accounts, such as by line of business or by reference to the location where the accounts are maintained. The Financial Accounts that can be subject to election for reporting thresholds to apply are:

- Any Depository Account [see IEIM401540] with a balance or value not exceeding an amount equivalent to US$50,000. This election is not available for the CRS/DAC.
- Pre-existing individual accounts [see IEIM402640] with a balance or value not exceeding an amount equivalent to US$50,000 as at 30 June 2014, unless the account becomes a High Value Account as at the end of a subsequent appropriate reporting period. This election is not available for the CRS/DAC.
- Pre-existing individual accounts that are Cash Value Insurance policies [see IEIM401640] or Annuity Contracts [see IEIM401680] with a balance or value not exceeding an amount equivalent to US$250,000 as at 30 June 2014, unless the account becomes a High Value Account as at the end of a subsequent appropriate reporting period. This election is not available for the CRS/DAC.
- Pre-existing entity accounts [see IEIM403240] with a balance or value not exceeding an amount equivalent to US$250,000. This election is available under all the AEOI regimes.

With the exception of the election for Depository Accounts, the rules on aggregation of account balances and values [see IEIM403560] must be applied for the purpose of determining whether or not an account is below the threshold for election. Some examples of how the thresholds apply can be found at IEIM402570.

IEIM402570 Elections and Process

The exemptions may be applied by the Financial Institution making an election. The effect of the election is that the Financial Institution is not required to review any of its accounts within the de minimis threshold(s) or, where the election instead provides, a clearly identifiable group of such accounts (for example, accounts held by a particular line of business).

The election is made on the electronic return of information to HMRC. A Financial Institution wishing to apply the election will need to register on the HMRC portal [see Automatic Exchange of Information: registering and reporting guidance - Publications - GOV.UK] and complete the appropriate notification of election on the return even if there are no accounts to report. The portal
currently has no facility to apply multiple separate elections by business line where different approaches are taken by separate business units within the same legal entity.

Affected entities wishing to make multiple elections should notify their usual HMRC point of contact, for example a Customer Relationship Manager.

If a Financial Institution chooses not to make an election to apply a particular threshold exemption it will need to review all relevant accounts (subject to any other elections made) in order to identify Reportable Accounts.

Where an election has been made to apply the de minimis threshold as at 30 June 2014 to an account (new account due diligence procedures apply to accounts opened after that date), the FATCA and CDOT agreements state that the account must then be reviewed again at 31 December 2015 and annually thereafter and if it has become a High Value Account it must then be reported if applicable. However, this has been overtaken by subsequent developments and the introduction of the CRS/DAC – see below.

**Effect of applying the ‘wider approach’**

The International Tax Compliance Regulations 2015 and the International Tax Compliance (Crown Dependencies and Gibraltar) Regulations 2014 require Financial Institutions to identify the territory of tax residence of the Account Holder, irrespective of whether it is a Reportable Jurisdiction, and to apply the due diligence procedures relevant to each regime (FATCA, CDOT and CRS/DAC) [see IEIM402500]. As a result of this and the absence of de minimis thresholds for individuals applicable to CRS/DAC, the benefit of the $1,000,000 higher threshold at which FATCA and CDOT pre-existing individual accounts that have been subject to elections become reviewable is lost from 31 December 2015. That is because from that date pre-existing individual accounts need to be identified for DAC/CRS purposes. This means that all individual accounts in existence on that date will need to be reviewed. This includes accounts that have been subject to an election but that now have a balance over $50,000 but not exceeding $1,000,000 and that would not, absent the CRS/DAC, be reviewable for the CDOT or FATCA regimes.

Once a pre-existing individual account is identified, the account will become reportable irrespective of the previous $1,000,000 review threshold.

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**IEIM402580 Date for Determining the Balance or Value for Thresholds**

Thresholds may apply in a number of circumstances. For example, under the CRS it is necessary to determine whether the aggregate value of accounts held by an individual exceed an amount equivalent to US$1 million [see IEIM403560] or the value of accounts held by an entity exceed US$250,000.

The threshold is applied on the last day of the calendar year that is the subject of the report. The balance or value on the account that is to be used for determining if the threshold has been exceeded is that on the last day of the appropriate reporting period ending in that year [Reporting Periods: FATCA, CDOT, DAC/CRS].

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Where a Financial Institution values financial accounts at regular points during the year, the balance or value on the last such valuation in the appropriate reporting period may be used for this purpose.

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**IEIM402600 Reliance on Service Providers**

Reporting Financial Institutions may use third party service providers to fulfil some or all of their due diligence obligations under the various automatic exchange of information regulations (FATCA, CDOT, CRS and DAC) but the obligations remain the responsibility of the Financial Institution. Any failure by a third party service provider would be regarded as a failure by the Financial Institution.

For example, where an independent financial adviser (IFA) has the customer relationship for introducing business to a Financial Institution, such as a broker selling Cash Value Insurance Contracts, the IFA is often best placed to obtain the self-certification [see IEIM403340] needed to carry out the due diligence process on the new account. The Financial Institution may rely on the IFA to obtain the self-certifications on its behalf.

Similarly, when a Financial Institution engages a third party to run AML/KYC processes [see Money Laundering Regulations: introduction - Detailed guidance - GOV.UK] it may rely on the report provided on the basis that the third party has relied on appropriate documentary evidence [see IEIM403490] in producing the report. In such a case the reporting Financial Institution may not hold the original documents or certified copies of them. If HMRC requires sight of documents in these circumstances, photocopies will be acceptable subject to the Financial Institution being able to obtain originals or certified copies should that be necessary.

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**IEIM402620 Alternative Procedures for Pre-Existing Accounts**

Reporting Financial Institutions may apply

1. The due diligence procedures for new accounts to pre-existing accounts, and/or
2. The due diligence procedures for High Value Accounts to Lower Value Accounts.

Where a Financial Institution chooses to apply one or both of these alternatives it may do so with respect to all its pre-existing accounts or, separately, to any clearly identified group of such accounts. A group of accounts may, for example, be those maintained by a particular line of business or those maintained in a particular location.

Where a Financial Institution chooses to apply the new account procedures to pre-existing accounts the rules that otherwise apply to pre-existing accounts continue to apply. For example, the financial institution can still rely on the exception for reporting a TIN [see IEIM402040] or date of birth [see IEIM402180] if it is not in its records and is not otherwise required to be collected by domestic law. Similarly it may rely on the residence address test for CRS and DAC purposes [see IEIM402680] if applying new account procedures to pre-existing Lower Value Accounts.
IEIM402640 Pre-Existing Individual Accounts

IEIM402650 Lower Value Accounts

IEIM402660 Introduction

In determining whether an Account Holder of a Lower Value Account is a Reportable Person [see IEIM403440] for CRS and DAC purposes Financial Institutions have two options for making such a determination. They can apply either

1. A residence address test [see IEIM402680], or
2. An electronic record search [see IEIM402780].

In the event that the Financial Institution applies the residence address test and this does not determine the residence of the individual Account Holder then it must also apply the electronic record search.

Financial Institutions can apply the residence address test to all Lower Value Accounts or, separately, to any clearly identified group of such accounts. A group of accounts may, for example, be those maintained by a particular line of business or those maintained in a particular location.

Financial Institutions may also opt to go straight to an electronic record search for indicia of tax residence without first applying the residence address test.

The US and CDOT IGAs do not allow for the residence address thus only the electronic record search is permitted.

IEIM402680 Residence Address Test

CRS and DAC Only

The due diligence procedures are for the purpose of identifying whether or not an Account Holder is a Reportable Person [see IEIM403440]. If an Account Holder is identified as a Reportable Person the Financial Institution will then have to collate Reportable Information [see IEIM403280] for the purpose of reporting to HMRC.

In determining whether an Account Holder of a Lower Value Account is a Reportable Person for CRS or DAC purposes Financial Institutions may apply the residence address test.

Where the Financial Institution has policies and procedures in place to verify the residence address of an Account Holder based on documentary evidence [see IEIM402760], a person will be regarded as resident for tax purposes in the jurisdiction in which an address is located if:

1. The Financial Institution has in its records a residence address for the Account Holder;
2. The residence address held is current [see IEIM402720]; and
3. The residence address is based on documentary evidence [see IEIM402760].

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IEIM402700 Residence Address Definition

CRS and DAC Only

The residence address held by a Financial Institution must be sufficiently detailed to identify where the Account Holder resides and will generally be in a form that identifies the street and the town, city or area where the individual lives in sufficient detail for the Financial Institution to determine the jurisdiction in which the residence is located.

In general, an “in-care-of” address or a post office box is not a residence address. However, a post office box can be part of a residence address where the address also contains a street, an apartment or suite number, or a rural route and thus clearly identifies the actual residence of the account holder.

An “in-care-of” address is unlikely to provide sufficient detail to identify the residence of the Account Holder as the address is that of the person receiving mail on behalf of the Account Holder. Exceptionally, an “in-care-of” address may be relied on where it is clear that the Account Holder is military personnel and the “in-care-of” address is a standard address of the type used for individuals residing on military bases. Additionally, an “in-care-of” address may be relied on where the address relates to a care or residential home.

IEIM402720 Current Residence Address

CRS and DAC Only

The residence address held by a Reporting Financial Institution must be current. A residence address is considered to be current where it is the most recent address that the Financial Institution has recorded for the Account Holder. Such an address will not be regarded as current if it has been used for mailing purposes and mail has been returned undeliverable-as-addressed other than due to an error and the account has a ‘flag’ on it to that effect.

If mail has been returned and the account (other than an Annuity Contract) is dormant then the residence address may continue to be regarded as current in certain circumstances [see IEIM402740].

IEIM402740 Dormant Accounts

CRS and DAC Only

A residence address associated with an account (other than an Annuity Contract) may be considered current even though mail has been returned undeliverable-as-addressed if the account is dormant.

An account is considered to be dormant if:

1. The Account Holder has not initiated a transaction in the past three years on that account or any other account he or she holds with the Financial Institution; and
2. The Account Holder has not communicated in the past six years with the Financial Institution that maintains the account regarding that account or any other account he or she holds with the Financial Institution; or
3. The account is considered to be dormant under the normal operating procedures of the Financial Institution that are applied for all accounts maintained by it provided these procedures are substantially similar to the requirements in 1 and 2 above.

There is an additional requirement for Cash Value Insurance Contracts to be regarded as dormant. As well as the tests above, the Financial Institution has not communicated with the Account Holder in the past six years regarding the account or any other account he or she holds with the Financial Institution.

An account ceases to be dormant on the earliest of any of the following events occurring:

1. The Account Holder initiates a transaction on the dormant account or any other account he or she holds with the Financial Institution;
2. The Account Holder communicates with the Financial Institution about the dormant account or any other account he or she holds with it; or
3. The account ceases to be a dormant account under the normal operating procedures of the Financial Institution.

**IEIM402760 Address Based on Documentary Evidence**

**CRS and DAC Only**

Financial institutions are generally required to carry out due diligence checks, often referred to as AML/KYC procedures, on their customers in respect of anti-money laundering regulations. These checks are based on the Financial Action Task Force (FATF) recommendations which have been incorporated into the UK Money Laundering Regulations which in turn require the Financial Institution to verify the customer’s identity based on documents, data or information obtained from a reliable and independent source. The types of document that meet this requirement are those included in the definition of documentary evidence in the [CRS](#).

Consequently, where a Financial Institution has identified the residence address of an Account Holder by following the policies and procedures it has in place for AML/KYC procedures the Financial Institution may rely on that address when applying the residence address test.

The current FATF recommendations have been effective since 2004 thus Account Holders that have been subject to AML/KYC processes since then should be in scope for this treatment.

For accounts opened before 2004 the policies and procedures that the Financial Institution has in place must ensure that the current residence address they hold is in the same jurisdiction:

1. As that of the address on the most recent documentation collected by the Financial Institution, for example, a utility bill, a real property lease or a declaration by the Account Holder made under penalty of perjury; and
2. As that reported by the Financial Institution with respect to the Account Holder under any other applicable tax reporting requirements (if any).

Alternatively, in the case of a Cash Value Insurance Contract the Financial Institution may rely on the current residence address in its records until:

1. There is a change in circumstances that causes the Financial Institution to know or have reason to know that the address held is incorrect or unreliable, or
2. The time of pay-out, whether full or partial, or maturity of the contract. The pay-out or maturity of the contract will trigger a change of circumstances requiring the Financial Institution to update its records.

In the event that a Financial Institution has been notified of a change of address by the Account Holder, supported by documentation from the Account Holder, and this does not result in any further AML/KYC processes, the Financial Institution may still rely on the address that has been the subject of AML/KYC provided the new address is in the same jurisdiction.

IEIM402780 Electronic Records Search

Where a Reporting Financial Institution fails to establish the residence of an individual with a Lower Value Account from the residence test [see IEIM402760], or is unable, or chooses not to apply the residence address test, it must review its electronically searchable data [see IEIM402300] for indicia of the individual’s residence (or, alternatively, citizenship for US reporting under FATCA). For FATCA reporting an electronic search may not be necessary if the Financial Institution has already established an Account Holder’s status in order to meet its obligations as a qualified intermediary [see IEIM402860].

The Account Holder will be regarded as a resident of a Reportable Jurisdiction [see IEIM402340] if any of the indicia below apply:

1. The Account Holder is identified as resident of a Reportable Jurisdiction or as a US citizen [see IEIM402800].
2. For FATCA only, there is an unambiguous indication of a US place of birth [see IEIM402820].
3. The current mailing or residence address (including a post office box) of the Account Holder is in a Reportable Jurisdiction [see IEIM402840].
4. There are one or more current telephone numbers in a Reportable Jurisdiction [see IEIM402844].
5. Standing instructions to transfer funds to an account maintained in a Reportable Jurisdiction (For CRS/DAC only, other than a Depository Account) [see IEIM402847].
6. A current effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction [see IEIM402855].
7. An “in-care-of” address or “hold mail” instruction in a Reportable Jurisdiction if the Reporting Financial Institution does not have any other address on file for the Account Holder [see IEIM402850].
If none of the above indicia are discovered through an electronic search, no further action is required in respect of Lower Value Accounts unless and until there is a subsequent change of circumstance that results in one or more of the above indicia being associated with the account or the Account Holder. Where such indicia arise the account becomes a Reportable Account unless the Financial Institution takes steps to cure or repair the indicia [see IEIM402880]. Only where the indicia remain in place after the cure or repair is completed will the account become a Reportable Account.

In addition, where a number of the above indicia are present but provide contradictory evidence the Financial Institution may take steps to cure or repair the indicia. For example, if the indicia, with the exception of a current telephone number in France, all point to the individual being resident in the UK, the Financial Institution can seek information from the individual to confirm where he or she is resident for tax purposes before treating the account as belonging to a French Reportable Person.

A Financial Institution will not be treated as having reason to know that an Account Holder’s status is incorrect because it retains information or documentation that may conflict with its review of the Account Holder’s status if it was not necessary to review that information or those documents under the procedures for the electronic record search.

**IEIM402800 Resident of a Reportable Jurisdiction**

Where the indicia found during the electronic search indicates that the Account Holder is resident for tax purposes [see IEIM402010] in a Reportable Jurisdiction, or for FATCA purposes is a US citizen or resident, the account will be a Reportable Account subject to applying the curing procedure for this indicator of a Reportable Jurisdiction.

**IEIM402820 Unambiguous US Place of Birth**

**FATCA Only**

Where the indicia found during the electronic search shows unambiguously that the Account Holder was born in the USA, the account will be a Reportable Account subject to applying the curing procedure for this indicator [see IEIM402880].

**IEIM402840 Mailing or Residence Address**

Where the indicia found during the electronic search indicates a current mailing or residence address (including a post office box) in a Reportable Jurisdiction the account will be a Reportable Account subject to applying the curing procedure for this indicium [see IEIM402880].

A mailing or residence address is considered to be current for this purpose where it is the most recent address recorded by the Financial Institution with respect to the Account Holder. Where the
account is a dormant account the mailing or residence address attached to the account can be considered as ‘current’ during the period of dormancy.

Where the Financial Institution has recorded two or more mailing or residence addresses in different Reportable Jurisdictions, the Account Holder and details of the account are potentially reportable to multiple jurisdictions. However, where one or more of those addresses is for a service provider of the Account Holder, for example, an asset manager, investment advisor or lawyer, the Financial Institution is not required to treat the service provider’s address as an indication of residence.

IEIM402844 Telephone Number in Reportable Jurisdiction

The telephone number(s) in a Reportable Jurisdiction is only required to be treated as an indicium of residence where that number is current, that is, it is the most recent telephone number(s) held by the Financial Institution for that Account Holder.

If two or more telephone numbers are held, any that relate to a service provider of the Account Holder such as a lawyer, accountant or financial adviser, etc., is not an indicium of residence of the Account Holder.

In the case of any number that is known not to relate to a telephone, for example a permanent fax number, the number should not be treated as indicia of residence. However if there is any doubt over the function, or the number has a combined function at least one of which is as a phone number, the number should be treated as indicia of residence if it is a Reportable Jurisdiction number.

FATCA

Where the indicia found is one or more US telephone numbers associated with the account, it must be reported unless the UK Financial Institution obtains or currently maintains a record of the following:

If all the telephone numbers associated with the account are US telephone numbers:

- a self-certification that the account holder is neither a US citizen nor a US resident for tax purposes; and
- a form of acceptable documentary evidence which establishes the Account Holder’s non-US status. [see IEIM402760]

If there are both US and non-US telephone numbers associated with the account:

- a self-certification that the account holder is neither a US citizen nor a US resident for tax purposes; or
- a form of acceptable documentary evidence which establishes the account holder’s non-US status. [see IEIM402760]

Where there is uncertainty whether a phone number is US a Financial Institution should take reasonable steps (in accordance with the relevant due diligence requirements for the type of
account) to establish whether or not it is a US phone number. It should not then be treated as a US phone number if its status remains uncertain.

In the case of any number that is known not to relate to a telephone, for example a permanent fax number, the number should not be treated as a US indicia. However if there is any doubt over the function, or the number has a combined function at least one of which is as a phone number, the number should be treated as US indicia if it is a US number.

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**IEIM402847 Standing Instructions**

Where at the time of review there are current standing instructions to transfer funds to an account maintained in a Reportable Jurisdiction, the account must be reported unless the UK Financial Institution obtains or currently maintains a record of:

- a self-certification that the Account Holder is not tax resident in the Reportable Jurisdiction; and
- a form of acceptable documentary evidence which establishes the Account Holder’s non-reportable status. [see IEIM402760]

There will be a standing instruction if the Account Holder has mandated the Financial Institution to make repeat payments without further instruction from the Account Holder, to another account that can be clearly identified as being an account maintained in a Reportable Jurisdiction.

Instructions to make an isolated payment will not be a standing instruction even when given significantly in advance of the payment being made.

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**IEIM402850 Hold Mail or In-Care-Of Address Only**

If a hold mail instruction or in-care-of address is discovered in the review of Lower Value Accounts, and no other address or indicia of residence are identified for the Account Holder, the Financial Institution must report on the basis of that address if it is in a Reportable Jurisdiction.

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**IEIM402855 Power of Attorney**

Where the indicia found is a current effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction, the account must be reported unless the UK Financial Institution obtains or currently maintains a record of one of the following:

- a self-certification showing that the Account Holder is not tax resident in the Reportable Jurisdiction; or
- a form of acceptable documentary evidence which establishes the Account Holder’s residence other than in a Reportable Jurisdiction. [see IEIM402760]
IEIM402860 Qualified Intermediaries

FATCA Only

A UK Financial Institution that has previously established an Account Holder’s status in order to meet its obligations under a qualified intermediary, withholding foreign partnership or withholding foreign trust agreement, or to fulfil its reporting obligations as a US payor under Chapter 61 of the IRS Code, can rely on that status for the purposes of the US Agreement where the Account Holder has received a reportable payment under those regimes. The Financial Institution is not required to perform the electronic search in relation to those accounts. It will however have to apply the appropriate due diligence procedures to all other pre-existing individual accounts it maintains [see IEIM402780].

IEIM402880 Curing Indicia

There may be occasions when the electronic record search gives indications of residence in a Reportable Jurisdiction [see IEIM402780] that the Financial Institution considers may be incorrect. In such circumstances the Financial Institution may take steps to ‘cure’ the information before treating the Account Holder as a Reportable Person.

Where the Financial Institution holds information about the Account Holder that includes any of

1. a current mailing address in a Reportable Jurisdiction,
2. one or more telephone numbers in a Reportable Jurisdiction (and no telephone number in the UK),
3. standing instructions [see IEIM402847], other than with respect to Depository Accounts, to transfer funds to an account maintained in a Reportable Jurisdiction, or
4. a currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction, then

the Financial Institution may obtain a self-certification from the Account Holder to ‘cure’ the information by establishing the jurisdiction of residence. The Financial Institution can rely on self-certifications it has previously reviewed and maintained a record of, but in either case the self-certification must be supported by documentary evidence [see IEIM403180]. If the self-certification supported by documentary evidence establishes that the Account Holder is not a Reportable Person then the Financial Institution is not required to treat the Account Holder as resident in a Reportable Jurisdiction.

The self-certification obtained as part of the curing procedure does not need to contain an express confirmation that an Account Holder is not resident in a particular jurisdiction. Provided the self-certification positively identifies the jurisdictions where the Account Holder is resident it can be taken that the Account Holder is not resident in any other jurisdiction.

Where a Financial Institution has contacted an Account Holder for a self-certification but the Account Holder has not responded, the account should be treated as reportable 90 days after initiating contact. The 90 day period is to allow the Account Holder sufficient time to respond to the request for information.
The information in d. above may arise in circumstances where the Account Holder cannot provide a self-certification. In such a case the Financial Institution may rely on documentary evidence that establishes the Account Holder’s non-reportable status.

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**IEIM402900 Higher Value Accounts**

**IEIM402910 Introduction**

High value pre-existing accounts are accounts with an aggregated balance or value [see IEIM403560] that exceeds $1 million at the date that the pre-existing accounts first need to be reviewed [see IEIM400500] or at any 31 December following the initial review date.

The aggregated amount is that across all accounts held by the individual with the Financial Institution and includes accounts held by related entities [see IEIM404000] of the Financial Institution.

When an account is identified as a High Value Account the residence address test [see IEIM402680] may not be used to establish the residence jurisdiction of the Account Holder.

The Financial Institution must start with the electronic record search [see IEIM402920] and then continue, where appropriate, with a paper record search [see IEIM402940] and a relationship manager inquiry [see IEIM402980].

The Financial Institution may choose to apply the new account procedures and seek self-certifications from Account Holders rather than carry out the due diligence for pre-existing High Value Accounts [see IEIM402620].

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**IEIM402920 Electronic Records Search**

For high value accounts a Financial Institution must review its electronically searchable data [link IEIM402300] for indicia of the individual’s residence (or, alternatively, citizenship for US reporting under FATCA).

The Account Holder will be regarded as a resident of a Reportable Jurisdiction [see IEIM402340] if any if the indicia below apply:

- The Account Holder is identified as resident of a Reportable Jurisdiction or as a US citizen [see IEIM402800].
- For FATCA only, there is an unambiguous indication of a US place of birth [see IEIM402820].
- The current mailing or residence address (including a post office box) of the Account Holder is in a Reportable Jurisdiction [see IEIM402840].
- There are one or more current telephone numbers in a Reportable Jurisdiction [see IEIM402844].
- Standing instructions to transfer funds to an account maintained in a Reportable Jurisdiction (other than a Depository Account) [see IEIM402847].
• A current effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction [see IEIM402855].
• An “in-care-of” address or “hold mail” instruction in a Reportable Jurisdiction if the reporting financial institution does not have any other address on file for the Account Holder [see IEIM402850].

To the extent that the Financial Institution’s electronically searchable databases do not include fields for the above or do not otherwise capture this information a paper record search will be required [see IEIM402940]. Where the electronically searchable databases include fields for the required information but are left blank a paper record search will be required unless the Financial Institution has policies and procedures in place that mean that a field is only left blank when the information is not in the Financial Institutions records. For example, a blank field in respect of f) above would indicate positively that the Financial Institution does not hold a power of attorney or other signatory authority for the Account Holder.

IEIM402940 Paper Search

A Financial Institution must carry out a paper record search to the extent that the information on residence of an Account Holder is not captured by the electronic search [see IEIM402920].

For example, where the electronically searchable databases contain all the required information except for details of standing instructions to transfer funds, the paper record search will only be required to look for that information.

The paper record search should include a review of the current master file and, to the extent that they are not contained in the current master file, the following documents associated with the account and obtained by the Financial Institution within the last 5 years.

• The most recent documentary evidence [see IEIM404060] collected with respect to the account;
• The most recent account opening contract or documentation;
• The most recent documentation obtained by the Financial Institution for AML/KYC procedures [see Money Laundering Regulations: introduction - Detailed guidance - GOV.UK] or other regulatory purposes;
• Any power of attorney or signatory authority currently in effect; and
• Any standing instructions to transfer funds currently in effect (other than for a Depository Account).

These should be reviewed for any of the indicia of residence detailed in [see IEIM402920].

A Financial Institution can rely on the review of High Value Accounts by third party service providers where there is a contract obliging the service provider to perform the review.
**IEIM402960 Electronic Records Search FATCA Exemption**

A Financial Institution does not need to carry out the paper record search [see IEIM402940] for determining a person’s non-US status where it has retained a withholding certificate and acceptable documentary evidence [see IEIM404060].

Withholding certificates issued by the IRS such as the W-8 and W-9 series are acceptable in establishing an Account Holder’s status. A Financial Institution may rely upon a pre-FATCA W-8 form in lieu of an updated version of the form until such time that the W-8 is required to be renewed.

**IEIM402980 Relationship Manager Inquiry**

The relationship manager enquiry is required for high value individual accounts in addition to the electronic search [see IEIM402920] and the paper record search [see IEIM402940]. The Financial Institution must consider whether any relationship manager associated with an account, which includes any accounts aggregated [see IEIM403560] with such an account, has knowledge that would identify the Account Holder as a Reportable Person.

A relationship manager is an employee or officer of the Financial Institution who has been assigned responsibility for specific Account Holders on an ongoing basis. A relationship manager will provide advice to Account Holders regarding their accounts as well as recommending and arranging for the provision of financial products, services and other related assistance.

Relationship management must be more than ancillary or incidental to a person’s job role. Thus a person with some contact with Account Holders, but whose functions are of a back office, administrative or clerical nature, is not considered to be a relationship manager.

The relationship manager also has an important role in identifying any change of circumstance [see IEIM403020] in relation to a high value individual account. A Financial Institution must ensure that it has procedures in place to capture changes that are made known to the relationship manager in respect of the Account Holder’s reportable status.

**IEIM403000 Relationship Manager Inquiry: Examples**

The following examples illustrate when an employee of Financial Institution would be regarded as a relationship manager:

1. An individual holds a Custodial Account with a Financial Institution. The value of the account at the end of the appropriate reporting period is an amount equivalent to US$1,350,000. An employee of the Financial Institution has a role that requires them to manage the account on an ongoing basis and maintain the Financial Institution’s relationship with the individual Account Holder. As the account has a value in excess of US$1 million, the employee will be a relationship manager with respect to this account.
2. An individual holds a Custodial Account with a Financial Institution with a value at the end of the appropriate reporting period of an amount equivalent to US$780,000. In addition, the individual also has a Depository Account with the Financial Institution with a balance at the same date of an amount equivalent to US$427,000. The Financial Institution’s internal systems link the accounts to the same Account Holder thus the accounts must be aggregated, the aggregate balances exceed US$1million so belong to a High Value Account Holder. The relationship with the Account Holder is managed in a similar way to that in example 1 above. The employee with that role will be a relationship manager in respect of the accounts held by this Account Holder.

3. The facts are the same as in example 2 except that the employee has no direct contact with the Account Holder simply performing an administrative role in relation to the accounts. Here the employee is not a relationship manager.

IEIM403020 Change of Circumstances

Once the due diligence procedures have been completed the Account Holder will be identified as either a Non-Reportable Person or reportable to one or more jurisdictions with which the UK has agreements to exchange information. That status will not change until such time as a change of circumstance is identified by the Financial Institution.

A change of circumstance includes any change to, or addition of, information in relation to an Account Holder’s status and includes details of any addition, substitution or other change of an Account Holder as well as information in respect of any accounts associated with the Account Holder, that is, accounts associated through the aggregation rules [see IEIM403560] or where a new account has been treated as a pre-existing obligation for due diligence purposes [see IEIM403420].

A change of circumstance is only relevant if the new information affects the status of the Account Holder for the purposes of the exchange of information agreements, whether that is based on the due diligence procedures or from a self-certification. For example, a person who has been identified as reportable to Jersey provides the Financial Institution with details of a change of residential address to a property in France. That is evidence that there has been a change of circumstance affecting the reportable status of the Account Holder. If, however, the new address had also been in Jersey the reportable status established earlier would not be affected and no further action would be required on the part of the Financial Institution.

Once a change of circumstance has been identified the Financial Institution must request a self-certification or other documentation from the Account Holder to establish whether the individual is a Reportable Person and, if so, to which jurisdiction the Reportable Information should be sent. If the Account Holder fails to respond to the request the Financial Institution should treat the Account Holder as reportable to each jurisdiction for which it holds indicia unless it can apply the curing procedure described at [see IEIM402880].
IEIM403040 Hold Mail or In-Care-Of Address Only

If a hold mail instruction or in-care-of address is discovered in the enhanced review of High Value Accounts, and no other address or indicia of residence are identified for the Account Holder, the Financial Institution must request a self-certification or other documentary evidence from the Account Holder to establish the jurisdiction of tax residence of the Account Holder.

If the Financial Institution cannot obtain a self-certification or documentary evidence from the Account Holder the Financial Institution is required to treat the Account Holder as:

- A US Reportable Person for FATCA,
- A Reportable Person for all four territories under the reciprocal Crown Dependencies and Overseas Territories agreements, and
- An undocumented account [see IEIM403100] for CRS.

IEIM403060 Lower Value Becomes Higher Value

If a pre-existing individual account at the point that the various automatic exchange agreements ‘switch-on’ [see IEIM400500] is a Lower Value Account it will need to be monitored at the end of each subsequent reporting period to see if it has become a High Value Account.

If the balance or value of the account on the last day of the appropriate reporting period, after taking account of any aggregation [see IEIM403560], exceeds an amount equivalent to US$1million, the Financial Institution must complete the enhanced review for High Value Accounts at [see IEIM402900] onwards within the calendar year following the year that the account becomes a High Value Account. This will apply to all the reporting regimes, FATCA, CDOT, CRS and DAC.

If, as a result of the enhanced review, the account is identified as a Reportable Account following this review it is reportable with respect to the year in which it is so identified and remains reportable in all subsequent years unless and until the Account Holder ceases to be a Reportable Person.

IEIM403080 Finding Indicia

Where the enhanced due diligence procedures for high value individual accounts have been carried out and any of the indicators listed at [see IEIM402780] are found, the account must be treated as a Reportable Account. The account will be a Reportable Account for each Reportable Jurisdiction identified from the due diligence procedure.

Where the information arising from the due diligence procedures contains potentially conflicting information, for example, the electronic search identifies a residential address in Italy but the relationship manager has knowledge of an address in France, the Financial Institution may attempt to cure the information by seeking a self-certification from the Account Holder [see IEIM402880].
If no indicators of residence in a Reportable Jurisdiction are found in any of the enhanced due diligence procedures then no further action is required unless and until there is a change in circumstances [see IEIM403020].

**IEIM403100 Undocumented Accounts**

**CRS and DAC Only**

An undocumented account can only exist for CRS and the DAC reporting purposes. An undocumented account exists where the conditions at [see IEIM403040] exist, that is, the only indicators that the Financial Institution hold are a hold mail or in-care-of address and the Financial Institution has been unable to obtain a self-certification from the Account Holder to cure the information held.

Where the Financial Institution has identified and reported an account as an undocumented account the Financial Institution must repeat the enhanced review for high value individual accounts annually until the account ceases to be undocumented.

**IEIM403120 New Individual Accounts: Introduction**

New accounts are those opened on or after the date that the various automatic exchange of information regimes ‘switch on’ under the timelines for reporting [see IEIM400520 for FATCA, IEIM400540 for CDOT, IEIM400580 for DAC/CRS]. New individual accounts are accounts where the Reportable Person [see IEIM403440] is an individual.

The due diligence procedures for new individual accounts require that a self-certification [see IEIM403340] is obtained from the Account Holder.

If the self-certification establishes that the Account Holder is resident for tax purposes in a Reportable Jurisdiction, then the Reporting Financial Institution must treat the account as a Reportable Account [see IEIM401520].

The wider approach that requires Financial Institutions to identify the territory in which a person is tax resident irrespective of whether or not that territory is a Reportable Jurisdiction, applies to new accounts as well as pre-existing accounts. The self-certification process can be used for this purpose. This information must be maintained by the Reporting Financial Institution for a period of 6 years from the end of the period in which the territory is identified [see IEIM400140].

The procedures applying for the purposes of identifying Reportable Accounts among new individual accounts are described in the following pages.
Upon account opening, the Reporting Financial Institution must obtain a self-certification. It is expected that Financial Institutions will maintain account opening processes that facilitate collection of a self-certification at the time of the account opening, whether that process is done face-to-face, online or by telephone. There may be circumstances where it is not possible or practical to obtain a self-certification on ‘day one’ of the account opening process, for example where an insurance contract has been assigned from one person to another or in the case where an investor acquires shares in an investment trust on the secondary market and this does not come to the attention of the Financial Institution until after the event.

In such circumstances, the self-certification should be obtained as soon as possible and in any case within a period of 90 days after the Financial Institution has knowledge that a new account has come into existence. This must be in sufficient time for the account to be reported, where the Account Holder is a Reportable Person, for the period in which the Financial Institution identifies the account. Financial institutions must make proper endeavours to obtain the self-certification in these circumstances. Financial institutions likely to be affected by this must have processes and procedures in place to ensure that self-certifications are sought from such Account Holders.

**Format of self-certification**

There is no prescribed format for a self-certification but it may, for example, form part of the account opening documentation. Whatever form it takes, it must allow the Reporting Financial Institution to determine the Account Holder’s residence(s) for tax purposes and whether s/he is a US citizen, and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC procedures.

The self-certification must also include the Account Holder’s tax identification number [see IEIM402040] and, except for FATCA, date of birth [see IEIM402180].

A self-certification must be signed by the Account Holder (or a person authorised to do so for her/him under domestic law), or in the case of an account opened by telephone or the internet the self-certification must be positively affirmed – that is, the Account Holder must confirm the information provided. The self-certification must be dated no earlier than the date the Account Holder received the form; undated self-certifications may be date stamped by the receiving Financial Institution on receipt and that date will be taken as the date of signature. A self-certification is required for all accounts, including those held in the names of minors.

Self-certifications may take a two stage process so that, if it is established that an Account Holder is a UK tax resident and not tax resident elsewhere or a US citizen, then it will not be necessary to gather further information beyond the first three bullet points below. Otherwise, self-certifications must include all of the following information for the Account Holder –

- name;
- residence address;
- jurisdiction(s) of tax residence – [see IEIM402060];
• TIN with respect to each Reportable Jurisdiction (see above); and
• (except for FATCA) date of birth.

The self-certification does not need to include the place of birth of the Account Holder even where the Reporting Financial Institution is otherwise required to obtain and report it under domestic law [see IEIM402180]. This is because if that information is already required to be reported it will be held by the Financial Institution (and, if held in an electronically searchable form, must then also be reported for CRS/DAC).

The self-certification may be pre-populated by the Reporting Financial Institution to include the Account Holder’s information, except for the jurisdiction(s) of residence for tax purposes, to the extent already available in its records. This includes records held in a central on-boarding system available across multiple jurisdictions in which the Financial Institution operates.

The self-certification may be provided in any manner and in any form, for example it can be in paper or electronic format. If the self-certification is provided electronically, the Financial Institution must have systems in place to ensure that the information provided is that of the Account Holder and it must be able to provide a hard copy of all such self-certifications to HMRC on request.

Where an Account Holder provides a paper self-certification a Financial Institution may retain an original, certified copy, or photocopy (including a microfiche, electronic scan, or similar means of electronic storage) of the self-certification. Any documentation that is stored electronically must be made available by the Financial Institution in hard copy form to HMRC upon request.

Where the Financial Institution is unable to obtain any valid self-certification within 90 days of opening the account, and there are no indicia of residence in any jurisdiction other than the UK, then the account is reportable to the USA under FATCA and to the Crown Dependencies and Gibraltar under the reciprocal CDOT agreements, but is not reportable under the DAC or CRS. However if there are indicia of residence in reportable jurisdictions other than the UK, then the account is also reportable under the DAC or CRS to those other jurisdictions.

IEIM403160 Self Certifications: Examples

The following examples illustrate how a self-certification may be provided:

Example 1

Individual A completes an online application to open an account with Reporting Financial Institution K. All the information required for self-certification is entered by A on an electronic application (including a confirmation of A’s jurisdiction of residence for tax purposes). A positively affirms that the information provided is correct by ticking a box on the application form.

A’s information, as provided in the electronic self-certification, is confirmed by K’s service provider to be reasonable based on the information it has collected pursuant to AML/KYC procedures.

A’s self-certification is valid.
Example 2

Individual B makes an application in person to open an account with bank L. B produces his driving licence as proof of identification and provides all the information required for self-certification to an employee of L who enters the information into L’s systems.

The application is subsequently signed by B.

B’s self-certification is valid.

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IEIM403180 Incorrect or Unreliable

A self-certification remains valid unless the Reporting Financial Institution knows, or has reason to know, that the original self-certification is incorrect or unreliable. This might be the case either at the time a new account is opened by an existing customer, or as a result of a change of circumstances reported by the Account Holder, for example, a change of address.

Whatever the cause, where the Reporting Financial Institution cannot rely on the original self-certification it must obtain either –

1) a valid self-certification that establishes the residence(s) for tax purposes of the Account Holder, or
2) a reasonable explanation and documentation (as appropriate) supporting the validity of the original self-certification (and retain a copy or a notation of such explanation and documentation).

A Reporting Financial Institution may have reason to know that a self-certification or Documentary Evidence is unreliable or incorrect. It may have information in its possession that suggest different facts pertaining to the Account Holder than those on the self-certification. This will include the knowledge of the relevant relationship managers. If a reasonably prudent person in the position of the reporting Financial Institution would question the information provided then that is reason to know that the information may be incorrect or unreliable.

A Reporting Financial Institution also has reason to know that a self-certification or Documentary Evidence is unreliable or incorrect if there is information in the documentation or in the Reporting Financial Institution’s account files that conflicts with the person’s claim regarding its status.

Standards of knowledge applicable to self-certifications and Documentary Evidence

A Reporting Financial Institution has reason to know that a self-certification provided by a person is unreliable or incorrect if:

- the self-certification is incomplete with respect to any item on the self-certification that is relevant to the claims made by the person,
- the self-certification contains any information that is inconsistent with the person’s claim, or
- the Reporting Financial Institution has other account information that is inconsistent with the person’s claim.
A Reporting Financial Institution that relies on a service provider to review and maintain a self-certification is considered to know or have reason to know the facts within the knowledge of the service provider.

A Reporting Financial Institution may not rely on Documentary Evidence provided by a person if the Documentary Evidence does not reasonably establish the identity of the person presenting it.

A Reporting Financial Institution may not rely on Documentary Evidence if it contains information that is inconsistent with the person’s claim as to its status, the Reporting Financial Institution has other account information that is inconsistent with the person’s status, or the Documentary Evidence lacks information necessary to establish the person’s status.

A Financial Institution may choose to treat a person as having the same status that it had prior to the change in circumstances until the earlier of 90 calendar days from the date that the self-certification became invalid due to the change in circumstances, the date that the validity of the self-certification is confirmed, or the date that a new self-certification is obtained. A Financial Institution may rely on a self-certification without having to inquire into possible changes of circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed.

If the Financial Institution cannot obtain a confirmation of the validity of the original self-certification or a valid self-certification during such 90-day period, the Reporting Financial Institution must treat the Account Holder as resident of the jurisdiction in which the Account Holder claimed to be resident in the original self-certification and the jurisdiction in which s/he may be resident as a result of the change in circumstances.

Where the Financial Institution is unable to obtain any valid self-certification within 90 days of opening the account, and there are no indicia of residence in any jurisdiction other than the UK, then the account is reportable to the USA under FATCA and to the Crown Dependencies and Gibraltar under the reciprocal CDOT agreements, but is not reportable under the DAC or CRS. However if there are indicia of residence in reportable jurisdictions other than the UK, then the account is also reportable under the DAC or CRS to those other jurisdictions.

**IEIM403200 Change of Circumstances**

A self-certification can become invalid as a result of a change of the Account Holder’s circumstances [see IEIM403020]. Reporting Financial Institutions need to have procedures to ensure that any change that constitutes a change in circumstances is identified.

A Reporting Financial Institution is expected to notify any person providing a self-certification of the person’s obligation to notify the Reporting Financial Institution of a change in circumstances.

A change in circumstances affecting the self-certification provided to the Reporting Financial Institution will invalidate the self-certification with respect to the information that is no longer reliable until the information is updated.
A self-certification becomes invalid as soon as the Reporting Financial Institution knows or has reason to know that circumstances affecting the correctness of the self-certification have changed. However, a Reporting Financial Institution may treat the status of the Account Holder as unchanged until the earlier of:

- 90 calendar days from the date that the self-certification became invalid due to the change in circumstances;
- the date that the validity of the self-certification is confirmed (where appropriate); or
- the date that a new self-certification is obtained.

A Reporting Financial Institution may rely on a self-certification without having to inquire into possible changes of circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed.

If the Reporting Financial Institution cannot obtain a confirmation of the validity of the original self-certification or a valid self-certification during the 90-day period, the Financial Institution must continue to treat the Account Holder as resident in the jurisdiction identified in the original self-certification and must also treat the Account Holder as resident in the jurisdiction indicated by the change of circumstance.

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IEIM403220 Entity Accounts: Introduction

An entity for the purposes of the various exchange of information regimes is a legal person or legal arrangement. It covers accounts held by any person other than in the capacity of an individual. Thus it covers accounts held by any entity that falls within the definition of company in Section 1121 CTA 2010 along with legal arrangements including partnerships and trusts.

For reporting purposes an entity will either be a Financial Institution [see IEIM400600] or a Non-Financial Entity (NFE) [see IEIM404040].

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IEIM403230 Investment Entity with Regularly Traded Securities

A difference between the DAC/CRS and the other regimes is that for both FATCA and CDOT the definition of Financial Account excludes equity and debt interests in an Investment Entity where those interests are regularly traded on an established securities market. That means that equity and debt interests in certain listed Investment Entities, for example Investment Trust Companies (ITC), are in scope under the DAC/CRS.

Where such interests are held in uncertified form through CREST, the CREST members and sponsors will be Reporting Financial Institutions and will be carrying out due diligence and reporting for DAC/CRS purposes. In those circumstances an ITC, for example, would not need to report in respect of its uncertified shareholders as that would otherwise lead to duplicated reporting.
Where new accounts arise as a result of interests acquired on the secondary market, a periodic check for new shareholders will be required. The frequency of such checks will depend on the systems and processes that are in place. An annual check may be considered adequate if performed at the year-end if the systems in place are sufficiently robust. However, for operational reasons the registrar may perform the checks at six monthly or more frequent intervals.

For new primary market issues the share application form can be amended to include the self-certification required on new account opening. Any incomplete applications would need to be returned to the applicant. In accordance with existing AML practice, incomplete applications could be accepted and the missing information be requested but if the missing information was not received the shares could be re-allotted or sold to a third party and/or the register of members rectified, provided that the terms and conditions of the Offer allowed this.

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**IEIM403240 Pre-Existing Entity Accounts**

**IEIM403260 Thresholds**

For all the regimes there is an optional threshold exemption that can be applied to pre-existing entity accounts where the account balance or value does not exceed an amount equivalent to $250,000. The exemption is applied by the Financial Institution making an election. The effect of the election is that the Financial Institution is not required to review or report any of its pre-existing entity accounts within the de minimis threshold or, where the election instead provides, a clearly identifiable group of such accounts (for example, accounts held by a particular line of business).

The election is made on the electronic return of information to HMRC. A Financial Institution wishing to apply the election will need to register on the HMRC portal [see Automatic Exchange of Information: registering and reporting guidance - Publications - GOV.UK] and complete the appropriate notification of election on the return even if there are no accounts to report. Currently the portal has no facility to apply multiple separate elections by business line where different approaches are taken by separate business units within the same legal entity. Affected entities wishing to make multiple elections should notify their usual HMRC point of contact, for example a Customer Relationship Manager.

If a Financial Institution chooses not to make an election to apply the threshold exemption it will need to review all pre-existing entity accounts in order to identify Reportable Accounts.

Where an election has been made to apply the de minimis threshold to an account, the Financial Institution must review the account balance at 31 December each year to determine if the balance has exceeded the relevant threshold (subject to the review dates for each regime). Where the threshold is exceeded for an account it becomes reviewable (that is, the due diligence procedures for pre-existing entity accounts must be applied). Where the account is identified as a Reportable Account, it is reportable from the year in which it was identified as so. This is explained further below.
Accounts becoming reviewable

For DAC/ CRS and CDOT, accounts become reviewable once the balance has been established as exceeding $250,000 at a review date. As all accounts exceeding that threshold must be subjected to due diligence and the process is the same under all the regimes, the benefit of the $1 million threshold for review under FATCA is effectively lost where the review under one regime identifies US Specified Persons for FATCA as these accounts become reportable once identified as such.

<table>
<thead>
<tr>
<th>Date $250,000 de minimis election applies from</th>
<th>First account balance review date</th>
<th>Subsequent account balance review dates</th>
<th>Threshold at which account becomes reviewable</th>
</tr>
</thead>
<tbody>
<tr>
<td>FATCA 30/06/2014</td>
<td>31/12/2015</td>
<td>31 December annually</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>CDOT 30/06/2014</td>
<td>31/12/2015</td>
<td>31 December annually</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>CRS/DAC 31/12/2015</td>
<td>31/12/2017</td>
<td>31 December annually</td>
<td>$250,000</td>
</tr>
</tbody>
</table>

The deadline for completing account balance reviews in all cases above is –

- for FATCA and CDOT, 30 June following the account balance review date
- for CRS/DAC, 31 December following the account balance review date.

In practice, Financial Institutions may apply the 31 December 2015 deadline for FATCA and CDOT as there is no difference in applying that or 30 June in terms of the first year from when an account may be identified as exceeding the threshold and potentially becoming reportable.

Example

Bank A has applied the thresholds for pre-existing entity accounts for all the regimes. The bank holds a Depository Account for Entity X, which has a balance at the relevant dates as follows:

- 30 June 2014 $187,000
- 31 December 2015 $208,000
- 31 December 2016 $312,000
- 31 December 2017 $623,000

At 31 December 2015 (the first account balance review date for FATCA and CDOT) the balance does not exceed $1,000,000 and so would not be reviewable for FATCA or CDOT.

At 31 December 2016, the balance exceeds $250,000 but is still below $1,000,000 so is not reviewable for FATCA or CDOT.
At 31 December 2017, the first review under the DAC/CRS, the balance exceeds $250,000. As a result, all accounts with a balance over $250,000, including this one, must be subjected to the due diligence procedures in the DAC. As a result, Entity X is identified as a US Specified Person and the account, having been so identified, is reportable for FATCA in respect of the 2017 reportable year.

Example

Bank A has applied the thresholds for pre-existing entity accounts for all the regimes. The bank holds a Depository Account for Entity X which has a balance at the relevant dates as follows:

<table>
<thead>
<tr>
<th>Date</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 June 2014</td>
<td>$187,000</td>
</tr>
<tr>
<td>31 December 2015</td>
<td>$208,000</td>
</tr>
<tr>
<td>31 December 2016</td>
<td>$312,000</td>
</tr>
</tbody>
</table>

At 31 December 2015 the balance is below the threshold for review of all the regimes so no action is required.

At 31 December 2016 the balance is over the threshold of £250,000 for CRS purposes but remains below the threshold of $1,000,000 for FATCA and CDOT. The account must be reviewed against the due diligence requirements for the CRS regime. The bank may, if it so chooses, extend the review to cover the due diligence requirements for all the regimes at this time to prevent having to review the account again at a later date should the balance subsequently exceed $1,000,000.

IEIM403280 Reportable Accounts

IEIM403290 Reportable Accounts: Introduction

A pre-existing entity account is a Reportable Account where the review procedures identify the account as held by one or more entities that are Reportable Persons [see IEIM405000] or which are Passive NFEs [see IEIM404040] with one or more Controlling Persons [see IEIM403400] that are Reportable Persons.

For example, the XYZ Partnership is a Passive NFE resident in the UK. It has three individuals who are identified as Controlling Persons of the partnership. Two of these are UK tax resident but the third is tax resident in France which is a Reportable Jurisdiction. As a result any accounts held by the partnership with a UK Financial Institution will be Reportable Accounts by virtue of the entity having a Controlling Person that is a Reportable Person.

IEIM403300 Available Information

Where the Financial Institution has carried out the review of regulatory and customer relationship information and has indications that the Account Holder is resident in a Reportable Jurisdiction it may take into account information in its possession, or which is publicly available, which reasonably
determines that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.

Such information will include the following:

- Information published by an authorised government body of a jurisdiction. For example, the list of Foreign Financial Institutions published by the US tax administration;
- Information in a publicly accessible register maintained or authorised by an authorised government body of a jurisdiction;
- Information disclosed on an established securities market;
- Information previously recorded in the files of the Financial Institution;
- A publicly accessible classification based on a standardised industry coding system. This will include any coding system employed by the Financial Institution which is based on such a standardised industry coding system.

Where the Financial Institution relies on such information it must retain a notation of the type of information reviewed and the date the review was carried out.

**IEIM403320 Account Holder**

Financial Institutions are required to determine whether a pre-existing account is held by one or more entities that are Reportable Persons [see IEIM402340]. If any of the entities is a Reportable Person then the account will be a Reportable Account.

The Financial Institution must review information maintained for regulatory or customer relationship purposes (including information collected as part of any AML/KYC procedure) to determine where the entity is resident, unless residence can be reasonably determined through the use of publicly available information [see IEIM 403320]. The entity will be reportable if the information indicates that the entity is resident in a Reportable Jurisdiction [see IEIM402340]. Such information will include, but is not limited to:

- A place of incorporation or organisation in a Reportable Jurisdiction;
- An address in a Reportable Jurisdiction; or
- Where the entity is a trust, an address of one or more of the trustees in a Reportable Jurisdiction.

As the definition of entity goes beyond corporate structures to include fiscally transparent vehicles such as trusts and partnerships, the address of the entity should be interpreted widely so will include the registered office, principal office and/or the place of effective management.

The existence of a permanent establishment (including a branch) in a Reportable Jurisdiction is not, in isolation, an indication of residence for this purpose.

Although there is no exemption from a paper record search for pre-existing entity accounts, such a search is not required in areas where all the information is electronically searchable [see IEIM402920 or IEIM402780].
If the information indicates that the Account Holder is resident in a Reportable Jurisdiction then the account is a Reportable Account unless the Financial Institution obtains a self-certification from the Account Holder [see IEIM402010], or determines based on information in its possession or which is publicly available, that the Account Holder is not a Reportable Person.

**IEIM403340 Self-Certification**

Where the Financial Institution has carried out the review of regulatory and customer relationship information and has indications that the Account Holder is resident in a Reportable Jurisdiction it may obtain a self-certification from the Account Holder which reasonably determines that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.

A self-certification for an entity must be signed (or otherwise positively affirmed) by the person with authority to sign on behalf of the entity. This will include:

- An officer or director of a corporate entity;
- A partner of a partnership;
- A trustee of a trust;
- Any person holding an equivalent title to any of the above; and
- Any other person with written authorisation from the entity to sign documentation on behalf of the entity.

The self-certification must also be dated at the latest at the date of receipt by the Financial Institution and must contain the following information in respect of the entity:

- The name;
- The address;
- The jurisdiction(s) of tax residence [see IEIM402015]; and
- The TIN with respect to each Reportable Jurisdiction [see IEIM402040].

The Financial Institution may also request the Account Holder entity to include its status in the self-certification as either a Financial Institution [see IEIM400600] or a Non-Financial Entity (NFE) [see IEIM404040]. When requesting this information from an Account Holder the Financial Institution is expected to provide the Account Holder with sufficient information to enable it to determine its status. Financial Institutions may produce their own guidance for this purpose or they may reference this guidance manual, the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters or the Intergovernmental Agreements for FATCA and CDOT reporting as appropriate.

The requirements for the validity of such a self-certification are the same as for those for self-certification of new individual accounts at IEIM403140 to IEIM403200.
IEIM403360 Financial Institutions

The Financial Institution may request the Account Holder entity to include its status in the self-certification as either a Financial Institution [see IEIM400600] or a NFE [see IEIM403560]. When requesting this information from an Account Holder the Financial Institution is expected to provide the Account Holder with sufficient information to enable it to determine its status [see IEIM403340].

If the Account Holder entity falls within the definition of a Financial Institution [see IEIM400600] no further review, identification or reporting will normally be required under the CRS/DAC regimes.

The exception to this is where the Financial Institution is a managed investment entity [see IEIM400760] resident in a jurisdiction that is not a Participating Jurisdiction [see IEIM402340]. In that case the entity is deemed to be a Passive NFE for reporting purposes [see IEIM404040].

Under the FATCA regime, accounts held by Financial Institutions are not reportable if the Financial Institution falls within one of the specific exclusions at Article1 (1) (gg) of the FATCA IGA. The exception to this is where there is significant non-compliance by a Financial Institution which has not been rectified. In such circumstances the entity will be classified as a Non-Participating Financial Institution.

Where the Financial Institution is a Non-Participating Financial Institution for FATCA, then reports on certain payments made to such entities will be required [see IEIM402360].

Under the CDOT regime, accounts held by Depository Institutions are not reportable. Accounts held by other types of Financial Institution are reportable if the entity is a specified CDOT person.

When seeking a self-certification from an entity the categories that may be recorded for a Financial Institution for CRS purposes are:

1. An investment entity as described in subparagraph A(6)(b) of Section VIII of the CRS (a managed investment entity).
2. Financial Institution other than in 1. above.

For FATCA purposes they are:

1. Participating Financial Institution.

There is no need to differentiate between types of Financial Institution for CDOT purposes.

IEIM403380 Non-Financial Entities

The Financial Institution may request the Account Holder entity to include its status in the self-certification as either a Financial Institution [see IEIM400600] or a Non-Financial Entity (NFE) [see IEIM404040]. When requesting this information from an Account Holder the Financial Institution is
expected to provide the Account Holder with sufficient information to enable it to determine its status.

If the Account Holder entity falls within the definition of a NFE [see IEIM404040] then the information to be reported will depend on whether the entity is an Active NFE or a Passive NFE.
IEIM403400 Controlling Persons

When a Financial Institution has determined that an Account Holder is a NFE it must carry out review procedures to determine:

1. Whether the account holder is a Passive NFE;
2. If so, the Controlling Persons of that Passive NFE; and
3. Whether any of the Controlling Persons is a Reportable Person.

Is the Account Holder a Passive NFE?

The Financial Institution must obtain a self-certification from the Account Holder [see IEIM403380] unless it has information in its possession, or that is publicly available, based on which it can reasonably determine the status of the Account Holder as an Active NFE or a Financial Institution (other than a managed investment entity [see IEIM400820] resident in a Non-Participating Jurisdiction [see IEIM402340]). If the Financial Institution cannot determine the status of the Account Holder as an Active NFE or a Financial Institution then the Financial Institution must presume the Account Holder to be a Passive NFE.

Controlling Persons

A Controlling Person is any natural person who has control over an entity, or who is able to use their influence and authority to make decisions on behalf of an entity.

Identifying Controlling Persons

To identify the Controlling Persons, the Financial Institution should follow procedures required by the UK Money Laundering Regulations 2007 and may use information collected and maintained pursuant to those regulations or other AML/KYC procedures.

Are any of the Controlling Persons a Reportable Person?

If the account balance or value does not exceed an amount equivalent to $1million, the Financial Institution may rely on information collected and maintained pursuant to AML/KYC procedures to determine whether the Controlling Person is a Reportable Person or it may choose to obtain a self-certification from the Account Holder or the Controlling Person.

If the account balance exceeds an amount equivalent to $1million the Financial Institution must obtain a self-certification from either the Account Holder or the Controlling Person. This may be provided in the same self-certification as the one provided by the Account Holder to determine its own status. The self-certification requirements are the same as for new individual accounts [see IEIM403140].

If a self-certification is required but is not obtained the Financial Institution must rely on the electronic record search for pre-existing individual accounts [see IEIM402780] to determine if there are indicia present that can be used to determine the reportable status of the Controlling Person. If none is present in its records, the Financial Institution need take no further action unless and until there is a change of circumstance with respect to the Controlling Person [see IEIM403400].
**IEIM403420 New Entity Accounts: Introduction**

The due diligence procedures for new entity accounts are broadly the same as those for pre-existing entity accounts except that there is no de minimise threshold.

Reporting Financial Institutions must determine:

- whether a new entity account is held by one or more entities that are Reportable Persons; and
- whether a new entity account is held by one or more entities that are Passive NFEs with one or more Controlling Persons who are Reportable Persons.

The following review procedures must be applied in order to determine this.

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**IEIM403440 Reportable Person**

Where a new entity account is held by one or more entities that are Reportable Persons, then the account must be treated as a Reportable Account.

**Self-certification**

To determine this, Financial Institutions must obtain a self-certification [see IEIM403340] as part of the account opening procedure and confirm the reasonableness of such self-certification based on the information obtained in connection with the opening of the account, including any documentation collected pursuant to AML/KYC procedures. In practice, this means the Financial Institution must not know or have reason to know that the self-certification is incorrect or unreliable - if the self-certification fails the reasonableness test, a new valid self-certification must be obtained. Financial Institutions are not, however, expected to carry out an independent legal analysis of relevant tax laws to confirm the reasonableness of a self-certification. Paragraph 14 of the Commentary on Section VI of the CRS contains examples illustrating the application of the “reasonableness” test.

The self-certification must allow determining the Account Holder’s residence(s) for tax purposes [see IEIM403460]. With respect to new entity accounts, a self-certification is valid only if it complies with the requirements for the validity of self-certifications for pre-existing entity accounts [Link IEIM403340].

There is an exception to the requirement to obtain a self-certification where the Financial Institution can reasonably determine, based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person. For example where such information shows that the entity is a corporation that is publicly traded, or a Governmental Entity.

If the self-certification indicates that the Account Holder is resident in a Reportable Jurisdiction, the Financial Institution must treat the account as a Reportable Account. An exception applies where the Financial Institution can reasonably determine, based on information in its possession, or that is publicly available that the Account Holder is not a Reportable Person in respect to that jurisdiction. For example where the entity is a corporation that is publicly traded, or is a Government Entity.
Timing of self-certification

It is expected that Financial Institutions will maintain account opening processes that facilitate collection of a self-certification at the time of the account opening, whether that process is done face-to-face, online or by telephone. There may be circumstances where it is not possible or practical to obtain a self-certification on ‘day one’ of the account opening process, for example where an insurance contract has been assigned from one person to another or in the case where an investor acquires shares in an investment trust on the secondary market and this does not come to the attention of the Financial Institution until after the event.

In such circumstances, the self-certification should be obtained as soon as possible and in any case within a period of 90 days after the Financial Institution has knowledge that a new account has come into existence. This must be in sufficient time for the account to be reported, where the Account Holder is a Reportable Person, for the period in which the Financial Institution identifies the account. Financial Institutions must make proper endeavours to obtain the self-certification in these circumstances. Financial Institutions likely to be affected by this must have processes and procedures in place to ensure that self-certifications are sought from such Account Holders.

Where the Financial Institution is unable to obtain any valid self-certification within 90 days of opening the account, and there are no indicia of residence in any jurisdiction other than the UK, then the account is reportable to the USA under FATCA and to the Crown Dependencies and Gibraltar under the reciprocal CDOT agreements, but is not reportable under the DAC or CRS. However if there are indicia of residence in reportable jurisdictions other than the UK, then the account is also reportable under the DAC or CRS to those other jurisdictions.

IEIM403460 Jurisdiction of Residence

The domestic laws of the various jurisdictions lay down the conditions under which an entity is to be treated as fiscally resident.

Generally, an entity will be resident for tax purposes in a jurisdiction if, under the laws of that jurisdiction, it is liable to tax by reason of its domicile, residence, place of management or incorporation, or any other criterion of a similar nature. Generally an entity will only be tax resident in one jurisdiction, although that may not always be the case. Dual resident entities may rely on the tiebreaker rules contained in tax conventions (if applicable) to solve cases of double residence for determining their residence for tax purposes.

Where an entity such as a partnership, limited liability partnership or similar legal arrangement has no residence for tax purposes it shall be treated as resident in the jurisdiction in which its place of effective management is situated or, in the case of a trust, the jurisdiction(s) in which the trustee(s) is/are resident.

Entities may find examples illustrating how an entity’s residence for tax purposes may be determined in Paragraph 8 of the Commentary on Section VI of the CRS, concerning due diligence for New Entity Accounts, helpful.
Financial Institutions must determine whether a new entity Account Holder is a Passive NFE with one or more controlling persons who are Reportable Persons. If so, then the account must be treated as a Reportable Account. In making this determination the Financial Institution must follow the guidance below but may do so in the order most appropriate under the circumstances.

Determining whether the Account Holder is a Passive NFE

A Financial Institution may obtain a self-certification from the Account Holder to establish its status, or instead may use:

- information in its possession (such as information collected pursuant to AML/KYC procedures); or
- information that is publicly available (such as information published by an authorised government body or standardised industry coding system) based upon which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution.

Note though that a professionally managed investment entity resident in a Non-Participating Jurisdiction is always treated as a Passive NFE, notwithstanding that it would be treated as a Financial Institution if it were resident in a Participating Jurisdiction (this ensures that it is not possible for controlling persons to avoid reporting by setting up such entities in Non-Participating Jurisdictions).

Determining Controlling Persons

For the purposes of determining the Controlling Persons of an Account Holder, a Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.

Determining whether a Controlling Person is a Reportable Person

For the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a Financial Institution may only rely on a self-certification from either the entity Account Holder or the Controlling Person.

This can be summarised in the following diagram (© OECD). Use this link to view diagram determining whether a Controlling Person is a Reportable person.

Special Due Diligence Rules

Reliance on Self-Certification

Where information already held by a Financial Institution, including knowledge about the customer held by a relationship manager, conflicts with any statements or self-certification, or the Financial Institution has reason to know that the self-certification or other documentary evidence is incorrect, it may not rely on that evidence or self-certification.
A Financial Institution will be considered to have reason to know that a self-certification or other documentation associated with an account is unreliable or incorrect if, based on the relevant facts, a reasonably prudent person would know this to be the case [see IEIM403180].

**Reliance upon an audited financial statement**

Financial Institutions may rely upon an audited financial statement to establish that an Account Holder meets a certain income or asset threshold, but are not obliged to where the entity’s status can be established from other information or documentation that it holds).

If a Financial Institution does rely upon an audited financial statement to establish a status for an Account Holder, it has reason to know that the status claimed is unreliable or incorrect only if the audited financial statement for the Account Holder or the notes or footnotes to the financial statement conflicts with the self-certification provided to it.

If a Reporting Financial Institution relies upon an audited financial statement to establish a status for an Account Holder that does not require the Account Holder to meet an asset or income threshold, it will be required to review only the notes or footnotes to the financial statement to determine whether the financial statement supports the claimed status. If a Financial Institution does rely upon other documentation to establish the Account Holder’s status there is no need to review any financial statements that may have been provided to it as part of the account opening.

**Reliance upon other documentation**

Where a Financial Institution relies on organisational documents to establish that an Account Holder has a particular status, it will only be required to review the documents to the extent needed to establish that the requirements applicable to the particular status are met.

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**IEIM403510 Limits on Reason to Know**

**Pre-existing entity accounts**

For the purposes of determining whether a Financial Institution that maintains a pre-existing entity account has reason to know that the status applied to the entity is unreliable or incorrect, the Financial Institution is only required to review information that may contradict the status claimed if such information is contained in:

- the most recent self-certification and documentary evidence;
- the current customer master file;
- the most recent account opening contract; and
- the most recent documentation obtained for AML/KYC procedures or for other regulatory purposes.

**Multiple accounts**

A Financial Institution that maintains multiple accounts for a single Account Holder will have reason to know that a claimed status for the person is inaccurate based on account information for another
account held by the person only to the extent that the accounts are either required to be aggregated or because of any other ‘reason to know’; for example, knowledge of a relationship manager.

**Change of address within same jurisdiction**

A change of address in the same jurisdiction as that of the previous address is not a reason to know that the self-certification or documentary evidence provided is inaccurate.

**Conflicting indicia**

A Financial Institution does not know or have reason to know that a self-certification or documentary evidence is unreliable or incorrect solely because it discovers any of the following indicia and such indicia conflicts with the self-certification or documentary evidence:

- one or more telephone numbers in a Reportable Jurisdiction and no telephone number in the jurisdiction of the Reporting Financial Institution; or
- standing instructions (other than with respect to a Depository Account in the case of the CRS/ DAC) to transfer funds to an account maintained in a Reportable Jurisdiction; or
- currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction.

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**IEIM403520 Limits on Reason to Know: Examples**

The following examples illustrate the application of the limits on the standards of ‘reason to know’:

**Example 1**

Reporting financial institution bank ‘A’ maintains a Depository Account for individual Account Holder ‘P’

P holds a pre-existing Depository Account with A. A has relied on the address in its records for P, as supported by his passport and a utility bill collected upon opening of the account, to determine that P is resident for tax purposes in jurisdiction X (application of the residence address test).

Five years later, P provides a power of attorney to his sister, who lives in jurisdiction Y, to operate his account. The fact that P has provided such power of attorney is not sufficient by itself to give A reason to know that the documentary evidence relied upon to treat P as a resident of jurisdiction X is unreliable or incorrect.

**Example 2**

Reporting Financial Institution insurance company ‘B’ has entered into a Cash Value Insurance Contract with individual Account Holder ‘D’

The contract is a new individual account. B has obtained a self-certification from D and confirmed its reasonableness on the basis of the AML/KYC documentation collected from D. The self-certification confirms that D is resident for tax purposes in jurisdiction V.
Two years after B entered into the contract with D, D provides a telephone number in jurisdiction T to B. Although B did not previously have any telephone number in its records for D, the sole receipt of a telephone number in jurisdiction T does not in itself constitute a reason to know that the original self-certification is unreliable or incorrect.

IEIM403540 Alternative Procedure for CIVC and Annuities

Individual beneficiary of a Cash Value Insurance Contract or an Annuity Contract

A Financial Institution can treat an individual beneficiary (other than the owner) who receives a death benefit under a Cash Value Insurance Contract or an Annuity Contract as a Non-Reportable Person unless the Financial Institution has knowledge or reason to know that the beneficiary is in fact a Reportable Person. A Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract or an Annuity Contract is a Reportable Person if the information collected and associated with the beneficiary contains indicia as described in paragraph B of Section III of the DAC.

Group Cash Value Insurance Contracts or group Annuity Contracts

A Financial Institution can treat an account that is a group Cash Value Insurance Contract or a group Annuity Contract, and that meets the requirements set out below, as a non-Reportable Account until the date on which an amount is payable to an employee/certificate holder or beneficiary (for FATCA, this is subject to a requirement that the Financial Institution obtains a certification from the employer that no employee/certificate holder (Account Holder) is a US Person).

A Financial Institution is not required to review all the account information collected by the employer to determine if an Account Holder’s status is unreliable or incorrect.

The requirements are that:

- the group Cash Value Insurance Contract or group Annuity Contract is issued to an employer and covers twenty-five or more employees/certificate holders; and
- the employee/certificate holders are entitled to receive any contract value; and to name beneficiaries for the benefit payable upon the employee holders; and
- the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed $1,000,000.

IEIM403560 Aggregation and Currency

Aggregation of individual accounts and entity accounts

Identical rules apply to aggregation for individual and entity accounts.

An account held by one or more individuals as a partner(s) of a partnership is treated as an entity account and is not treated as an individual account.
Financial Institutions are required to aggregate all financial accounts maintained by it or by a related entity, but only to the extent that the Financial Institution’s computerised systems link the financial accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated.

Each joint holder of a financial account must be attributed the entire balance or value of the account for purposes of applying the aggregation requirements.

**Special aggregation rule applicable to relationship managers – all accounts**

In determining the aggregate balance or value of financial accounts held by a person to determine whether a financial account is a High Value Account, a Financial Institution is also required to aggregate all accounts held by that person which a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by that person.

Paragraph 18 of the Commentary to Section VII of the Common Reporting Standard contains examples that may be helpful.

**Amounts read to include equivalent in other currencies**

Where accounts are denominated in a currency other than US dollars then either the threshold limits must be converted into the currency in which the accounts are denominated before determining if they apply, or the balances shown in the accounts must be converted into US dollars before applying the threshold limits.

This should be done using a published spot rate for the 31 December of the year being reported or in the case of an insurance contract or Annuity Contract, the date of the most recent contract valuation.

In the case of closed accounts the spot rate to be used is the rate on the date the account was closed.
IEIM404000 Miscellaneous

IEIM404005 Related Entity

An entity is regarded as being related to another entity if one entity controls the other or the two entities are under common control - the “Related Entity Group”. For this purpose control is taken as including the direct or indirect ownership of more than 50 per cent of the vote and value in an entity.

Whether an entity is a related entity to another entity is relevant for the account balance aggregation rules [see IEIM403560], the scope of the term Reportable Person [see IEIM403440] and for determining if an NFE can meet the criteria for being an Active NFE [see IEIM404040].

FATCA

Whether an entity is a related entity of another entity has a wider application for FATCA.

An entity that is a member of a Related Entity Group will not be a Financial Institution if-

- The entity does not maintain financial accounts (other than accounts maintained for members of its Related Entity Group)
- The entity does not hold an account with or receive U.S. source withholdable payments from any withholding agent other than a member of its Related Entity Group;
- The entity does not make U.S. source withholdable payments to any person other than to members of its Related Entity Group that are not limited FIs or limited branches; and
- The entity has not agreed to undertake reporting as a Sponsoring Entity or otherwise act as an agent regarding the Agreement on behalf of any Financial Institution, including a member of its related entity group.

Related Entities are relevant in the context of the obligations placed on UK Financial Institutions, in respect of any Related Entities that are Non-Participating Financial Institutions (NPFI).

Where a UK Financial Institution has any related entities that, as a result of the jurisdictions they operate in, are unable to comply with FATCA, then the UK Financial Institution must treat the Related Entity as an NPFI and fulfil obligations in respect of that NPFI [see IEIM402360].

EIM404010 Investment Entities

Investment Entities which have received seed capital from a member of a group to which the Investment Entity belongs will not be considered a Related Entity for the purposes of the Agreement.

In general a seed capital investment is an initial capital contribution (that is intended as a temporary investment), made to an Investment Entity. This will generally be for the purposes of establishing a performance record before selling interests in the entity to unrelated investors, or for purposes otherwise deemed appropriate by the manager.
Specifically, an Investment Entity will not be considered a Related Entity as a result of a contribution of seed capital by a member of the group if:

- the member of the group that provides the seed capital is in the business of providing seed capital to Investment Entities that it intends to sell to unrelated investors;
- the Investment Entity is created in the course of its business;
- any equity interest in excess of 50% of the total value of stock of the Investment Entity is intended to be held for no more than three years from the date of acquisition; and
- in the case of an equity interest that has been held for over three years, its value is less than 50% of the total value of the stock of the Investment Entity.

IEIM404020 Passive Income

In determining whether or not a NFE is an Active NFE or a Passive NFE [see IEIM404040] it is necessary to consider the nature of the income that the entity receives as it is one of the requirements that less than 50% of the gross income of a NFE can be passive income for the entity to be regarded as an Active NFE.

As the term suggests, passive income is derived from investing in assets rather than from activities carried on in the normal course of a trade or business. Passive income includes the portion of income that consists of:

1. Dividends and other distributions of income;
2. Interest;
3. Income equivalent to interest;
4. Rents and royalties, other than rents and royalties derived in the active conduct of a trade or business conducted, at least in part, by employees of the NFE;
5. Annuities;
6. The excess of gains over losses from the sale or exchange of property that gives rise to passive income described previously;
7. The excess of gains over losses from transactions (including futures, forwards, options and similar transactions) in any Financial Assets;
8. The excess of foreign currency gains over foreign currency losses;
9. Net income from swaps;
10. Amounts received under Cash Value Insurance Contracts.

The context in which the income described above is received is important. For example, where the NFE is a dealer in financial assets any such income as described above may be income from a trading activity. Where the income described above is received by a NFE and is accounted for, or is taxable as, income from trading activities it should not be included in gross income as passive income.
IEIM404040 Non-Financial Entity

A Non-Financial Entity or NFE (Non-Financial Foreign Entity or NFFE for FATCA) is any entity that is not a Financial Institution [see IEIM400600].

NFE are then divided into two categories, Active NFE and Passive NFE. The Passive NFE category is effectively a default category, any NFE that does not meet the criteria to be an Active NFE will be a Passive NFE.

A NFE can be an Active NFE if it meets any of the following criteria:

- It is active by reason of income or assets. This requires less than 50% of its gross income for the preceding calendar year or other appropriate reporting period to be passive income [see IEIM404020] and less than 50% of its assets held in the same period to be assets that produce or are held for the production of passive income;
- Its stock is regularly traded on an established securities market or it is a Related Entity [see IEIM404000] of such an entity;
- It is a Government Entity [see IEIM400930], International Organisation [see IEIM400940], Central Bank [see IEIM400950] or a wholly owned subsidiary of such an entity;
- It is holding company for NFEs that are members of a non-financial group. It will not qualify as an Active NFE where these holdings are part of a business as an investment fund or vehicle whose purpose is to acquire or fund companies and then hold interests as capital assets for investment purposes.
- It is a start-up NFE which is not yet operating a business and has no prior operating history, but is investing capital into assets with the intention of operating a business other than that of a Financial Institution. This category only applies during the first 24 months after the date that the NFE was first formed.
- It is a NFE that has not been a Financial Institution in the last 5 years and which is in the process of liquidating its assets or is reorganising with a view to continuing or recommencing business operations other than as a Financial Institution.
- It is a treasury centre of a non-financial group engaging in financing and hedging transactions with or for Related Entities.
- It is a not for profit organisation set up for religious, charitable, scientific, artistic, cultural, athletic or educational purposes; or it is established and operated as a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated for the promotion of social welfare. In all cases the organisation must be exempt from income tax and its income and assets cannot be applied other than for the express purposes for which the organisation is established.

FATCA Direct Reporting NFFE

The USA published a notice - Notice 2013-69 that announced the introduction of a new category of Passive NFFE – a Direct Reporting NFFE.

The US Regulations at §1.1472-1(c)(3) describes a Direct Reporting NFFE and explains how it is treated. As the name suggests, a Direct Reporting NFFE reports directly to the IRS certain
information about its direct and indirect substantial US owners. The NFFE is required to register with the IRS to obtain a Global Intermediary Identification Number.

Notice 2013-69 also sets out that an Entity will be allowed to sponsor one or more Direct Reporting NFFEs (Sponsored Direct Reporting NFFEs) and report for them.

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**IEIM404060 Documentary Evidence**

There are a number of instances where a Financial Institution is required to review or obtain documentary evidence in determining whether or not an Account Holder is a Reportable Person. This applies across all the reporting regimes.

A Financial Institution (or the third party service provider acting on behalf of the Financial Institution) can accept documentary evidence to support an Account Holder’s status provided the documentation (in original or certified copy form) meets any of the following criteria:

- A Certificate of Residence issued by an appropriate tax official of the country in which the Account Holder claims to be resident. For example a certificate in relation to a person’s UK tax residence issued by HMRC.
- Any valid identification issued by an authorised 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. For example a passport or driving licence.
- With respect to an entity, documentation issued by an authorised government body that includes the name of the entity and either the address of its principal office in the jurisdiction in which it claims to be resident or the jurisdiction in which the entity was incorporated or organised.
- Any financial statement, third party credit report, bankruptcy filing, or securities regulator’s report.
- Any of the documents referenced in the UK’s attachment to the QI Agreement as being acceptable in addition to Forms W-8 or W-9.

The documents included in the UK’s attachment to the QI Agreement are:

**For natural persons (one or more of the following documents):**

- Passport
- National identity card
- Armed Forces identity card
- Driving licence
- Shotgun certificate issued by a UK police authority

**For legal persons:**

- For partnerships: a copy of the partnership agreement,
- For corporations: a copy of the Certificate of Incorporation or the Memorandum and Articles of Association,
• For Trusts: either a copy of the Trust deed and any subsidiary deed evidencing the appointment and powers of trustees, or certified copies of extracts from the deeds.

These documents will be treated as valid documentary evidence under all the regimes, not just FATCA.

Validity of Documentation

Documentary evidence, including a self-certificate, used to establish an Account Holder’s status will remain valid indefinitely subject to a change in circumstance which results in a change of the Account Holder’s status. When reviewing documentary evidence a Financial Institution is expected to give preference to more recent documents, or those with more specific information, than another document.

IEIM404080 Retention of Documents

A Financial Institution or a third party undertaking due diligence procedures for a Financial Institution must retain records of the documentary evidence, or a notation or record of the documents reviewed and used to support an Account Holder’s status for a period of six years following the end of the year in which the status was established.

The documentary evidence can be retained as originals, photocopies or in an electronic format.

A Financial Institution that is not required to retain copies of documentation reviewed under AML due diligence procedures will be treated, for the purposes of all the regimes, as having retained a record of such documentation if it retains a record in its files noting:

• the date the documentation was reviewed,
• each type of document,
• the document’s identification number where present (for example, a passport number), and
• whether any indicia of residence in a Reportable Jurisdiction were identified.

For High Value Pre-existing Accounts [see IEIM402960] where a relationship manager enquiry is required [see IEIM402980], records of electronic searches, requests made and responses to relationship manager enquiries should also be retained for six years following the end of the year in which the due diligence was undertaken.

IEIM404100 Document Sharing

Documentation is required to support the status of each financial account held. However in the following circumstances documentation obtained by a Financial Institution can be used in relation to more than one financial account.
Single Branch System

A Financial Institution may rely on documentation furnished by a customer where an existing customer opens a new financial account with the same Financial Institution and where both accounts are treated as a single account or obligation for due diligence and reporting purposes [see IEIM402500].

Universal account systems

A Financial Institution may rely on documentation furnished by a customer for an account held at another location of the same Financial Institution or at a location of a Related Entity of the Financial Institution if the Financial Institution treats all accounts that share documentation as a single account for due diligence and reporting purposes, and the Financial Institution and the other location or related entity are part of a universal account system that uses a customer identifier that can be used to retrieve systematically all other accounts of the customer.

In this scenario a Financial Institution must be able to produce to HMRC the necessary records and documentation relevant to the status claimed (or a notation of the documentary evidence reviewed, if the Financial Institution is not required to retain copies of the documentary evidence for AML purposes).

Shared account systems

A Financial Institution may rely on documentation provided by a customer for an account held at another location of the same Financial Institution, or at a location of a member of the Related Entity Group of the Financial Institution, if:

- the Financial Institution treats all accounts that share documentation as consolidated accounts, and
- the Financial Institution and the other location or Related Entity Group member share an information system, electronic or otherwise, that is described below.

A shared account system must allow the Financial Institution to easily access data about the nature of the documentation, the information contained in the documentation (including a copy of the documentation itself), and the validity status of the documentation.

If the Financial Institution becomes aware of any fact that may affect the reliability of the documentation, the information system must allow the Financial Institution to easily record this data in the system.

Additionally the Financial Institution must be able to show how and when it transmitted data regarding such facts into the information system and demonstrate that any data it has transmitted to the information system has been processed and the validity of the documentation subjected to appropriate due diligence.

A Financial Institution that opts to rely upon the status designated for the Account Holder in the shared account system, without obtaining and reviewing copies of the documentation supporting the status, must be able to produce upon request by HMRC all documentation (or a notation of the
documentary evidence reviewed, if the Financial Institution is not required to retain copies of the documentary evidence for AML purposes) relevant to the status claimed.

**IEIM404120 Mergers and Bulk Acquisitions**

Where a Financial Institution acquires accounts by way of a merger or bulk acquisition, the Financial Institution can rely on the status of Account Holders as determined by the predecessor Financial Institution, provided that the predecessor Financial Institution had met its due diligence obligations.

The Financial Institution may continue to rely on the status of the Account Holder as long as it has no reasonable cause to believe that the status is unreliable or incorrect.

HMRC would expect that the Financial Institution undertake a sample review of the acquired accounts to determine that the Account Holders’ status, assigned by the predecessor Financial Institution, is reliable. An Account Holder’s status will need to be verified by the acquiring Financial Institution in accordance with the due diligence procedures should the acquirer have reason to know that it is incorrect or if there is a change in circumstance.

The UK Financial Institution may treat accounts acquired in a merger or bulk acquisition that takes place after 30 June 2014 for FATCA and CDOT or after 31 December 2015 for the CRS and the DAC as preexisting accounts for the purposes of applying the identification and documentation procedures.

**FATCA Only**

Where a Deemed Compliant Financial Institution becomes part of a group as the result of a merger or acquisition, the status of any account maintained by the Deemed Compliant Financial Institution can be relied upon unless there is a change in circumstance in relation to the account.

**IEIM404140 Merger of Investment Entities**

Mergers of Investment Entities can be different to mergers of Custodial Institutions or Depository Institutions. The Financial Accounts of Investment Entities are its equity and debt interest, so the merger of two such entities creates a series of new accounts in the surviving entity.

Mergers of Investment Entities will normally involve a surviving fund taking over the assets of the merging fund in exchange for issuing shares or units to the investors of the merging fund. The shares or units in the merging fund are then extinguished. The new shares in the surviving fund will be new accounts except where both funds were previously administered by the same person, for example the fund manager, who reported on behalf of the Investment Entities or the merged fund takes over and holds the information on the reportable status of the debt and equity holders in the merged fund and can, therefore, continue to report on the basis of that information.
FATCA Reporting

There are a number of potential scenarios for FATCA reporting depending upon whether the merging fund (the investors of which will create the New Accounts in the surviving fund) is a UK Financial Institution and whether it is a Reporting or Participating Financial Institution, Deemed Compliant Financial Institution or Non-Participating Financial Institution. These are considered below.

1. More than one fund sponsored by the same UK sponsor
   Where both funds are sponsored UK funds with the same UK sponsor, no new accounts are created. This is because for Sponsored Financial Institutions, whether a financial account is a new account or not is determined by reference to whether it is new to the sponsor (for example the fund manager), and not whether it is new to the Sponsored Financial Institution (the fund).

2. Merging fund is a Reporting Financial Institution
   Where the merging fund is a Reporting Financial Institution (including a Sponsored Financial Institution, but where the funds do not share the same sponsor), a FATCA Partner Jurisdiction Financial Institution or a Participating Foreign Financial Institution, the surviving fund can rely on the account identification and documentation performed by the merging fund and will not need to undertake any further account due diligence in order to comply with its FATCA obligations. The surviving fund can continue to use the same account classification as the merging fund until there is a change in circumstances for the Financial Account.

3. Merging fund is not a Reporting Financial Institution
   Where the merging fund is not a Reporting Financial Institution, a FATCA Partner Jurisdiction Financial Institution or a Participating Foreign Financial Institution (because it is a Deemed Compliant Financial Institution, a Non-Participating UK Financial Institution or a Non-Participating Foreign Financial Institution), the surviving fund will need to undertake account identification procedures on the new accounts. However, in these circumstances the account identification procedures will be limited to those that are required for Pre-existing Accounts and should be carried out at the latest by the 31 December following the date of the merger or 31 December of the year following the year of the merger, if the merger takes place after 30 September of any calendar year.

IEIM404160 Merger of CVIC

It is fairly common for insurance companies in the UK to sell off “backbooks” of business to another company, especially when the insurance company no longer sells that type of business. Where this relates to pre-existing accounts, the transferor can continue to rely on the original identification of the transferee company.

Where the transferring company has relied on the exemption from reviewing accounts because they have effectively been prevented from selling to residents of overseas jurisdictions, the acquiring company can rely on the same exemption if they meet the same conditions. However, such an exemption is not available for reporting under the CDOT regime or the DAC. The accounts may still
require to be reviewed to identify any Reportable Persons [see IEIM403440] in EU Member States, the Crown Dependencies and Gibraltar where the transferring company has not already carried out the due diligence before transfer.

IEIM404180 Cash Value Insurance Contract: Prevention of Sale to Non-Resident Account Holders

Pre-existing Cash Value Insurance Contracts or Annuity Contracts that are unable to be sold to residents of a Reportable Jurisdiction, including the USA, because of legal or regulatory restrictions do not need to be reviewed, identified or reported for FATCA purposes and do not need to be reviewed, identified or reported, subject to an election to that effect, for CRS purposes. This also applies to similar insurance policies written in Trust or assigned to a Trust on or before 30 June 2014.

This does not apply to reporting under the CDOT IGAs or the DAC.

FATCA

For FATCA, this exemption only applies where both of the following conditions are met:

- The Financial Institution’s Cash Value Insurance Contracts and Annuity Contracts cannot be sold into the USA without legal or regulatory authority, and
- UK law requires reporting or withholding in respect of these products.

The sale of contracts to US residents will be considered effectively prevented if the issuing Specified Insurance Company (not including any US branches) is not licensed to sell insurance in any state of the US and the products are not registered with the Securities and Exchange Commission.

Under UK law there will either be reporting or withholding on such pre-existing contracts through or under one of the following mechanisms:

- Chargeable events reporting regime.
- Income minus Expense Regime (I-E).
- Basic rate tax deducted from the interest portion of a Purchased Life Annuity.

CRS

For the CRS this exemption only applies where the Financial Institution has made an election to apply the exemption and the following condition is met:

- The Financial Institution’s Cash Value Insurance Contracts and Annuity Contracts cannot be sold to residents of Reportable Jurisdiction without the legal or regulatory authority of that Reportable Jurisdiction.

The CRS exemption contains a second condition which is an alternative to the above which would require UK Financial Institutions to be prevented under UK law from selling such contracts to residents in another jurisdiction. No such prohibition exists.
IEIM404500 Reporting Format

UK Financial Institutions who want to directly upload their return of Reportable Accounts must submit their returns to HMRC using the UK submission schema. This can be found at –

Automatic Exchange of Information: registering and reporting guidance - Publications - GOV.UK

A Portal to allow reporting to HMRC will be hosted on the UK Government Gateway. UK Financial Institutions may submit their returns to HMRC by uploading the data onto the portal using the Reportable Account submission schema.

For Financial Institutions who have few or no Reportable Accounts there is a form based system that will allow the Financial Institution to manually enter their Reportable Accounts.

In order to use the Portal the Financial Institutions will need to register their details to gain access. If they are using a sponsor or third party service provider then this party will be able to register the details of the Financial Institution for whom they are reporting and undertake the reporting. Whether there is a sponsor/sponsored entity relationship or the Financial Institution is using a third party service provider the legal responsibility for ensuring that reporting is done remains that of the Financial Institution.

Existing SET users will also be able to submit their xml files via the SET route however it will not be possible for a Financial Institution to obtain SET to make their returns if they do not already have access. If a Financial Institution uses SET to submit their xml files they must still register their details on the Portal.

IEIM404520 FATCA Registration

Each Reporting UK Financial Institution and any entity that is a Registered Deemed Compliant Entity or a Direct Reporting NFFE will be required to register and obtain a Global Intermediary Identification Number (GIIN) from the IRS.

GIINs will be assigned to registered entities from January 2014. The IRS will publish guidance regarding the registration process.

UK Financial Institutions are not required to provide a GIIN to establish their FATCA status prior to 1 January 2015. Before that date Model 1 Financial Institutions can confirm their status by either:

- providing a Withholding Certificate
- providing a pre FATCA W-8 with an oral or written confirmation that the Entity is a Model 1 Financial Institution; or
- informing the withholding agent that they are a Model 1 Financial Institution.

The following types of entity are not required to register and should not seek to do so:

- Non-Reporting UK Financial Institutions
- Deemed Compliant UK Financial Institutions (unless they are Registered Deemed Compliant)
• Active and Passive NFFEs (excluding Direct Reporting NFFEs).

Where a Financial Institution with a Local Client Base has a reporting obligation, because it has US Reportable Accounts, it will be required to obtain a GIIN.

Entities that are Reporting Financial Institutions and also acting as a sponsor for other entities will need to register separately for each of these roles.

An umbrella fund may register with the IRS either at sub-fund and/or umbrella level. This may lead to nil returns by the umbrella fund where the shares are issued to investors at sub-fund level however in this case all investors will be reported to HMRC at sub-fund level.
IEIM405010 Compliance

IEIM405010 Introduction

Under all the regimes, Financial Institutions will be required to have procedures and systems in place to ensure that Reportable Accounts are identified, the relevant information is collected and the information is then reported to HMRC for exchange with those jurisdictions that the UK has agreed to send information to.

Where a Reporting UK Financial Institution has taken all reasonable efforts to supply accurate information and to establish appropriate governance and due diligence processes then they will be held to be compliant with the UK Regulations. This will be the case despite the occurrence of minor and administrative errors, or a failure to supply accurate information despite reasonable care having been taken [see IEIM405020]. It is the view of HMRC that if the Financial Institution has made all good faith efforts then this will also constitute all reasonable efforts for the purposes of establishing compliance with the UK Regulations.

However, Financial Institutions need to be aware that under the US and CDOT IGAs, the CRS and the DAC a failure to rectify minor and administrative errors, or correct inaccurate information, when these are discovered may lead to the Financial Institution being regarded as having failed in its obligations. This is referred to under the IGA with the USA as Significant Non-Compliance and may lead to a declaration that the Financial Institution be treated as a Non-Participating Financial Institution for FATCA purposes. Penalties may also be imposed under Regulations that apply across all the regimes.

IEIM405020 Minor Errors

In the event that the information reported is corrupted or incomplete, the US and the CDOTs will be able to contact the Reporting Financial Institution directly to try and resolve the problem. For the CRS and DAC any contact will be via HMRC, and we expect the US and CDOT to do the same in most cases. Examples of minor errors could include:

- Data fields missing or incomplete;
- Data that has been corrupted;
- Use of an incompatible format.

Where this leads to the information having to be resubmitted this will have to be via HMRC.

Continual and repeated administrative or minor errors could be considered as significant non-compliance where they continually and repeatedly disrupt and prevent transfer of the information.

Where a Reporting UK Financial Institution is concerned that a direct enquiry from another jurisdiction extends beyond an enquiry on the quality or format of the data and potentially presents difficulties in respect of their obligations under the Data Protection Act 1988 (DPA), or implementing the requirements of the Data Protection Directive (Directive 95/46/EC) then they should contact the UK Competent Authority.
For more specific enquiries, for instance regarding a specific individual or entity, the overseas Competent Authority will contact the UK Competent Authority, who will then contact the Financial Institution.

IEIM405040 Significant Non-Compliance

Significant non-compliance may be determined from either an HMRC or a partner jurisdiction perspective. In either event the relevant Competent Authorities will notify the other regarding the circumstances.

Where one Competent Authority notifies the other of significant non-compliance there is an 18 month period in which the Financial Institution must resolve the non-compliance.

Where HMRC is notified of or identifies significant non-compliance by a UK Financial Institution, HMRC will apply any relevant penalties under the legislation.

HMRC will also engage with the Financial Institution to:

• discuss the areas of non-compliance;
• discuss remedies/solution to prevent future non-compliance;
• agree measures and a timetable to resolve its significant non-compliance.

HMRC will inform the partner jurisdiction of the outcome of these discussions.

Financial Institutions need to be aware that in the event that the issues relate to information reportable to the USA and they remain unresolved after a period of 18 months then the Financial Institution will be treated as a Non-Participating Financial Institution [see IEIM402360].

The following are examples of what would be regarded as significant non-compliance include:

• Repeated failure to file a return or repeated late filing.
• Ongoing or repeated failure to register, supply accurate information or establish appropriate governance or due diligence processes.
• The intentional provision of substantially incorrect information.
• The deliberate or negligent omission of required information.

IEIM405060 Risk Management Process

For those Financial Institutions with a Customer Relationship Manager (CRM), as part of the normal relationship management activity, a CRM should seek to understand how a business intends to meet its obligations under the legislation and the systems and processes that it has put in place.

Areas of difficulty or particular risk could form part of the discussions about business systems and governance and the CRM should work with the company/entity to identify and deal with any risks
that could lead to non-compliance. It is also envisioned that compliance with the legislation could form part of any Business Risk Review carried out with the business.

CRMs will be able to call on support from Governance Specialists in Large Business (LB) and Audit Specialists in both LB and Local Compliance to help them to understand and address any issues identified.

For those Financial Institutions where there is no CRM, compliance activity will follow a risk based approach and will focus on those Financial Institutions where information indicates they are potentially in non-compliance with the legislation.

Any audit of systems and processes, of either Customer Relationship Manager (CRM) or non CRM businesses will encompass a review of whether or not a Financial Institution is able to correctly identify its account holders and meets its reporting obligations.

**IEIM405080 Penalties**

The Regulations set out the penalties that will be applicable where a Reporting Financial Institution fails to provide the required information and where it provides inaccurate information. A penalty can be applied for each separate failure by the Financial Institution.

These penalties operate in the same was as other penalties for failure to comply with information requests, such as Schedule 23 of FA2011.

**IEIM405100 Anti-Avoidance**

The Regulations include an anti-avoidance measure which is aimed at arrangements taken by any person to avoid the obligations placed upon them by the Regulations.

It is intended that ‘arrangements’ will be interpreted widely and the effect of the rule is that the Regulations will apply, as if the arrangements had not been entered into.