Implementation of The International Tax Compliance (United States of America) Regulations 2014

Guidance Notes

28 August 2014

These guidance notes supersede the 28 February 2014 version. Further amendments and additions to this guidance will be required as a result of the changes to the US Regulations. Significant changes to this guidance will be published as stand alone updates. This guidance will be reviewed to include these updates along with other necessary changes at 6-monthly intervals. The next review of the guidance will be in February 2015.

Guidance Contents

1. Background

The Foreign Account Tax Compliance Act provisions (commonly known as FATCA) are contained in the HIRE Act 2010. These provisions are US legislation aimed at reducing tax evasion by US citizens.

FATCA requires Financial Institutions outside the US to pass information about their US customers to the US tax authorities, the Internal Revenue Service (IRS). A 30% withholding tax is imposed on the US source income of any Financial Institution that fails to comply with this requirement.

On 12 September 2012 the UK and the US signed a Treaty to implement FATCA in the UK ("The UK-US Agreement to Improve International Tax Compliance and to Implement FATCA") referred to hereafter as the Agreement. The Agreement and the legislation introduced to enact it will remove some of the implementation problems faced by UK Financial Institutions, for instance the legal difficulty of complying without breaching data protection restrictions. As such UK based Financial Institutions should not be subject to a 30% withholding tax on US source income, unless they fail to meet the requirements set out in the Agreement and UK legislation.

Under the terms of the Agreement, UK Financial Institutions will provide HMRC with the required information. HMRC will then forward that information to the US Internal Revenue Service.

The UK legislation bringing into effect the implementation of the UK-US Treaty is contained at clause 222 of Finance Act 2013. This clause provides HM Treasury with powers to make Regulations to give effect to the Agreement (and other similar Agreements). The Regulations (The International Tax Compliance (United States of America) Regulations 2013) can be accessed on HMRC's website at http://www.hmrc.gov.uk/fatca/index.htm

1.1 The purpose of these Guidance notes

The Guidance is to be read by businesses, their advisers and HMRC staff and is published in conjunction with The International Tax Compliance (United States of America) Regulations 2014. It applies to:

- UK Financial Institutions
- UK entities that will need to certify their entity “classification” for the purposes of FATCA; **and**
- Entities that undertake FATCA obligations on behalf of Financial Institutions.

The application of the provisions in any further similar Agreements entered into by the UK, where it differs from the UK-US Agreement will be covered in supplementary chapters to this guidance. Where no supplementary guidance is provided, the provision of the similar Agreement should be applied in the same way as the provision in the UK-US Agreement.

1.2 Scope of FATCA

FATCA and the UK legislation implementing the Agreement signed on the 12th September 2012, applies to Financial Institutions located in the UK. In the Agreement and in this Guidance these are referred to as “UK Financial Institutions”. In order to determine how the legislation applies it will be necessary for a Financial Institution to consider a number of questions, namely:

- Am I a Financial Institution?
- Do I maintain Financial Accounts?
- Are there indicators that any of the account holders’ are Specified US Persons?
- After applying the relevant due diligence, do I have any Reportable Accounts?

1.3 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 will be 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 UK Regulations laid on 7 August 2013. 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 FATCA webpage http://www.hmrc.gov.uk/fatca/index.htm and make any subsequent changes to the Regulations or Guidance as required.

2. Financial Institutions

2.1 Introduction

The first step to be undertaken by an entity or its representative is to establish whether, for the purposes of the Agreement, the entity is a Financial Institution. This will determine the extent of the obligations that need to be undertaken.

Through the US Regulations, FATCA introduces the concept of a Foreign Financial Institution (FFI). This term applies to non-US entities that meet the definition of a Financial Institution. Under the Agreement UK entities are regarded as United Kingdom Financial Institutions (UKFI's) if they fall within any of, or more than one of, the following categories.

- Depository Institution - Section 2.26
- Custodial Institution - Section 2.27
- Investment Entity - Section 2.28
- Specified Insurance Company - Section 2.29
- Holding Companies and Treasury Centres of Financial Groups - Section 2.30

Each category of Financial Institution is determined by set criteria, which must be met. Where an entity does not meet the definition of a Financial Institution then the entity will be regarded as a Non-Financial Foreign Entity (NFFE). (See Section 2.6)

Under the Agreement UK Financial Institution's will be classified either as a Reporting UK Financial Institution or a Non-Reporting UK Financial Institution.

As long as UK Financial Institutions are in compliance with the UK legislation then they will not be subject to any withholding tax on their US source income under S1471 of the US Internal Revenue Code.

Non-Reporting UK Financial Institutions

A Non-Reporting UK Financial Institution is any Financial Institution specifically identified as such in Annex II of the Agreement; or one which otherwise qualifies under Article 1. 1. (q) of the Agreement as:

- a Deemed Compliant Financial Institution,
- an Owner Documented Financial Institution,
- an Exempt Beneficial Owner, **or**
- an Excepted Financial Institution.

A Non-Reporting Financial Institution will **not** need to obtain a Global Intermediary Identification Number (GIIN) or carry out the due diligence and reporting obligations under the Agreement.

However there is one scenario in which an entity which is treated as Deemed Compliant under Annex II could still have some reporting obligations. That is where an entity meets the criteria of a Financial Institution with a Local Client Base, and has US Reportable Accounts. (See Section 2.13)

A Registered Deemed Compliant Financial Institution will need to obtain a GIIN. (See Section 2.15)

Reporting UK Financial Institutions

Any UK Financial Institution that is not a Non-Reporting UK Financial Institution will be a Reporting UK Financial Institution. They will be responsible for ensuring that their due diligence and reporting requirements are met.

2.2 UK Financial Institutions (UKFIs)

The Agreement applies to UK Financial Institutions. Under the Agreement 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, including a UK branch of a US Financial Institution.

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 under the Agreement 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 a company not resident in the UK
    - 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 Trusts
    - if most or all of the trustees are resident in the UK for tax purposes then the Trust is UK resident. 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 the 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 (known as check the box elections), made to the IRS, are irrelevant for determining whether an entity is in scope for the Agreement.

2.3 Subsidiaries and Branches

A subsidiary or branch of a non UK entity (including a US entity) carrying on a business, as a Custodial Institution, a Depository Institution, an Investment Entity, a relevant Holding Company, a Treasury Company or a Specified Insurance Company in the UK, will be a Reporting UK Financial Institution.

Subsidiaries and branches of UK tax resident Financial Institutions that are not located in the UK are excluded from the scope of the UK Agreement and will not be regarded as UK Financial Institutions.

These entities will be covered by the relevant rules in the jurisdiction in which they are located. Those rules will either be the US Regulations or the legislation introduced to bring effect to an Agreement between that jurisdiction and the US.

However, where such subsidiaries and branches act as introducers with regard to a Financial Account and the relevant account is held and maintained in the UK by a UK Financial Institution **and** is subject to UK Regulatory requirements, the account will be within the scope of the UK Agreement. The UK Financial Institution maintaining the account(s) will be required to undertake the appropriate due diligence processes and report the appropriate details to HMRC.

Example 1

Albion Bank PLC, located in London, has within its group the following entities:

- a subsidiary (S) located in Edinburgh,
- a foreign subsidiary (D) located in Partner Jurisdiction 1
- a foreign branch (F) located in Partner Jurisdiction 2
- a foreign branch (X) located in Eurasia and
- a foreign branch (Y) located in New York

Under the terms of the Agreement:

- Albion Bank in London and its subsidiary S will be UK Financial Institutions and report to HMRC.
- D and F will be classified under the Agreement as Partner Jurisdiction Financial Institutions and will report to their respective jurisdictions.
- X will be a Limited FFI and will have to identify itself as a Non Participating Foreign Financial Institution for withholding/reporting purposes **if** Eurasia does not have an Agreement with the US and if X cannot enter into an FFI Agreement directly with the IRS due to legal or other impediments. However X will have to undertake the obligations required under the US Regulations as far as it is legally able to do so.
- Y will report on UK persons who hold accounts to the IRS.

Example 2 - Where an overseas bank has a branch located in the UK
Oceania Bank of Australia has a branch Z, which is a permanent establishment for tax purposes, located in London.

- As Z is a permanent establishment for UK tax purposes, it will be a UK Financial Institution and will therefore fall under the UK Agreement and will need to comply with the UK Regulations and legislation and report information on any reportable Financial Accounts to HMRC.

2.4 Related Entities

For the purposes of FATCA 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.

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 as set out in Article 4 of the Agreement. Further guidance on these obligations is set out in more detail at Section 9.4.

Exemption for 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.

2.5 Non-Participating Financial Institutions (NPFIs)

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 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. 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.

For further details about how to comply with the UK legislation see Section 10.

2.6 Non-Financial Foreign Entities (NFFEs)

An NFFE is any non-US entity that is not treated as a Financial Institution. An NFFE will either be an Active NFFE or a Passive NFFE.

Criteria for determining an Active NFFE

An Active NFFE is defined as any NFFE that meets **ONE** of the following criteria:

- Less than 50 per cent of the NFFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 per cent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income.
- The stock of the NFFE is regularly traded on an established securities market **or** the NFFE is a Related Entity of an Entity, the stock of which is traded on an established securities market. See Section 3.10 for how this should be applied under the Agreement.
- The NFFE is organised in a US Territory and all of the owners of the payee are bona fide residents of that US Territory. The definition of US Territory is set out at Article 1 (1) (b) of the Agreement.
- The NFFE is a non-US Government, a political subdivision of such non-US Government (which, for the avoidance of doubt, includes a state, province, county, or municipality), or a public body performing a function of such non-US Government or a political subdivision thereof, a government of a US Territory, an international organisation, a non-US central bank of issue, or an entity wholly owned by one or more of the foregoing.
- Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution. However the entity **will not qualify as an Active NFFE** <u>if it functions (or holds itself out to be)</u> an investment fund, such as a Private Equity Fund, Venture Capital Fund, Leveraged Buyout Fund or any Investment

Vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes. In these circumstances the entity will be a passive NFFE.

- The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution; provided that the NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFFE.
- The NFFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets, **or** is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution.
- The NFFE primarily engages in financing and hedging transactions with, or for related entities that are not Financial Institutions, and does not provide financing or hedging services to any entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution.
- The NFFE is an “Excepted NFFE” (excluding Direct Reporting NFFEs and sponsored Direct Reporting NFFEs) as described in relevant US Treasury Regulations; **or**
- The NFFE meets **all** of the following requirements:
  - It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
  - It is exempt from income tax in its country of residence;
  - It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;

- The applicable laws of the entity's country of residence or the entity's formation documents do not permit any income or assets of the entity to be distributed to, or applied for the benefit of, a private person or non-charitable entity other than pursuant to the conduct of the entity's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the entity has purchased; **and**
- The applicable laws of the entity's country of residence or the entity's formation documents require that, upon the entity's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organisation, or escheat to the government of the entity's country of residence or any political subdivision thereof.

Passive Income

The term "passive income" means the portion of gross income that consists of-

1. Dividends, including substitute dividend amounts;
2. Interest;
3. Income equivalent to interest, including substitute interest and amounts received from or with respect to a pool of insurance contracts if the amounts received depend in whole or part upon the performance of the pool;
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 NFFE;
5. Annuities;
6. The excess of gains over losses from the sale or exchange of property that gives rise to passive income described in items 1 to 5;
7. The excess of gains over losses from transactions (including futures, forwards, and similar transactions) in any commodities, but not including—

(i) Any commodity hedging transaction described in section 954(c)(5)(A) of the U.S. Revenue Code, determined by treating the entity as a controlled foreign corporation; or

(ii) Active business gains or losses from the sale of commodities, but only if substantially all the foreign entity's commodities are property described in paragraph (1), (2), or (8) of section 1221(a) of the U.S. Revenue Code;

8. The excess of foreign currency gains over foreign currency losses;
9. Net income from "notional principle contracts". These are financial instruments that provide for the payment of amounts by one party to another at specified intervals calculated by reference to a specified index upon a notional principal amount in exchange for specified consideration or a promise to pay similar amounts (NB: in the UK this would normally be a swap);
10. Amounts received under cash value insurance contracts; or
11. Amounts earned by an insurance company in connection with its reserves for insurance and annuity contracts.

However, the following amounts are excluded from any calculation of Passive Income

1. Any income from interest, dividends, rents, or royalties that is received or accrued from a related person to the extent such amount is properly allocable to income of such related person that is not passive income. For purposes of this section, a person is a related person with respect to the NFFE if—

   (A) such person is an individual, corporation, partnership, trust, or estate which controls, or is controlled by, the NFFE, or

   (B) such person is a corporation, partnership, trust, or estate which is controlled by the same person or persons which control the NFFE.
2. In the case of an NFFE that regularly acts as a dealer in property described in item 6 above of this section (referring to the sale or exchange of property that gives rise to passive income), forward contracts, option contracts, or similar financial instruments (including

notional principal contracts and all instruments referenced to commodities)

(i) Any item of income or gain (other than any dividends or interest) from any transaction (including hedging transactions and transactions involving physical settlement) entered into in the ordinary course of such dealer's trade or business as such a dealer; and

(ii) If such dealer is a dealer in securities, any income from any transaction entered into in the ordinary course of such trade or business as a dealer in securities.

Application to General Insurance Companies

A General Insurance Company should generally **not** be treated as a Financial Institution under FATCA but will instead be classified as a NFFE unless it has Financial Accounts.

2.7 Exempt Beneficial Owners

Entities that are Exempt Beneficial Owners do not have any reporting or registration requirements in relation to any Financial Accounts that they maintain. Additionally reporting UK Financial Institutions are not required to review or report on accounts held by Exempt Beneficial Owners.

Exempt Beneficial Owners are entities that fall within the following categories.

- Foreign Government and any political sub divisions of a Foreign Government or any wholly owned agency or instrumentality of such. See Section 2.8 for how this applies to the UK.
- Foreign Central Bank of Issue. See Section 2.9 for how this applies to the UK.
- International Organisations or any wholly owned agency or Instrumentality of such. See Section 2.10 for how this applies to the UK.
- Governments of US Territories

- Certain Retirement Funds. See Section 2.11 for how this applies to the UK.
- Entities Wholly Owned by Exempt Beneficial Owners

UK Exempt Beneficial Owners will **not** need to register for a GIIN.

2.8 UK Government and UK Governmental Organisations

The UK Government and the organisations listed below are Non-Reporting Financial Institutions and will be treated as Exempt Beneficial Owners.

The Devolved Administrations as per:

- the Northern Ireland Act 1998 (updated by The Northern Ireland (St Andrews Agreement) Acts 2006 & 2007, and the Northern Ireland Act 2009)
- 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 Act (NI) 1972 (as amended by The Local Government (Miscellaneous Provisions) Act (NI) 2010 and Local Government Finance Act (NI) 2011)
- the Local Government etc. (Scotland) Act 1994
- the Local Government (Wales) Act 1994.

2.9 Central Banks

The Bank of England and any of its wholly owned subsidiaries are Non-Reporting Financial Institutions and will be treated as Exempt Beneficial Owners.

2.10 International Organisations

The organisations listed below are Non-Reporting Financial Institutions and will be treated as Exempt Beneficial Owners.

Any UK office of:

- The International Monetary Fund
- The World Bank
- The International Bank for Reconstruction and Development
- The International Finance Corporation
- The International Finance Corporation Order, 1955 (SI 1955 No.1954)
- The International Development Association
- The Asian Development Bank
- The African Development Bank
- The European Community
- The European Coal and Steel Community
- The European Atomic Energy Community
- The European Investment Bank
- The European Bank for Reconstruction and Development
- The OECD Support Fund
- The Inter-American Development Bank

2.11 Retirement Funds

Any pension scheme or other retirement arrangement established in the UK and described in Article 3 (General Definitions) of the UK/US Double Tax Convention (2001) will have no reporting obligations and Reporting UK Financial Institutions will not be required to review or report on accounts held by such pension schemes or other retirement arrangements. This exemption includes separate nominee companies of exempt pension schemes.

Under the UK/US Double Taxation Agreement a “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 registered pension schemes including those deemed registered by HMRC, and pension funds or pension schemes covered by IRS Announcement 2005-30, 2005-1 C.B. 988, on the Mutual Agreement on UK Pension Agreements.
(http://www.irs.gov/irb/2005-18_IRB/ar10.html#d0e1440)

The Pension Protection Fund is also an Exempt Beneficial Owner and is to be treated as a Non-Reporting Financial Institution.

Example 1
A Trust based pension scheme purchases a Trustee Investment Plan (TIP) from a Reporting UK Insurance Company. As the TIP is purchased by an Exempt Beneficial Owner, the Reporting UK Insurance Company is not required to review or report on this account.

Example 2 - Management of Registered Personal Pension Schemes
Where an Insurance Company acting as a pension scheme trustee or administrator invests into a fund on behalf of individual investors a Reporting Financial Institution holding these funds on behalf of the Insurance Company, will not be required to review or report on that account as it will be treated as an account of an Exempt Beneficial Owner.

2.12 Deemed Compliant Financial Institutions

Deemed Compliant Financial Institutions are UK Financial Institutions within this category in Annex II or ones which otherwise qualify under the US Regulations as:

- Registered Deemed Compliant Financial Institution
- Certified Deemed Compliant Financial Institution,
- 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 (See Section 2.13), are required to register with the IRS.

There are two types of entity that can take advantage of this exemption.

i. Non-profit organisations: 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

ii. Financial Institutions with a Local Client Base will have a reduced reporting requirement if they meet the relevant criteria.

2.13 Local Client Base Financial Institutions

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 listed ~~overleaf~~ below:

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 publically 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.

2.14 US Regulations Exemptions available to UK Financial Institutions

The following sections cover the categories of Deemed Compliant Financial Institutions set out in the US Regulations which are available to UK Financial Institutions as permitted by the terms of the Agreement.

- Registered Deemed Compliant Financial Institutions, (Section 2.15)
- Certified Deemed Compliant Financial Institutions (Section 2.21)
- Owner Documented Financial Institutions. (Section 2.25)
- Non-Registering Local Banks (Section 2.22)
- Financial Institutions with only Low Value Accounts (Section 2.23)
- Limited Life Debt Investment Vehicles (Section 2.25(a))
- Excepted Inter-affiliate FIs (Section 2.25(b))
- Investment Advisers and Investment Managers (Section 2.28(a))

2.15 Registered Deemed Compliant Financial Institutions

Sections 2.16 to 2.20 provide details on each of the Registered Deemed Compliant categories.

A UK Financial Institution that qualifies for one of the Registered Deemed Compliant categories below will need to obtain a GIIN from the IRS and will need to submit annual returns to HMRC.

2.16 Non-reporting members of Participating FFI groups (1471-5 (f) (1) (i) (B))

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.

2.17 Qualified Collective Investment Vehicles (1471-5 (f) (1) (i) (C))

The term Qualified Collective Investment Vehicles (QCIV) applies to Investment Entities that are owned solely through Participating Foreign 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 an Investment Entity 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 the group of Related Entities 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.

2.18 Restricted Funds (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. Not withstanding 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.

2.19 Qualified credit card issuers (1471-5 (f) (1) (i) (E))

A qualified credit card issuer 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 (by the later of 30 June 2014 or the date it registers as a Deemed Compliant Financial Institution) 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.

The terms applying to qualified credit card issuers also apply to other card and Electronic Money Issuers. See Section 3.21

2.20 Sponsored Investment Entities (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 section 4.15 for more details on aggregation of sponsored funds).

Subject to the design of the final reporting schema, 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.

2.21 Certified Deemed Compliant Financial Institutions

Under the Agreement non reporting UK Financial Institutions include categories of deemed compliant Financial Institutions, excepted Financial Institutions and exempt beneficial owners as set out under the U.S. Regulations. Sections 2.22 to 2.25 (b) provide details on each of the Certified Deemed Compliant categories. Certified Deemed Compliant Financial Institutions are not required to register with the IRS and obtain a GIIN.

2.22 Non-Registering local bank (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.

2.23 Financial Institutions with only Low Value Accounts (1471-5 (f) (2) (ii))

The Financial Institution **must not**:

- be an Investment Entity,

- have any Financial Accounts exceeding $50,000 and must not
- have more than $50 million in assets on its balance sheet at the end of its most recent accounting year
- have more than $50 million in assets on its consolidated or combined balance sheet where it is in a group with related entities

2.24 Sponsored closely held Investment Vehicles (1.1471-5 (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 Institution, 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 does **not** 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.

2.25 Owner Documented Foreign Financial Institutions (1.1471-5(f) (3))

In general, Owner Documented Financial Institution classification is intended to apply to closely held Passive Investment Vehicles that are Investment Entities, where meeting the obligations under the Agreement would be onerous given the size of the entity. The Owner Documented Financial Institution must provide the required documentation and agree to notify the other Financial Institution which is undertaking the reporting on behalf of the Owner Documented Financial Institution if there is a change in circumstances.

An Owner Documented Financial Institution **must** satisfy the following requirements:

- The Financial Institution must not maintain a Financial Account for any Non-Participating Financial Institution;
- The Financial Institution 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 Investment Entity 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 Owner Documented Foreign Financial Institution), an entity that is a US Person, an Exempt Beneficial Owner, or an Excepted NFFE.

2.25(a) Limited Life debt Investment Entities

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 Section 2.40 for a general commentary on securitisation vehicles.

2.25(b) Excepted inter-affiliate FFI

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; or
- 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.

2.26 Depository Institution

A Depository Institution is an institution that accepts deposits in the ordinary course of a banking or similar business. For the purposes of the Agreement 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[1] (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.

Entities that issue payment cards that can be pre-loaded with funds in excess of $50,000 to be spent at a later date, such as a pre-paid credit card or "e-money" will also be considered to be Depository Institutions for the purposes of the Agreement, notwithstanding that these entities are exempt from the

[1] S.I. 2001/544

definition of a Depository provider for the purposes of the provisions of the Electronic Money Issuers Regulations 2011.

Entities that solely provide asset based finance services or that accept deposits solely from persons 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 with the entity, will not be Depository Institutions. This might for instance apply to a factoring or invoice discounting business.

Entities that facilitate money transfers by instructing agents to transmit funds (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.

2.27 Custodial Institution

A Custodial Institution is an institution which holds financial assets for the account of others as a substantial portion of its business in the UK.

A substantial proportion in this context means where 20 per cent or greater of the entity’s gross income from the shorter of its last 3 accounting periods, or the period since it commenced business, arises from the holding of assets for the benefit of others and from related financial services.

An entity with no operating history as of the date of the determination is considered to hold financial assets for the account of others as a substantial portion of its business if the entity expects to meet the gross income threshold based on its anticipated functions, assets, and employees, with due consideration given to any purpose or functions for which the entity is licensed or regulated (including those of any predecessor).

Related financial services are any ancillary service directly related to the holding of assets by the institution on behalf of others and includes

- custody, account maintenance and transfer fees;

- execution and pricing commission and fees from securities transactions;
- income earned from extending credit to customers;
- income earned from contracts for differences and on the bid-ask spread of financial assets; and
- fees for providing financial advice, clearance and settlement services.

Such institutions could include brokers, custodial banks, Trust companies, clearing organisations and nominees. Insurance brokers do not hold assets on behalf of clients and thus should not fall within the scope of this provision.

An execution only broker that simply executes trading instructions, or receives and transmit such instructions to another executing broker will not hold assets for the account of others should not fall to be custodial institutions (although it is possible that they could be an investment entity – see 2.32).

2.28 Investment Entity

The UK Regulations mirror the final U.S. Regulations and set out that an entity meets the definition of an Investment Entity if it, the entity, falls within the scope of either (i) or (ii) below:

(i) An investment entity within the meaning of the Agreement.

An entity falls within this category if it "conducts as a business" (see below), for or on behalf of a customer (for example an account holder) one or more of the following activities:

- trading in money market instruments (cheques, bills, certificates of deposit, derivatives etc.);
- foreign exchange;
- interest rate and index instruments;
- transferable securities and commodity futures trading;
- individual and collective portfolio management;

- otherwise investing, administering or managing funds or money on behalf of other persons,

The entity will be regarded as conducting these activities as a business if the entity's gross income attributable to such activities is equal to or exceeds 50 per cent of the entity's gross income during the shorter of:

- The three-year period ending on 31 December of the year preceding the year in which the determination is made; **or**
- The period during which the entity has been in existence.

(ii) it meets the financial assets test (see below) AND is managed by a Financial Institution.

An Entity meets the financial assets test if the entity's gross income is primarily attributable to investing, reinvesting, or trading in financial assets ("the financial assets test").

The meaning of what is a "financial asset" is set out in the UK Regulations and includes:

- any asset capable of being the subject matter of a transaction that is an "investment transaction" within the meaning of regulation 14F of Part 2B of the Authorised Investment Funds (Tax) Regulations 2006,
- an Insurance Contract or an Annuity Contract,
- commodities; **or**
- a derivative contract within the meaning of Part 7 of the Corporation Tax Acts 2009

Therefore an Investment Entity whose assets consist of non-debt direct interests in real property or land, even if managed by another Investment Entity would not be an Investment Entity.

An Investment Entity meets the “financial assets test” if the entity’s gross income attributable to such activities is equal to or exceeds 50 per cent of the entity’s gross income during the shorter of:

- The three-year period ending on 31 December of the year preceding the year in which the determination is made; **or**
- The period during which the entity has been in existence.

Where an entity’s gross income is primarily attributable to investing, reinvesting, or trading in financial assets and that entity is managed by a Financial Institution that performs any of the activities, either directly or through another third party service provider, listed above, the managed entity will still be regarded as an Investment Entity.
Further guidance on when another Financial Institution is managing the assets on behalf of the entity can be found in section 2.36.

Where an entity is managed by an individual the managed entity will not be an Investment Entity because an individual cannot be an Investment Entity.

Section 2.32 provides further guidance on how the rules apply to Collective Investment Schemes.
Section 2.36 provides further guidance on how the rules apply to Trusts.

2.28 (a) Investment Advisers and Investment Managers
Under the terms of the IGA, Investment advisers and Investment Managers may fall to be a Financial Institution 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 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 Nonparticipating Financial Institution.

Then that entity will be regarded as a certified Deemed Compliant Financial Institution (see 2.21 above).

In the case of investment advisers who **solely** render investment advice to customers and do not otherwise undertake investment services or maintain financial accounts. These are likely to be NFFEs, as they are service providers and will not meet the financial assets test.

2.29 Specified Insurance Company

An Insurance Company will be treated as a Specified Insurance Company only when the products written are classified as Cash Value Insurance or Annuity Contracts, or if payments are made with respect to such contracts.

Therefore Insurance companies that only provide General Insurance or term Life Insurance should not be Financial Institutions and neither will reinsurance companies that only provide indemnity reinsurance contracts.

A Specified Insurance Company can include both Insurance Companies and the holding companies of insurance companies. However, a holding company itself will only be a Specified Insurance Company if it issues or is obligated to make payments with respect to Cash Value Insurance Contracts or Annuity Contracts.

Insurance brokers are normally part of the payment chain and therefore should not be classified as a Specified Insurance Company. This will not be the case where they are obligated to make payments under the terms of the Insurance or Annuity Contract.

2.30 Holding Companies and Treasury Centres of Financial Groups

Not all entities that carry on activities as a holding company or as a treasury centre will be Financial Institutions. Those Holding Companies and Treasury Centres that are part of a non-financial group will not be treated as financial Institutions **unless** they were "formed in connection with" or are "used by" an Investment Entity. (See below for guidance on "formed in connection with" and "used by").

A Financial Group will be any group that contains a Financial Institution but is NOT a non-financial group.

Financial group

A financial group is *either*,

An expanded affiliated group that contains any Financial Institution that is NOT

- a Model 1 or Model 2 FFI (that has not been determined to be an NPFFI),
- a participating FFI,
- a deemed-compliant FFI.

or,

An expanded affiliated group that contains **any** Financial Institution and for the three-year period (or if shorter the period the group has been in existence) ending on December 31 of the preceding year,

- more than 25 percent of the gross income of the group consists of passive income,
- more than five percent of the gross income of the group is derived by members of the that are registered non-US Financial Institutions; or
- more than 25 percent of the value of assets held by the group are assets that produce or are held for the production of passive income.

Holding and Treasury Companies

Within a Financial Group, an entity carrying out the following activities will be a Holding Company or Treasury Centre Financial Institution:

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

In addition, any Holding Company or Treasury Centre that is part of a non financial group but that is formed in connection with or used by a collective investment scheme, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund, **or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in financial assets,** will also be treated as financial Institutions.

A Holding Company or Treasury Centre is considered to be ”formed in connection with” or “used by” a private equity fund or similar vehicle should be determined in the following circumstances:

1. The investment activity of the company is directed by the private equity fund, its manager or other individual(s) directed by the manager.
2. The private equity fund has executive representatives on the board of the company, or
3. The holding company is used to facilitate banking or financing arrangements,
4. The private equity fund or similar vehicle derives some financial, or other, benefit or advantage from the existence of the holding company.

Where, subsequent to acquisition by a private equity fund, a holding company is set up which, in addition to holding shares of the portfolio group, provide management and other services to the portfolio group, the main purpose of the company should be considered.

Where a holding company in a private equity investment structure is not considered to be a Relevant Holding Company on the basis of the factors above, it should be classified as an Active NFFE.

Where the portfolio group held by the holding company is not itself a financial group the fact that there are other Investment Entities or Financial Institutions within the private equity structure as a whole will not taint the classification of the holding company as an Active NFFE (where it is so classified under the criteria set out above).

Where there is a fund investing in non-financial assets, both the entities holding the non-financial assets directly, and any intermediate holding companies are not to be treated as Financial Institutions, where they meet the financial assets test on an Entity basis. The fund (the top entity in the structure) will remain to be treated as an Investment Entity where it is professionally managed by a Financial Institution.

2.31 Collective Investment Schemes

References in this Guidance to Collective Investment Scheme, unless otherwise specified, should be read as defined in the UK Regulations. This broadly has the same meaning as it has for the purpose of the Financial Services and Markets Act 2000, except that it also includes 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),
- a Venture Capital Trust within the meaning of Part 6 of the Income Tax Act 2007~~,~~

For the purposes of the Agreement, Investment Entity includes the following types of entities:

- Collective Investment Schemes within the meaning in the Financial Services and Markets Act 2000.
- closed ended investment companies
- fund managers
- investment managers
- fund administrators
- transfer agents
- depositories, and
- trustees of Unit Trusts.

However, the only Financial Accounts that are relevant to the Agreement are the Equity and Debt Interests in Collective Investment Schemes.

The UK Regulations state that where the Investment Entity is a Collective Investment Scheme constituted by a person, only the Collective Investment Scheme will have reporting responsibilities in relation to the Financial

Accounts (the Equity and Debt Interests) of that Collective Investment Scheme.

For example, a fund administrator or a trustee of a Unit Trust will not be a Reporting Financial Institution by virtue of acting for a Collective Investment Scheme. (However, by exception, a fund manager may be regarded as a Reporting Financial Institution by virtue of Regulation 3(6) where it acts on behalf of a Collective Investment Scheme that is not constituted by a person, for example a Unit Trust.)

Therefore any Investment Entity other than:

- a Collective Investment Scheme
- or a manager or operator of a Collective Investment Scheme that is not constituted as a person,

will not have any reporting responsibilities in relation to the interests in the Collective Investment Scheme.

Nevertheless an entity may have reporting responsibilities if it maintains Financial Accounts other than those of the Collective Investment Scheme – see the section on fund distributors below.

2.32 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 as defined for the purposes of the Agreement.

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 fund. As shown in the following example, if a customer invests in a fund via a fund platform, the responsibility to report on the customer may lie with the platform.

Example 1

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 (see 2.34 below).

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 2.38).

2.33 Fund nominees - Distributors in the chain of legal 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.

In considering whether such a distributor meets the condition requiring 20 per cent of the entity’s gross income to derive from holding financial assets and from related financial services, consideration should be given as to whether the income derived from acting as nominee arises in another group company, or whether income is derived from commission, discounts or other sources.

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

HMRC will treat fund nominees, fund intermediaries and fund platforms 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 accounts of others.

For the purpose of aggregating accounts to determine whether any Pre-existing Custodial Accounts are below the de minimis threshold, a Custodial Institution will need to consider all the Financial Accounts of its customers without reference to whether the customers underlying interests are in different Collective Investment Schemes.

2.34 Advisory only distributors

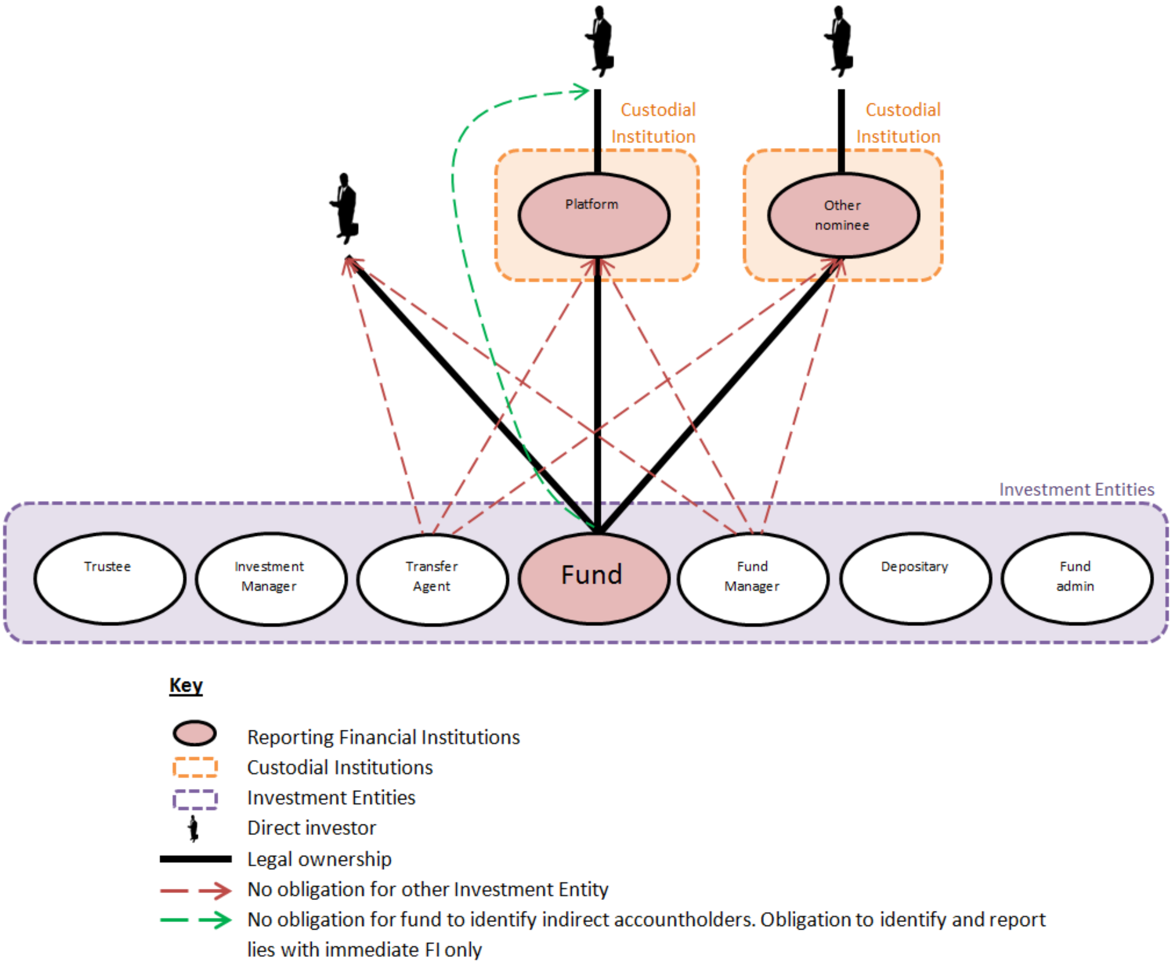
Such distributors, which may include financial advisers, may nevertheless be asked by Financial Institutions to provide assistance in identifying account holders and obtaining self certifications (See Section 4.7).

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 HMRC does not regard such advisory only distributors 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 HMRC believes that reliance on third parties for account identification and self certification in FATCA should work in a similar manner to Regulation 17 of the Money Laundering Regulations 2007. As with this Regulation, Financial Institutions should have no obligation to use distributors to comply with their FATCA obligations, and may instead obtain self certifications directly.

2.35 Identification and reporting on interest in a Collective Investment Scheme

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



Depending on how the fund is structured, various entities may fall within the definition of Investment Entity. However, as set out at 2.32 above, provided the fund is a Collective Investment Scheme, only the fund has obligations under the Regulations. The fund itself will need to determine which entity carries out the obligations to identify, verify and report on account holders that are Specified US Persons, by reference to its own governance structure and contractual arrangements.

Example 1

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 under the UK legislation. 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 Specified US Persons.

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.

Investment Trust Companies (ITC's) and Venture Capital Trusts (VCT's)

ITC's and VCT's are classified in the Regulations as Investment Entities.

Although the ITC or VCT will be a Reporting UK Financial Institution, it will not generally need to report on its shares and securities which are regularly traded on an established securities market as these will not be Financial Accounts. Accordingly, in many scenarios it will simply need to file a nil return with HMRC unless it maintains other Financial Accounts. For further guidance on "regularly traded on an established securities market" please see Section 3.10.

To be treated as a VCT or ITC the entity must be approved by HMRC for the general purpose of either the Venture Capital Trust scheme or, in relation to ITC's, meet the conditions in section 842 ICTA 1988.

Guidance on the requirements for approval required by HMRC can be found in the following HMRC Manuals

- Re VCT's: http://www.hmrc.gov.uk/manuals/vcmmanual/index.htm
- Re ITC's: http://www.hmrc.gov.uk/manuals/ctmanual/CTM47110.htm

ITC and VCT shares and securities are invariably listed on the London Stock Exchange and so, subject to the conditions set out in Section 3.10 should meet the requirement of "regularly traded on an established securities market" and will not constitute "Financial Accounts".

Where an ITC is in a members voluntary liquidation it will be deemed to meet the regularly traded condition providing no new investments are made.

2.36 Trusts

A trust could fall within any of the definitions of Financial Institution depending on the nature of its activities and the assets it holds. For example, a Trust could be a Custodial Institution where an Employee Benefit Trust continues to hold shares for an employee after they have been granted.

Trusts as Financial Institutions

For most other structures it is expected that a trust will be treated as a Financial Institution most commonly where it meets the definition of an Investment Entity.

The Agreement sets out that a Trust is, for these purposes, to be treated as an Entity.

For full details of what constitutes an Investment Entity please refer to Section 2.28 above. However an Investment Entity is broadly an entity that undertakes investment activity on behalf of customers, or (and more relevantly for Trusts) an entity that meets the financial assets test AND is managed by a Financial Institution.

With regard to Trusts, the test of being managed by a Financial Institution will be met where the Trust or its activities are being "professionally managed" (this would typically be where either one of the trustees is a Financial Institution, or the trustees have appointed a discretionary fund manager to manage the trust's assets).

If it is not professionally managed then the Trust will not be an Investment Entity. This means that the trust is likely to be treated as an NFFE (see Section 2.6 above) rather than a Financial Institution.

So, a Trust will be "professionally managed" and an Investment Entity, and therefore a Financial Institution, where:

- the Trustee is a Financial Institution;
- the Trustee (on behalf of the Trust) engages a Financial Institution to manage the Trust; or
- the Trustee (on behalf of the Trust) engages a Financial Institution to manage the Financial Assets of the Trust.

A Trust which does not meet these conditions will not be an Investment Entity. For example, where a non-professionally managed trust has a Depository Account with a Financial Institution, and where that Financial Institution does not manage the account or the funds in the account, then that would not result in the Trust being treated as a Financial Institution.

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 manages the investment strategy for the assets. This will usually be where the Trust has appointed a discretionary fund manager to manage their portfolio. Engaging a Financial Institution to manage the investment portfolio of the Trust will lead to the Trust being an Investment Entity even when the portfolio being managed contains assets that are retail investment products (although it is unusual to only have retail investment products in a professionally managed portfolio).

For example, if a Trust holds an insurance policy provided by a Financial Institution this would not on its own lead to the Trust being an Investment Entity. Although the underlying investments that fund the policy will be professionally managed (by the Financial Institution providing the product), the product itself is not being professionally managed. In this situation the Trust would be a non-Financial Entity holding a Financial Account with other Financial Institutions.

The requirement that the Financial Institution has management of the investment strategy of the assets means that the holding of certain assets (such as units purchased in investment funds) may superficially appear to meet that condition. However on closer inspection, the simple holding or acquisition of a retail type product or service will not meet the condition.

A Financial Institution that is engaged by the Trust solely to acquire or dispose of Financial Assets does not amount to management of those assets by the Financial Institution. Engaging a Financial Institution in this way, for instance to provide broker services, would not lead to the Trust being an Investment Entity.

Where the assets being managed are in a pool used to fund the product or service purchased, the mere acquisition of that product or service will not constitute professional management of the assets of the Trust. In this case the Trust holds a fixed asset which increases in value through the management of the pooled assets being invested (similar to a bank investing their pooled deposits collectively). The Trust's holding of that fixed asset is not being professionally managed. Investment products and services of this nature may include:

- Insurance products,
- Investment bonds,

Other products and services that provide an interest in managed portfolios of underlying assets and are also sold on a retail basis will not lead to the Trust being treated as professionally managed for the same reasons. The Glossary of Definitions in the Financial Services Handbook defines retail investment products. A Trust that acquires a retail investment product, or purchases a financial service that is designed to give a similar exposure and return to a retail investment product, and is sold on a retail basis, will not be treated as an Investment Entity solely because of this acquisition.

Collectively managed investments that are sold on a retail basis may include:

- Funds of funds,
- Unit trusts,

If the Trust has acquired these assets through retail investment only then the Trust will be an NFFE that is holding a Financial Account or other similar asset.

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 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.
http://www.step.org/sites/default/files/Policy/fatca-flow-chart-12-august-2014.pdf
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.

Additional assets

In some cases a retail financial service may acquire certain assets in the name of the customer so they are held 'outside wrapper', such as a portfolio including direct security holdings under a managed advisory mandate. This is commonly done for cost reduction and/or risk management purposes by the service provider. Where these products are acquired as part of a retail service then this will not lead to the holder meeting the 'professionally managed' test.

If the customer has acquired additional assets that are not connected to the financial service, such as shares transferred in by the settlor, then these assets can only lead to the holder meeting the 'professionally managed' test if those assets are *themselves* subject to professional management.

Rebuttable presumption

As a rule of thumb, an entity that is not eligible to be deemed as Professional Investors Client under the categorisation in the Conduct of Business Sourcebook (COBS 3) of the FCA Handbook is not expected to be an FI. Where an entity has purchased an investment product or service on a retail basis from a Financial Institution this will usually be a financial account maintained by the service provider and it will not affect the status of the client. However, if the entity in question has engaged another Financial Institution to undertake an investment business/activity *on their behalf* (rather than simply acquiring a retail investment service) then this position is subject to rebuttal.

Trusts as Non Reporting Financial Institutions

Under the Agreement a Trust that is a charitable organisation will be treated as a Non Reporting UK Financial Institution (see Section 2.12).

Trusts that are not Financial Institutions

Where a Trust is not a Financial Institution it will be a NFFE. In such circumstances it must be determined whether the Trust is either an Active or Passive NFFE (see Section 2.6).

Where the Trust is a Passive NFFE, the Financial Institutions where the Trust holds Financial Accounts will be required to undertake the necessary due diligence procedures to determine if any of these accounts are Reportable Accounts.

Registration - Trustee documented Trust

For UK resident Trusts that are Investment Entities where the **Trustee** of the Trust is a Reporting Model 1 Foreign Financial Institution, Participating Foreign Financial Institution or Reporting US Financial Institution, and the trustee reports all information required with respect to all US Reportable Accounts of the Trust, the Trust itself will be treated as a Non-Reporting UK Financial Institution and will not be required to register with the IRS.

Where the Trust is an Investment Entity because it is managed by a Financial Institution, but that Financial Institution is not the Trustee, the Trust will be required to register as an Investment Entity unless the Trust is able to take advantage of the Sponsored Investment Entity~~,~~ or Owner Documented Financial Institution categories.

Reporting

Trusts that are Investment Entities but are not in a position to take advantage of the Trustee Documented Trust, Sponsored Investment Entity or Owner Documented Financial Institution Deemed Compliant categories are able to use a third party service provider to meet their obligations under the Agreement however the legal responsibility remains with the Trust.

The information to be reported in relation to Trusts that are Investment Entities will be the Debt or Equity Interest in the Trust as set out in Section 3.8.

This applies to interests held by:

- a settlor of the trust
- a beneficiary that is entitled to a mandatory distribution (either directly or indirectly) from the Trust;
- a beneficiary that receives a discretionary distribution (either directly or indirectly) from the Trust in the calendar year.

The information required on Specified US Persons will be:

- Name
- Address
- TIN (where applicable)
- Account number or functional equivalent
- The account balance or value

Balance or Value

The balance or value to be reported in terms of a person who is the Beneficial Owner of a portion or all of the Trust will be the most recent value calculated by the Financial Institution.

The balance or value for a beneficiary that is entitled to a mandatory distribution (either directly or indirectly) from the Trust will be the net present value of amounts payable in the future.

Where a specified US person has a mandatory interest in the trust, the net present value of their future interest should be measured on a recognised actuarial basis.

Where the settlor of the trust is a US person, the total value of the assets of the trust must be consistent with that used by the trustees for valuation purposes and should be based on a recognised accounting standard. Whilst it would be normal to value listed securities at the appropriate market rate on the day concerned, it is acceptable to value unlisted securities at the original book value unless another accounting basis was used by the trust for normal valuation purposes.

Reportable Payments

Payments to be reported are the total gross amounts paid or credited to any Beneficial Owner and beneficiaries who receive mandatory or discretionary distributions during the calendar year or appropriate reporting period, including aggregate payments in redemption (in whole or in part) of the account.

Employee Equity Incentives

Shares held in trust under an employee equity incentive arrangement may be in a Financial Account and therefore subject to Reporting by the Financial Institution that holds the account. This is subject to certain employee equity incentives not being treated as Financial Accounts under Annex II of the Agreement (see 3.13).

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 either a Custodial or an Investment Account.

In cases such as Employee Benefit Trusts, or other similar structures which do NOT maintain financial accounts, when shares are allocated and the trustee is directed as soon as reasonably possible to transfer the assets (to the beneficiary, broker, custodian etc), the Trust will not be treated as maintaining a Financial Account for the duration of time it takes to complete the transfer.

2.37 Partnerships

For the purposes of the Agreement, partnerships are regarded as an entity. The type of entity will depend on the activities undertaken by the partnership and a partnership may fall into any of the categories of Financial Institution.

Where a partnership is a Financial Institution it will need to identify any Financial Accounts it holds, including any equity interest in the partnership itself. This means that a partnership will be required to identify and where necessary report on the capital or profits interest in the partnership of any partners who are Specified US Persons.

2.38 Central Securities Depository (CSD)

In the UK a 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). 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 operated by Euroclear UK & Ireland Limited (EUI), or the Financial Institution that accesses EUI on their behalf, are responsible for any reporting required by the Agreement in respect of securities held by means of EUI. EUI acting as the CSD is not required to undertake any 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 (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, in accordance with Article 5, paragraph 3 of the Agreement, the CSD may report on behalf of such participants in respect of interests recorded as a third party service provider.

2.39 Personal Investment Companies

Personal Investment Companies will need to consider whether they are within the definition of Investment Entity. Similar to the treatment of Trusts where a Personal Investment Company is managed by a Financial Institution it will be an Investment Entity.

2.40 Securitisation Vehicles

The following relates to securitisation vehicles established post 1 December 2012 and includes an example of a securitisation cash flow.

For vehicles set up before 1 December 2012 please see Section 2.21 (Limited Life Debt Investment Entities) for transitional rules.

Securitisation structures are typically legally remote from the Financial Institution 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.

The common principles as to whether an entity meets the definition of a Financial Institution should be applied to all entities within a securitisation structure. More specifically, the expectation would be that issuing entities are likely to be classified as Investment Entities on the basis of their activities, Trusts should be classified in accordance with the Trust principles set out within Section 2.37 and holding and funding entities will likely be treated as Financial Institutions in their own right.

A securitisation vehicle that is a Financial Institution will need to consider if it has any Financial Accounts that may be reportable. If there are no Financial Accounts a nil return is still required.

Example of a post 1 January 2012 Securitisation programme

Cash Flows:

1. Mortgage customer makes their regular monthly mortgage payment to bank A plc.
2. Bank A plc identifies appropriate SPV that cash belongs to and pays cash to the Trust. .
3. Once a month on the distribution date the Trust pays cash to the funding company.
4. 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 – 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 Specified US 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 which will include gross amounts of interest paid.

2.41 Direct Reporting NFFEs and Sponsored Direct Reporting NFFEs

In its Notice 2013-69 the U.S. has indicated changes to their Regulations that will introduce a new category of Passive NFFE - a Direct Reporting NFFE.

A Direct Reporting NFFE is now described at §1.1472-1(c)(3) and will be treated as an Excepted NFFE. It will be required to elect to, and report directly to the IRS certain information about its direct or indirect substantial U.S. owners. The NFFE will also be required to register with the IRS to obtain its Global Intermediary Identification Number (GIIN).

The Notice also sets out that an Entity will be allowed to sponsor one or more Direct Reporting NFFEs (Sponsored Direct Reporting NFFEs).

3. Financial Accounts

A Financial Account is an account maintained by a Financial Institution. However not all accounts will be Financial Accounts for the purposes of the Agreement. For example ISA Accounts are exempted accounts (see Section 3.11 for further details).

There are 5 categories of Financial Account:

- Depository Accounts (Section 3.3)
- Custodial Accounts (Section 3.4)
- Cash Value Insurance Contracts (Section 3.6)
- Annuity Contracts (Section 3.7)
- Equity and Debt Interests (Section 3.8).

Each category of Financial Account is subject to certain exclusions and exemptions. Details can be found in the relevant sections indicated above.

3.1 Introduction

Reporting UK Financial Institutions (UKFIs) must provide information to HMRC on an annual basis in relation to Financial Accounts held by Specified US Persons. In the Agreement these accounts are referred to as Reportable Accounts.

A Financial Institution, unless otherwise exempt, must identify:

- whether it maintains any Financial Accounts
- the type of Financial Accounts held, and
- whether the account holder of those Financial Accounts are Specified US Persons or Controlling Persons of a passive NFFE.

A Financial Account is a US Reportable Account where it is held by one or more Specified US Persons, or by a Non-US Entity with one or more Controlling Persons that are Specified US Persons. If the account holder of a US Reportable account ceases to be a Specified US Person, or the

Controlling Persons of a Non-US Entity cease to be Specified US Persons, then the Financial Account will cease to be a US Reportable Account.

For the purposes of the Agreement the term Financial Account is broadly defined and therefore may include products or obligations that would not normally be regarded as an ‘account’ in either other UK legislation or in everyday commercial use. For example it includes all Cash Value Insurance Contracts (regardless of the cash/surrender value of the contract), Annuity Contracts and Equity and Debt Interests.

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 (See Section 3.4).

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

Accounts maintained by Financial Institutions

In relation to each type of Financial Account, "maintained" has the following meaning:

- A Depository Account is maintained by the Financial Institution, which is obliged to make payments with respect to the account.
- A Custodial Account is maintained by the Financial Institution that holds custody over the assets in the account (including a Financial Institution that holds assets in the name of the broker ("in street name") for an account holder.

- An Insurance Contract or an Annuity Contract is maintained by the Financial Institution that is obligated to make payments with respect to the contract.
- Any Equity or Debt Interest in a Financial Institution, where that Equity or Debt Interest constitutes a Financial Account, is treated as being maintained by that Financial Institution where that Financial Institution is an Investment Entity.

A Financial Institution may maintain more than one type of Financial Account. For example a Depository Institution may also maintain Custodial Accounts as well as Depository Accounts.
When a Financial Account is created will depend on the type of the account. An account will be created when the Financial Institution is required to recognise the account based on existing operating procedures or under the regulatory or legal requirements of the jurisdiction in which it operates.

Where a customer exercises their cancelation rights (i.e. they cancel the account within the "cooling off" period) a Financial Account is created and the value to be reported (if reportable) is the closing value.

Reportable Accounts
A Financial Account is a US Reportable Account where it is held by one or more Specified US Persons, or by a Non-US Entity with one or more Controlling Persons that are Specified US Persons.

Reporting Financial Institutions with no Reportable Accounts will be required to make a nil return to HMRC on an annual basis.

Section 4 and subsequent sections set out the due diligence procedures that must be followed by a Financial Institution, or by a third party on behalf of the Financial Institution, in order to identify Reportable Accounts.

Where a Financial Institution engages a third party to carry out the Financial Institutions' due diligence and reporting obligations then those obligations remain with the Financial Institution.

Ceasing to be a Reportable Account

If the account holder of a US Reportable account ceases to be a Specified US Person, or the Controlling Persons of a Non-US Entity cease to be Specified US Persons, then the Financial Account will cease to be a US Reportable Account.

If the account holder, or the Controlling Persons of a Non-US Entity, are Specified US Persons at any point in the reportable period then the Financial Account will be a US Reportable Account for that period.

However, following a change in circumstance, if the Financial Institution is not in a position to review multiple statuses held during the reportable period when preparing their FATCA return (for instance if the account holder has had one or more changes in address) then the Financial Institution should treat the Financial Account as US Reportable Account or not based on the status at the end of the reportable period.

3.2 Account Holders

In order to identify the person or entity that is the account holder under the terms of the Agreement, a Financial Institution may need to consider the type of account and the capacity in which it is held.

Trusts and Estates

Where a Trust or Estate is listed as the holder of a Financial Account then they are to be treated as the account holder, rather than any owner or beneficiary (although accounts held by the estate of a deceased person are not Financial Accounts – Section 3.14).

However, when a Trust/Estate is treated as the account holder of a Financial Account this does not remove the requirement to identify the Controlling Persons where that entity is a Passive NFFE.

In relation to a share register, where an issuer's share register has been the subject of an acquisition, (for example a takeover by Company A of Company B) and shareholders of Company B have not responded and accepted the offer, they become known as dissenters or dissenting shareholders. On completion of the takeover, the consideration is transferred to a trustee to be held on the dissenters' behalf until they claim the proceeds and it is paid to them. In this case the trustee does **not** become the account holder. This is because the original shareholdings (equity interests) are not Financial Accounts unless Section 3.8 applies.

Partnerships

Where a Financial Account is held in the name of the partnership which is a Financial Institution it will be the partnership that is the account holder rather than the partners in the partnership.

Accounts held by persons <u>other than</u> a Financial Institution.

A person, other than a Financial Institution, that holds a Financial Account for the benefit of another person, as an

- agent,
- custodian,
- nominee,
- signatory,
- investment adviser, or
- intermediary

is not treated as an account holder with respect to such account for purposes of the Agreement. Where the Financial Account does not meet the conditions relating to Intermediary Accounts (Section 3.15) then the person on whose behalf the account is held is the account holder.

Note: if an account is held for the benefit of another person by a Financial Institution (including an Exempt Beneficial Owner or a Deemed Compliant Financial Institution) such a Custodial Institution, then the Financial Institution will be the account holder and not the person on whose behalf the account is held. It will the account that the person maintains with that Financial Institution where they are the account holder.

Example 1

Where a parent opens an account for a child, the child will be the account holder.

Joint Accounts

Where a Financial Account is jointly held, the balance or value in the account is to be attributed in full to all joint holders of the account. This will apply for both aggregation and reporting purposes.

If an account is jointly held by an individual and an entity, the Financial Institution will need to apply separately both the individual and entity due diligence requirements in relation to that account.

Cash Value Insurance Contracts and Annuity Contracts

An Insurance or Annuity Contract is held by each person entitled to access the contract's value (for example, through a loan, withdrawal, surrender, or otherwise) or with the ability to change a beneficiary under the contract.

Where no person can access the contract's value or change a beneficiary, the account holders are any person named in the contract as an owner and any person who is entitled to receive a future payment under the terms of the contract. When an obligation to pay an amount under the contract becomes fixed, each person entitled to receive a payment is an account holder.

Joint life second death Cash Value Insurance Contracts

Joint life second death Cash Value Insurance Contracts are sometimes taken out by spouses. Such policies insure both parties, but do not pay out on the death of the first person. Instead the policy remains in force until the other person has died or the policy is surrendered.

Where one of the policyholders whose life is assured is a US Person (and the other is not a US person) this will be a Reportable Account which is reported annually. If the US Person dies during the term of the insurance it will cease to be a US Reportable Account.

Entity account holders

An entity account may be a US Reportable Account if either the entity is a Specified US Person, or it is a non-US entity who has controlling persons who are Specified US Persons.

The entity itself will be resident where it is tax resident, the general rules for where an NFFE is held to be resident are the same as those for a Financial Institution (Section 2.2).

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

However a reportable entity may also be tax transparent (partnerships, trusts, foundations etc). For reporting purposes, an entity will be held to be resident, even if the law of that country or jurisdiction does not treat the entity as a taxable person, e.g. a business entity based in the US will be resident in the US, whether or not it has ‘checked the box’ to be treated as a taxable person.

3.3 Depository Account

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

The account does not have to be an interest bearing account.
A Depository Account will include any credit balance on a credit card (a credit balance does not include credit balances in relation to disputed charges, but does include credit balances resulting from refunds of purchases) issued by a credit card company engaged in banking or similar business.

However, credit cards will not be considered to be Depository Accounts where the issuer of the credit card implements policies and procedures (by the later of 30 June 2014 or the date it registers as a Financial Institution) 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.

Where a Financial Institution elects to apply the threshold for Depository Accounts this will mean that a credit card account will only be reportable where, after applying the aggregation rules (See Section 4.14):

- there are no other accounts and the balance exceeds $50,000
- the total balance on all aggregated Depository Accounts (including the credit card balance) exceeds $50,000

See Section 2.19 for information in respect of entities that are credit card issuers.

The definition of Depository Account also includes an amount held by an Insurance Company under an agreement to pay or credit interest. However, amounts held by an Insurance Company awaiting payment in relation to a Cash Value Insurance Contract where the term has ended will not constitute a Depository Account.

3.4 Custodial Account

A Custodial Account is an account (other than an Insurance Contract or Annuity Contract) for the benefit of another person that holds any financial instrument or contract held for investment.

Financial instruments/contracts which can be held in such accounts can include, but are not limited to:

- a share or stock in a corporation
- a note, bond, debenture, or other evidence of indebtedness
- a currency or commodity transaction
- a credit default swap
- a swap based upon a non-financial index
- a notional principal contract (in general, contracts that provide for the payment of amounts by one party to another at specified intervals. These are calculated by reference to a specified index upon a notional principal amount in exchange for specified consideration or a promise to pay similar amounts)
- an Insurance Contract or Annuity Contract, and
- any option or other derivative instrument for the benefit of another person.

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 cash/surrender value of the Cash Value Insurance Contract.

A Custodial Account does not include financial instruments/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.

Collateral

Notwithstanding the above, the Custodial Accounts definition includes all 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 FATCA purposes..

3.5 Insurance Contract

An Insurance Contract is a contract, other than an Annuity Contract, under which the issuer agrees to make payments upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.

3.6 Cash Value Insurance Contract

This is an Insurance Contract where there is a cash surrender or termination value (determined without reduction for any surrender charges or policy loan) or the policyholder can borrow against (or with regard to) the contract. It includes all Cash Value Insurance Contracts regardless of the cash/surrender value of the contract.

It is most likely that the type of UK insurance products within this category will be:

- Investment bonds
- Capital redemption policies
- Deferred annuities in the accumulation phase
- Maximum Investment Plans and savings back life assurance policies

A Cash Value Insurance Contract does not include:

- Indemnity reinsurance contracts between two insurance companies
- term life and pure protection Insurance Contracts, including ~~any~~ a refund of any policy premium due to cancellation or termination of the

policy, a reduction in amount insured, or a correction of an error in relation to the premium due and any policyholder bonus.

In determining the cash/surrender value of a Cash Value Insurance Contract it does not include an amount payable on the death of an individual insured under a Life Insurance Contract.

When a policy becomes subject to a claim and an amount is payable this does not create a New Account, it is still the same policy.

3.7 Annuity Contract

An Annuity Contract is a contract under which the Financial Institution 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 IPTM4000 Purchased Life Annuities.

The following are not considered to be an Annuity Contract for FATCA purposes.

- Pension annuities – as per Section 3.11 these are exempt products
- Immediate needs annuities - see IPTM6205.
- Periodic payment orders.

Reinsurance of Annuity Contracts between two Insurance Companies are excluded from this definition.

3.8 An Equity or Debt Interest in an Investment Entity

Where an Investment Entity is an asset manager, investment advisor or other similar entity then their Debt and Equity Interests are excluded from being a Financial Account. This mirrors the treatment of Debt and Equity interests in entities that are solely Depository or Custodial Institutions.

Debt and Equity Interests (other than regularly traded interests) are only Financial Accounts in relation to those entities that are Investment Entities because:

- the entity's gross income is attributable to investing, reinvesting or trading in financial assets, **and** they are managed by a Financial Institution including another Investment Entity, **or**
- the entity functions or holds itself out as a Collective Investment Vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy of investing, reinvesting or trading in financial assets.

In the case of a partnership that is a Financial Institution, the term Equity Interest means either a capital or profits interest in the partnership.

In the case of a Trust that is a Financial Institution, an Equity Interest means either an interest held by any person treated as a settlor or beneficiary of all or a portion of the Trust, or any other natural person exercising ultimate effective control over the Trust.

A Specified US Person shall be treated as being a beneficiary of a Trust if such person has:

- the right to receive a mandatory distribution (either directly or indirectly) from the Trust; or
- receives a discretionary distribution (either directly or indirectly) from the Trust

3.9 An Equity or Debt Interest in a Holding Company or Treasury Centre of a Financial Group

Any Equity or Debt Interest (other than regularly traded interests) in a Holding Company or Treasury Centre described in Section 2.30 will be a Financial Account where:

- Its related entities include one or more Investment Entities or Passive NFFEs, and the income derived by such Investment Entities or Passive NFFEs is 50 per cent or more of the aggregate income earned by the related entity group
- The redemption or retirement amount or return earned on the interest is determined, directly or indirectly, primarily by reference to one or more Investment Entities or one or more Passive NFFEs that are members of the entity's the related entity group
- The value of the interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to withholdable payments; **or**
- The interest is issued with a principal purpose of avoiding the reporting or withholding requirements of Section 4.

3.10 Debt or Equity Interests regularly traded on an established securities market.

The Agreement makes clear that with regard to Depository and Custodial Institutions and Specified Insurance Companies that the only debt or equity interests reportable are those where the class of interest has been established for the avoidance of reporting under the Agreement.

The rules differ for Investment Entities that are Financial Institutions solely because they are an Investment Entity. Here the Agreement excludes those debt and equity interests that are "regularly traded on an established securities market "

For the purposes of the Agreement an Equity or Debt Interest will be considered "regularly traded" if it is listed on a recognised stock exchange. As such HMRC will treat the term regularly traded on an established securities market, as having the meaning as per Section 1005(3) ITA 2007.
However please see the restrictions to this treatment set out below.

HMRC publishes tables of named recognised stock exchanges (Table 1) and recognised stock exchanges under the law of named jurisdictions (Table 2). Both of these tables state which markets on which securities would meet the HMRC definition of 'listed' for the purposes of HMRC legislation. http://www.hmrc.gov.uk/fid/rse-recognised-exchanges.htm#3

Provided that the debt or equity interest meets the required conditions for “regularly traded on an established securities market” there is no need to check annually if any transactions have been undertaken. This provides consistency with existing HMRC treatment and “recognised stock exchange” includes the London Stock Exchange, AIM and PLUS.

The main markets of the London Stock Exchange and the PLUS Listed market meet the US Established Securities Market definition in their own right as they are EU Regulated Markets under Title III MiFID and are included in the FSA list of Regulated Markets.

The AIM, PLUS Quoted and PLUS Traded Markets are **not** Regulated Markets under Title III MiFID.

However for the purposes of this legislation HMRC view these as also meeting the requirement as they are all markets of exchanges that have been designated as recognised investment exchanges by the FSA, they are recognised stock exchanges for the purposes of the US/UK Double Tax Convention (Article 23 uses the term listed or admitting to dealings on a recognised stock exchange) and they are within Section 1005 ITA 2007.

Restrictions applying to regularly traded on an established securities market

To prevent the risk that an entity could circumvent FATCA reporting by seeking a listing where there is no intention of the investment vehicle being widely available HMRC will in all cases treat as Financial Accounts those equity or debt interests established with a purpose of avoiding reporting in accordance with the Agreement - including interests that nevertheless meet the underlying criteria for regularly traded on an established securities market.

Where there is an attempt to set up a particular interest or class of interest to avoid reporting under the Agreement hen all debt and equity interests will become reportable. This also should achieve the objectives of not requiring major financial institutions to report on their interests but targets reporting at where it will be of most relevance.

In assessing whether a class of interest has been set up to avoid reporting HMRC will consider a number of factors, such as, **for example**:

- whether the Investment Entity is subject to regulation in the UK,
- it complies with HMRC conditions in relation to the provision of certain tax reliefs (for example in regard to HMRC approval for Investment Trust Companies and Venture Capital Trusts);
- whether the vehicle complies with the Genuine Diversity of Ownership Condition (see for example regulation 9A of SI 2006/964) which targets certain tax benefits only to funds where there is an intention that it is held widely for the benefit of a number of investors;
- whether the investor has any right to redeem their holding at net asset value:
- the degree to which the assets held in the underlying portfolio are exposed to investment or trading risk, (for example most ITCs will be listed under Chapter 15 of the UK Listing Rules (closed-ended investment funds). These rules require a company to have a published investment policy which demonstrates how they intend to manage their assets with a view to spreading investment risk), and
- whether the product is publically advertised through the issuance of a prospectus.

Please note the above is not an exhaustive list and where appropriate HMRC will consider each case on its particular circumstances.

3.11 Products exempt from being Financial Accounts

Annex II of the Agreement sets out certain products that have been agreed as low risk (in terms of the likelihood of being used for tax evasion) and which are exempt from being treated as Financial Accounts.

A product listed in Annex II is exempt from being a Financial Account even where the product is still subject to other reporting, such as for US source payments under the US Qualified Intermediary (QI) regime.

The Agreement also provides the capacity for Annex II to be updated, either to allow for other low risk products to be added or to remove products that are no longer deemed low risk.

Sections 3.12 to 3.13 detail identified UK accounts that are exempt from being a Financial Account and which are contained in Annex II of the Agreement.

3.12 Retirement Accounts and Products

All retirement accounts or products established under a:

- UK registered pension scheme under Part 4 of the Finance Act 2004;
- Non-registered pension arrangements 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

are not Financial Accounts and therefore a Financial Institution will have no reporting obligations under FATCA 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 phase

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

- Individual Personal / Stakeholder Pension Policy
- Group Personal / Stakeholder Pension Policy
- Self Invested Personal Pension Arrangement
- Free Standing Additional Voluntary Contribution Schemes
- Defined Benefit Schemes
- Defined Contribution Occupational Schemes
- Group Money Purchase Schemes
- Executive Pension Schemes

Decumulation phase

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.

The following types of annuities are commonly pension annuities (that is to say funded with the accumulated savings from a registered pension scheme):

- Lifetime Annuity
  - A lifetime annuity is a contract between Insurance Company and a pension scheme member under which the member hands over all or part of their pension fund to the Insurance Company which agrees to pay out a regular income to the scheme member for the remainder of that person's life. This includes all types of annuity that meet the requirements for being a Lifetime Annuity in paragraph 3 of Schedule 28 FA 2004.

  Scheme Pension
  - A scheme administrator may secure their liability to pay the member a scheme pension by purchasing an Annuity Contract from an Insurance Company or the pension may be paid direct from the scheme.
- Impaired Life Annuity
  - An impaired life annuity pays an income for life in the same way as a lifetime annuity or scheme pension. However, it pays a higher income to those suffering with certain medical conditions on the basis that they have a reduced life expectancy.
- Enhanced Annuity
  - An enhanced annuity also pays an income for life in the same way as a lifetime annuity or scheme pension.
- Short term annuity
  - A short term annuity is a contract between an Insurance Company and a pension scheme member under which the member hands over part of their drawdown pension fund to the Insurance Company which agrees to pay out a regular income to the scheme member for term of up to five years.

Cross border pensions

When a UK Financial Institution (regulated in the UK and subject to UK laws) writes pension business outside of the UK directly (though not through a permanent establishment in the country the person is resident in) this will not be a Financial Account if:

- the pension is excluded from the definition of Financial Account under another FATCA Agreement between the US and another Partner Jurisdiction, **and**
- the account or product written by the UK Financial Institution is subject to the same requirements and oversight under the laws of such other 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 1

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 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.

“Holloway “ business

A with-profits permanent health insurance contract where issued by a friendly society within the meaning of the Friendly Societies Act 1992 (c. 40).

This includes a long-term insurance contract offered or effected by a friendly society under the “Holloway system”, providing permanent health benefits and, in addition, investment benefits, where the investment benefits:

(a) are derived from surpluses accrued by the friendly society and apportioned to policyholders; and

(b) are payable to policyholders at maturity, on retirement, on death, or as otherwise specified by contractual provisions or individual society rules.

3.13 Certain Other Tax Favoured Accounts or Products

The following accounts or products are not to be treated as Financial Accounts for the purposes of the legislation:

- 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 the Individual Savings Account Regulations 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 - approved by HMRC under Schedule 2 Income Tax (Earnings and Pensions) Act 2003*.
- Save As You Earn Share Option Schemes - approved by HMRC under Schedule 3 Income Tax (Earnings and Pensions) Act 2003*.

- Company Share Option Plans - approved by HMRC under Schedule 4 Income Tax (Earnings and Pensions) Act 2003*.
- Immediate Needs Annuities.

*The Share Option Schemes and Profit Sharing Schemes approved by HMRC under Schedule 9 Income and Corporation Taxes Act 1988 that preceded and were replaced by the approved schemes in the Income Tax (Earnings and Pensions) Act 2003 are also considered not to be treated as Financial Accounts for the purposes of the legislation.

These accounts will not therefore be subject to the due diligence procedures and are not Reportable Accounts.

3.14 Accounts of Deceased Persons/Estates

Accounts of deceased persons will not be Financial Accounts where the UK Financial Institution that maintains them has received and is in possession of a formal notification of the account holder’s death (for example a copy of the deceased’s death certificate, a copy of the coroner’s interim certificate or a copy of the will). Such an account will not be reportable in the year of the account holder’s death or in subsequent years.

3.15 Intermediary Accounts (Escrow Accounts)

Accounts that meet the conditions below will not be Financial Accounts.

Accounts held by a UK Financial Institution for a non-Financial Intermediary (such as a firm of solicitors or estate agents) and established for the purposes of either:

- a court order, judgement or other legal matter on which the non-Financial Intermediary is acting on behalf of their underlying client; **or**
- 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.

Accounts provided by a non-Financial Intermediary as an intermediary (such as non-legal Escrow type accounts) that meet the conditions above will also not be Financial Accounts.

Where the Financial Account does not meet the above conditions then please refer to Section 3.16.

3.16 Undesignated/Designated Accounts

Where a Financial Account (held by a non-financial intermediary such as a solicitor) does not meet any of the conditions in Section 3.15, but is an account, holding on a pooled basis, 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 conditions are met, the Financial Institution is only required to undertake the due diligence procedures in respect of the non-financial intermediary.

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. In this case the Financial Institution should, if required report the underlying client Account Holders.

3.17 Segregated Accounts

Where an investment manager (see 2.28a) 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 instead are treated as Custodial Accounts of a Custodial Institution (who will need to treat the investors as their account holders as there is no interposing fund).

Note that in cases where an investment manager also holds assets on behalf of clients (by acting as a Custodial Institution), reporting will be required on those accounts by virtue of the investment manager falling 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,.

Fully disclosed clearing and settlement (Model B)

Where wealth management services are provided it is not uncommon for these Financial Institutions to enter into arrangements designed to facilitate the clearing and settlement of security transactions utilising a third party provider’s existing information technology infrastructure ‘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 his own behalf, and, acting as the agent of its underlying client.

For the avoidance of doubt 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 its underlying clients then the Financial Accounts remain the responsibility of the broker/wealth manager and not the clearing firm.

The broker/wealth manager may allow the clearing firm to undertake the reporting on its behalf.

The clearing firm however will treat the broker/wealth manager as its client (as it is a Financial Institution) and consequently as 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.

3.18 Dormant Accounts

A UK Financial Institution may apply its existing normal operating procedures to classify an account as dormant. Where normal operating procedures are not applicable, then the UK Financial Institution may classify an account as dormant for the purposes of the Agreement where:

- there has been no activity on the account in the past three years,
- the account holder has not contacted the Financial Institution regarding that account or any other account in the past six years,
- the account is not linked to an active account belonging to the same account holder.

The UK Financial Institution should classify the account based upon existing documentation it already has in its possession for the account holder. Where this review determines that the dormant account is reportable, then the UK Financial Institution should make the appropriate report notwithstanding that there has been no contact with the account holder. Where the Financial Institution has closed the account and transferred the customer's account balances to a pooled 'unclaimed balances account', however described, maintained by the bank there will be no customer account to report.

Where the Financial Institution has closed the account and there is no customer account to report, 'reactivation' will be treated as the opening of a New Account. The Financial Institution would then have to establish the account holders' status as if the account were any other type of New Account.

Although a dormant account will still be reportable, in the case of a Financial Institution who is a QI, there may be withholding implications to the dormant status. An account will no longer be dormant where:

- under normal operating procedures the account is not considered dormant.
- the account holder contacts the Financial Institution in relation to that account or any other account held by the account holder with that

Financial Institution including a former account holder whose account balances have been transferred to an unclaimed balances account.

- the account holder initiates a transaction with respect to the dormant account or other any other account held by the account holder with that Financial Institution.

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.

3.19 Rollovers

Where some or all of the proceeds of a maturing fixed term product are rolled over, automatically or with the account holder's interaction, into a new fixed term product this shall not be deemed to be the creation of a New Account.

3.20 Syndicated Loans

In relation to syndicated loan activities an Entity acting as a lead manager/fronting bank/agent ("Agent") of a syndicated Invoice Finance facility would not in itself be sufficient to bring that entity into the Investment Entity or Custodian Institution definition as a Financial Institution, provided no other business activities would bring the entity into that classification.

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 bank from the syndicate is typically appointed as Agent. The Agent's role is to act as the agent for the lenders, (i.e. not of the borrower) 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 certain terms of the facility.

In essence, 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 passes these monies back to the lenders to which they are due. 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 FI Agent acts for and on behalf of a syndicate of lenders which includes that lender, does not lead to the creation of a "Custodial Account" held by the UK Agent.

The lenders hold their interests in a loan directly rather than through the Agent and, therefore, the participation of a lender does not amount to a "Custodial Account" held by a UK Agent.

3.21 Electronic money issuers (E-Money)

The following table details some types of E-Money formats.

Product	'Financial Account' Under FATCA?	Comments
E-voucher*	No	None
Pay card	Yes	Where cash is retained in credit, this causes the arrangement to fall within scope of financial account. This is a depository account, and could only benefit from an exemption if the manufacturing FFI meets the qualified credit card issuers exemption.
prepaid credit card	Yes	Where cash is retained in credit, this causes the arrangement to fall within scope of financial account. This is a depository account, and could only benefit from an exemption if the manufacturing FFI meets the qualified credit card issuers exemption.
'Merchant services' account	Possibly	If cash is retained within a merchant 'account' then this is not a depository account, but may be a custodial account. If merchant services payments simply flow through systems but are not retained in an account, such payments would not be financial accounts. If in scope, the only comparable exemption in the US legislation is 'escrow account' exemption, but these are not "escrow" accounts.

In addition to the above, any account that would otherwise fall within the definition of a financial account (depository, investment, custodial, insurance) shall not fail to qualify as a financial account just because it is maintained in an e-Money format. For example, an online depository account (sometimes known as an ‘e-wallet’) is treated the same way as a traditional depository account.

4. Due Diligence

4.1 General Requirements

The Agreement sets out that Financial Institutions are responsible for the identification and reporting of Financial Accounts held by Specified US Persons.

A Financial Institution can rely on a third party service provider to fulfil its obligations under the legislation, but the obligations remain the responsibility of the Financial Institution and so any failure will be seen as a failure on the part of the Financial Institution.

Example 1

A fund may use a transfer agent, or other person such as a FA to fulfil its due diligence requirements or a company may use a business process outsourcing provider to fulfil its due diligence requirements. However, in the event of any irregularities or failure to meet the legislative requirements the Financial Institution, in this case the fund, will be held accountable.

A Financial Institution will need to follow one or more of the following three processes for identification of account holders:

- Indicia search
  - the Financial Institution can identify Reportable Account's by searching for US indicia by reference to documentation or information held or collected in accordance with maintaining or the opening of an account; this may include for example information held for the purposes of compliance with UK AML/KYC rules.
- Self certification
  - by obtaining a self certification from an account holder or Controlling Person of a Passive NFFE where applicable.

- Publicly available information (for entities only)
    - a Financial Institution may be able to determine, using information publically available, the FATCA status of an entity account holder

4.2 Acceptable Documentary Evidence

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 one 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.
- Any financial statement, third party credit report, bankruptcy filing, or US Securities and Exchange Commission 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:

1) For natural persons (one or more of the following documents):
    a) Passport
    b) National identity card
    c) Armed Forces identity card
    d) Driving licence
    e) Shotgun certificate issued by a UK police authority

2) For legal persons:
   a) For partnerships: a copy of the partnership agreement,
   b) For corporations: a copy of the Certificate of Incorporation or the Memorandum and Articles of Association,
   c) 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.

4.3 Withholding Certificates

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, where one is required to establish the account holder's status, in lieu of obtaining an updated version of the form until such time that the W-8 is required to be renewed.

4.4 Non-IRS forms for individuals

Financial Institutions can use their own form instead of an official IRS form **only** where the replacement form contains all of the following information:

- The name and permanent residence address of the individual
- All countries that the individual is resident in for tax purposes.
- Tax identification number(s), where issued, for each country listed. Where a country does not issue a tax identification number a 'functional equivalent' may be used. For an individual this would include, for example, a social security or national insurance number, a citizen or personal identification number or a resident registration number. For an entity it would include a business or company registration number or other similar form of identification.

The form must be dated and signed and should be accompanied by appropriate documentary evidence that supports the individual's status. (See Section 4.2)

The form can also request other information required either for other purposes, such as AML due diligence. Forms may be in either paper or electronic format.

A Financial Institution can use its own forms to cure any US indicia found in order to determine the account holder's status. (See Sections 5.6 to 5.11)

4.5 Validity of Documentation

A withholding certificate or other documentary evidence, including a self certification, 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.

4.6 Retention of Documentary Evidence

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 the Agreement, 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 US indicia were identified.

For High Value Pre-existing Accounts where a Relationship Manager enquiry is required, 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. Guidance on the identification and role of a Relationship Manager can be found at 5.17.

4.7 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 section 6.3)

Universal account systems

A Financial Institution may rely on documentation furnished by a customer for an account held at another branch location of the same Financial Institution or at a branch 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 branch 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 branch location of the same Financial Institution, or at a branch 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 branch 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.

4.8 Self Certification

Self certification may be used by a Financial Institution in relation to individual account holders as follows:

- To establish the tax residence of the holder of a New Individual Account,,
- To obtain a US TIN from a New Individual Account holder who is a US resident for tax purposes, **or**
- In order to show that an individual is not in fact a US citizen or US resident for tax purposes, even if US indicia are found in respect of a Lower Value or High Value Pre-existing Individual Account that they hold.

Self certification is required in relation to entities as follows:

- To establish the status of an entity where a Financial Institution cannot reasonably determine that the account holder is not a Specified US Person based on information in its possession or that is publicly available.
- To establish the status of a Financial Institution that is neither a UK Financial Institution nor a Partner Jurisdiction Financial Institution, unless a Financial Institution's status can be established from an IRS published list.
- To establish whether an entity is a Passive NFFE.
- To establish the tax residence of a Controlling Person of a Passive NFFE.

A self certification can be in any format and the term self certification includes the use of withholding certificates, such as the IRS W Series of forms, or other similar agreed forms.

A self certification provided by an account holder cannot be relied upon if a Financial Institution has reason to know that it is incorrect, unreliable or there is a change in circumstance which changes the account holder's status.

4.9 Confirming the Reasonableness of Self Certification

A Financial Institution receiving a self certification, must consider other information it has obtained concerning the individual to check whether the self certification is reasonable.

Example 1

Where an account holder provides one of the US indicia, such as a US address, to the Financial Institution but then provides a self certification confirming they are not US resident for tax purposes, the Financial Institution would need to make further enquiries to establish whether or not the self certification is reasonable.

Where a Financial Institution relies on AML procedures performed by other parties and no self certification is provided directly to the Financial Institution, the Financial Institution may request that the third party should obtain a self certification for the purposes of the legislation. The third party should then confirm the reasonableness of the self certification based on information that it has obtained.

For the avoidance of doubt, where self certification is received directly by the Financial Institution, there is no requirement to ensure that any third party that carried out AML/KYC procedures has confirmed its reasonableness. The Financial Institution is required to confirm this based on any other information it alone has obtained or holds. So where a Financial Advisor (FA) has performed AML checks, the Financial Institution is not deemed to have seen any documentation the FA has seen, unless the documentation is also provided to the Financial Institution.

Example 2

A Financial Institution has received a New Account opening instruction from an individual (this may have been by telephone) which includes a self certification regarding the account holder's residence status. The Financial Institution has performed AML procedures by checking the identity of the individual (name, address and date of birth) against the records of, for example a credit reference agency. The check confirmed the identity of the individual.

The Financial Institution can satisfy its obligations under the legislation by confirming the reasonableness of the self certification against other information in the account opening instruction and any other information it has on the individual. Where no other information exists, the reasonableness is confirmed based on information in the account opening instruction alone.

If the account opening instruction is received by phone, the account holder receives paperwork that includes their response to the self certification question and other questions asked. The account holder is requested to contact the Financial Institution in the event that any of the information is not correct within a specified period (say, 30 days). Provided the Financial Institution does not receive any other information from the account holder within the specified time, and provided the self certification is otherwise reasonable, then the requirements are met.

Example 3

A Financial Institution has received New Account opening documentation from an individual who has been advised by a Financial Adviser (FA). The Financial Institution is unaware of any previous contact with the individual and has not delegated the FA to carry out the FATCA due diligence procedures on its behalf. However, the Financial Institution can rely on the introducing FA to perform the necessary AML checks to identify the individual and is provided with a confirmation by the FA that they have done so.

The Financial Institution must therefore ensure it identifies the account holder's status for FATCA purposes. The documents received regarding the account opening contains information about the individual (name, address, date of birth, contact details including telephone number and email address), and a self certification that the individual is not resident in the US for tax purposes, and is not a citizen of the US.

The Financial Institution can satisfy its requirements under the Agreement by confirming the reasonableness of the self certification against other information contained in the account opening instruction and any other information it has on the individual. Where no other information exists the reasonableness is confirmed based on the information in the account opening instruction alone. The Financial Institution is not deemed to have seen any documentation the FA has seen.

Example 4

As per example 2, but the Financial Institution has delegated the FA to perform the FATCA due diligence procedures on its behalf.

The introducing FA carries out the AML checks and obtains a self certification from the individual confirming their FATCA status. The Financial Institution can satisfy its requirements under the Agreement by obtaining confirmation from the FA that they have confirmed the reasonableness of the self certification.

Example 5

As per example 1, but the individual has been introduced by an FA, although the Financial Institution has not placed reliance on the FA's AML procedures and instead has performed its own AML procedures.

The Financial Institution can satisfy its requirements under the Agreement by confirming the reasonableness of the self certification against other information contained in the account opening instruction and any other information it has on the individual. Where no other information exists the reasonableness is confirmed based on the information in the account opening instruction alone.

4.10 Self Certification for New Individual Accounts

The requirements for self certification for New Individual Accounts are focused on establishing the tax residency or residencies of the account holder, and for the specific purposes of the Agreement whether or not the account holder is a US citizen.

Obtaining a self certification

Unless the Financial Account is of a type that does not need to be reviewed, identified or reported, a Financial Institution is required to obtain a self certification to enable it to determine where the account holder is tax resident and whether or not they are a US citizen. The self certification process and documentation should allow for cases where the account holder is a tax resident of more than one country.

Citizenship is important when considering the Agreement as a US citizen is considered a US resident for tax purposes even if they are also tax resident elsewhere.

For the purposes of the Agreement, where a self certification determines that a New Individual Account holder is a US resident for tax purposes, there is also a requirement to obtain a US Taxpayer Identification Number (TIN) from the account holder. (See Section 4.17)

Where a self certification is already held

If the individual already holds a self-certification for the account holder, for instance, if one has been obtained for another Financial Account, then provided the Financial Institution is able to access this document (see Section 4.8) they will be held to have ‘obtained’ this document. However, if there has been a Change in Circumstance since this self certification was obtained (see Section 4.18), or any of the information obtained when the New account is opened indicates that the previous self-certification can no longer be relied upon, then a new self certification must be obtained.

Timing of a self certification

It is expected that a self-certification will be requested as part of the account opening procedure for new customers. It is not mandatory that the self certification must be obtained *before* the account can be opened, however the Financial Institution should requests and obtains the self certification within a reasonable period (90 days or a reasonable length of time determined by the circumstances).

If for some reason the Financial Institution is unable to obtain a valid self-certification on opening of the account by the time that the account would need to be reported (e.g. an assignment of an insurance contract where the Financial Institution is unable to refuse the account even though no self-certification is provided, the self certification provided cannot be relied upon, or the account holder has simply not yet replied) then the account should be treated as reportable from the date it is opened. As the account is reportable if a self certification has not been obtained, reporting it is compliant with data protection law. However if the Financial Institution subsequently receives a self certification that shows the account was NOT reportable they are entitled to make a 'correction' to their report.
Note: This is a different treatment to the reporting of a pre-existing account where if indicia are found the account is not treated as reportable until 90 days after the account holder has been asked for a self certification.

Wording of self certification

A Financial Institution can choose the form of wording it uses to determine the tax residence of a New Individual Account holder. However the wording must be sufficient for an account holder to confirm the country or countries where they are tax resident and if they are a US citizen.

Format of the self certification

Financial Institutions may permit individuals to open accounts in various ways. For example individuals can make investments or purchase financial products by telephone, online or on paper application forms. They may even invest without using any of the Financial Institution's set application processes and instead send a payment with a covering letter (which is then followed up with required documentation). The method of self certification does not necessarily have to follow the existing account opening or application method.

Self certifications can be obtained in any of these account opening procedures. The following examples are intended to illustrate how these may operate, but are not exhaustive.

Example 1 - Telephone Applications

An individual makes a telephone call to a Financial Institution, asking to open an account in line with the Financial Institution's normal account opening procedures.

The Financial Institution asks the account holder to state the countries in which they are tax resident and whether they are a US citizen. The individual provides this information on the phone and the Financial Institution records the confirmation on its system. Subsequent paperwork sent to the investor to confirm the account opening should include their response to these self certification questions and require them to contact the Financial Institution in the event that it is not correct.

Example 2 - Online Applications

An individual accesses the website of a Financial Institution to open an account in line with the Financial Institution's normal account opening procedures. On the account opening web page, along with information about the individual such as name and address, the individual is asked to select the appropriate country or countries in which they are tax resident and whether they are a US citizen.

4.11 Self Certification for Pre-existing Individual Accounts

If, US indicia are found suggesting that the account holder is potentially a US citizen or US resident for tax purposes, then the Financial Institution must treat the account as a Reportable Account.

However, if the Financial Institution obtains a self certification from the account holder confirming their non-US status and obtains or has previously reviewed and recorded details of any other documents required under the applicable procedures, then the account would not be treated as reportable.

4.12 Self Certification for New Entity Accounts

For certain Entity Accounts (see Section 8.3) a Financial Institution can identify the Entity Account Holder by relying on information it holds or that is publically available. Where it is unable to do so it must obtain a self certification from the Entity Account holders who are identified as one of the following:

- a Specified US Person.
- a Financial Institution that is neither a UK Financial Institution nor a Partner Jurisdiction Financial Institution (Participating FFI, a Deemed Compliant FFI, an Exempt Beneficial Owner, or an entity which is otherwise excluded as a Financial institution, as defined in relevant US Treasury Regulations).
- a Passive NFFE.

For entities that are Passive NFFEs, the Financial Institution must identify the Controlling Persons and obtain a self certification from the account holder or any Controlling Persons to determine whether they are a US citizen or are resident of the US for tax purposes.

This determination can be achieved in the same way as described for New Individual Accounts in Section 4.10 above.

4.13 Self Certification for Pre-existing Entity Accounts

Self certification is required for Pre-existing Entity Accounts in the following situations:

An entity account holder is identified as a Specified US Person.

Then the Financial Institution will be required to treat the account as reportable unless it obtains a self certification showing that the account holder is not a Specified US Person.

The entity account holder is not a UK Financial Institution or Partner Jurisdiction Financial Institution.

The entity account holder will be treated as a Non-Participating Financial Institution unless a self certification is obtained that identifies the entity as a Certified Deemed Compliant FFI, an Exempt Beneficial Owner or an Excepted FFI, as these terms are defined in relevant US Treasury Regulations.

The entity account holder is a Passive NFFE (an entity account holder will be a Passive NFFE if it is not an Active NFFE).

The Financial Institution must obtain a self certification from the account holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the entity is an Active NFFE.

If the account balance held by one or more **Passive** NFFEs exceeds $1,000,000, a self certification is required from the account holder or Controlling Person.

4.14 Aggregation

To identify whether the accounts are reportable and whether they are Lower Value Accounts or High Value Accounts a Financial Institution will need to consider aggregation of accounts of both individuals and entities in certain circumstances.

When do the aggregation rules apply?

Aggregation is required where the Financial Institution has elected under the UK legislation to apply the thresholds in relation to Reportable Accounts set out in Annex 1 of the Agreement. The aggregation rules also apply in determining whether an account is a High Value Account. (See Section 5.12)

A Financial Institution is required to aggregate all Financial Accounts held by the same account holder that are maintained by it or by a Related Entity, but only to the extent that the Financial Institution's current computerised systems link the Financial Accounts by reference to a data element, for example a customer or taxpayer identification number.

Where accounts can be linked by a data element and details of the balances are provided, but the system does not provide an aggregated balance of the accounts, the Financial Institution will still be required to carry out the aggregation process.

Note: Financial Institutions should only aggregate accounts that are held by the same account holder. All accounts held by any Individual, or Entity, are required to be aggregated. However, if an Individual who holds accounts in their own name, is also a controlling person of an Entity, then the accounts of the Individual and the Entity for whom they are a controlling person should not be aggregated.

Relationship Manager

A Financial Institution may appoint a relationship manager for a customer's accounts. The due diligence requirements (see 5.16) vary where there is a relationship manager depending on the value of accounts held by the customer.

Example 1 – Lower Value Account

An individual holds a number of accounts with Bank A and has been assigned a relationship manager. Bank A can aggregate the accounts by virtue of a taxpayer identification number found during the due diligence process.

The aggregated balance of accounts exceeds $50,000 and is less than $1million.

Bank A must apply due diligence procedures relevant to Lower Value Accounts (see 5.4). There is no need for Bank A to carry out the relationship manager enquiry as the $1million High Value Account threshold has not been exceeded.

Example 2 – High Value Accounts

The facts are as in Example 1 above but the aggregated balance exceeds $1millon. As the aggregate balance of all Financial Accounts linked by a common data element and held by the individual exceeds $1,000,000 the Financial Institution must also make enquiry of any relationship manager(s) assigned to that individual to establish whether the relationship manager(s) knows of any additional accounts that are directly or indirectly owned, controlled or established (other than in a fiduciary capacity) by the same person.(see Section 5.16 - Relationship Managers)

Exempt Products

If a product is exempt from being treated as a Financial Account, it does not need to be included for the purposes of aggregation. So for example where an individual holds an ISA as well as several Depository Accounts with the same Financial Institution and their systems allow these to be linked, then the Financial Institution must aggregate the Depository Accounts but not the ISA.

Related Entities

Where a computer system links accounts across related entities, irrespective of where they are located, the Financial Institution will need to aggregate in considering whether any of the reporting thresholds apply. However, once it has considered the thresholds, the Financial Institution will only be responsible for reporting on the Reportable Accounts which it holds. The following example sets out how this could work in practice.

Example

Bank A is a UK Financial Institution and has a related entity Bank B which is also a UK Financial Institution. Bank A can link the Depository Account of US Person X to a Custodial Account in the name of the same US Person X with Bank B, by virtue of the taxpayer identification number found during the due diligence process. The accounts have balances as follows:

Depository Account with Bank A - $30,000
Custodial Account with Bank B - $40,000

As the aggregated balance or value is $70,000 the accounts are potentially reportable. However, the Depository Account balance is below the $50,000 threshold for Depository Accounts and is therefore not reportable.

The Custodial Account in this example is reportable because the aggregated total exceeds $50,000 and there is no Custodial Account exemption that can apply.

Bank B must report on the account it holds for US Person X.

If Bank B were to be located in another jurisdiction it would have to report on the account it holds under the FATCA arrangements of that jurisdiction.

Aggregation of Pre-existing Individual Accounts

The following examples provide illustrative outcomes that could occur from the aggregation process.

Example 1 – Application of the $50,000 threshold

Bank A has elected to apply the relevant thresholds in Annex I. It can link the following accounts of US Person X by a taxpayer identification number found during the due diligence process:

A Depository Account with a balance of $25,000
A Custodial Account with a balance of $20,000.

The aggregated total is below $50,000; therefore regardless of the types of account neither account will be reportable.

Example 2 – Application of the $50,000 threshold

In this scenario the account balances of US Person X are:

A Depository Account with a balance of $45,000
A Custodial Account with a balance of $7,000.

As the aggregated balance or value is $52,000 the accounts are potentially reportable. However, the Depository Account balance is below the $50,000 threshold for Depository Accounts and is therefore not reportable.

The Custodial Account in this example is reportable because the aggregated total exceeds $50,000 and there is no Custodial Account exemption that can apply.

Example 3 – Application of the $250,000 Cash Value Insurance Contract threshold

Company B is a UK Financial Institution and has elected to apply the relevant thresholds in Annex I. It can link the following accounts of US Person Y by a client number found during the due diligence process:

A Cash Value Insurance Contract with a value of $230,000
A Custodial Account with a balance of $30,000

The aggregated balance or value indicates the accounts are potentially reportable (aggregated value above $50,000); however, as the Cash Value Insurance Contract is below the threshold that applies to that type of account, it is not reportable.

There is no Custodial Account exemption; therefore the Custodial Account is reportable.

Example 4 – Application of the $1million threshold for High Value Accounts

Bank A can link the accounts of US Person Z by a taxpayer identification number found during the due diligence process:

A Depository Account with a balance of $40,000
A Custodial Account with a balance of $980,000.

As the aggregated total is in excess of $1million US Person Z is identified as a holder of a High Value Account. However, the Depository Account balance is below the $50,000 threshold for Depository Accounts and is therefore not reportable.

The Custodial Account in this example is reportable as a High Value Account.

Example 5 – Aggregation involving joint accounts

Two US Persons have three accounts between them, one deposit account each and a jointly held deposit account with the following balances:

US Person A	$35,000
US Person B	$25,000
Joint Account	$30,000

A data element in the Financial Institution's computer system allows the joint account to be associated with both A and B. The system shows the individual balances of the accounts; however, it does not show a combined balance. The fact that there is not a combined balance does not prevent the aggregation rules applying.

The balance on the joint account is attributable in full to each of the account holders. In this example the aggregate balance for A would be $65,000 and for B $55,000. As the amounts after aggregation are in excess of the $50,000 threshold, both account holders will be reportable.

If A was not a US Person then only B would be reportable following an aggregation exercise.

Example 6 – Aggregation of negative balances

Two US Persons have three accounts between them, one account each and a jointly held account, all with the same Financial Institution with the following balances:

US Person A	$53,000
US Person B	$49,000
Joint Account	($ 8,000) – treated as nil

The accounts can be linked and therefore must be aggregated, but for the purposes of aggregation the negative balances should be treated as nil. Therefore the only reportable account after applying the thresholds would be that for A.

Reporting

Once aggregation has taken place and it is determined that the accounts are reportable, the accounts should be reported individually. A Financial Institution should not consolidate the accounts for reporting purposes.

Example 7 – Separate account reporting

Person Y (a Specified US Person) holds three Depository Accounts with bank Z. The balances are as follows:

Account 0001	$ 3,000
Account 0002	$32,000
Account 0003	$25,000

The aggregated balances total $60,000 and all the accounts are reportable. Bank Z should report on the three accounts individually and not consolidate the information into a single entry for reporting purposes.

Aggregation of Pre-existing Entity Accounts

For purposes of determining the aggregate balance or value of accounts held by an entity, all accounts held by the entity will need to be aggregated where the Financial Institution has elected under the UK legislation to apply the thresholds set out in Annex I of the Agreement and the Financial Institution's computerised system can link the accounts by reference to a common data element.

Example 8- Aggregation of Pre-existing Entity Accounts

Person A (a Specified US Person) has an individual Depository Account with Bank X. Person A also controls 100 per cent of entity Y and 50% of entity Z both of which also have Depository Accounts with Bank X. The balances are as follows:

Individual Depository Account	$ 35,000
Entity Y Depository Account	$130,000
Entity Z Depository Account	$110,000

Bank X has elected to apply the relevant thresholds in Annex I and these accounts can be linked in Bank X's system.

The individual Depository Account is not reportable as it is below the $50,000 threshold.

Entity Y's and Entity Z's Depository Accounts are also non reportable as the aggregated balances are below the $250,000 threshold that applies to Pre-existing Entity Accounts.

4.15 Aggregation of Sponsored funds

The sponsor of a range of funds acts on behalf of the funds and stands in their place in relation to meeting the FATCA obligations of the funds, however the ultimate responsibility for these obligations remain that of the Sponsored Financial Institution.

Aggregation is required across the range of funds within the same sponsoring group, where the sponsor or its service provider uses the same computerised systems to link the accounts.

In practice a sponsor (typically the fund manager) will use a service provider (the transfer agent) to manage the client relationships of the account holders (the investors in the funds). Where different service providers are used by the same sponsor, the systems might not link account information across service providers and aggregation would only be required at the level of the service provider (transfer agent).

For example, where a sponsor manages all the client relationships through a single transfer agent, aggregation should happen at the level of the sponsor (to the extent that the system links accounts).

Where a sponsor has two fund ranges each using a different transfer agent, in practice aggregation is possible only at the fund range/transfer agent level, as this is where the client relationship is held. The sponsor would aggregate at the level of the transfer agent (to the extent that the system links accounts).

4.16 Currency Conversion

Where accounts are denominated in a currency other than US dollars then the threshold limits must be converted into the currency in which the accounts are denominated before determining if they apply.

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.

Example 1

The threshold to be applied to GBP denominated Pre-existing Individual Depository Accounts when a published spot rate at 31 December 2014 is 1.6500 would be £30,303. ($50,000/1.6500)

Example 2

A Pre-existing Insurance Contract is valued at £155,000 as of 31 May 2014. In order to be measured against the $250,000 threshold, the Financial Institution can use the spot rate at 31 May 2014.

Alternatively a Financial Institution could convert non-US dollar balances into US dollars and then apply the thresholds. Regardless of the method of conversion, the rules for determining the spot rate apply.

The method of conversion must be applied consistently.

Examples of acceptable published exchange rates include, Reuters, Bloomberg, Financial Times and exchange rates published on the HMRC website. (www.hmrc.gov.uk)

4.17 Tax Identification Numbers (TINs)

Where it has been established that an account holder is a US Person, a Financial Institution is required to obtain a US TIN in several instances. When referred to, a US TIN means a US Federal Taxpayer Identifying Number.

For Pre-existing Individual Accounts that are Reportable Accounts a US TIN need only be provided if it held by the Reporting Financial Institution. In the absence of a record of the US TIN, a date of birth should be provided, but again only where that is held by the Reporting Financial Institution.

In line with the Agreement, HMRC has introduced legislation to require Reporting Financial Institutions to obtain the US TIN for relevant Pre-existing Accounts from 1 January 2017.

For all New Individual Accounts that are identified as Reportable Accounts from 1 July 2014 onwards, the Reporting Institution **must ask for** a self certification including a US TIN from account holders identified as resident in the US.

Where for a New Individual Account the account holder fails to provide a US TIN, the account is to be treated as reportable.

There is no requirement for a Financial Institution to verify that any US TIN provided is correct. A Financial Institution will not be held accountable where information supplied by an individual proves to be inaccurate provided that the Financial Institution had no reason to doubt that the veracity of the information provided.

A Financial Institution is not restricted by the manner which it records a TIN, for example it is not necessary to retain a withholding certificate as the means of recording the TIN.

4.18 Change of Circumstance

A change in circumstances includes any change to or addition of information in relation to the account holder's account (including the addition, substitution, or other change of an account holder) or any change to or addition of information to any account associated with such account.

A change of circumstance will only have relevance if the change to or addition of information affects the status of the account holder for the purposes of the Agreement.

Associated accounts are those accounts that are associated through the aggregation rules or where a New Account is treated as being a pre-existing obligation. See Section 4.14 for aggregation and 6 for pre-existing obligation rules.

Example 1

Where an account holder with a Pre-existing Account opens a New Account that is linked to the Pre-existing Account in the Financial Institution's computer systems and, as part of the account opening process, a US telephone number is provided, then this is a change in circumstance with respect to the Pre-existing Account.

The change will only be relevant if it indicates that an account holder's status has changed, that is, it either indicates that they are a US Person or that they are no longer a US Person.

If there is a change of circumstances that causes the Financial Institution to know or have reason to know that the original self certification (such as one obtained on the opening of a New Individual Account) is incorrect or unreliable, the Financial Institution can no longer rely on the original self certification.

The Financial Institution should then obtain a new self certification that establishes whether the account holder is a US citizen or US tax resident.
In the event that there is a change in circumstance which indicates a change in the account holder's status, the Financial Institution should verify the account holder's actual status in sufficient time to allow it to report the account, if required, in the next reportable period.

If an account holder fails to respond to a Financial Institution's requests for a self certification or for other documentation to verify the account holder's status, then the Financial Institution should treat the account as a US Reportable Account until such time as the Financial Institution is given the necessary information to be able to correctly verify the status.

4.18a Assignment or Sale of Cash Value Insurance Contract

A cash value insurance contract such as an endowment policy may be the subject of assignment or sale by the beneficial owner of the policy. Such an assignment or sale will result in the Reporting Financial Institution having to consider the reportable status of the new beneficial owner of the policy.

Example 1

An individual holds a mortgage with lender A, and as part of their mortgage arrangements they hold an endowment policy. This endowment was taken out by the individual borrower and although the endowment is part of the mortgage arrangements it is the individual who is beneficially entitled to receive sums payable on the surrender or redemption of the policy (for instance they may be able to keep amounts payable under the endowment if they are able to pay off the mortgage from an alternative source). The borrower takes out a mortgage with a new lender but under the terms of the mortgage agreement they keep their existing endowment. In this case the endowment policy has not been assigned, even if the policy is named in the underlying mortgage arrangement. The endowment is an individual account and continues to be held by the same beneficial owner (the borrower).

Example 2

The same individual holds a mortgage with lender B, and as part of their mortgage arrangements they have taken out an endowment policy. However in this case mortgage lender B (which is a financial institution) has the direct benefit of the endowment policy such that they are beneficially entitled to receive sums payable on the surrender or redemption of the policy, or the sum insured in the event of the death of the borrower. In this case mortgage lender B is an Entity Account Holder. The borrower takes out a new mortgage with mortgage lender C, repays the existing loan and the financial institution assigns the benefit of the policy to mortgage lender C. The account with mortgage lender C is treated as a new account; the Reporting Financial Institution must determine the status of the new account holder mortgage lender C. In all likelihood, mortgage lender C will also be a UK Financial

Institution or other Partner Jurisdiction Financial Institution, which can be identified on the basis of publicly available information.

Example 3

Individual X holds an endowment policy with a Reporting Financial Institution. This is a Financial Account. Individual X sells the benefit of the policy to another person - Individual Y. Individual Y will be subject to the due diligence procedures as a new individual account holder. This is a different situation from a new account being opened where the Financial Institution has direct contact with the individual and if that individual does not provide the necessary information the Financial Institution can simply turn down the business. Where there is an assignment the Financial Institution has no choice in the matter and must therefore take reasonable steps to obtain the necessary information from the new owner of the policy. If the new owner fails to provide a valid self certification, despite the reasonable efforts of the Financial Institution to obtain one, the account would become reportable.

4.19 Mergers or Bulk Acquisitions of Accounts

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 Reporting Model 1 Financial Institution, US withholding agent, or a Participating 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.

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.

The UK Financial Institution may treat accounts acquired in a merger or bulk acquisition that takes place after 30 June 2014 as preexisting accounts for the purposes of applying the identification and documentation procedures by treating the accounts as if they had been acquired on 30 June 2014.

Mergers 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 are sponsored by the same sponsor – see below.

So that fund mergers are not impeded, or held up by the requirement to perform due diligence on a series of New Accounts, special rules apply to the documentation of New Accounts on a merger of Investment Entities. There are a number of potential scenarios 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.

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).

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.

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 fund, 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 (See Sections 5 and 7) 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.

Mergers and Acquisitions in relation to Pre-existing Cash Value Insurance Contracts

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. Therefore provided the transferee company was prohibited from selling the business into the US (See Section 5.1) the policies will remain out of scope, and the transferor company does not need to undertake any further due diligence checks.

4.20 Arrangements for establishing tax residency

The UK Regulations (Regulation 11 (2) (a)) require a reporting Financial Institution to introduce and maintain arrangements to establish the tax residency of **all** account holders, i.e. not just US persons.

This requirement requires Financial Institutions to introduce systems for collecting and maintaining information regarding the tax residence of account holders from 1 September 2013, in anticipation of subsequent FATCA like agreements such as those that conform with the expected Global Standard for Automatic Exchange of Information. This should minimise implementation costs whilst also enabling compliance with data protection rules.

HMRC will expect the relevant systems to be in place by 31 May 2016 to enable data to have been populated in respect of all Reportable Accounts for the year ending 31 December 2015. For accounts opened on or after 1 January 2016 data must be populated by the end of the calendar year in which the account is opened.

Financial Institutions will still be required to comply with their reporting obligations under the Agreement and with any specified due diligence requirements contained in subsequent UK Regulations, enacting future FATCA like Agreements entered into by the UK.

The regulation also allows the financial institution to collect the tax residency of existing Account Holders as at 1 September 2013.. This includes the ability to ask the customer for a self-certification, and other evidence of their tax residency at any time. Evidence may include documentary evidence such as a certificate of Tax Residency, or other details such as local tax identification numbers for the jurisdictions in which they are resident.

Example

A financial institution introduces arrangements to establish the tax residency of their account holders on 1 September 2013. A new customer opens an account with the financial institution on the 2 September 2013. As part of their arrangements the financial institution asks the customer for their tax residency and their local tax identification number. The customer gives their tax residence as the Isle of Man, and provides their National Insurance Number. Although on the 2 September 2013 there are no reporting obligations in respect of Isle of Man residents, under Regulation 6 (1) (b) the financial institution can maintain this information.

When putting in place the arrangements to establish the tax residency remediation timelines in any applicable agreement should be adhered to,

Example

A new customer opens an account on 7 July 2014. On this date the financial institution does not have the systems capability to record tax residency of the customer. Having obtained residency details from the customer, the Financial Institution must have systems in place to record that data by 31 May 2016.

4.21 Information maintained for regulatory or customer relationship purposes

Under certain circumstances, Financial Institutions will have an obligation to review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures).

This is needed when

- determining whether an Entity Account Holder is a Specified Person,
- undertaking a paper based review of a high value account holder,
- identifying whether a Controlling Person of a Passive NFFE is a Specified US Person, or
- confirming the reasonableness of a self certification.

For the purposes of complying with the regulations a Financial Institution only to review ‘active’ information, as this is the information being ‘maintained’ for customer and regulatory purposes. I.e. information that accessible and is in current use. Information that is in use for automated purposes only, such as mailing lists, will still qualify as active.

Information that is simply being *retained* for regulatory or customer purposes (i.e. AML says you must keep for X years, or access to the information will only be needed on a ‘just in case’ basis, a change of status, such as death of the named contact or maturation of a policy) will not need to be reviewed as, for the purposes of these Regulations, is not being maintained so does not have to be reviewed until such time as it is used again.

Data that is being retained will need to be reviewed if the information ever becomes ‘active’ again. This will be when the information is used with respect to the operation of the account, such as on a change in status of the type mentioned above. A review of the information that does not relate to operation of the account (such as an AML review of the Financial Institution) will not lead to the information being treated as ‘active’ and no review would be needed. When the material is reviewed, new information found will qualify as a Change in Circumstance (see 4.18). Information is only ‘new’ if it is in addition to what was found on previous reviews, for example the finding of an indicia for an individual where that indicia has been identified from other documentation and was cured, will not be new information. If the Financial Institution has previously “cured or repaired” other indicia the same information may be used, provided that the date of the ‘cure’ postdates the date of the information being reviewed, and that the cure obtained meets the criteria for curing the new indicia found.

In practice this is likely to mean that the data held electronically then this is the information maintained for regulatory purposes. Although there may be situations where paper files or electronic non-searchable documents also need to be reviewed, archived data that may have been obtained for regulatory purposes, or historic records that being retained until account closure or in case of dispute do not need to be reviewed.

5. Pre-existing Individual Accounts

A Pre-existing Individual Account is a Financial Account maintained by a Financial Institution as of 30 June 2014. Pre-existing Accounts will fall into one of four categories depending on the balance or value of the account. These are:

- Financial Accounts below the threshold exemption limit
- Cash Value Insurance Contracts and Annuity Contracts unable to be sold to US residents
- Lower Value Accounts
- High Value Accounts.

5.1 Threshold Exemptions that apply to Pre-existing Individual Accounts

Under the UK legislation a Financial Institution is required to identify and report all Reportable Accounts. The Agreement is written to provide for exemptions to apply to certain accounts based on thresholds subject to an election to remove them. The UK legislation reverses this requirement meaning that no thresholds apply unless a Financial Institution elects to apply the appropriate threshold exemptions set out in the Agreement when reviewing and identifying Pre-existing Individual Accounts.

The election can apply to all Financial Accounts or to a clearly identifiable group of accounts, such as by a line of business or by reference to the location where the account is maintained.

The form the election will take and the rules governing such elections are yet to be finalised and HMRC will consult with business on the most suitable approach.

If an election is made by the Financial Institution then the following accounts do not need to be reviewed, identified or reported to HMRC.

- Any Depository Accounts with a balance or value of $50,000 or less.

- Pre-existing Individual Accounts with a balance not exceeding $50,000 at the 30 June 2014, unless the account becomes a High Value Account as of 31 December 2015 or any subsequent year.
- Pre-existing Individual Accounts that qualify as Cash Value Insurance Contracts or Annuity Contracts with a balance or value of $250,000 or less at the 30 June 2014, unless the account becomes a High Value Account as of 31 December 2015 or any subsequent year

If a Financial Institution **does not make** an election to apply the threshold exemptions, then it will need to review all Pre-existing Individual Accounts.

5.2 Pre-existing Cash Value Insurance Contracts or Annuity Contracts unable to be sold to US residents

Pre-existing Cash Value Insurance Contracts or Annuity Contracts that are unable to be sold to US residents because of legal or regulatory restrictions do not need to be reviewed, identified or reported. This also applies to similar Insurance policies written in Trust or assigned to a Trust on or before 30 June 2014.

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 US without legal or regulatory authority, **and**
- UK law requires reporting or withholding in respect of these products.

No existing UK law prevents the sale of Cash Value Insurance products or Annuity Contracts to US residents. However, 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.

Assignment of Pre-existing Insurance Contracts

When a Pre-existing Cash Value Insurance Contract or Annuity Contract is assigned to another person then this will be treated as a New Account. This is to ensure that Pre-existing Insurance Contracts assigned after 1 July 2014 to US Persons are correctly identified and reported where necessary.

Once the Financial Institution becomes aware that an assignment has been made, the Financial Institution will need to carry out the due diligence applicable for New Accounts. If the Financial Institution is unable to obtain a valid self-certification the account should be treated as reportable.

5.3 Reportable Accounts

Where the Financial Institution has identified US indicia, (See Section 5.5) and those indicia have not been cured or repaired. The relevant Pre-existing Accounts will be reportable unless they are exempt from being Financial Accounts (see 3.11).

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Where a Pre-existing Lower Value or High Value Account closes prior to the Financial Institution carrying out its due diligence procedures, the account still needs to be reviewed. Where, following the due diligence procedures the account is found to be reportable, the Financial Institution must report the information for the closed account as required under Section 9.

This will not however apply to accounts that are closed prior to 30 June 2014.

Where an account is closed on or after 1 July 2014 the and the Financial Institution has no continuing contractual relationship with the account holder and therefore is unable to undertake action in relation to any indicia or is unlikely to receive a response to any query made to the Account Holder, the account should be treated as reportable in that reporting year.

The reporting requirement for a Depository Account can alter annually even where the account holder remains a US Person. Whether a Depository Account is a Reportable Account is dependent on whether the annual balance or value is above the reporting threshold of $50,000 and an election has been made to apply the thresholds.

Example 1

A Depository Account belonging to a US Person with a balance of $65,000 at 31 December will need to be reported. The following year there is a large withdrawal from the account bringing the balance down to $20,000 at 31 December. As the balance is now below the $50,000 threshold the account does not need to be reported.

5.4 Lower Value Accounts

These are Pre-existing Individual Accounts with a balance or value that exceeds $50,000 or $250,000 for Cash Value Insurance Contracts and Annuity Contracts, but does not exceed $1,000,000.

5.5 Electronic Record Searches and Lower Value Accounts

A Financial Institution must review its electronically searchable data for any of the following US indicia.

- Identification of the account holder as a US citizen or resident.
- Unambiguous indication of a US place of birth.
- Current US mailing or residence address (including PO Box).
- Current US telephone number.
- Standing instruction to transfer funds to an account maintained in the US.

- Current effective power of attorney or signatory authority granted to a person with a US address.
- An ‘in care of’ or ‘hold mail’ that is the sole address the Financial Institution holds for the account holder. An ‘in care of’ or ‘hold mail’ address is **not** treated as US indicia for the purposes of electronic searches, but is a US indicia where a review of paper records is required.

Where none of the indicia listed above are discovered through an electronic search, no further action is required in respect of Lower Value Accounts, unless there is a subsequent change of circumstance that results in one or more US indicia being associated with the account or Account holder. Where that happens the account will become reportable unless further action is taken by the Financial Institution to attempt to cure or repair the indicia. (See Sections 5.6 to 5.11)

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 under the procedures described in this section to review that information or documentation.

Example 1

For Lower Value Accounts, where only an electronic search is required and no US indicia are identified, the Financial Institution will not have reason to know that the account holder was a US Person even if it held a copy of a US passport for the account holder. This applies only if the Financial Institution was not required to or had not previously reviewed that documentation or information.

Where a Financial Institution has started its review, found indicia and attempted to verify or cure the indicia by contacting the account holder, but the account holder does not respond, the account should be treated as reportable 90 days after initiating contact. The 90 day limit is to allow the account holder sufficient time to respond to requests for information and does not alter the timings set out in Section 5.18.

Qualified Intermediaries

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 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.

5.6 Identification of the account holder as a US citizen or resident

Where the indicia found indicates that the account holder is a US citizen or resident by birth, the account needs to be reported unless the Financial Institution obtains or currently maintains a record of **all** of the following:

- a self certification showing that the account holder is neither a US citizen nor a US resident for tax purposes, **and**
- evidence of the account holder's citizenship or nationality in a country other than the US (for example passport or other government issued identification).

5.7 Unambiguous US Place of Birth

Where the indicia found is an unambiguous US place of birth then the account needs to be reported unless the Financial Institution obtains or currently maintains a record of **all** of the following:

- a self certification showing that the account holder is neither a US citizen nor a US resident for tax purposes,

- evidence of the account holder's citizenship or nationality in a country other than the US (for example passport or other government issued identification); **and**
- a copy of the account holder's Certificate of Loss of Nationality of the United States or a reasonable explanation of the reason the account holder does not have such a certificate or the reason the account holder did not obtain US citizenship at birth.

5.8 Current US mailing address/residence address

Where the indicia found is a current US mailing address, and/or is a current permanent residence address in the US, the account must be reported unless the UK Financial Institution obtains or currently maintains a record of the following:

- 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 Section 4.2.

5.9 One or more US telephone numbers associated with the account

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 Section 4.2.

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 Section 4.2.

Where there is uncertainty whether a phone number is US (for example a mobile phone number) 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.

5.10 Standing Instructions to transfer funds to an account maintained in the US

Where at the time of review there are current standing instructions to transfer funds to an account maintained in the US, 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 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 Section 4.2.

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 clearly be indentified as being an account maintained in the US.

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

5.11 Effective Power of Attorney or Signatory Authority/ "in care" or "hold mail" address.

Where the indicia found is a current effective power of attorney or signatory authority granted to a person with a US address, or an 'in care of' or 'hold mail' address in the US that is the sole address the Financial Institution holds for the account holder, 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 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 Section 4.2.

5.12 High Value Accounts

These are Pre-existing Individual Accounts with an aggregated balance or value that exceeds $1,000,000 at 30 June 2014 or at 31 December 2015 or 31 December of any subsequent year. This is an aggregated amount across all accounts held by that individual (as far as systems allow) (see 4.14).

5.13 Electronic Record Searches and High Value Accounts

A Financial Institution must review its electronically searchable data in the same manner as for Lower Value Accounts.

If a Financial Institution has previously obtained documentation from a Pre-existing Individual Account holder to establish the 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 Code,

it will not have to carry out either the electronic search or the paper record search) in respect of such accounts where the Account Holder has received a reportable payment under those regimes.

Any UK Financial Institution that falls into this category is required, however, to perform the Relationship Manager enquiry (See Section 5.16) where the accounts are High Value Pre-existing Individual Accounts.

5.14 Paper Record Search and High Value Accounts

A paper record search will not be required where all the following information is electronically searchable:

- the account holder's nationality or residence status;
- the account holder's residence address or mailing address currently on file;
- the account holder's telephone number(s) currently on file;
- whether there are standing instructions to transfer funds to another account;
- whether there is a current "in-care-of" address or "hold mail" address for the account holder; and
- whether there is any power of attorney or signatory authority for the account.

The paper record search, where necessary, should include a review of the current customer master file and, to the extent 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 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 or for other regulatory purposes;
- any power of attorney or signature authority forms currently in effect; **and**

- any standing instructions to transfer funds currently in effect.

These should be reviewed for any US indicia as set at Section 5.5.

A Financial Institution can rely on the review of High Value Accounts performed by third party distributors, for example financial advisers, on their behalf where there is a contract obligating the distributor to perform the review.

5.15 Exceptions

A Financial Institution is not required to perform the paper record search for any Pre-existing Individual Account for which it has retained a withholding certificate and acceptable documentary evidence (See Section 4.2) which establishes the account holder's non-US status.

5.16 Relationship Manager

In addition to the electronic and paper searches the Financial Institution must also consider whether any Relationship Manager associated with the account (including any accounts aggregated with such account) has knowledge that would identify the account holder as a Specified US Person.

If the Relationship Manager knows that the account holder is a Specified US Person then the account must be reported unless the indicia can be cured.

For these purposes a Relationship Manager is assumed to be any person who is an officer or other employee of the Financial Institution assigned responsibility for specific account holders on an ongoing basis, and who advises the account holders regarding their accounts and arranges for the overall provision of financial products, services and other related assistance.

A Financial Institution must also ensure that it has procedures in place to capture any change of circumstance in relation to a High Value Individual Account made known to the Relationship Manager in respect of the account holder's status.

Example 1

If a Relationship Manager is notified that the account holder has a new mailing address in the US, this would be a change in circumstance and the Financial Institution would either need to report the account or obtain the appropriate documentation to cure or repair that indicia.

The electronic search and paper search only need to be done once for each account identified as a High Value Account, but the responsibilities of Relationship Managers to ensure that any knowledge regarding the account holder's status or aggregation of accounts is captured are constant and ongoing (see 4.14).

If the Relationship Manager has knowledge that there archived records for the account that are not currently treated as maintained for regulatory or customer relationship purposes (see 4.21), such as knowledge that there are archived records which hold alternate addresses, then this in itself is not knowledge that would identify the account holder as a Specified US Person. In order for knowledge of these records to be knowledge that would identify the account holder as a Specified US Person the Relationship Manager would have to actually know that one or more of those addresses was based in the US.

5.17 Effects of Finding US Indicia

Where one or more indicia are discovered through the enhanced review procedures and none of the cures or repairs can be applied, the Financial Institution must treat the account as a US Reportable Account for the current and all subsequent years.

Where no indicia are discovered in the electronic search, the paper record search or by making enquiries of the Relationship Manager, no further action is required unless there is a subsequent change in circumstances.

If there is a change in circumstances that results in one or more of the indicia listed in this section being associated with the account and none of the cures or repairs can be applied, it must be treated as a US Reportable Account for the year of change and all subsequent years. This applies for all accounts except Depository Accounts (See Section 5.3), unless the account holder ceases to be a Specified US Person.

Where a Financial Institution has started its review, indicia are found and attempts made to verify or cure those indicia by contacting the account holder, but the account holder does not respond, the account should be treated as reportable 90 days after initiating contact. The 90 day limit is to allow the account holder sufficient time to respond to requests for information.

5.18 Timing of reviews

For pre-existing accounts being reviewed the data being considered should be that which is held at the date of the review. However if the Financial Institution has archived data from the point when the account is identified as reportable then this may also be used, provided that any subsequent changes in circumstance are included in the review process.

Lower Value Accounts

The review of Pre-existing Accounts that are Lower Value Accounts at 30 June 2014 must be completed by 30 June 2016.

Pre-existing Lower Value Accounts that are identified as reportable are only reportable from the year in which they are identified as such.

Example 1

The due diligence procedures are carried out on a Lower Value Account during March 2015 and the account is determined as reportable. The Financial Institution is only required to report on the account information for the year ending 31 December 2015 onwards.

High Value Accounts

The review of Pre-existing Accounts that are High Value Accounts at 30 June 2014 must be completed by 30 June 2015.

A high value account only becomes reportable in the year in which it identified as such. Following the revision of the dates applicable to the agreement there is no requirement to report on pre-exisiting High Value Accounts for the year previous to which it is identified as being reportable.

Example 1

The due diligence procedures are carried out on a High Value Individual Account during April 2015 and the account is determined as reportable. The Financial Institution is required to report on the account for calendar year 2015 and subsequent years only.

Where the balance or value of an account does not exceed $1,000,000 as of 30 June 2014 there is no requirement to undertake an enhanced review of these accounts until the balance has exceeded $1,000,000 at 31 December 2015 or 31 December of any subsequent calendar year.
If the account is high value on one of those dates the Financial Institution must perform the procedures described for High Value Accounts by 30 June of the following year.

Example 2

The balance on a Individual Account is found to be in excess $1,000,000 when reviewed on 31 December 2015. The account is not determined as reportable until 6 June 2016. The Financial Institution is only required to report on the account for calendar year 2016 onwards.

6. New Individual Accounts

A New Individual Account is an account opened on or after 1 July 2014.

6.1 Threshold Exemptions that apply to New Individual Accounts

Under the UK legislation a Financial Institution is required to identify and report all Reportable Accounts. The Agreement is written to provide for exemptions to apply to certain accounts based on thresholds subject to an election to remove them. The UK legislation reverses this requirement meaning that no thresholds apply unless a Financial Institution elects to apply the appropriate threshold exemptions set out in the Agreement when reviewing and identifying Pre-existing Individual Accounts.

The election can apply to all Financial Accounts or to a clearly identifiable group of accounts, such as accounts held by a line of business.

The form the election will take and rules governing such elections are yet to be finalised and HMRC will consult with business on the most suitable approach.

The threshold exemptions for New Individual Accounts are:

- Depository Accounts do not need to be reviewed, identified or reported unless the account balance exceeds $50,000.
- Cash Value Insurance Contracts do not need to be reviewed, identified or reported unless the cash value exceeds $50,000.

If a Financial Institution **does not make** an election under the Regulations to apply the threshold exemptions to Reportable Accounts, then it will need to review and identify the status of all of its New Individual Account holders.

6.2 Reportable Accounts

Where it is established that the holder of a New Individual Account is a US citizen or resident in the US for tax purposes then the account must be treated as a Reportable Account.

In this instance the Financial Institution is required to retain a record of an US TIN. The US TIN may be retained in any manner and does not need to be on an IRS form.

6.3 New Accounts for holders of Pre-existing Accounts

This section applies for the purpose of dealing with US FATCA and the Crown Dependencies and Overseas Territories IGAs only. To determine the information to be collected and held for the purpose of the CRS please refer to paragraph 4.20.

Where a Pre-existing Account holder wishes to open a New Account with the same institution, there will be no need to re-document the Account Holder as long as:

- the appropriate due diligence requirements have already been carried out, or are in the process of being carried out within time limits set out for the Pre-existing Accounts; **and**
- the accounts are treated as linked or as a single account or obligation for the purposes of applying any of the due diligence requirements and reporting.

This means that the standards of knowledge to be applied, the change of circumstances rules and aggregation requirements will apply to all accounts held by the account holder.

Therefore where there is a change of circumstance or where the Financial Institution has reason to know that the account holder's status is inaccurate in relation to one account, this will apply to all other accounts held by the account holder.

Where the Financial Institution has elected to apply the thresholds exemptions, the accounts must be treated as linked for aggregation purposes.

This can also be applied on a group basis where documentation is shared within the group. See Section 4.7.

6.4 Identification of New Individual Accounts

For accounts that are not exempt, and for accounts that previously qualified for the threshold exemption, but now have a balance or value above the threshold limit, the Financial Institution must undertake the following procedures to determine the account holder's status.

- Obtain a self certification (See Section 4.8) that allows the Financial Institution to determine whether the account holder is US tax resident; **and**
- Confirm the reasonableness of this self certification based on any information the Financial Institution holds or obtains in connection with the opening of the account, including any documentation obtained for AML/KYC or other regulatory procedures.

For these purposes a US citizen is considered to be resident in the US for tax purposes even where they are also tax resident in another country.

In the absence of a valid self certification being provided by the account holder, the account would become reportable.

If the information provided during the account opening process contains any of the indicia described in Section 5.5 then the account will become reportable unless further action is taken by the Financial Institution to attempt to cure or repair the indicia. (See Sections 5.8 to 5.11).

The identification of these accounts should be completed as soon as practicable after the account has been opened. The expectation would be that this would follow AML/KYC time limits. For accounts that were previously exempt because of the threshold exemptions being applied but no longer are, the Financial Institution must determine the account holder's status in sufficient time to report the account, if necessary, for the year in which the account ceased to be exempt.

6.5 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-US account until the date on which an amount is payable to an employee/certificate holder or beneficiary, provided the Financial Institution obtains a certification from an 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's death; **and**
- the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed $1,000,000.

6.6 Accounts held by beneficiaries of a Cash Value Insurance Contract that is a Life Insurance Contract

A Financial Institution can treat an individual beneficiary (other than the owner) who receives a death benefit under a Cash Value Insurance Contract that is a Life Insurance Contract as a non-US Person and treat such account as a non-US account unless the participating Financial Institution has knowledge or reason to know that the beneficiary is a US Person.

6.7 Reliance on Self Certification and Documentary evidence

Where information already held by a Financial Institution 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.

7. Pre-existing Entity Accounts

Pre-existing Entity Accounts are those accounts that are in existence at 30 June 2014.

7.1 Threshold Exemptions that apply to Pre-existing Entity Accounts

The UK legislation allows for Financial Institutions to elect whether to apply the threshold exemptions when reviewing and identifying Pre-existing Entity Accounts. The Agreement is written to provide for exemptions to apply to certain accounts based on thresholds subject to an election to remove them. The UK legislation reverses this requirement meaning that no thresholds apply unless a Financial Institution elects to apply the appropriate threshold exemptions set out in the Agreement when reviewing and identifying Pre-existing Entity Accounts.

The election can apply to all Financial Accounts or to a clearly identifiable group of accounts, such as accounts held by a line of business.

- Where the threshold exemption is applied and the account balance or value does not exceed $250,000 at 30 June 2014 there is no requirement to review, identify or report the account until the account balance exceeds $1,000,000, at 31 December 2015 or 31 December of any subsequent calendar year.

If a Financial Institution **does not make** an election under the Regulations to apply the threshold exemption, it will need to review and identify all Pre-existing Entity Accounts.

The form the election will take and rules governing such elections are yet to be decided and HMRC will consult with business on the most suitable approach.

7.2 Reportable Accounts

An Entity Account is only reportable where the account is held by one or more entities that are Specified US Persons or Passive NFFEs with one or more Controlling Persons who are US citizens or residents.

Where a Pre-existing Entity Account closes prior to the Financial Institution carrying out its due diligence procedures, then the account is still required to be reviewed. Where following the due diligence procedures the account is found to be reportable, the Financial Institution must report the information as required under Section 9. This will not apply to accounts that are closed prior to 30 June 2014.

If the account holder is a Non-Participating Financial Institution (NPFI), payments made to the NPFI will be reportable (See Section 9.4).

Controlling Persons are defined as natural persons who exercise control over an entity. In the case of a Trust this means:

- the settlor,
- the trustees,
- the protector (if any),
- the beneficiaries or class of beneficiaries, **and**
- any other natural person exercising ultimate effective control over the Trust.

In the case of a legal arrangement other than a Trust, it means persons in equivalent or similar positions. The term “Controlling Persons” must be interpreted in a manner consistent with the Recommendations of the Financial Action Task Force.

An entity account will also be reportable where a self certification is not provided or the entity’s status cannot be determined from information held or that is publically available. In this situation the account should continue to be reported until such time that the entity’s status is correctly identified.

7.3 Standardised Industry Codes and US indicia for Pre-existing Entities

A Financial Institution can rely on information previously recorded in its files in addition to standardised industry codes, in determining the status of an entity. For these purposes, a standardised industry code may be any coding system employed by the Financial Institution.

The term standardised industry code means a code that is part of a coding system used by the Financial Institution to classify account holders by business type and was in use by the later of 1 January 2012, or six months after the date the Financial Institution was formed or organised.

Example

A Financial Institution has a coding system that has been in existence since 2010. This can be used to determine the status of account holders for all New and Pre-existing accounts.

Where a standardised industry code alone is used, the Financial Institution is unable to rely on this to determine the entity's status if there are US indicia, as described below, and these indicia have not been cured.

The term US indicia, when used with respect to an entity, includes any of the following:

- Classification of an account holder as a US resident in the current customer files.
- A current US residence address or US mailing address.
- Standing instructions to pay amounts to a US address or an account maintained in the US.
- A current telephone number for the entity in the US, but no telephone number for the entity outside of the US.
- A current telephone number for the entity in the US in addition to a telephone number for the entity outside of the US.

- A power of attorney or signatory authority granted to a person with a US address.
- An “in-care-of” address or “hold mail” address that is the sole address provided for the entity.

Documentary evidence required to cure US indicia in relation to Standard industrial Codes

If there are US indicia as described above, the Financial Institution may treat the entity as non-US only if the Financial Institution obtains a self certification for the entity and one form of acceptable documentary evidence which establishes the entity’s non-US status such as a Certificate of Incorporation.

7.4 Identification of an entity as a Specified US Person

In order to identify if an entity is a Specified US Person, information maintained for regulatory or customer relationship purposes (including information collected as part of any AML/KYC procedure) can be relied upon.

A US place of incorporation or organisation, a US address, or the US indicia listed above would be examples of information indicating that an entity is a Specified US Person.

Although there is no exemption from a paper record search for pre-existing entity accounts, as is the case for High Value individual accounts, a paper record search will not be required in areas where all of the information is electronically searchable.

If the account holder is found to be a Specified US Person then the account should be treated as reportable unless a self certification is obtained from the account holder which shows that the account holder is not a Specified US Person or it can be reasonably determined from information held or that is publically available, that the account holder is not a Specified US Person.

Article 1 of the Agreement includes a list of exceptions for Specified US Persons at definition gg. To avoid unnecessary reporting, a self certification may be obtained from any entity that is believed to be within this definition, but where there is insufficient information held by the Financial Institution to allow it to make a correct determination.

7.5 Identification of an entity as a Financial Institution

In order to identify whether an entity is a Financial Institution, information maintained for regulatory or customer relationship purposes (including information collected as part of any AML/KYC procedure) or a Global Intermediary Identification Number can be relied upon.

If the entity is a non-US Financial Institution, including Non-Reporting Financial Institutions listed in Annex II (both Exempt Beneficial Owners and Deemed Compliant Financial Institutions) then that account is not a 'Reportable Account', however there may still be reporting obligations if the entity is a Non-Participating Financial Institution.

If the entity is a US Financial Institution, then that account will NOT be a 'Reportable Account' if the Financial Institution is included in the list of exceptions for Specified US Persons at definition gg.

7.6 Identification of an entity as a Non-Participating Financial Institution (NPFI)

If the account holder is a Financial Institution, but is not either a UK Financial Institution, a Financial Institution in another Partner Jurisdiction or a Participating Financial Institution, then it should be treated as a Non-Participating Financial Institution.

This will apply unless

- the entity is a United Kingdom Financial Institution or other Partner Jurisdiction Financial Institution (including Exempt Beneficial Owners and Deemed Compliant Financial Institutions), this may be determined by the Reporting Financial Institution on the basis of information already held/publically available,

- the entity provides a self certification stating that it is a Certified Deemed Compliant Financial Institution, an Exempt Beneficial Owner, an Excepted Financial Institution, or
- the Reporting Financial Institution is able to verify that the entity is a participating Financial Institution or Registered Deemed Compliant Financial Institution, for instance from its Global Intermediary Identification Number.

A Financial Institution may become a Non-Participating Financial Institution where following significant non-compliance it is regarded as such by the IRS (See Section 10.2).

If the account holder is a Non-Participating Financial Institution then the Reporting Financial Institution will need to report on payments made to it (See Section 9.4).

7.7 Identification of an entity as a Non-Financial Foreign Entity (NFFE)

When an entity account holder is not identified as either a US Person or a Financial Institution, the Financial Institution must consider whether the entity is a Passive NFFE and if any of the Controlling Persons of that entity are a US citizen or tax resident of the US.

An entity will be a Passive NFFE if it is not an Active NFFE (See Section 2.6).To determine whether the entity is a Passive NFFE, the Financial Institution must obtain a self certification from the account holder establishing its status; unless it has information in its possession or that is publicly available that enables the Financial Institution to reasonably determine whether or not the entity is an Active NFFE.

To identify the Controlling Persons of an entity, a Financial Institution may rely on information collected and maintained pursuant to AML/KYC procedures.

To determine whether the Controlling Persons of a Passive NFFE are citizens or residents of the US for tax purposes, Financial Institutions may rely on:

- Information collected and maintained pursuant to AML/KYC procedures in the case of an account held by one or more Passive NFFEs, with a balance that does not exceed $1,000,000.
- A self certification from an account holder or Controlling Person in the case of an account held by one or more Passive NFFEs, with a balance that exceeds $1,000,000.

7.8 Timing of reviews

The review of Pre-existing Entity Accounts with an account balance or value that exceeds $250,000 at 30 June 2014 must be completed by 30 June 2016.

The review of Pre-existing Entity Accounts with a balance or value that does not exceed $250,000 at 30 June 2014, but exceeds $1,000,000 at 31 December 2015 or 31 December of any subsequent calendar year, must be completed by 30 June of the following year.

Pre-existing Entity Accounts that are identified as reportable are only reportable from the year in which they are identified as such.

For pre-existing accounts being reviewed the data being considered should be that which is held at the date of the review. However if the Financial Institution has archived data from the point when the account is identified as reportable then this may also be used, provided that any subsequent changes in circumstance are included in the review process.

8 New Entity Accounts

A New Entity Account is an account opened by or for an entity on or after 1 July 2014.

Where a New Account is opened by an entity account holder who already has a Pre-existing Account the Financial Institution may treat both accounts as one account for the purposes of applying AML/KYC due diligence. In these circumstances, the Financial Institution may choose to apply the identification and documentation procedures for either Pre-existing or New Accounts to derive the FATCA classification for any New Account or Accounts opened on or after 1 July 2014 by the same entity.

8.1 Exemptions that apply to New Entity Accounts

There are no threshold exemptions that apply to New Entity Accounts so there will be no need to apply any aggregation or currency conversion rules.

However, where a Financial Institution maintains credit card accounts, these do not need to be reviewed, identified or reported where the Financial Institution has policies or procedures that prevent the account holder establishing a credit balance in excess of $50,000.

8.2 Reportable Accounts

An account holder of a New Entity Account must be classified as either:

- a Specified US Person;
- a US Person other than a Specified US Person;
- a UK Financial Institution or other Partner Jurisdiction Financial Institution ;
- a Participating FFI, a Deemed Compliant FFI, an Exempt Beneficial Owner, or an Excepted FFI, as those terms are defined in relevant US Treasury Regulations; **or**
- an Active NFFE or Passive NFFE;
- a Non-Participating Financial Institution.

New Entity Accounts **will be** reportable where there is an account holder who is:

- a Specified US Person; or
- a Passive NFFE with one or more Controlling Persons who are citizens or residents of the US.

If the account holder is one of those listed below then the account **is not** a US Reportable Account:

- a US Person other than a Specified US Person;
- a UK Financial Institution or other Partner Jurisdiction Financial Institution;
- a Participating FFI, a Deemed Compliant FFI, an Exempt Beneficial Owner, or an Excepted FFI, as those terms are defined in relevant US Treasury Regulations; **or**
- an Active NFFE;
- a Passive NFFE where none of the Controlling Persons are US citizens or resident in the US.

8.3 Identification of an Entity as a Financial Institution

A Financial Institution may rely on publicly available information, a GIIN or information within the Financial Institution's possession to identify whether an account holder is an Active NFFE, Participating FFI or a UK or Partner Jurisdiction Financial Institution. Where the Financial Institution relies on the GIIN for any purpose it must verify the GIIN against the published IRS FFI list. In all other instances the Financial Institution must obtain a self certification from the account holder to establish the account holder's status.

8.4 Identification of an Entity as a Non-Participating Financial Institution

If the entity is a UK Financial Institution or a Financial Institution in another Partner Jurisdiction, no further review, identification or reporting will normally be required. The exception to this is if the Financial Institution becomes a Non-Participating Financial Institution following significant non-compliance.

If the account holder is a Financial Institution, but not a UK Financial Institution, Financial Institution in another Partner Jurisdiction or a Participating Financial Institution, then the entity is treated as a Non-Participating Financial Institution.

This applies unless the Reporting Financial Institution:

- obtains a self certification from the entity stating that it is a Certified Deemed Compliant Financial Institution, an Exempt Beneficial Owner, or an Excepted Financial Institution; **or**
- verifies its status as a Participating Financial Institution or Registered Deemed Compliant Financial Institution for instance by obtaining a GIIN (see 8.3).

If the account holder is a Non-Participating Financial Institution, then reports on certain payments made to such entities will be required. (See Section 9.4)

8.5 Identification of an Entity Account Holder as a Specified US Person

If the Financial Institution indentifies the account holder of a New Entity Account as a Specified US Person, the account will be a US Reportable Account and the Financial Institution must obtain a self certification that includes a US TIN. The self certification could be, for example on a W-9.

8.6 Identification of an entity as a Non-Financial Foreign Entity (NFFE)

If on the basis of a self certification the holder of a New Entity Account is established as a Passive NFFE, the Financial Institution must identify the Controlling Persons of the entity as determined under AML/KYC procedures.

To determine whether the Controlling Persons of a Passive NFFE are citizens or residents of the US for tax purposes the Reporting Financial Institution must obtain a self certification from the account holder or Controlling Person.

If they are a citizen or resident of the US, the account shall be treated as a Reportable Account.

9. Reporting

Once a Financial Institution has applied the procedure and due diligence in respect of the accounts it holds and has identified Reportable Accounts then it must report certain information regarding those accounts to HMRC in accordance with the timetable in Section 9.3.

9.1 Information Required

Specified US Persons and Controlling Persons of Entity Accounts

In relation to each Specified US Person that is the holder of a Reportable Account and in relation to each Controlling Person of an Entity Account who is a Specified US Person, the information to be reported is:

1) Name
2) Address
3) US TIN (where applicable)
4) The account number or functional equivalent
5) The name and identifying number of the Reporting Financial Institution
6) The account balance or value as of the end of the calendar year or other appropriate period.

Account number or functional equivalent

If the Reportable Account has a unique identifying number or code then this is what should be reported. 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 that Reportable Account in future.

If the Reportable Account does not have a unique identifying number or code then what should be reported is any functional equivalent. This may include non unique identifiers that relate to a class of interests. A non-unique identifier should be sufficient to enable the Financial Institution to identify the Reportable Account held by the named account holder in future.

Exceptionally, if the Reportable Account does not have any form of identifying number or code then what should be reported is a description sufficient for the

Financial Institution to identify the Reportable Account held by the named account holder in future.

Custodial Accounts

In addition to 1 to 6 above, where the account is a Custodial Account the following information is also required in relation to the calendar year or other appropriate reporting period:

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

Depository Accounts

In addition to 1 to 6 above, where the account is a Depository Account the following information is also required:

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

Cash Value Insurance Contracts

In addition to 1 to 5 above and **if the account is still in existence at the end of the year** the following information must be reported each year:

- the annual amount reported to the policyholder as the "surrender value" of the account; **or**
- The "surrender value" calculated by the Specified Insurance Company as at 31 December; **and**
- Any part surrenders taken throughout the policy year.

Purchased Life Annuities (PLA's)

As UK Purchased Life Annuities do not have a cash/surrender value, there is no account balance to report. A Specified Insurance Company will only be required to report the amount paid out or credited to the policy holder.

Deferred Annuities

In the UK, deferred annuities have two stages:

- The accumulation phase where the product is similar to a Cash Value Insurance Contract and should be treated as such for reporting as set out above.
- The pay-out phase where the annuity becomes a PLA and should be treated as such for reporting as set out above.

When a deferred annuity is ending its accumulation phase, some contracts provide the option for the account holder to take the surrender value of contract, instead of converting the account into a PLA; this is the amount that should be reported.

Other accounts

In addition to 1 to 6 above, for other accounts the following information is also required:

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

Account closures and transfers

In addition to 1 to 5 above, in the case of a Depository or Custodial Account closed or transferred in its entirety by an account holder during a calendar year the payments made with respect to the account shall be:

- The payments and income paid or credited to the account that are described earlier in this section for Custodial, Depository and Other Accounts.
- 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.

9.2 Explanation of information required

Address

The address to be reported with respect to an account held by a Specified US Person is the residence address recorded by the Reporting Financial Institution for the account holder or, if no residence address is associated with the account holder, the address for the account used for mailing or other purposes by the Reporting Financial Institution.
In the case of Controlling Persons of a Passive NFFE, the address required will be the address of each Controlling Person who is reportable.

Taxpayer Identification Numbers (TINs)

Where it has been established that an account holder is a US Person a Financial Institution is required to obtain a US TIN in several instances. When referred to, a US TIN means a US Federal Taxpayer Identification Number. For Pre-existing Individual Accounts that are Reportable Accounts then a US TIN need only be provided if it exists in the records of the Reporting Financial Institution. In the absence of a record of the US TIN, a date of birth should be provided, but again only where it is held by the Reporting Financial Institution.

In line with the Agreement, HMRC has introduced legislation to require Reporting Financial Institutions to obtain the US TIN for relevant Pre-existing Individual Accounts from the 1 January 2017.

For all New Individual Accounts that are identified as Reportable Accounts from 1 July 2014 onwards, the Reporting Institution **must** obtain a self certification from account holders identified as resident in the US that includes a US TIN. This self certification could be on for example, IRS forms W-9 or on an other similar agreed form.

Where for a New Individual Account the proposed account holder fails to provide a US TIN or evidence of non-US status and the account becomes active, the account is to be treated as reportable.

There is no requirement for a Financial Institution to verify that any US TIN provided is correct. A Financial Institution will not be held accountable where information supplied by an individual proves to be inaccurate and the Financial Institution had no reason to know.

Account Number

The account number to be reported with respect to an account is the identifying number assigned to the account or other number that is used to identify the account within the Financial Institution.

Account balance or value

The account balance or value of an account may be reported in US dollars or in the currency in which the account is denominated.

Depository Accounts

The balance or value will be that shown on the 31 December, unless the account is closed on a date before that.

Example 1

For a reportable Depository Account the balance or value to be reported will be the balance or value as of the 31 December 2014. This will be reported in 2015.

Other Financial Accounts

The balance or value will either be that shown on 31 December of the year to be reported or where it is not possible to or usual to value an account at 31 December, the normal valuation point for the account that is nearest to 31 December is to be used.

Example 2

When a Specified Insurance Company has chosen to use the anniversary date of a policy for valuation purposes where if for example, the policy was opened on 3 August 2013, it will be valued on 2 August 2014. If it exceeds the reporting threshold then it is the 2 August 2014 value that will be reported for the year ending 31 December 2014. This will be reported to HMRC in 2015.

Where the 31 December falls on a weekend or non working day, the date to be used is the last working day before the 31 December.

The balance or valuation of a Financial Account is the balance or value calculated by the Financial Institution for purposes of reporting to the account holder.

The balance or value of an Equity Interest is the value calculated by the Financial Institution for the purpose that requires the most frequent determination of value, and the balance or value of a Debt Interest is its principal amount.

The balance or value of the account is not to 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 and is not to be reduced by any fees, penalties or other charges for which the account holder may be liable upon terminating, transferring, surrendering, liquidating or withdrawing cash from the account.

Joint Accounts

For Joint Accounts the balance or value to be attributed is the entire balance or value of the account. This will be attributable to each holder of the account.

Example 3

Where a jointly held account has a balance or value of $100,000 and one of the account holders is a Specified US Person then the amount to be attributed to that person would be $100,000.

If both account holders were Specified US Persons then each would be attributed the $100,000 and reports would be made for both.

Account Closures

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.

9.3 Timetable for reporting

Reporting Year	In respect of	Information to be reported	Reporting date to HMRC
2014	• Each Specified US Person either holding a Reportable Account **Or** • as a Controlling Person of an Entity Account	• Name • Address • US TIN (where applicable or DoB for Pre-existing Accounts) • Account number or functional equivalent • Name and identifying number of Reporting Financial Institution • Account balance or value	31 May 2015
2015 As 2014, plus the following:	• Custodial Accounts	• The total gross amount of interest; • The total gross amount of dividends; • The total gross amount of other income paid or credited to the account	31 May 2016
	• Depository Accounts	• The total amount of gross interest paid or credited to the account in the calendar year or other reporting period	
	• Other Accounts	• The total gross amount paid or credited to the account including the aggregate amount of any redemption payments made to the account holder during the calendar year or other appropriate reporting period	
2016 As 2015, plus the following	• Custodial Accounts	• The total gross proceeds from the sale or redemption of property paid or credited to the account	31 May 2017
2017 onwards		• All of the above	

9.4 Reporting on Non-Participating Financial Institutions

Where a Reporting Financial Institution makes payments to a Non-Participating Financial Institution, under the Agreement 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 Agreement a UKFI, providing that it complies with its due diligence and reporting obligations is not subject to withholding.

Whether or not this reporting requirement continues will need to be considered alongside any discussion on the longer term solution that delivers the underlying policy objectives of passthru payments, but which removes the legal problems for Financial Institutions outside the US.

The payments that are to be reported are:

a) US source payments made to an NPFFI 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 NPFFI
c) Non-US source dividends paid on a shareholding held in a Financial Account held by a NPFFI
d) Non-US source payments, to a NPFFI, that are the proceeds or benefits of a Cash Value Insurance Contract or Annuity Contract.

Exceptions

The following do not need to be reported:

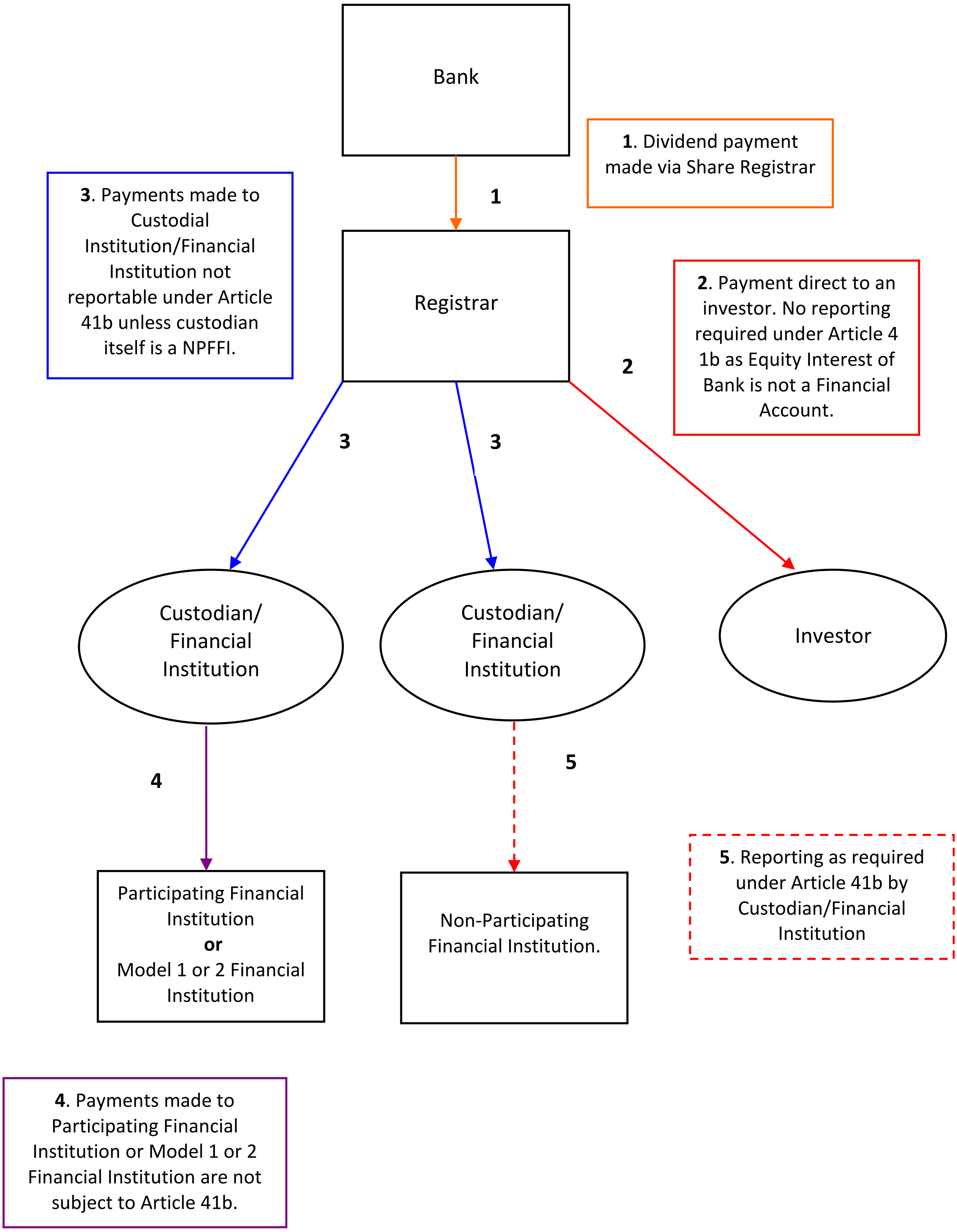
1) Any payments made that are not in respect of a Financial Account held by the Financial Institution;
2) Payments for the following: services (including wages and other forms of employee compensation (such as stock options)), the use of property, office and equipment leases, software licenses, transportation, freight, gambling winnings, awards, prizes, 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 so, alternatively either no knowledge of the facts that give rise to the payment or no control over the payment or 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, and
4) Capital markets payments in c) above that are not directly traceable to a US source.

Payments of Dividends made 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, for example where the shareholding is held in a Custodial Account, of an NPFFI.

Shareholdings of a Financial Institution, other than shareholdings or equity interest in certain Investment Entities (See Section 3.8), 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 NPFFI, the payment will not be reportable.

The diagram below shows examples of where the reporting for dividend payments requirement will apply.



Reporting

1) A payment will be treated as being made when an amount is paid or credited to an NPFFI.
2) Only the aggregate amount of foreign reportable payments made to the payee during the calendar year need to be reported.
3) Where the payments described in c) above, cannot be separately indentified 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.
4) 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,
5) Alternatively the Financial Institution may report the aggregate number of accounts held by NPFFIs and the aggregate amount of reportable payments paid to such accounts.

9.5 Reporting payments of US Source Withholdable Payments to Non-Participating Financial Institutions

Financial Institutions will also need to report up the payment chain when a Non-Participating Financial is the recipient of specific US Source Payments. The requirement to report US Source Withholdable Payments to Non-Participating Financial Institutions up the payment chain will fall on Financial Institutions **other than** those who have elected to act as qualifying intermediaries with primary withholding responsibility, withholding foreign partnerships or withholding foreign trusts (see Article 4(1)(d)&(e) of the Agreement).

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.

9.6 Format

UK Financial Institutions who want to directly upload their FATCA return must submit their FATCA returns to HMRC using the UK FATCA submission schema.

http://www.hmrc.gov.uk/softwaredevelopers/fatca/index.htm

9.7 Transmission

A FATCA Portal to allow reporting to HMRC will be hosted on the UK Government Gateway. UK Financial Institutions may submit their FATCA returns to HMRC by uploading the data onto the portal using the UK FATCA 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 FATCA 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 FATCA 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 FATCA portal.

9.8 Penalties

The Regulations set out the penalties will be applicable where a Reporting Financial Institution fails to provide the required information and where it provides inaccurate information.

These penalties operate in the same was as other penalties for failure to comply with information requests, such as Schedule 23 of FA2011.

10. Compliance

In IRS notice 2014-33 the IRS announced that calendar years 2014 and 2015 will be regarded as a transition period for purposes of IRS enforcement and administration of the due diligence, reporting, and withholding provisions. For this period it was proposed that the IRS will take into account the extent to which a Financial Institution has made good faith efforts to comply with the requirements. The UK has not made any such announcements for transitional 2014 and 2015 reporting.

However, if 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. It is the view of HMRC that if the Financial Institution has made all good faith efforts for 2014 and 2015 reporting (as outlined in the IRS notice) then this will also constitute all reasonable efforts for the purposes of establishing compliance with the UK Regulations.

Note: If despite all reasonable efforts being taken to supply accurate information and to establish appropriate governance and due diligence processes no reportable accounts have been identified by the Regulatory reporting date then the Financial Institution is still obliged to make a return, even if it is a Nil return.

10.1 Minor Errors

In the event that the information reported is corrupted or incomplete, the recipient country will be able to contact the Reporting Financial Institution directly to try and resolve the problem. 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 an enquiry from the US 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 US Competent Authority will contact the UK Competent Authority, who will then contact the Financial Institution.

10.2 Significant Non-Compliance

Significant non-compliance may be determined from either an IRS or HMRC 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 IRS of the outcome of these discussions.

In the event that the issues remain unresolved after a period of 18 months then the Financial Institution will be treated as a Non-Participating Financial Institution.

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.

10.3 Tax Compliance 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 process 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 Service (LBS) and Audit Specialists in both LBS 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.

10.4 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.

11. Registration

Each Reporting UK Financial Institution and any entity that is 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, 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 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.