August 2014

Foreign Account Tax Compliance Act (FATCA) frequently asked questions

Does FATCA apply to me?

FATCA applies to you if you fall within the definition of a 'financial institution' for FATCA reporting, including:

- custodial institutions
- depository institutions
- investment entities
- specified insurance companies
- holding companies
- treasury centres of a financial group

These terms are defined in the relevant regulations or agreements.

Can I report on accounts held by my overseas branches or subsidiaries to HMRC?

No, you can only report to HMRC on accounts held by UK financial institutions.

If a UK resident entity has an overseas branch or a permanent establishment, then the overseas branch or permanent establishment will **not** be a UK financial institution. On the same basis, if an overseas entity has a UK branch or a permanent establishment, then the UK branch or permanent establishment **will be** a UK financial institution. This UK financial institution will need its own Global Intermediary Identification Number (GIIN) (one legal entity can equate to multiple financial institutions if it has branches and establishments in multiple jurisdictions).

Each reporting financial institution will need its own GIIN and under the terms of FATCA reporting under an Inter-Governmental Agreement (IGA) a financial institution will only be resident in one jurisdiction.

Do we report at entity level?

Yes, other than in cases of overseas branches or permanent establishments each qualifying entity will be treated as a single financial institution. Each reporting financial institution will need its own GIIN and will be responsible for submitting a return every year.

However, even though every financial institution will be legally responsible for the submission of their own return it will be possible for one member of a group to undertake registration and reporting for other financial institutions within their group.

What if we do not hold fixed format addresses?

It's a government wide data policy to use fixed format names and addresses. Free format addresses will not be accepted.

If you've to convert from free form addresses, or from a different fixed form then best endeavours at mapping will be fine. If you use your address line 1, 2, 3 and city to fill our building, street etc lines, this will be accepted.

The city and country address fields are mandatory. These **must** be filled in.

Are sponsored financial institutions supported by HMRC?

The UK legislation does not recognise sponsorship, however the portal will allow a third party (including the sponsoring entity) to register and report on behalf of a sponsored financial institution.

Sponsored entities are financial institutions in their own right. An entity reporting to HMRC on behalf of a sponsored financial institution can either use their sponsor' GIIN, or if the financial institution has received a sponsored entity GIIN they should use that.

Financial institutions that have registered using the sponsored entity option with the IRS, may all share the GIIN of their sponsoring entity. HMRC will support multiple financial institutions being able to register with the same GIIN.

Are there data protection issues in providing client's financial information, such as account numbers, to HMRC?

All reporting to HMRC for FATCA is done in order to comply with UK law. As financial institutions have a legal obligation to provide this data there is no data protection issue.

How do we report if we have multiple owners for a private individual account eg a husband and wife joint account?

Individual accounts with multiple owners should be reported as separate individual accounts each of which is held in full by each holder. The account will only be reported in respect of a holder who is a US person.

This means that if only the husband is a US person then the account is reported to HMRC as if it were held solely by the husband (with full balance and all relevant payments). If both the husband and wife are US persons, then the account is reported twice to HMRC, once as if it were held solely by the husband and once as if it were held solely by the wife (both times with full balance and all relevant payments).

What tax residency should we use when reporting corporate entities? Will they have to be reported as a different account holder type depending on where they and their controlling persons are resident?

As the UK schema has been designed for reporting to many different countries, a financial institution may have to report the account of a Jersey corporate entity with US substantial owners. The account holder type will vary depending on the jurisdiction to which it is being reported, but this is only the case for the account holder types that are present in the US and common reporting standard (CRS) schemas, **not** the way the UK schema has been drafted.

A US entity with controlling persons in Jersey will be a specified person for US purposes and a non-financial foreign entity (NFFE) with substantial owners for Jersey purposes. The UK schema asks if you are an individual, an entity, or an entity with controlling persons. Even though the entity above can be two different types of account holder in the schema that will be passed to the US, it will **always** be an entity with controlling persons in the UK schema

When using the UK schema a UK financial institution will just need to report this entity as an entity with controlling persons. They should report the entity as resident in Jersey, and the controlling persons as resident in the US. HMRC will then filter the data and report the entity to the US as a passive NFFE with US controlling persons, and to Jersey as a specified person.

Note: some financial institutions with multinational businesses may prefer to make a separate report with respect to each relevant jurisdiction. It will also be possible for a financial institution to submit separate submissions for each jurisdiction if they choose to. In this case, in the report they make to HMRC for Jersey they may either report the entity as an 'organisation', or an 'organisation with controlling persons'. Both of these will result in the data being sent to Jersey showing the entity as a specified person.

I am a financial institution that maintained accounts on the 1 July 2014, however my business is closing down and all the accounts will be closed by 31 May 2015. Do I need to register?

Where you have reportable accounts and they close between 1 July 2014 and 31 December 2014 then yes, you'll need to register as a financial institution. See the following sections of HMRC's guidance notes for reporting requirements:

- Sections 5, 5.1, and 5.3: these explain the pre-existing account procedures (including for closed accounts), including the facility to make an election for certain accounts within the threshold for exemption;
- Section 9.1: Information required to be reported;
- Section 9.2: Account closures (information required to be reported); and
- 9.3: Timetable for reporting / information to be reported.

Download the guidance notes

Please note that even if an election is made to apply the threshold for exemption, a nil report would still need to be made to HMRC by 31 May 2015.

Does the FATCA UK submission schema cover US FATCA, UK Crown Dependency and Other Territory (CDOT) regulations?

Although the UK schema will support reporting under both sets of regulations the guide itself only covers reporting under the US FATCA regulations.

The HMRC's online service does not yet support reporting to any jurisdiction other than the US and will need to be updated before returns can be made to HMRC to comply with the CDOT regulations.

The HMRC schema contains 2 fields called 'Due Diligence' and 'Threshold Indicators'. These are not present in the US schema. What are these?

The Agreement that the UK signed with the US allows for UK financial institutions to make certain ‘elections’ regarding how they do their due diligence.

Thresholds

UK financial institutions need to make an election if they wish to use thresholds when undertaking their due diligence. If they do not make this election then they are required to review accounts regardless of value.

The threshold will apply to the whole report. If a financial institution wishes to elect to apply thresholds to some accounts but not others (for example, they only make the election for some lines of business) then they must report those sets of accounts separately.

Due Diligence

Due diligence is the process for identification and reporting of financial accounts held by specified US persons. Please refer to the chapter on due diligence in the HMRC guidance (Chapter 4). Due diligence requirements are set out in the IGA, they are implemented in the UK as a result of the UK regulations. Annex II permits the UK to allow UK financial institutions to rely on the procedures described in relevant US Treasury regulations.

Please note that this permits use of alternative procedures only, it does not permit the use of any alternate definitions or obligations given in the US Treasury regulations.

If a financial institution wishes to use procedures described in relevant US Treasury regulations when undertaking their due diligence, in place of the procedures outlined in the UK IGA, then they should make this election here.

A financial institution who complies with the due diligence requirements that are specified in the UK regulations shouldn't make this election.

If they wish to make this election to some accounts but not others (for example, they only make the election for some lines of business) then they must report those sets of accounts separately.

What happens if I don’t comply

HMRC can charge penalties for non-compliance and late filing.

Find more information on penalties in the HMRC FATCA regulations

Where can I find further information?

Find detailed guidance and regulations on reporting for financial institutions

If you require further assistance please call the helpline on 03000 576 748.