STEP Briefing Note:
FATCA recalcitrant entity account reporting

UK HMRC has confirmed the position for FATCA reporting where a Financial Institution (FI) has been unable to get a self-certification in respect of a new entity account.

This only applies to new entity account reporting for FATCA.

Where an FI has been unable to get a self-certification from an entity, it should use Anti Money Laundering/Know Your Customer (AML/KYC) and publicly available information to establish whether it can be excluded from reporting, for example as a Deemed Compliant FI, UK government entity or active NFFE.

If it cannot, then the UK/US FATCA Intergovernmental Agreement requires it to treat it as a passive NFFE (Non-Financial Foreign Entity), this is a default category for any entity that is not an FFI (Foreign Financial Institution) or active NFE. The FI should use AML/KYC data to try and identify any controlling persons.

The reporting should be:

- The entity by default as a passive NFFE.
- Any controlling persons with US indicia.
- If no controlling persons can be identified, or those identified do not have US indicia, then they are not reported.

The undocumented account flag should not be ticked for these accounts; an undocumented account can only exist in CRS reporting, where the only information an FI holds is a ‘hold mail’ or ‘in care of’ address.