HM Revenue & Customs

Automatic Exchange of Financial Account Information

Guidance Notes

14 September 2015

USERS SHOULD READ THE SECTION 'PURPOSE AND STATUS OF THIS GUIDANCE' BEFORE PROCEEDING TO THE GUIDANCE MATERIAL

Automatic Exchange of Information Manual

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Purpose and Status of This Guidance

This Guidance is in draft.

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

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

Clause 13 of the DAC states:-

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

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

A table of destinations is included with this guidance which shows the extent to which the existing FATCA and CDOT Guidance has been incorporated into this guidance. Appended to this guidance is the FATCA and CDOT guidance to the extent that it has not been incorporated (see the table of destinations), that guidance remains active as the source for information in respect of those two regimes.

AEIM 100000

Introduction

Guidance

The Automatic Exchange of Information Manual contains up to date guidance for HM Revenue & Customs staff and customers on key issues on the application of various international agreements and UK legislation on the automatic exchange of financial account information between the UK and other tax jurisdictions.

We will continue to expand and update the Manual to include guidance on new legislation, international agreements and litigation which has become final.

Feedback

If you have any comments on this Manual, or suggestions for improvement, please send them to:

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How to use this Manual

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The left bar is not available to internet users. Instead search the Manuals area using your chosen keywords and look for results in the Automatic Exchange of Information manual (AEIM page references).

Acknowledgment

This manual includes quotations from an OECD publication:

- the Standard for Automatic Exchange of Financial Account Information, © OECD 2014

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AEIM100020

Background - Automatic Exchange of Financial Account Information

Globalisation of the financial sector now makes it much easier for individuals and entities to hold money and assets outside of their jurisdiction of tax residence. While the great majority comply with their tax obligations there are some who will use the availability of offshore financial structures to evade tax.

Automatic exchange of financial account information is about improving transparency in the fight against tax evasion and in so doing protecting the integrity of the tax systems of the Participating Jurisdictions. The UK is a party to a number of international agreements designed to provide tax administrations with details of financial accounts and assets, owned by individuals and entities that are resident for tax purposes in their jurisdiction, but which are held by financial institutions in the other territory.

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

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

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

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

Going forward it is expected that, with the exception of the FATCA agreement, all of the UK's obligations in this area will be under the CRS or the DAC meaning that reporting under CDOT will be relatively short-lived. All three regimes have significant common requirements, this guidance manual will therefore concentrate on the requirements of the DAC and the CRS and highlight the differences that apply under the other two regimes.

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

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AEIM 100040

Background – Foreign Account Tax Compliance Act (FATCA)

In 2010 the United States of America enacted the Foreign Account Tax Compliance Act provisions (FATCA) which are contained in the HIRE Act 2010. These provisions are aimed at reducing tax evasion by US citizens and entities.

FATCA requires financial institutions outside the USA to pass information about their USA customers to the US tax administration, the Internal Revenue Service. The legislation allows for a 30% withholding tax to be applied to the US source income of any non-US financial institution that fails to comply with this requirement. This caused a number of issues for UK financial institutions not least of which was how they could comply with the requirements of FATCA without breaching data protection restrictions.

On 12 September 2012 the UK and the USA signed a Treaty to implement FATCA in the UK – "The UK-US Agreement to Improve International Tax Compliance and to Implement FATCA" (the US IGA). Legislation at section 222 Finance Act 2013 provides HM Treasury with powers to make regulations to give effect to this and other similar agreements. The US IGA was brought into force by the International Tax Compliance (United States of America) Regulations 2014, which were subsequently incorporated into the International Tax Compliance Regulations 2015 (SI 2015/878). These regulations impose obligations on UK financial institutions to identify, maintain and report information to HMRC on financial accounts held by US citizens and entities. There is an also a requirement under FATCA for Reporting Financial Institutions to report payments to Non-Participating Financial Institutions (see FATCA Guidance paragraphs 2.5 and 9.4). Provided these financial institutions comply with the requirements of the legislation they will not be subject to the 30% withholding tax on US source income.

AEIM 100060

Background – The Crown Dependencies and Overseas Territories Agreements (CDOT)

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

Of these, the agreements with the three Crown Dependencies and with Gibraltar are reciprocal thus imposing obligations on UK financial institutions to identify, maintain and report information to HMRC on financial accounts held by individuals and entities resident for tax purposes in those territories. The regulations that require this are The International Tax Compliance (Crown Dependencies and Gibraltar) Regulations 2014 (SI 2014/520) as amended by The International Tax Compliance (Crown Dependencies and Gibraltar) (Amendment) Regulations 2015 (SI 2015/873).

The agreements with the remaining six Overseas Territories are non-reciprocal meaning that while HMRC will receive information from these territories there is no requirement for reporting in the opposite direction.

AEIM 100080

Background – The Common Reporting Standard (CRS)

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

There are, however, some distinct differences between the two systems, driven to a large extent by the multilateral nature of the CRS compared to FATCA and the US specific features of FATCA such as reporting on the basis of citizenship as well as tax residence, compared to only tax residence under the CRS, and the FATCA withholding tax which introduces additional features into the reporting process that are not needed when implementing the CRS.

In October 2014, 45 jurisdictions signed a multilateral competent authority agreement to start exchanging information using the CRS framework from 2017. A further 4 signed the same agreement with a commitment to start exchanging information in 2018. Since then many more jurisdictions have either signed the multilateral competent authority agreement, or made a commitment to automatic exchange. The regulations that require UK financial institutions to identify, maintain and report information for exchange with these jurisdictions, The International Tax Compliance Regulations 2015, came into force on 15 April 2015.

The current list of Participating Jurisdictions for automatic exchange under both the CRS and the DAC can be found at.

AEIM100100

Background - EU Directive on Administrative Cooperation (the DAC)

Following publication of the CRS by the OECD in June 2014 the European Union immediately started work on incorporating it into an EU Directive to make automatic exchange of financial account information mandatory between EU Member States.

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

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

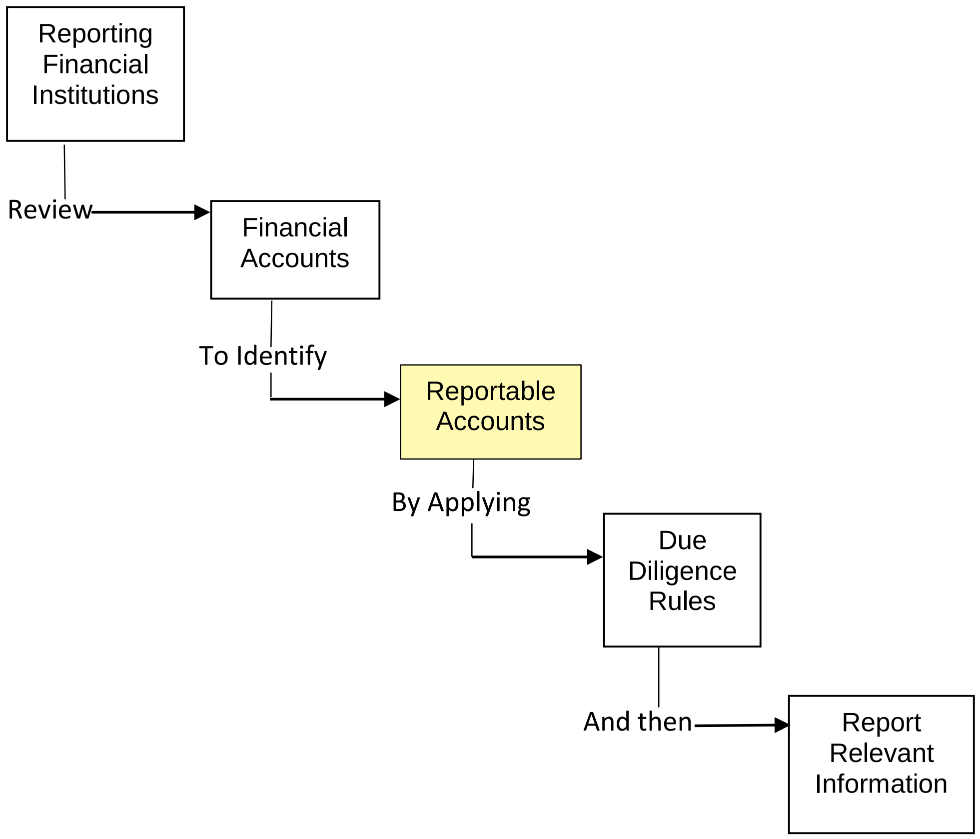
AEIM100120

How the Automatic Exchange Legislation Works

The International Tax Compliance Regulations 2015 implement the DAC in the UK, and incorporate the previously separate FATCA provisions. The Regulations implementing the UK's CDOT agreements, the International Tax Compliance (Crown Dependencies and Gibraltar) Regulations 2014 as amended by the International Tax Compliance (Crown Dependencies and Gibraltar) (Amendments) Regulations 2015 work in the same way to bring into effect the obligations that financial institutions have to report details of accounts to HMRC for exchange with other jurisdictions – these Regulations will not be incorporated into the International Tax Compliance

Regulations 2015 as it is anticipated that they will be repealed once the UK and its Crown Dependencies and Overseas Territories start to exchange information under the CRS.

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



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

AEIM100140

The Wider Approach

The 'wider approach' is intended to enable Reporting Financial Institutions to capture and maintain information on the tax residence of Account Holders irrespective of whether or not that Account Holder is a Reportable Person for any given Reportable Period. This already applies for both the FATCA and CDOT regimes.

The due diligence procedures in each of the agreements governing automatic exchange are designed to identify accounts which are held by the residents of the jurisdictions with which the UK is committed to exchange information. However, the number of these jurisdictions is not fixed and there is an expectation that under the CRS more jurisdictions will reach agreement with the UK over time. As a result, the regulations applying the due diligence rules have been designed to adopt a wider approach to recording the territory in which a person is tax resident irrespective of whether that territory is a Reportable Jurisdiction at the time that the Regulations come into force.

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

The main concern is to provide Financial Institutions with the legal cover they require in the context of data protection law. The Regulations impose an obligation on Financial Institutions without any discretion on their part to collect this information. In such circumstances it is the legislator that must consider the question of proportionality for Data Protection Act purposes. The obligation to identify the territory in which an Account Holder is tax resident and to maintain that information for 6 years from the end of the year in which the due diligence arrangements have been applied provides the necessary data protection cover for Financial Institutions to comply with their obligations.

TIMETABLE: EFFECTIVE DATES FOR AGREEMENTS

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

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

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

Subsequent reporting periods ending on 31 December each year are reportable to HMRC by the 31 May next following. Where 31 May falls on a weekend or Bank Holiday then then the deadline for submitting reportable information to HMRC is the next following working day. Data must be sent to HMRC by this date to enable it to be processed for exchange by 30 September. Not all financial account information is reportable in the first reporting period. Details of what is to be reported under each regime and when can be found at:

AIEM100520 for FATCA

AEIM100540 for CDOT

AEIM 100580 for DAC

AEIM 100520

TIMETABLE: REPORTING: FATCA

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

Reporting Year to 31 December	**In Respect of**	**Information to be Reported**
2014	Each specified US person either • Holding a Reportable Account, or • As a Controlling Person of an entity account	• Name • Address • US Tax identification Number (where applicable or Date of Birth for pre-existing accounts)[1]. • Account number or functional equivalent. • Name and identifying number of reporting financial institution. • Account balance or value.
2015 **As 2014 plus the items listed aside.**	• Custodial Accounts	• Total gross amount of interest. • Total gross amount of dividends. • Total gross amount of other income paid or credited to the account.
	• 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 redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

[1] The TIN or, if no TIN is held, the date of birth is not required to be reported for pre-existing calendar years before 2017 if the Reporting Financial Institution does not already hold the information.

2016 **As 2015 plus the items listed aside**	• Custodial Accounts	• The total gross proceeds from the sale or redemption of property paid or credited to the account.
2017 Onwards		• All of the above.

AEIM100540

TIMETABLE: REPORTING: CDOT

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

Reporting Year to 31 December	In Respect of	Information to be Reported
2014	Each specified CDOT person either • Holding a Reportable Account, or • As a Controlling Person of an entity account	• Name • Address • Date of Birth (for an individual)[2] • Social Security Number/National Insurance Number[3] • Account number or functional equivalent. • Name and identifying number of reporting financial institution. • Account balance or value.
2015 **As 2014 plus the items listed aside.**	• Custodial Accounts	• Total gross amount of interest. • Total gross amount of dividends.

[2] Date of birth is not required to be reported for pre-existing accounts for calendar years before 2017 if the financial institution does not already hold that information.

[3] Social security number or National Insurance Number (see AEIM102040) is not required to be reported for pre-existing accounts for calendar years before 2017 if the financial institution does not already hold that information.

		• Total gross amount of other income paid or credited to the account.
	• 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 redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.
2016 **As 2015 plus the items listed aside**	• Custodial Accounts	• The total gross proceeds from the sale or redemption of property paid or credited to the account.
2017 Onwards		• All of the above.

AEIM 100580

TIMETABLE: REPORTING: DAC/CRS

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

Reporting Year to 31 December	In Respect of	Information to be Reported
2016 onwards	Each Reportable Person Reportable Person either • Holding a Reportable Account, or	• Name • Address • Jurisdiction of residence

	• As a Controlling Person of an entity account	• Tax Identification Number (TIN)[4] • Date of Birth[5] • Place of Birth[6] • Account number or functional equivalent. • Name and identifying number (if any) of reporting financial institution. • Account balance or value.
.	• Custodial Accounts	• Total gross amount of interest. • Total gross amount of dividends. • 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	• 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 redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

[4] TIN(s) or date of birth is not required to be reported if such TIN(s) or date of birth is not in the records of the Reporting Financial Institution and is not otherwise required to be collected by such Reporting Financial Institution under domestic law or any European Union legal instrument. However, a Reporting Financial Institution is required to use reasonable efforts to obtain the TIN(s) and date of birth with respect to Pre-existing Accounts by the end of the second calendar year following the year in which Pre-existing Accounts were identified as Reportable Accounts. Also, the TIN is not required to be reported if a TIN is not issued by the relevant Member State or other jurisdiction of residence.

[5] See Footnote 3 above

[6] place of birth is not required to be reported unless: (1) the Reporting Financial Institution is otherwise required to obtain and report it under domestic law or the Reporting Financial Institution is or has been otherwise required to obtain and report it under any European Union legal instrument in effect or that was in effect on 5 January 2015; and (2) it is available in the electronically searchable data maintained by the Reporting Financial Institution.

AEIM100600

FINANCIAL INSTITUTIONS

The various UK regulations for automatic exchange of financial account information impose obligations on UK financial institutions to identify, maintain and report information about the tax residence (which includes citizenship in the case of the USA), of individuals and entities for whom they maintain financial accounts. Under the 'wider approach' they are required to keep that information in respect of all Account Holders for a period of 6 years from the reporting period in which it is identified and to report it to HMRC to the extent that it is reportable under one of the agreements.

There are four categories of financial institution common to each of the agreements –

- Custodial Institution
- Depository Institution
- Investment Entity , and
- Specified Insurance Company

Each category of financial institution is determined by set criteria. Where an entity does not meet the definition of financial institution in any of the categories then it will be classified as non-financial entity (NFE) or, for FATCA purposes, a non-financial foreign entity (NFFE). Throughout this guidance references to NFE should be read as including a reference to NFFE unless otherwise specified.

AEIM100620

FINANCIAL INSTITUTIONS: UK FINANCIAL INSTITUTION

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

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

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

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

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

- For a company
    - If the company is incorporated in the UK or centrally managed and controlled in the UK. For example, a UK incorporated subsidiary of a foreign banking group will be a UK tax resident entity.
- For a company not resident in the UK under the above test
    - Where it is within the charge to corporation tax if, and only if, it carries on a trade in the UK through a permanent establishment in the UK. For example, a UK branch of a foreign bank that trades through a permanent establishment in the UK will be UK tax resident.
- For trusts
    - For CDOT and DAC purposes, if one or more of the trustees are resident in the UK for tax purposes then the trust is UK resident unless the trust is resident for tax purposes in another jurisdiction with which the UK automatically exchanges financial account information and the trust reports details of Reportable Accounts to that jurisdiction.
    - For FATCA purposes a trust will be regarded as resident in the UK for reporting purposes where most or all of the trustees are resident in the UK for tax purposes. Where some of the trustees, but not all are UK tax resident, then the Trust is also to be treated as UK resident if the settlor is both resident and domiciled in the UK for tax purposes.
- For partnerships
    - If the control and management of the business of the partnership takes place in the UK, or the partnership registers with and submits Partnership Tax Returns to HMRC.

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

Entity Classification Elections (known as check the box elections), made to the IRS, do not determine the residence of an entity. The tests above must be applied to determine the residence of entities making such elections.

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

AEIM100630

FINANCIAL INSTITUIONS: HOLDING COMPANIES AND TREASURY CENTRES

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

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

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

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

AEIM100640

FINANCIAL INSTITUTIONS: CUSTODIAL INSTITUTION

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

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

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

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

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

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

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

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

AEIM100660

FINANCIAL INSTITUTIONS: CUSTODIAL INSTITUTION: EXECUTION ONLY BROKER

An execution only broker that simply executes trading instructions or receives and transmits such instructions to another executing broker will not hold Financial Assets for the account of others so will not be a Custodial Institution. However, such a broker may be a financial institution if it falls with the definition of an investment entity.

AEIM100680

FINANCIAL INSTITUTIONS: CUSTODIAL INSTITUTION: CENTRAL SECURITIES DEPOSITORY

In the UK a Central Securities Depository (CSD) will not be treated as maintaining financial accounts. The participants of UK securities settlement systems that hold interests recorded in the CSD are either Financial Institutions in their own right, or they access the system through a Financial Institution (a sponsor). 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 in respect of securities held by means of EUI. EUI acting as the CSD is not required to undertake any reporting 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, the CSD may act as a third party service provider and report on behalf of such participants in respect of reportable interests.

AEIM100700

FINANCIAL INSTITUTIONS: CUSTODIAL INSTITUTION: TRUSTS

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

A trust can be either a financial institution or a NFE. Where a trust meets one of the definitions for being a financial institution it is most likely to be an investment entity and its financial accounts would usually be the equity and debt interests in the trust itself. It may, alternatively, meet the requirements for being a Custodial Institution.

For example, shares held in trust may be in a Custodial Account maintained by the trust and therefore subject to reporting by the trust as the Custodial Institution that maintains the account. This may be the case where a trust such as an Employee Benefit Trust continues to hold Financial Assets, such as shares, for an employee after they have been granted.

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

Further guidance on trusts can be found at

AEIM100720

FINANCIAL INSTITUTIONS: CUSTODIAL INSTITUTION: 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.

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 those maintained by the distributor, and the distributor will be responsible for ensuring it meets its obligations in respect of those accounts.

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

For the purpose of aggregating accounts to determine whether any pre-existing Custodial Accounts are High Value Accounts, a Custodial Institution will need to consider all the financial accounts held with them by each customer even though the underlying interests are in different Collective Investment Schemes.

AEIM100740

FINANCIAL INSTITUTIONS: DEPOSITORY INSTITUTION

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

HMRC will regard a person carrying out an activity in the UK that is a regulated activity for the purposes of the Financial Services and Markets Act 2000 by virtue of Article 5 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (accepting deposits) as a Depository Institution.

Entities within this definition will include entities regulated in the UK as a savings or commercial bank, a credit union, industrial and provident societies and building societies. In considering Article 5, HMRC will apply the relevant exclusions contained therein – for example, insurance brokers and solicitors would not be expected to fall within this definition. However in considering whether an entity is conducting banking or similar business, it will be the actual activities that the entity carries out that will be determinative.

An entity is considered to engage in a banking or similar business if, in the ordinary course of its business it accepts deposits or other similar investments of funds and regularly engages in one or more of the following activities:

a. Makes personal, mortgage, industrial or other loans or provides other extensions of credit;

b. Purchases, sells, discounts or negotiates accounts receivable, instalment obligations, notes, drafts, cheques, bills of exchange, acceptances or other evidences of indebtedness;

c. Issues letters of credit and negotiates drafts drawn thereunder;

d. Provides trust or fiduciary services;

e. Finances foreign exchange transactions; or

f. Enters into, purchases, or disposes of finance leases or leased assets.

Entities that issue payment cards that can be pre-loaded with funds to be spent at a later date, such as a pre-paid credit card or "e-money" may not be Depository Institutions provided certain conditions are met.

Pre-paid credit card issuers may meet the conditions to be a Qualified Credit Card Issuer which will make them a Non-reporting Financial Institution or the payment card account may meet the conditions to be an Excluded Account.

"E-money" providers that are governed by the provisions of the European Union Electronic Money Directive (2009/110/EC) (EMD) are not deposit takers for the purposes of the Banking Consolidation Directive (2006/48/EC). Recital 13 to the EMD specifically states that "The issuance of electronic money does not constitute a deposit-taking activity pursuant to Directive 2006/48/EC", consequently such providers will not fall within the definition of Depository Institution that requires deposits to be accepted in the ordinary course of a banking or similar business.

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

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

AEIM100760

FINANCIAL INSTITUTIONS: INVESTMENT ENTITY

An entity will be an investment entity if it meets either one of the following two sets of criteria.

Investment Entity Conducting Business on behalf of Customers

An entity will be an investment entity if it primarily conducts as a business for or on behalf of a customer one or more of the following activities:

- Trading in
    - Money market instruments (cheques, bills, certificates of deposit, derivatives, etc.).
    - Foreign Exchange.
    - Exchange, interest rate and index instruments.
    - Transferable securities.
    - Commodity futures.
- Individual and collective portfolio management.

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

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

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

Managed Investment Entity

An entity will be an investment entity if it is investing on its own account, is managed by a financial institution AND meets the Financial Assets test as described below.

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

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

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

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

Financial Assets are defined at

Some examples of how the definition of investment entity is applied are included in this manual at AEIM101180.

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

- Trusts
- Partnerships
- Personal investment companies
- Securitisation vehicles

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

An entity that primarily conducts as a business investing, administering, or managing non-debt, direct interests in real property on behalf of other persons, such as a real estate investment trust, will not be an investment entity. This will include structures where the interest in the property is held through a chain of entities provided the entity at the head of the chain has absolute control over the entities below, for example a parent company sitting at the head of a chain of wholly owned subsidiaries.

AEIM100780

FINANCIAL INSTITUTIONS: INVESTMENT ENTITY: EXAMPLES

The following examples illustrate the application of the tests described at AEIM101160.

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

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

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

4. **Entity Managed by a Foreign Financial Institution** – the facts are the same as in example 3 except that Investment Partnership LLP is managed by Invest Co GmbH, a German financial institution. The fact that the LLP is managed by a financial institution resident in another jurisdiction does not alter its status. It will be an investment entity, because it is managed by a financial institution and more than 50% of its gross income is primarily attributable to investing, reinvesting or trading in Financial Assets.

5. **Property Fund Managed by a Financial Institution** – Fund P is an investment fund that invests solely in non-debt direct interests in real property. Fund P is managed by Invest

Co Ltd, a financial institution. Fund P has structured its holdings in property through a company, P Ltd, which has four wholly owned subsidiaries each of which has invested in a property. Fund P will not be an investment entity as although it is managed by a financial institution, none of its gross income is attributable to investing, reinvesting or trading in Financial Assets as the assets it holds are non-debt direct interests in real property.

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

7. **Family Trust Managed by an Individual** - see Example 6 above: if Ben managed the assets of a family trust, the trust would not be an investment entity as it is neither primarily conducting as a business one or more of the relevant activities or operations for or on behalf of a customer, and although its gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets, it is not an entity that is managed by a financial institution (because Ben, as an individual, cannot be a financial institution). (Note: in practice, a trust holding assets on behalf of a family arrangement will typically appoint a company or partnership to manage its assets but some family trusts may instead appoint a suitably qualified individual).

8. **Family Trust with a Corporate Trustee** – The ABC family trust's gross income is primarily attributable to investing, reinvesting or trading in Financial Assets. The trust was set up on the advice of a law firm and that firm's own corporate trustee is the trustee of the trust. The corporate trustee acts for the law firm's clients without itself charging any fees to the clients. Even though the corporate trustee does not charge, it is a Financial Institution as its related entity (the law firm) is charging the clients for these services, it therefore primarily conducts as a business for or on behalf of a customer the prescribed activities. This in turn means that the ABC family trust is also an Investment Entity.

AEIM100800

FINANCIAL INSTITUTIONS: INVESTMENT ENTITY: TRUSTS

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

A trust can be either a financial institution or a NFE. Where a trust meets one of the definitions for being a financial institution it is most likely to be an investment entity but it may, alternatively, meet the requirements to be a Custodial Institution. A trust is unlikely to be regarded as an investment entity by virtue of investing as a business because trusts generally do not carry on businesses for or on behalf of customers unless they are collective investment schemes. A trust may be an investment entity however where its gross income is primarily derived from investing, reinvesting or trading in Financial Assets and it is managed by a financial institution.

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

If the trust is not managed by a Financial Institution in this way, and does not meet any of the other definitions of financial institution, it will be a non-financial entity. For example, where the trustees of a trust are individuals (and therefore not financial institutions) and the trust holds only a Depository Account or other investments with a financial institution, and that financial institution does not have discretion to manage the account or the assets in the account, then the trust will not be an investment entity.

AEIM100820

FINANCIAL INSTITUTIONS: INVESTMENT ENTITY: TRUSTS: TRUST MANAGED BY A FINANCIAL INSTITUTION

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

Does a Financial Institution Manage the Trust?

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

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

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

Where the trustees of a trust invest in retail investments the arrangement will not amount to discretionary management where the trustees make the decision on what investments to make, even though advice may be taken on investing and third party brokers used to buy, hold or sell the investments. The Glossary of Definitions in the Financial Services Handbook defines both retail investment and retail investment activity.

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

[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.

AEIM100840: FINANCIAL INSTITUTIONS: SPECIFIED INSURANCE COMPANY

A specified insurance company is an entity that is an insurance company, including a holding company in an insurance group that writes products that are classified as Cash Value Insurance Contracts or Annuity Contracts or makes payments with respect to such contracts.

Insurance companies that only provide general insurance or term life insurance will not be specified insurance companies, nor will reinsurance companies that only provide indemnity reinsurance contracts.

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

AEIM100860: FINANCIAL INSTITUTIONS: PARTNERSHIPS

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

A partnership can be either a financial institution or a NFE. In determining the status of the partnership it should first consider whether or not it meets any of the definitions of financial institution. If it does not it will be a NFE.

AEIM100880: FINANCIAL INSTITUTIONS: PERSONAL INVESTMENT COMPANIES

Personal investment companies will need to consider whether or not they come within the definition of investment entity. This is most likely to occur where either the personal investment company itself is, or its Financial Assets are, managed by a financial institution.

AEIM100900: FINANCIAL INSTITUTIONS: SECURITISATION VEHICLES

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

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 considered in accordance with the guidance at AEIM100800 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.

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

Example of a securitisation programme.

Cash Flows:

1. Mortgage customer makes their regular monthly mortgage payment to bank A plc.

2. Bank A plc identifies the appropriate SPV that the cash belongs to and pays the cash to that entity, say, a trust.

3. Once a month on the distribution date the trust pays cash to the funding company.

4. The funding company pays cash on payment date to Bank B.

5. Bank B passes the cash to Euroclear or Clear Stream, the exchanges on which the bonds are held.

6. Euroclear and Clear Stream pass the cash to the custodian bank who then credits the bondholders' accounts. Bondholders then draw on their cash at the custodian bank.

The above scenario provides the following reporting obligations:

- Mortgages are not within the financial account definition so there is no financial account with Bank A Plc and therefore no reporting requirement in relation to them.

- Steps 3 – 5 involve payments made between financial institutions and as such there is no need for any of these payments to be reported unless a Financial Institution that receives a payment is a Non-Participating Financial Institution for FATCA purposes. The trust though may have reporting requirements if any of its Account Holders are Reportable Persons. .

- In step 6 the custodian will have financial accounts in which the bonds are held and as such the custodian will need to identify if it has any Reportable Accounts. Where it does, it must perform the necessary reporting.

AEIM100920

FINANCIAL INSTITUTIONS: NON-REPORTING FINANCIAL INSTITUTIONS

All of the automatic exchange of information regimes exclude certain financial institutions from being reporting financial institutions. Such financial institutions are not required to identify, maintain or report information about Reportable Persons.

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

For the purposes of the DAC (which is implemented in the UK by the 2015 Regulations, and which are applicable for reporting by UK financial institutions) the only Non-reporting Financial Institutions are those defined in Annex I Section XIII B.

AEIM 100930

FINANCIAL INSTITUTIONS: NON-REPORTING FINANCIAL INSTITUTIONS: OWNER-DOCUMENTED FINANCIAL INSTITUTION

The Owner Documented Financial Institution (ODFI) is a concept found in the US FATCA Regulations (s 1.1471-5(f) (3)) which can be used for FATCA purposes (see FATCA Guidance at paragraph 2.25) where it is beneficial for the Financial Institution.

In general, ODFI classification is intended to apply to closely held passive investment vehicles that are Investment Entities by virtue of being managed by a Financial Institution, where meeting the obligations under the US Agreement would be onerous given the size of the entity. It is, however, quite limited in its effect as it is necessary for all Reportable Accounts of the ODFI to be maintained by the ODFI. The single largest benefit to the ODFI is that they do not have to register with the IRS to obtain a Global Intermediary Identification Number (GIIN) as the Financial Institution managing the Investment Entity can report for the ODFI using its own GIIN.

ODFI is not a Non-reporting Financial Institution category under either the DAC or the CDOT regime. However, a similar outcome can be obtained where the ODFI for FATCA purposes employs the Financial Institution undertaking the ODFI's reporting obligations under FATCA as a third party service provider. This service provider can carry out the ODFI's reporting obligations under the DAC and CDOT regimes.

AEIM100940

FINANCIAL INSTITUTIONS: NON-REPORTING FINANCIAL INSTITUTIONS: TRUSTEE-DOCUMENTED TRUST

A trustee-documented trust is a trust that is a financial institution where the trustee of the trust is itself a reporting financial institution and reports all the information required in respect of the Reportable Accounts of the trust. The trustee in such a case must report the information that the trustee-documented trust would have reported but for its status as a Non-reporting Financial Institution and must identify, when reporting, the trustee-documented trust in respect of which it fulfils the reporting and due diligence obligations.

AEIM100960: FINANCIAL INSTITUTIONS: NON-REPORTING FINANCIAL INSTITUTIONS: NON-PROFIT ORGANISATIONS

Where a non-profit organisation is a financial institution, which is most likely to happen if it falls within the definition of investment entity by virtue of having its Financial Assets managed by a Financial Institution, it is potentially in scope as a reporting financial institution for both CDOT and DAC/CRS reporting.

Under FATCA, such non-profit organisations are deemed compliant financial institutions and are not required to register with the IRS or report to HMRC.

Under both CDOT and DAC such non-profit organisations are required to carry out due diligence processes to identify and report on any Reportable Persons. Where the non-profit organisation is not a financial institution it will be a NFE. Under all three regimes the effect is to treat the NFE as active. They are specifically defined as active under FATCA and DAC and the Controlling Persons are exempted from being reported on under CDOT.

AEIM101500: FINANCIAL ACCOUNT

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

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

Accounts	**Financial Institution that is Generally Considered to Maintain Them**
Depository Accounts	The financial institution that is obligated to make payments with respect to the account (excluding an agent of the financial institution).
Custodial Accounts	The financial institution that holds custody over the assets in the account.
Equity and debt interests in investment entities.	The issuer of the equity or debt interest maintained by the investment entity.
Cash Value Insurance Contracts	The financial institution that issues or, if different, is obligated to make payments with respect to the contract.
Annuity Contracts	The financial institution that issues or, if different, is obligated to make payments with respect to the contract.

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

AEIM101520 FINANCIAL ACCOUNT: REPORTABLE ACCOUNT

Once a financial institution has identified the financial accounts it maintains it needs to review all those accounts to identify the territory in which the Account Holder is tax resident and maintain the information for future use. This is the wider approach. To the extent that any of the Account Holders are identified as tax resident in one or more Reportable Jurisdictions the account will be a Reportable Account which must be reported to HMRC.

A Reportable Account is an account held by one or more Reportable Persons or by a passive NFE with one or more Controlling Persons that is a Reportable Person.

AEIM101540 FINANCIAL ACCOUNT: DEPOSITORY ACCOUNT

A Depository Account includes any commercial current, savings, time or thrift account, or any account evidenced by a certificate of deposit, investment certificate, thrift certificate, certificate of indebtedness, or other similar instrument where cash is placed on deposit with an entity engaged in a banking or similar business. Being engaged in a banking or similar business is explained at AEIM100740.

A Depository Account does not have to be an interest bearing account.

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

Credit cards will not be reportable as Depository Accounts if the credit card issuer meets the conditions to be a qualified credit card issuer and is therefore a Non-reporting Financial Institution. Similarly, where a financial institution does not satisfy the requirements to be a qualified credit card issuer, but accepts deposits when a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility, it may still not have to report the account as a Depository Account if it qualifies as an Excluded Account.

AEIM101580 FINANCIAL ACCOUNT: CUSTODIAL ACCOUNT

A Custodial Account is an account (other than an insurance contract or Annuity Contract) for the benefit of another person that holds one or more Financial Assets.

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

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

AEIM101600 FINANCIAL ACCOUNT: CUSTODIAL ACCOUNT: COLLATERAL

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

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

AEIM101640 FINANCIAL ACCOUNT: CASH VALUE INSURANCE CONTRACT

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

A Cash Value Insurance Contract is an insurance contract where the policyholder is entitled to receive payment on surrender or termination of the contract. Examples of the type of insurance product that will be cash value insurance products and those that will not can be found at AEIM101660.

The cash value of such a contract is the greater of:

i. The amount that the policyholder is entitled to receive on the surrender or termination of the contract without reduction for any surrender charge or loans outstanding against the policy, for example, where the policyholder receives an annual statement of the value of the policy that will be the cash value in that year, and

ii. The amount the policyholder can borrow against or with regard to the policy. Note that the policyholder does not need to have pledged the account as collateral for borrowing for this second test to apply. It is the amount that the policyholder could expect to borrow against the Cash Value Insurance Contract should they choose to use it as collateral for a loan.

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

a) Solely by reason of the death of an individual insured under a life insurance contract;

b) As a personal injury, sickness or other benefit providing indemnification of an economic loss arising from an event that has been insured against;

c) As a refund of premium due to the cancellation or termination of an insurance contract, a reduction in the amount insured or a correction of a posting or similar error in relation to the premium

d) As a policyholder dividend, other than a termination dividend, provided that the insurance contract pays only the benefits in b) above. A policyholder dividend is the return of premium, under the terms of the policy, resulting from an excess of income over losses and expenses.

e) As a return of an advance premium or premium deposit for an insurance contract where the premium is payable at least annually. In this case the advance premium or premium deposit must not exceed the amount due as the next annual premium payable under the contract.

AEIM101660 FINANCIAL ACCOUNT: CASH VALUE INSURANCE CONTRACT: EXAMPLES

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

- Investment bonds – investment products with an underlying life insurance element in which the policyholder invests either a lump sum or makes regular payments which go into a variety of investment funds with the aim of delivering an investment return.
- Capital redemption bonds – policies under which one or more fixed sums are paid to an insurer under a contract pursuant to which one or more specified amounts are paid out at a later time based on an actuarial computation.

- Deferred annuities in the accumulation phase – a deferred annuity delays distribution of payments until some point in the future after the accumulation phase has passed. The accumulation phase begins when the contract is entered into and ends after a specified period of time during which premiums are payable. Pension annuities that fall within the excluded products list are not reportable.
- Maximum Investment Plans and savings back life assurance policies – regular premium life assurance policies generally carrying a relatively small amount of life cover. The premiums are pooled by the insurer to enable investment through a fund manager with a view to generating a return on the investment.
- Insurance "wrapper" products – insurance contracts where assets are held in an account maintained by a financial institution and managed in accordance with a personalised investment strategy or under the control or influence of the policyholder, owner or beneficiary of the contract.

Cash Value Insurance Contracts do **not** include:

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

AEIM101680 FINANCIAL ACCOUNT: ANNUITY CONTRACTS

An Annuity Contract is a contract under which the issuer agrees to make payments for a period of time, determined in whole or in part by reference to the life expectancy of one or more individuals. For UK purposes this covers all annuities as outlined in the Insurance Policyholder Taxation Manual at [IPTM4000].

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

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

Reinsurance of Annuity Contracts between insurance companies are not annuities.

AEIM101700 FINANCIAL ACCOUNT: EQUITY OR DEBT INTEREST IN AN INVESTMENT ENTITY

Equity and debt interests are financial accounts if they are interests in an investment entity.

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

An equity interest may vary depending on the nature of the investment entity. In the case of an investment entity that is a partnership an equity interest is either a capital or profits interest in the partnership.

In the case of a trust an equity interest is any interest held by a person who is treated as a settlor or beneficiary of all or any part of the trust, or any other natural person exercising ultimate effective control over the trust.

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

AEIM101720 FINANCIAL ACCOUNT: EXCLUDED ACCOUNTS

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

In the intergovernmental agreements between the UK and the USA, Crown Dependencies and Overseas Territories, the Excluded Accounts are listed in Annex II of each agreement.

For reporting under the DAC, the only products that are specifically excluded by UK domestic legislation are those UK specific products specified in Schedule 2 of the International Tax Compliance Regulations 2015 (SI/2015/878). The agreements for automatic exchange provide for the list of Excluded Accounts to be updated, either to allow for other low risk products to be added or to remove products that are no longer regarded as low risk.

AEIM101760 FINANCIAL ACCOUNT: EXCLUDED ACCOUNTS: RETIREMENT & PENSION ACCOUNTS

All retirement accounts and products established under a:

- UK registered pension scheme under Part 4 of the Finance Act 2004; and
- Non-registered pension arrangements, including arrangements with overseas pension funds, where
    - Annual contributions are limited to £50,000; **and**
    - The funds contributed cannot be accessed before the age of 55, except in circumstances of serious ill health

are in Annex II of the IGAs and are substantially similar to the definition of retirement accounts in Section VIII C(17)(a) of the CRS and DAC. Consequently they are Excluded Accounts and financial institutions will have no due diligence or reporting obligations in respect of these accounts or products. For clarification this applies to both the accumulation and decumulation phases of a pension scheme, contract or arrangement.

Registered Pension Scheme

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

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

Accumulation and Decumulation Phase

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

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

"Pension" is defined under Section 165 (2) Finance Act 2004, to include an annuity or income withdrawal as well as a pension that is paid directly from the pension scheme.

AEIM101780 FINANCIAL ACCOUNT: EXCLUDED ACCOUNTS: RETIREMENT & PENSION ACCOUNTS: 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, that is, not through a permanent establishment in the country where the business is written, this will not be a financial account if:

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

Example

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

AEIM101800 FINANCIAL ACCOUNT: EXCLUDED ACCOUNTS: RETIREMENT & PENSION ACCOUNTS: ‘HOLLOWAY’ CONTRACTS

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

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

(b) Are payable to [policyholders] on retirement, death, or as otherwise specified by contractual provisions or individual society rules for example, disability of the policyholder.

AEIM101820 FINANCIAL ACCOUNT: EXCLUDED ACCOUNTS: OTHER TAX FAVOURED ACCOUNTS AND PRODUCTS

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

- Individual Savings Accounts (ISAs) - as defined in the Individual Savings Account Regulations 1998 (SI 1998 No.1870) and subsequent Amendment Regulations.
- Junior ISAs - as defined in SI 1998 No.1870, and subsequent Amendment Regulations.
- Child Trust Funds - as defined in the Child Trust Funds Act 2004 and subsequent Amendment Regulations.
- Premium Bonds - where issued by NS&I (UK National Savings and Investments).
- Children's Bonus Bonds - where issued by NS&I (UK National Savings and Investments).
- Fixed Interest Savings Certificates - where issued by NS&I (UK National Savings and Investments).
- Index Linked Savings Certificates - where issued by NS&I (UK National Savings and Investments).
- Tax Exempt Savings Plans - where issued by a Friendly Society within the meaning of the Friendly Societies Act 1992 (c. 40).
- Share Incentive Plans – as regulated under Part 1 Schedule 8 FA 2014*.
- Save As You Earn Share Option Schemes - as regulated under Part 2 Schedule 8 FA 2014*.
- Company Share Option Plans - as regulated under Part 3 Schedule 8 FA 2014*.
- Immediate Needs Annuities – qualifying as such under Section 725 Income Tax (Trading and Other Income) Act 2005.
- [Holdings in Venture Capital Trusts – where approved as such by HMRC under Chapter 3 Income Tax Act 2007.

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

AEIM101840 FINANCIAL ACCOUNT: EXCLUDED ACCOUNTS: ESTATE ACCOUNTS

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

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

AEIM101860 FINANCIAL ACCOUNT: EXCLUDED ACCOUNTS: ESCROW ACCOUNTS

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

a. A court order, judgement or other legal matter on which the third party is acting on behalf of the underlying beneficial owner for example, an account held by an individual or an entity appointed by the Court of Protection to look after the affairs of a vulnerable person.
b. A sale, exchange, or lease of real or personal property where it also meets the following conditions:
    - The account holds only the monies appropriate to secure an obligation of one of the parties directly related to the transaction, or a similar payment, or with a Financial Asset that is deposited in the account in connection with the transaction.
    - The account is established and used solely to secure the obligation of the parties to the transaction.
    - The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the parties when the transaction is completed.
    - The account is not a margin or similar account established in connection with a sale or exchange of a Financial Asset; and
    - The account is not associated with a credit card account.

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

d. An obligation of a financial institution solely to facilitate the payment of taxes at a later time.

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

Periodic payment orders in connection with an escrow account are not considered to be reportable Annuity Contracts.

AEIM101880 FINANCIAL ACCOUNT: EXCLUDED ACCOUNTS: DEPOSITORY ACCOUNTS WITH UNRETURNED OVERPAYMENTS

A financial institution that does not satisfy the requirements to be a qualified credit card issuer but which accepts deposits when a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility may treat such Depository Accounts as Excluded Accounts if the following criteria are met:

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

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

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

AEIM101900 FINANCIAL ACCOUNT: EXCLUDED ACCOUNTS: LOW VALUE DORMANT ACCOUNTS

Dormant Accounts are defined for the purposes of the residence address test for pre-existing lower value individual accounts. A subset of Dormant Accounts is also included in the list of Excluded Accounts meaning that accounts with less than an amount equivalent toUS$1,000 do not need to be subjected to any due diligence procedures until they are reactivated in some way. The definition there is narrower than the definition for the residence address test in that it only permits Dormant Accounts to be included where there has been no activity on the account for three years and no contact from the customer for six years.

AEIM102000 REPORTABLE INFORMATION: GENERAL REQUIREMENTS

The agreements for automatic exchange of information require specific information to be reported in respect of Account Holders who are identified by financial institutions as holding Reportable Accounts.

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

- Name
- Address
- Taxpayer Identification Number(s) (TIN)
- Jurisdiction(s) to which the information is reportable
- The account number (or a functional equivalent in the absence of an account number)
- The name and identifying number of the reporting financial institution
- The account balance or value as of the end of the calendar year or other appropriate period.

For the Crown Dependencies and Overseas Territories agreements and the DAC, financial institutions must also report

- Date of birth of individuals

For the DAC, financial institutions may also be required to report place of birth of individuals subject to certain conditions (see AEIM102180).

There are also additional reporting requirements depending on the type of account that is being reported on.

The timelines for reporting information under the various regimes can be found at:

AEIM 100520 FATCA

AEIM 100540 CDOT

AEIM 100580 DAC/CRS

AEIM102020 REPORTABLE INFORMATION: ADDRESS

Individual Account Holders

Where the Reportable Person is an individual who is an Account Holder or is a Controlling Person of an entity, the address to be reported is the individual's current residence address. If the financial institution does not hold this address in its records then it should report the mailing address it has on file for that person.

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

Entity Account Holders

Where the Reportable Person is an entity the address to be reported is the mailing address that the financial institution holds on file for that entity.

AEIM102040 REPORTABLE INFORMATION: TAXPAYER IDENTIFICATION NUMBER

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

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

Some jurisdictions do not issue a TIN, or do not issue a TIN to all residents, and where no TIN has been issued there will be nothing to report unless they use other high integrity numbers with an equivalent level of identification. For individuals these include:

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

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

Some jurisdictions that issue TINs have domestic law that does not require the collection of the TIN for domestic reporting purposes, Australia for example. There is a standard approach in international tax treaties that stops the sending jurisdiction from requesting information from local sources if the receiving jurisdiction could not ask for under its own domestic rules. The reporting financial institution is not required to collect the TIN for those jurisdictions. Details of the jurisdictions where this applies will be published on the OECD website.

The TIN must be reported for all new accounts. For pre-existing accounts the TIN is reportable to the extent that it is already held in records maintained by the reporting financial institution or the reporting financial institution is otherwise obliged to collect it. Where the TIN is not held in respect of pre-existing accounts the reporting financial institution must use reasonable efforts to obtain it by the end of the second calendar year following the year in which the accounts are identified as Reportable Accounts.

As Reportable Persons may be resident in more than one jurisdiction they may have two or more TINs that the financial institution must report.

US Agreement

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

Crown Dependencies and Overseas Territories Agreements

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

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

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

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

AEIM102060 REPORTABLE INFORMATION: JURISDICTION

The UK Regulations apply the wider approach that requires financial institutions to retain data on the jurisdiction of residence of Account Holders irrespective of whether or not that jurisdiction is a Reportable Jurisdiction.

Financial institutions must carry out the due diligence procedures required and where a person is identified as a Reportable Person include the jurisdiction of residence in the return of information to HMRC. Where a Reportable Person is identified as having more than one Reportable Jurisdiction of residence the financial institution is required to report all of the identified Reportable Jurisdictions to HMRC.

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

Reportable Account data is to be sent to HMRC where the Account Holder is a US specified person or otherwise a resident of a Reportable Jurisdiction. A list of Reportable Jurisdictions can be found at AEIM 102340.

AEIM102080 REPORTABLE INFORMATION: ACCOUNT NUMBER

The account number to be reported is the unique identifying number or code that the reporting financial institution has assigned to the Reportable Account. This will include identifiers such as bank account numbers and policy numbers for insurance contracts as well as other non-traditional unique identifiers. The unique identifier should be sufficient to enable the financial institution to identify the Reportable Account in future.

Where there is not a unique identifying number or code the financial institution should report any functional equivalent that they use to identify the account. This may include non-unique identifiers that relate to a class of interests, which, along with the name of the Account Holder, enable the account to be identified.

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

AEIM102100 REPORTABLE INFORMATION: REPORTING FINANCIAL INSTITUTION

The reporting financial institution must report its name and identifying number. This is to enable the jurisdiction receiving the information to easily identify the source of it in the event that they have any follow-up questions in respect of the data reported.

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

In addition, the financial institution will need to report a UK identifying number. This will take the form of either the unique taxpayer reference number (UTR) issued by HMRC to persons making annual tax returns. If the Financial Institution has not been issued with a UTR then it may report another identifier issued for regulatory purposes such as a company registration number or confirm that no unique identifier is held.

AEIM102120 REPORTABLE INFORMATION: ACCOUNT BALANCE OR VALUE

The reporting financial institution must report the balance or value of reportable financial accounts as of the end of the reporting period for each calendar year. This will be 31 December in each year unless it is not possible or usual to value an account at that date. If that is the case then that value at the normal valuation point for the account that is nearest to 31 December should be used. The value of the account should be reported in the currency in which the account is denominated.

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

For Cash Value Insurance Contracts or Annuity Contracts the amount to be reported is the cash value or surrender value of the contract.

For an equity interest in an investment entity the amount to be reported is the value calculated by the financial institution for the purpose that requires the most frequent determination of value.

For a debt interest in an investment entity the balance or value is the principal amount of the debt.

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

AEIM102140 REPORTABLE INFORMATION: ACCOUNT BALANCE OR VALUE: JOINT ACCOUNTS

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

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

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

AEIM102160 REPORTABLE INFORMATION: ACCOUNT BALANCE OR VALUE: MULTIPLE JURISDICTIONS

Where a Reportable Person is either an Account Holder or the Controlling Person of a passive NFE/NFFE and is identified as having more than one jurisdiction of residence, the entire balance or value of the Reportable Account, as well as the entire amount paid or credited to the Reportable Account must be reported to each jurisdiction of residence of the Account Holder or Controlling Person.

AEIM102170 REPORTABLE INFORMATION: ACCOUNT CLOSURE

An account is regarded as closed according to the normal operating procedures of the reporting financial institution that are consistently applied for all accounts that it maintains. For example, an equity interest in an investment entity would be considered closed when that interest is terminated by the transfer, surrender, redemption or cancellation of the interest or the liquidation of the entity.

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

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

FATCA & CDOT Reporting

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.

DAC Reporting

When an account is closed the reporting financial institution must report the fact of the closure but is not required to report the balance or value of the account at closure. Any reportable amounts paid or credited to the account in the reporting period up to the date of closure remain reportable.

AEIM102180 REPORTABLE INFORMATION: PLACE AND DATE OF BIRTH

Place of Birth

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

The requirement to report place of birth is subject to the condition at Annex I Section I Paragraph E of the DAC. This makes place of birth a reportable item only where the Reporting Financial Institution is required to obtain and report it either under UK domestic law or under a European Union legal instrument in effect or that was in effect on 5 January 2015 being the date that the DAC came into force for automatic exchange of financial account information.

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

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

The reference to an EU legal instrument 'that was in effect on 5 January 2015' is a recognition of the expectation that the EUSD will be repealed as the requirements of that Directive have been overtaken by the DAC. This was settled by the Council of Europe when the DAC was agreed but the process for repeal has yet to be concluded.

What this means is that where place of birth information has been captured in the electronic data systems of the reporting Financial Institution for EUSD purposes that information must be retained and reported under the DAC even after the EUSD has been repealed. Our interpretation of the DAC is that the provisions in Annex 1 E do not have the effect of placing a continuing requirement, after the repeal of the EUSD, to collect and report place of birth for new accounts, on those Financial Institutions currently required to do so by the EUSD.

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

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

Date of Birth

The date of birth is reportable for all new accounts. It is only reportable for pre-existing accounts to the extent that it is already held in records maintained by the reporting financial institution or the reporting financial institution is otherwise obliged to collect it. Where the date of birth is not held in respect of pre-existing accounts the reporting financial institution must use reasonable efforts to obtain it by the end of the second calendar year following the year in which the accounts are identified as Reportable Accounts.

AEIM102200 REPORTABLE INFORMATION: CUSTODIAL ACCOUNT

In addition to the general reporting requirements, where the Reportable Account is a Custodial Account the information to be reported for each reporting period is:

- The total gross amount of interest paid or credited to the account, the Regulations define interest to include any amount that is chargeable as interest under Part 4 of ITTOIA 2005(1) ,
- The total amount of dividends paid or credited to the account,
- The total gross amount of other income generated with respect to the assets held in the account paid or credited to the account,
- The total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account.

AEIM102220 REPORTABLE INFORMATION: CUSTODIAL ACCOUNTS: GROSS PROCEEDS

A Custodial Institution is required to report the total gross proceeds from the sale or redemption of Financial Assets held in a Custodial Account during the reporting period. This is without regard to whether or not the Account Holder would be subject to tax in the UK on the sale or redemption of the Financial Asset.

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

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

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

AEIM102240 REPORTABLE INFORMATION: DEPOSITORY ACCOUNTS

In addition to the general reporting requirements, where the Reportable Account is a Depository Account the information to be reported for each reportable period is the gross amount of interest paid or credited to the account during that period.

AEIM102260 REPORTABLE INFORMATION: OTHER ACCOUNTS

In addition to the general reporting requirements, in the case of any account other than a Depository Account or a Custodial Account the information to be reported for each reporting period is the total gross amount of income paid or credited to the Account Holder in the reporting period with respect to which the reporting financial institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the reporting period.

AEIM102280: REPORTABLE INFORMATION: CURRENCY

All amounts to be reported by the reporting financial institution must identify the currency in which they are denominated.

AEIM102300: REPORTABLE INFORMATION: PAPER AND ELECTRONIC RECORDS

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

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

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

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

AEIM102320: REPORTABLE INFORMATION: REASONABLE EFFORTS TO OBTAIN

Where a financial institution does not hold information in its records on either the Account Holder's taxpayer identification number or date of birth it is expected to make reasonable efforts to obtain the information by the end of the second calendar year following the year in which the account is identified as reportable. Such attempts must be made at least once a year.

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

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

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

Reasonable efforts may continue to be made after the above mentioned period if the financial institution so chooses.

AEIM102340: REPORTABLE INFORMATION: REPORTABLE JURISDICTIONS AND PARTICIPATING JURISDICTIONS

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

FATCA

United States of America

CDOT

Gibraltar, Guernsey, Isle of Man and Jersey.

DAC

Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and Switzerland[7].

Note that the term Reportable Jurisdictions has relevance for determining for whom reporting financial institutions must report financial account information to HMRC. With regard to the DAC/CRS, the UK and over 60 other jurisdictions to date have signed the Multi-Lateral Competent

[7] Switzerland entered into an agreement with the EU on 27 May 2015 to exchange information, starting in 2018, equivalent to that required under the DAC.

Authority Agreement (MCAA) for CRS purposes (the OECD maintained list can be found at (http://www.oecd.org/tax/exchange-of-tax-information/MCAA-Signatories.pdf). The MCAA, and other competent authority agreements as appropriate, together with formal agreements between the UK and other jurisdictions that we agree to exchange financial account information with will result in additions to the number of Reportable Jurisdictions over the coming months and a list will be published in good time to enable financial institutions to make their first reports by 31 May 2017.

Participating Jurisdictions (DAC/CRS)

The terms Reporting Jurisdiction and Participating Jurisdiction have different meanings. The list of Participating Jurisdictions at Schedule 1 to the 2015 Regulations are the jurisdictions that have made a commitment to exchange under the DAC/CRS as Participating Jurisdictions. For the purposes of the 2015 Regulations, where an Investment Entity that is managed by a Financial Institution is resident in a Participating Jurisdiction there is no need to look through the entity to identify its Controlling Persons. .

The non-EU jurisdictions on this list will not become Reportable Jurisdictions unless and until they are either reach agreement with the EU to adopt the DAC or the UK has concluded agreements that require the UK to send information to them under the CRS.

Note that as at 31 July 2015, Ghana had signed the Multilateral Competent Authority Agreement. The International Tax Compliance Regulations 2015 will be amended to include Ghana in the list of Participating Jurisdictions, as well as any other jurisdictions that subsequently commit to the CRS.

AEIM102500: DUE DILIGENCE: GENERAL REQUIREMENTS

Due diligence requirements apply for ‘new’ accounts and ‘pre-existing’ accounts.

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

If the Account Holder is identified as being tax resident in any of the jurisdictions with which the UK has agreed to exchange information on a reciprocal basis then they are a Reportable Person and the account is a Reportable Account.

An account is treated as a Reportable Account as of the date it is identified as such pursuant to the due diligence procedures that financial institutions must follow. The requirement to apply due diligence procedures for pre-existing accounts is subject to certain options that financial institutions may elect to apply such that accounts below de minimis thresholds are not subject to review.

AEIM 102505

DUE DILIGENCE: GENERAL REQUIREMENTS: REQUIREMENT TO NOTIFY ACCOUNT HOLDERS

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

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

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

AEIM102520: DUE DILIGENCE: GENERAL REQUIREMENTS: IDENTIFYING REPORTABLE ACCOUNTS

An account is treated as a Reportable Account from the date it is identified as such pursuant to the due diligence procedures that the financial institution is required to follow. Information must be reported annually to HMRC on that account in the calendar year following the year to which the reportable information relates.

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

- The Account Holder ceases to be a Reportable Person.
- The account is closed or transferred to another financial institution in its entirety (where it may become a Reportable Account by that business).
- The account becomes an Excluded Account.
- The reporting financial institution becomes a Non-reporting Financial Institution.

While the account remains a Reportable Account it must be reported even where the balance or value of the account is zero or negative (the latter are treated as ‘zero’ balances). It also remains reportable where nothing has been credited to or in respect of the account during the appropriate reportable period.

When an account ceases to be a Reportable Account it no longer needs to be reported, but where the account is closed information with respect to that account must be reported until the date of closure in accordance with the rules of each regime (see AEIM102170).

AEIM102540: DUE DILIGENCE: GENERAL REQUIREMENTS: IDENTIFYING REPORTABLE ACCOUNTS: EXAMPLES

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

1. **Account becomes reportable** – a financial institution carries out due diligence procedures on lower value pre-existing accounts as at 31 December 2015 for DAC/CRS purposes between 1 January 2016 and 31 December 2017. On 22 March 2017 the financial institution identifies an account that belongs to an individual resident in Italy. The account is a Reportable Account from that date. Information on that account is reportable for the full calendar year 2017, the first report being made in 2018 and annually thereafter.
2. **Account reportable after change of circumstance** – a new account is opened by an individual on 20 June 2016. The self-certification provided by the individual on opening the account shows that he is tax resident in the UK. The account is not a Reportable Account. On 13 September 2018 the individual notifies the financial institution that he has moved to Germany to work and will be tax resident there for the foreseeable future. The account becomes a Reportable Account from that date and is reportable for the full calendar year 2018, the first report being made in 2019 and annually thereafter.
3. **Account ceases to be reportable** – the Account Holder of the account in example 1 above notifies the financial institution that they have moved permanently to the UK and are resident there (and nowhere else) for tax purposes with effect from 17 April 2019. As a result, the individual ceases to be a Reportable Person. As the account ceases to be a Reportable Account in the calendar year 2019 no report from the financial institution is

required in 2020 or any subsequent calendar year unless the account becomes reportable once again.

4. **Account is closed** – a Reportable Account is closed by the Account Holder on 14 August 2018. The financial institution must report in 2019 that the account has been closed along with information in respect of that account for the period from 1 January 2018 to the date of closure. The amount of information will depend on the regime under which reporting occurs.
5. **Account ceases to be reportable and is then closed** – the Account Holder in example 3 above closes the account with the financial institution on 11 October 2019. As the closure occurred after the account ceased to be reportable, information with respect to the closure of the account is not required to be reported in 2020.

AEIM102560: DUE DILIGENCE: GENERAL REQUIREMENTS: DATE FOR DETERMINING BALANCE OR VALUE

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

The balance or value of the Reportable Account is to be determined as of the last day of the appropriate reporting period. If the balance or value of the account requires conversion from one currency to another the guidance at   should be considered.

If the balance or value of the account is negative it should be reported as a zero balance or value.

AEIM102565: DUE DILIGENCE: GENERAL REQUIREMENTS: THRESHOLDS

The intergovernmental agreements with the USA and the Crown Dependences and Overseas Territories allow for certain thresholds to apply below which due diligence on relevant accounts does not need to be carried out. With one exception, pre-existing entity accounts, such thresholds do not apply to the due diligence requirements under the DAC/DAC/CRS.

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

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

With the exception of the election for Depository Accounts, the rules on aggregation of account balances and values must be applied for the purpose of determining whether or not an account is below the threshold for election. Some examples of how the thresholds apply can be found at AEIM 102580.

AEIM102570: DUE DILIGENCE: GENERAL REQUIREMENTS: THRESHOLDS: ELECTIONS AND PROCESS

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

The election is made on the electronic return of information to HMRC. A financial institution wishing to apply the election will need to register on the HMRC portal and complete the appropriate notification of election on the return even if there are no accounts to report. As at September 2015 the portal has no facility to apply multiple separate elections by business line where different approaches are taken by separate business units within the same legal entity. Affected entities wishing to make multiple elections should notify their usual HMRC point of contact, for example a Customer Relationship Manager.

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

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

Effect of applying the 'wider approach'

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

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

AEIM102580: DUE DILIGENCE: GENERAL REQUIREMENTS: DATE FOR DETERMINING THE BALANCE OR VALUE FOR THRESHOLDS

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

The threshold is applied on the last day of the calendar year that is the subject of the report. The balance or value on the account that is to be used for determining if the threshold has been exceeded is that on the last day of the appropriate reporting period ending in that year .

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

AEIM102600: DUE DILIGENCE: GENERAL REQUIREMENTS: RELIANCE ON SERVICE PROVIDERS

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

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

Similarly, when a financial institution engages a third party to run AML/KYC processes it may rely on the report provided on the basis that the third party has relied on appropriate Documentary Evidence in producing the report. In such a case the reporting financial institution may not hold the original documents or certified copies of them. If HMRC requires sight of documents in these circumstances, photocopies will be acceptable subject to the financial institution being able to obtain originals or certified copies should that be necessary.

AEIM102620: DUE DILIGENCE: GENERAL REQUIREMENTS: ALTERNATIVE PROCEDURES FOR PRE-EXISTING ACCOUNTS

Reporting financial institutions may apply

i. The due diligence procedures for new accounts to pre-existing accounts,

ii. The due diligence procedures for High Value Accounts to Lower Value Accounts, and

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

Where a financial institution chooses to apply the new account procedures to pre-existing accounts the rules that otherwise apply to pre-existing accounts continue to apply. For example, the financial institution can still rely on the exception for reporting a TIN or date of birth if it is not in its records and is not otherwise required to be collected by domestic law. Similarly it may rely in the residence address test if applying new account procedures to pre-existing Lower Value Accounts.

AEIM102640: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS

Pre-existing accounts are those in existence at the point that the various automatic exchange of information regimes 'switch on' under the timelines for due diligence and reporting.

Pre-existing individual accounts are accounts held by a Reportable Person who is an individual. These are split between High Value Accounts and Lower Value Accounts and there are different due diligence procedures for each type. High value pre-existing individual accounts are defined as accounts with an aggregate balance or value that exceeds an amount equivalent to US$1 million as at the end of the calendar year that is the subject of the report. Thus for reporting in 2017 under the DAC/CRS the accounts in scope are those Reportable Accounts in existence as at 31 December 2015.

Lower value pre-existing individual accounts are those with an account balance or value that does not exceed an amount equivalent to US$1 million at the end of the calendar year.

As well as differences in the amount of due diligence required for the two types of pre-existing individual account, financial institutions have longer to carry out their due diligence on Lower Value Accounts compared to High Value Accounts . However, to the extent that Lower Value Accounts are identified as Reportable Accounts in a calendar year they are reportable for that calendar year. Under the DAC/CRS financial institutions have until 31 December 2017 to carry out due diligence on Lower Value Accounts in existence at 31 December 2015 thus all such accounts must be reported no later than 2018 but if any Reportable Accounts are identified on or before 31 December 2016 they must be reported in 2017.

It is expected that more jurisdictions will become Reportable Jurisdictions over time. Under the wider approach Financial Institutions will have identified the territory of tax residence of all pre-existing Account Holders as at 31 December 2015 and will be capturing information for all new accounts opened from 1 January 2016. Any changes of tax residence as a result of a change of circumstances thereafter will be captured when the change is recognised by the Financial Institution. Where new Reportable Jurisdictions are added to the list Financial Institutions will already have identified tax residents of those jurisdictions. Financial Institutions will therefore be able to-contact relevant Account Holders to acquire any further information they may need for reporting purposes, for example a Tax Identification Number or Date of Birth following the process detailed at .

For FATCA and CDOT reporting financial institutions have the option to apply a threshold exemption to Lower Value Accounts that take them out of the scope for carrying out due diligence processes.

AEIM102660: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS

In determining whether an Account Holder of a Lower Value Account is a Reportable Person for DAC/CRS or CDOT purposes financial institutions have two options for making such a determination. They can apply either

i. A residence address test, or

ii. An electronic record search.

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

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

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

As FATCA reporting requires the financial institution to search for indicia of US citizenship the residence address test is not appropriate thus for FATCA only the electronic record search is permitted.

AEIM102680: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: RESIDENCE ADDRESS TEST

The due diligence procedures are for the purpose of identifying whether or not an Account Holder is a Reportable Person. If an Account Holder is identified as a Reportable Person the financial institution will then have to collate reportable information for the purpose of reporting to HMRC.

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

Where the financial institution has policies and procedures in place to verify the residence address of an Account Holder based on Documentary Evidence, a person will be regarded as resident for tax purposes in the jurisdiction in which an address is located if:

a) The financial institution has in its records a residence address for the Account Holder;

b) The residence address held is current ; and

c) The residence address is based on Documentary Evidence.

AEIM102700: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: RESIDENCE ADDRESS DEFINITION

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

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

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

AEIM102720: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: CURRENT RESIDENCE ADDRESS

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

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

AEIM102740: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: RESIDENCE ADDRESS: DORMANT ACCOUNTS

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

An account is considered to be dormant for this purpose if:

i. The Account Holder has not initiated a transaction in the past three years on that account or any other account he or she holds with the financial institution; and

ii. The Account Holder has not communicated in the past six years with the financial institution that maintains the account regarding that account or any other account he or she holds with the financial institution; or

iii. The account is considered to be dormant under the normal operating procedures of the financial institution that are applied for all accounts maintained by it provided these procedures are substantially similar to the requirements in i. and ii. above.

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

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

i. The Account Holder initiates a transaction on the dormant account or any other account he or she holds with the financial institution;

ii. The Account Holder communicates with the financial institution about the dormant account or any other account he or she holds with it; or

iii. The account ceases to be a dormant account under the normal operating procedures of the financial institution.

AEIM102760: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: RESIDENCE ADDRESS BASED ON DOCUMENTARY EVIDENCE

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

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

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

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

i. As that of the address on the most recent documentation collected by the financial institution, for example, a utility bill, a real property lease or a declaration by the Account Holder made under penalty of perjury; and

ii. As that reported by the financial institution with respect to the Account Holder under any other applicable tax reporting requirements (if any).

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

i. There is a change in circumstances that causes the financial institution to know or have reason to know that the address held is incorrect or unreliable, or

ii. The time of pay-out, whether full or partial, or maturity of the contract. The pay-out or maturity of the contract will trigger a change of circumstances requiring the financial institution to update its records.

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

AEIM102780: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: ELECTRONIC RECORD SEARCH

Where a reporting financial institution fails to establish the residence of an individual with a Lower Value Account from the residence test, or chooses not to apply the residence address test, it must review its electronically searchable data for indicia of the individual's residence (and citizenship for US reporting under FATCA). For FATCA reporting an electronic search may not be necessary if the financial institution has already established an Account Holder’s status in order to meet its obligations as a qualified intermediary.

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

a) The Account Holder is identified as resident of a Reportable Jurisdiction or as a US citizen.

b) For FATCA only, there is an unambiguous indication of a US place of birth.

c) The current mailing or residence address (including a post office box) of the Account Holder is in a Reportable Jurisdiction.

d) There are one or more current telephone numbers in a Reportable Jurisdiction (and, for DAC/CRS, no telephone number in the jurisdiction of the reporting FI).

e) Standing instructions to transfer funds to an account maintained in a Reportable Jurisdiction (other than a Depository Account in the case of the DAC/CRS)

f) A current effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction.

g) A “hold mail” instruction or an “in-care-of” address or in a Reportable Jurisdiction if the reporting financial institution does not have any other address on file for the Account Holder.

If none of the above indicia are discovered through an electronic search, no further action is required in respect of Lower Value Accounts unless and until there is a subsequent change of circumstance that results in one or more of the above indicia being associated with the account or the Account Holder. Where such indicia arise the account becomes a Reportable Account unless the financial institution takes steps to cure or repair the indicia. Only where the indicia remain in place after the cure or repair is completed will the account become a Reportable Account.

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

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

AEIM102800: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: ELECTRONIC RECORD SEARCH: RESIDENT OF A REPORTABLE JURISDICTION

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

AEIM102820: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: ELECTRONIC RECORD SEARCH: UNAMBIGUOUS UNITED STATES PLACE OF BIRTH

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

AEIM102840: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: ELECTRONIC RECORD SEARCH: MAILING OR RESIDENCE ADDRESS

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

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

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

AEIM102860: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: ELECTRONIC RECORD SEARCH: QUALIFIED INTERMEDIARIES (FATCA)

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 payer under Chapter 61 of the IRS Code, can rely on that status for the purposes of the US agreement where the Account Holder has received a reportable payment under those regimes. The financial institution is not required to perform the electronic search in relation to those accounts. It will however have to apply the appropriate due diligence procedures to all other pre-existing individual accounts it maintains.

AEIM102880: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: LOWER VALUE ACCOUNTS: ELECTRONIC RECORD SEARCH: CURING INDICIA

There may be occasions when the electronic record search gives indications of residence in a Reportable Jurisdiction that the financial institution considers may be incorrect. In such circumstances the financial institution may take steps to 'cure' the information before treating the Account Holder as a Reportable Person.

Where the financial institution holds information about the Account Holder that includes any of

a. a current mailing address in a Reportable Jurisdiction,

b. one or more telephone numbers in a Reportable Jurisdiction (and, for DAC/CRS, no telephone number in the jurisdiction of the reporting FI),

c. standing instructions , to transfer funds to an account maintained in a Reportable Jurisdiction (other than a Depository Account in the case of the DAC/CRS), or

d. a currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction, then

the financial institution must obtain a self-certification from the Account Holder to establish the jurisdiction of residence. The financial institution can rely on self-certifications it has previously reviewed and maintained a record of, but in either case the self-certification must be supported by Documentary Evidence. If the self-certification supported by Documentary Evidence establishes that the Account Holder is not a Reportable Person then the financial institution is not required to treat the Account Holder as resident in a Reportable Jurisdiction.

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

Where a financial institution has contacted an Account Holder for a self-certificate but the Account Holder has not responded, the account should be treated as undocumented 90 days after initiating contact. The 90 day period is to allow the Account Holder sufficient time to respond to the request for information. In such circumstances, the financial institution must contact the Account Holder at least annually to obtain the self-certification.

The information in d. above may arise in circumstances where the Account Holder cannot provide a self-certification. In such a case the financial institution may rely on Documentary Evidence that establishes the Account Holder’s non-reportable status.

AEIM102900: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS

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

The aggregated amount is that across all accounts held by the individual with the financial institution and includes accounts held by related entities of the financial institution.

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

The financial institution must start with the electronic record search and then continue, where appropriate, with a paper record search and a relationship manager inquiry.

The financial institution may choose to apply the new account procedures and seek self-certifications from Account Holders rather than carry out the due diligence for pre-existing High Value Accounts.

AEIM102920: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: ELECTRONIC RECORD SEARCH

For High Value Accounts a financial institution must review its electronically searchable data [AEIM102300] for indicia of the individual’s residence (and, in addition, citizenship for US reporting under FATCA).

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

a) The Account Holder is identified as resident of a Reportable Jurisdiction or as a US citizen.

b) For FATCA only, there is an unambiguous indication of a US place of birth.

c) The current mailing or residence address (including a post office box) of the Account Holder is in a Reportable Jurisdiction.

d) There are one or more current telephone numbers in a Reportable Jurisdiction (and, for DAC/CRS, no telephone number in the jurisdiction of the reporting FI).

e) Standing instructions to transfer funds to an account maintained in a Reportable Jurisdiction (other than a Depository Account in the case of the DAC/CRS)

f) A current effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction.

g) A "hold mail" instruction or "in-care-of" address in a Reportable Jurisdiction if the reporting financial institution does not have any other address on file for the Account Holder.

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

AEIM102940: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: PAPER RECORD SEARCH

A financial institution must carry out a paper record search to the extent that the information on residence of an Account Holder is not captured by the electronic search.

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

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

- The most recent Documentary Evidence 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 other regulatory purposes;
- Any power of attorney or signatory authority currently in effect; and

- Any standing instructions to transfer funds currently in effect (other than for a Depository Account in the case of the DAC/CRS).

These should be reviewed for any of the indicia of residence detailed in AEIM 102920.

A financial institution can rely on the review of High Value Accounts by third party service providers where there is a contract obliging the service provider to perform the review.

AEIM102960: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: PAPER RECORD SEARCH: FATCA EXCEPTION

A financial institution does not need to carry out the paper record search for determining a person's non-US status where it has retained a withholding certificate and acceptable Documentary Evidence.

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

AEIM102980: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: PAPER RECORD SEARCH: RELATIONSHIP MANAGER INQUIRY

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

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

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

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

AEIM103000: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: RELATIONSHIP MANAGER INQUIRY: EXAMPLES

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

1. An individual holds a Custodial Account with a financial institution. The value of the account at the end of the appropriate reporting period is an amount equivalent to US$1,350,000. An employee of the financial institution has a role that requires them to manage the account on an ongoing basis and maintain the financial institution’s relationship with the individual Account Holder. As the account has a value in excess of US$1million, the employee will be a relationship manager with respect to this account.
2. An individual holds a Custodial Account with a financial institution with a value at the end of the appropriate reporting period of an amount equivalent to US$780,000. In addition, the individual also has a Depository Account with the financial institution with a balance at the same date of an amount equivalent to US$427,000. The financial institution’s internal systems link the accounts to the same Account Holder thus the accounts must be aggregated, the aggregate balances exceed US$1million so belong to a High Value Account Holder. The relationship with the Account Holder is managed in a similar way to that in example 1 above. The employee with that role will be a relationship manager in respect of the accounts held by this Account Holder.
3. The facts are the same as in example 2 except that the employee has no direct contact with the Account Holder simply performing an administrative role in relation to the accounts. Here the employee is not a relationship manager.

AEIM103020: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: CHANGE OF CIRCUMSTANCE

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

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

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

Once a change of circumstance has been identified the financial institution must request a self-certification or other documentation from the Account Holder to establish whether the individual is a Reportable Person and, if so, to which jurisdiction the reportable information should be sent. If the Account Holder fails to respond to the request the financial institution should treat the Account Holder as reportable to each jurisdiction for which it holds indicia unless it can apply the curing procedure described at AEIM102880.

AEIM103040: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: HOLD MAIL OR IN-CARE-OF ADDRESS ONLY

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

If the financial institution cannot obtain a self-certification or Documentary Evidence from the Account Holder the financial institution is required to treat the Account Holder as:

- A US Specified Person for FATCA,
- A Reportable Person for all four territories under the reciprocal Crown Dependences and Overseas Territories agreements, and
- An undocumented account   for DAC/CRS.

AEIM103060: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: LOWER VALUE ACCOUNT BECOMES HIGH VALUE

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

If the balance or value of the account on the last day of the appropriate reporting period, after taking account of any aggregation, exceeds an amount equivalent to US$1million, the financial institution must complete the enhanced review for High Value Accounts (at AEIM102900 onwards) within the calendar year following the year that the account becomes a High Value Account. This will apply to all three reporting regimes, FATCA, CDOT and DAC/CRS.

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

AEIM103080: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: EFFECT OF FINDING INDICIA

Where the enhanced due diligence procedures for high value individual accounts have been carried out and any of the indicators (listed at AEIM102780) are found, the account must be treated as a Reportable Account. The account will be a Reportable Account for each Reportable Jurisdiction identified from the due diligence procedure.

Where the information arising from the due diligence procedures contains potentially conflicting information, for example, the electronic search identifies a residential address in Italy but the relationship manager has knowledge of an address France, the financial institution may attempt to cure the information by seeking a self-certification from the Account Holder.

If no indicators of residence in a Reportable Jurisdiction are found in any of the enhanced due diligence procedures then no further action is required unless and until there is a change in circumstances.

AEIM103100: DUE DILIGENCE: PRE-EXISTING INDIVIDUAL ACCOUNTS: HIGH VALUE ACCOUNTS: UNDOCUMENTED ACCOUNT

An undocumented account exists where the conditions (at AEIM103040) exist, that is, the only indicators that the financial institution hold are a hold mail or in-care-of address and the financial institution has been unable to obtain a self-certification from the Account Holder to cure the information held.

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

AEIM103120: DUE DILIGENCE: NEW INDIVIDUAL ACCOUNTS

New accounts are those opened on or after the date that the various automatic exchange of information regimes 'switch on' under the timelines for due diligence and reporting purposes. New Individual Accounts are accounts where the Reportable Person is an individual.

The due diligence procedures for New Individual Accounts require that a self-certification is obtained from the Account Holder.

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

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

The procedures applying for the purposes of identifying Reportable Accounts among New Individual Accounts are described in the following pages.

AEIM103140: DUE DILIGENCE: NEW INDIVIDUAL ACCOUNTS: SELF-CERTIFICATION

Upon account opening, the reporting financial Institution must obtain a self-certification

It is expected that financial institutions will maintain account opening processes that facilitate collection of a self-certification at the time of the account opening, whether that process is done face-to-face, online or by telephone. There may be circumstances where, exceptionally, it is not possible or practical to obtain a self-certification on 'day one' of the account opening process, for example where an insurance contract has been assigned from one person to another or in the case where an investor acquires shares in an investment trust on the secondary market.

In such circumstances, it is expected that the self-certification should be obtained within a period of 90 days or such reasonable time as the circumstances dictate. Financial institutions must make proper endeavours to obtain the self-certification in these circumstances, including issuing follow up letters on at least an annual basis. If an Account Holder fails to respond then there is no need to close the account but it should be reported as undocumented. HMRC may make enquiries if particular financial institutions appear to have a disproportionate number of undocumented accounts.

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

The self-certification must also include the Account Holder's tax identification number and date of birth.

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

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

- name;
- residence address;
- jurisdiction(s) of residence for tax purposes – see ;
- TIN with respect to each Reportable Jurisdiction (see above); and
- date of birth.

The self-certification does not need to include the place of birth of the Account Holder even where the reporting financial institution is otherwise required to obtain and report it under domestic law.

This is because if that information is already required to be reported it will be held by the financial institution (and, if held in an electronically searchable form, must be then also be reported for DAC/CRS).

The self-certification may be pre-populated by the reporting financial institution to include the Account Holder's information, except for the jurisdiction(s) of residence for tax purposes, to the extent already available in its records.

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

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

AEIM103160: DUE DILIGENCE: NEW INDIVIDUAL ACCOUNTS: SELF-CERTIFICATION: EXAMPLES

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

Example 1

Individual A completes an online application to open an account with reporting financial institution K. All the information required for self-certification is entered by A on an electronic application (including a confirmation of A's jurisdiction of residence for tax purposes). A positively confirms the information provided as part of the application.

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

A's self-certification is valid.

Example 2

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

The application is subsequently signed by B.

B's self-certification is valid.

AEIM103180: DUE DILIGENCE: NEW INDIVIDUAL ACCOUNTS: SELF-CERTIFICATION INCORRECT OR UNRELIABLE

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

Whatever the cause, where the reporting financial institution cannot rely on the original self-certification it must obtain either –

(i) a valid self-certification that establishes the residence(s) for tax purposes of the Account Holder, or

(ii) a reasonable explanation and documentation (as appropriate) supporting the validity of the original self-certification (and retain a copy or a notation of such explanation and documentation).

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

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

Standards of knowledge applicable to self-certifications and Documentary Evidence

A reporting financial institution has reason to know that a self-certification provided by a person is unreliable or incorrect if:

- the self-certification is incomplete with respect to any item on the self-certification that is relevant to the claims made by the person,
- the self-certification contains any information that is inconsistent with the person's claim, or
- the reporting financial institution has other account information that is inconsistent with the person's claim.

A reporting financial institution that relies on a service provider to review and maintain a self-certification is considered to know or have reason to know the facts within the knowledge of the service provider.

A reporting financial institution may not rely on Documentary Evidence provided by a person if the Documentary Evidence does not reasonably establish the identity of the person presenting it.

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

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

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

AEIM103200: DUE DILIGENCE: NEW INDIVIDUAL ACCOUNTS: SELF-CERTIFICATION: CHANGE OF CIRCUMSTANCES

A self-certification can become invalid as a result of a change of the Account Holder's circumstances [AEIM103020]. Reporting financial institutions need to have procedures to ensure that any change that constitutes a change in circumstances is identified.

A reporting financial institution is expected to notify any person providing a self-certification of the person's obligation to notify the reporting financial institution of a change in circumstances.

A change in circumstances affecting the self-certification provided to the reporting financial institution will invalidate the self-certification with respect to the information that is no longer reliable until the information is updated.

A self-certification becomes invalid as soon as the reporting financial institution knows or has reason to know that circumstances affecting the correctness of the self-certification have changed. However, a reporting financial institution may treat the status of the Account Holder as unchanged until the earlier of –

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

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

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

AEIM103220: DUE DILIGENCE: ENTITY ACCOUNTS

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

For reporting purposes an entity will either be a financial institution or a non-financial entity (NFE).

AEIM103225: DUE DILIGENCE: ENTITY ACCOUNTS: INVESTMENT ENTITY WITH REGULARLY TRADED SECURITIES

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

Where such interests are held in uncertified form through CREST, the CREST members and sponsors will be Reporting Financial Institutions and will be carrying out due diligence and reporting for DAC/CRS purposes. In those circumstances an ITC, for example, would not need to report in respect of its uncertified shareholders as that would otherwise lead to duplicated reporting.

Where new accounts arise as a result of interests acquired on the secondary market, a periodic check for new shareholders will be required. The frequency of such checks will depend on the systems and processes that are in place. An annual check may be considered adequate if performed at the year-end if the systems in place are sufficiently robust. However, for operational reasons the registrar may perform the checks at six monthly or more frequent intervals.

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

AEIM103240: DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS

Pre-existing accounts are those in existence at the point that the various automatic exchange of information regimes 'switch on' under the timelines for reporting.

AEIM103260: DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: THRESHOLD EXEMPTION

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

The election is made on the electronic return of information to HMRC. A financial institution wishing to apply the election will need to register on the HMRC portal and complete the appropriate notification of election on the return even if there are no accounts to report. As at September 2015 the portal has no facility to apply multiple separate elections by business line where different approaches are taken by separate business units within the same legal entity. Affected entities wishing to make multiple elections should notify their usual HMRC point of contact, for example a Customer Relationship Manager.

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

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

Accounts becoming reviewable

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

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

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

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

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

Example

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

30 June 2014 $187,000

31 December 2015 $208,000

31 December 2016 $312,000

31 December 2017 $623,000

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

At 31 December 2016, the balance exceeds $250,000 but is still below $1,000,000 so is not reviewable for FATCA or CDOT.

At 31 December 2017, the first review under the DAC/CRS, the balance exceeds $250,000. As a result, all accounts with a balance over $250,000, including this one, must be subjected to the due diligence procedures in the DAC. As a result, Entity X is identified as a US Specified Person and the account, having been so identified, is reportable for FATCA in respect of the 2017 reportable year.

AEIM103280: DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: REPORTABLE ACCOUNTS

A pre-existing entity account is a Reportable Account where the review procedures identify the account as held by one or more entities that are Reportable Persons (AEIM105000) or which are passive NFEs with one or more Controlling Persons that are Reportable Persons.

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

AEIM103300: DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: REVIEW PROCEDURE FOR ACCOUNT HOLDERS

Financial institutions are required to determine whether a pre-existing account is held by one or more entities that are Reportable Persons or which are passive NFEs with one or more Controlling Persons that are Reportable Persons. Such entity accounts will be Reportable Accounts.

The financial institution must review information maintained for regulatory or customer relationship purposes (including information collected as part of any AML/KYC procedure) to determine where the entity is tax resident [AEIM103460], unless residence can be reasonably determined through the use of publicly available information. The entity will be reportable if the information indicates that the entity is tax resident in a Reportable Jurisdiction. Such information will include, but is not limited to:

- A place of incorporation or organisation in a Reportable Jurisdiction;
- An address in a Reportable Jurisdiction; or
- Where the entity is a trust, an address of one or more of the trustees in a Reportable Jurisdiction.

As the definition of entity goes beyond corporate structures to include fiscally transparent vehicles such as trusts and partnerships, the address of the entity should be interpreted widely so will include the registered office, principal office and/or the place of effective management.

The existence of a permanent establishment (including a branch) in a Reportable Jurisdiction is not, in isolation, an indication of residence for this purpose.

Although there is no exemption from a paper record search for pre-existing entity accounts, such a search is not required in areas where all the information is electronically searchable (for example, information held for AML/KYC purposes).

If the information indicates that the Account Holder is tax resident in a Reportable Jurisdiction then the account is a Reportable Account unless the financial institution obtains a self-certification from the Account Holder, or determines, based on information in its possession or which is publicly available, that the Account Holder is not a Reportable Person.

AEIM103320: DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: PRE-EXISTING ACCOUNTS: REVIEW PROCEDURE FOR ACCOUNT HOLDERS: AVAILABLE INFORMATION

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

Such information will include the following:

- Information published by an authorised government body of a jurisdiction. For example, the list of Foreign Financial Institutions published by the US tax administration;
- Information in a publicly accessible register maintained or authorised by an authorised government body of a jurisdiction;
- Information disclosed on an established securities market;
- Information previously recorded in the files of the financial institution;
- A publicly accessible classification based on a standardised industry coding system. This will include any coding system employed by the financial institution which is based on such a standardised industry coding system.

Where the financial institution relies on such information it must retain a notation of the type of information reviewed and the date the review was carried out.

AEIM103340 DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: REVIEW PROCEDURE FOR ACCOUNT HOLDERS: SELF-CERTIFICATION

Where the financial institution has carried out the review of regulatory and customer relationship information and has indications that the Account Holder is resident in a Reportable Jurisdiction it may obtain a self-certification from the Account Holder which reasonably determines that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.

A self-certification for an entity must be signed (or otherwise positively affirmed) by the person with authority to sign on behalf of the entity. This will include:

- An officer or director of a corporate entity;
- A partner of a partnership;
- A trustee of a trust;
- Any person holding an equivalent title to any of the above; and
- Any other person with written authorisation from the entity to sign documentation on behalf of the entity.

The self-certification must also be dated at the latest at the date of receipt by the financial institution and must contain the following information in respect of the entity:

- The name;
- The address;
- The jurisdiction(s) of residence for tax purposes; and
- The TIN with respect to each Reportable Jurisdiction.

The financial institution may also request the Account Holder entity to include its status in the self-certification as either a financial institution or a NFE. When requesting this information from an Account Holder the financial institution is expected to provide the Account Holder with sufficient information to enable it to determine its status. Financial institutions may produce their own guidance for this purpose or they may reference this guidance manual, HMRC's 'Quick Guide for Account Holders' the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters, or the Intergovernmental Agreements for FATCA and CDOT reporting as appropriate.

The requirements for the validity of such a self-certification are the same as for those for self-certification of New Individual Accounts at AEIM103140 to 103200.

AEIM103360: DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: REVIEW PROCEDURE FOR ACCOUNT HOLDERS: SELF-CERTIFICATION AS A FINANCIAL INSTITUTION

The financial institution may request the Account Holder entity to include its status in the self-certification as either a financial institution or a NFE. When requesting this information from an Account Holder the financial institution is expected to provide the Account Holder with sufficient information to enable it to determine its status.

If the Account Holder entity falls within the definition of a financial institution then where it is a financial institution, wherever resident for DAC/CRS or CDOT reporting or a UK or partner jurisdiction financial institution for FATCA reporting, no further review, identification or reporting will normally be required.

The exception to this under the FATCA regime is where there is significant non-compliance by the financial institution which has not been rectified. In such circumstances the entity will be classified as a non-participating financial institution.

Where the financial institution is a non-participating financial institution for FATCA, then reports on certain payments made to such entities will be required.

The exception to this under the DAC/CRS regime is where the financial institution is a managed investment entity resident in a jurisdiction that is not a Participating Jurisdiction. In that case the entity is deemed to be a passive NFE for reporting purposes.

When seeking a self-certification from an entity the categories that may be recorded for a financial institution for DAC/CRS purposes are:

1. An investment entity as described in subparagraph A(6)(b) of Section VIII of the DAC/CRS (a managed investment entity) .

2. Financial institution other than in 1 above.

For FATCA purposes they are:

1. Participating financial institution.

2. Non-participating financial institution.

There is no need to differentiate between types of financial institution for CDOT purposes.

AEIM103380 DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: REVIEW PROCEDURE FOR ACCOUNT HOLDERS: SELF-CERTIFICATION AS A NFE

The financial institution may request the Account Holder entity to include its status in the self-certification as either a financial institution or a NFE. When requesting this information from an Account Holder the financial institution is expected to provide the Account Holder with sufficient information to enable it to determine its status.

If the Account Holder entity falls within the definition of a NFE then the information to be reported will depend on whether the entity is an active NFE or a passive NFE.

AEIM103400: DUE DILIGENCE: ENTITY ACCOUNTS: PRE-EXISTING ACCOUNTS: REVIEW PROCEDURE FOR CONTROLLING PERSONS

When a financial institution has determined that an Account Holder is a NFE it must carry out review procedures to determine:

a. Whether the Account Holder is a passive NFE;

b. If so, the Controlling Persons of that passive NFE; and

c. Whether any of the Controlling Persons is a Reportable Person.

Is the Account Holder a passive NFE?

The financial institution must obtain a self-certification from the Account Holder unless it has information in its possession, or that is publicly available, based on which it can reasonably determine the status of the Account Holder as an active NFE or a financial institution (other than a managed investment entity resident in a non-Participating Jurisdiction). If the financial institution cannot determine the status of the Account Holder as an active NFE or a financial institution then the financial institution must presume the Account Holder to be a passive NFE.

Identifying Controlling Persons.

To identify the Controlling Persons, the financial institution may rely on information collected and maintained pursuant to AML/KYC procedures.

Are any of the Controlling Persons a Reportable Person?

If the account balance or value does not exceed an amount equivalent to $1million, the financial institution may rely on information collected and maintained pursuant to AML/KYC procedures to determine whether the Controlling Person is a Reportable Person or it may choose to obtain a self-certification from the Account Holder or the Controlling Person.

If the account balance exceeds an amount equivalent to $1million the financial institution must obtain a self-certification from either the Account Holder or the Controlling Person. This may be provided in the same self-certification as the one provided by the Account Holder to determine its own status. The self-certification requirements are the same as for New Individual Accounts.

If a self-certification is required but is not obtained the financial institution must rely on the electronic record search for pre-existing individual accounts to determine if there are indicia present that can be used to determine the reportable status of the Controlling Person. If none is present in its records, the financial institution need take no further action unless and until there is a change of circumstance with respect to the Controlling Person.

AEIM103420 DUE DILIGENCE: ENTITY ACCOUNTS: NEW ACCOUNTS

The due diligence procedures for New Entity Accounts are broadly the same as those for Pre-existing Entity Accounts except that there is no de minimis threshold.

Reporting Financial Institutions must determine:

- whether a New Entity Account is held by one or more Entities that are Reportable Persons; and

- whether a New Entity Account is held by one or more Entities that are Passive NFEs with one or more Controlling Persons who are Reportable Persons.

The following review procedures must be applied in order to determine this.

AEIM103440 DUE DILIGENCE: ENTITY ACCOUNTS: NEW ACCOUNTS: DETERMINING WHETHER THE ENTITY IS A REPORTABLE PERSON

Where a New Entity Account is held by one or more Entities that are Reportable Persons, then the account must be treated as a Reportable Account.

Self-certification

To determine this, financial institutions must obtain a self-certification as part of the account opening procedure and confirm the reasonableness of such self-certification based on the information obtained in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures. In practice, this means the financial institution must not know or have reason to know that the self-certification is incorrect or unreliable - if the self-certification fails the reasonableness test, a new valid self-certification must be obtained. Financial institutions are not, however, expected to carry out an independent legal analysis of relevant tax laws to confirm the reasonableness of a self-certification. Paragraph 14 of the Commentary on Section VI of the DAC/CRS contains examples illustrating the application of the “reasonableness” test.

The self-certification must allow determining the Account Holder’s residence(s) for tax purposes (see AEIM103460).

With respect to New Entity Accounts, a self-certification is valid only if it complies with the requirements for the validity of self-certifications for Pre-existing Entity Accounts.

Timing of self-certification

It is expected that financial institutions will maintain account opening processes that facilitate collection of a self-certification at the time of the account opening, whether that process is done face-to-face, online or by telephone. There may be circumstances, however, where it is not possible or practical to obtain a self-certification on ‘day one’ of the account opening process, for example where an insurance contract has been assigned from one person to another or in the case where an investor acquires shares in an investment trust on the secondary market.

In such circumstances, it is expected that the self-certification should be obtained within a period of 90 days or such reasonable time as the circumstances dictate. Financial institutions must make proper endeavours to obtain the self-certification in these circumstances, including issuing follow up letters on at least an annual basis. If an Account Holder fails to respond then there is no need to close the account but it should be reported as undocumented. HMRC may make enquiries if particular financial institutions appear to have a disproportionate number of undocumented accounts.

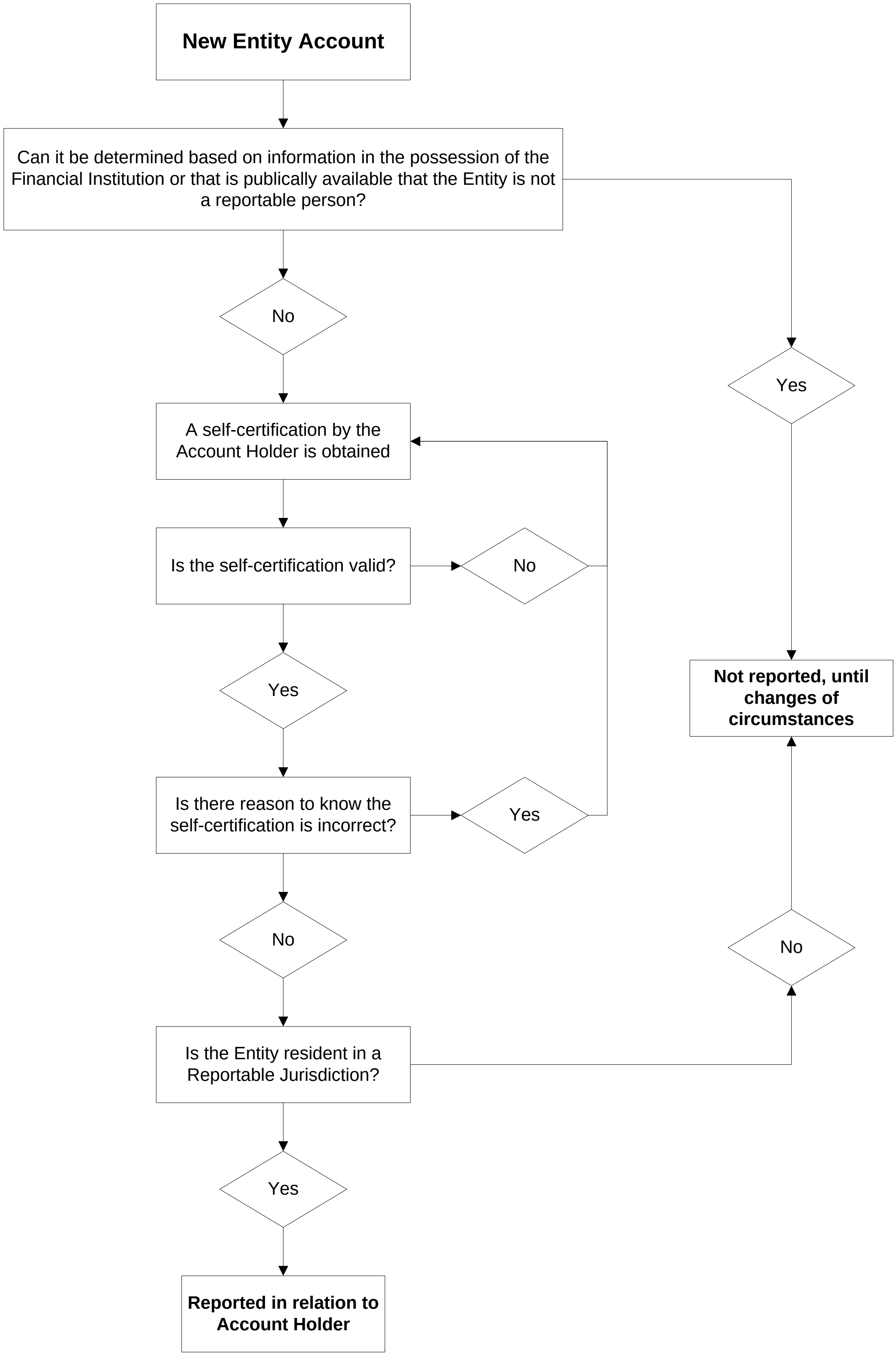
Information in the financial institution's possession or that is publicly available

The due diligence procedures provide an exception to the requirement to obtain a self-certification where the financial institution can reasonably determine, based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person. For example, such information may show that the entity is in fact a corporation that is publicly traded or a Governmental Entity.

Where a self-certification is obtained and it indicates that the Account Holder is resident in a Reportable Jurisdiction, the financial institution must treat the account as a Reportable Account. Again, an exception applies where the financial institution can reasonably determine, based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.

Note that financial institutions are not obliged to rely on these exceptions and they may insist on self-certifications being provided.

This can be summarised in the following diagram (© OECD).


New Entity Account
Can it be determined based on information in the possession of the Financial Institution or that is publically available that the Entity is not a reportable person?
No
Yes
A self-certification by the Account Holder is obtained
Is the self-certification valid?
No
Yes
Is there reason to know the self-certification is incorrect?
Yes
No
Not reported, until changes of circumstances
Is the Entity resident in a Reportable Jurisdiction?
No
Yes
Reported in relation to Account Holder

AEIM103460 DUE DILIGENCE: ENTITY ACCOUNTS: NEW ACCOUNTS: DETERMINING WHETHER THE ENTITY IS A REPORTABLE PERSON: JURISDICTION OF RESIDENCE

The domestic laws of the various jurisdictions lay down the conditions under which an entity is to be treated as fiscally resident.

Generally, an Entity will be resident for tax purposes in a jurisdiction if, under the laws of that jurisdiction, it is liable to tax by reason of its domicile, residence, place of management or incorporation, or any other criterion of a similar nature. Generally an entity will only be tax resident in one jurisdiction, although that may not always be the case. Dual resident Entities may rely on the tiebreaker rules contained in tax conventions (if applicable) to solve cases of double residence for determining their residence for tax purposes.

Where an entity such as a partnership, limited liability partnership or similar legal arrangement has no residence for tax purposes it shall be treated as resident in the jurisdiction in which its place of effective management is situated or, in the case of a trust, the jurisdiction(s) in which the trustee(s) is/are resident.

Entities may find examples illustrating how an entity's residence for tax purposes may be determined in Paragraph 8 of the Commentary on Section VI of the DAC/CRS, concerning due diligence for New Entity Accounts, helpful.

AEIM103480 DUE DILIGENCE: ENTITY ACCOUNTS: NEW ACCOUNTS: ACCOUNT HELD BY PASSIVE NFE(S) WITH ONE OR MORE CONTROLLING PERSONS WHO ARE REPORTABLE PERSONS

Financial institutions must determine whether a New Entity Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons. If so, then the account must be treated as a Reportable Account. In making this determination the financial institution must follow the guidance below but may do so in the order most appropriate under the circumstances.

Determining whether the Account Holder is a Passive NFE

A financial institution may obtain a self-certification from the Account Holder to establish its status, or instead may use:

- information in its possession (such as information collected pursuant to AML/KYC procedures); or
- information that is publicly available (such as information published by an authorised government body or standardised industry coding system) based upon which it can reasonably determine that the Account Holder is an Active NFE or a financial institution.

Note though that a professionally managed investment entity resident in a non-Participating Jurisdiction is always treated as a Passive NFE, notwithstanding that it would be treated as a financial institution if it were resident in a Participating Jurisdiction (this ensures that it is not possible for Controlling Persons to avoid reporting by setting up such entities in non-Participating Jurisdictions).

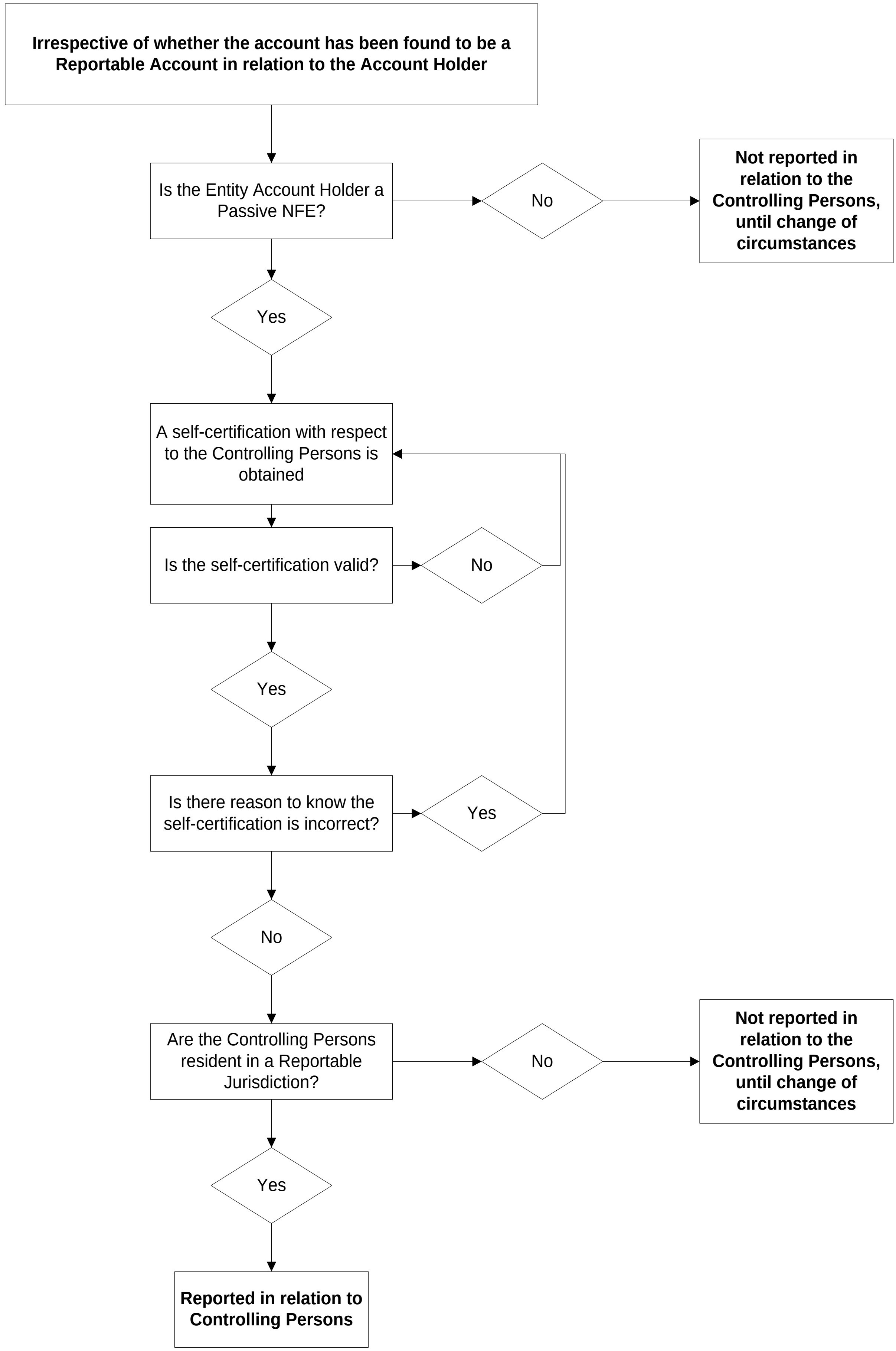
Determining Controlling Persons

For the purposes of determining the Controlling Persons of an Account Holder, a financial institution may rely on information collected and maintained pursuant to AML/KYC Procedures.

Determining whether a Controlling Person is a Reportable Person

For the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a financial institution may **only** rely on a self-certification from either the entity Account Holder or the Controlling Person.

This can be summarised in the following diagram (© OECD).


Irrespective of whether the account has been found to be a Reportable Account in relation to the Account Holder
Is the Entity Account Holder a Passive NFE?
No
Not reported in relation to the Controlling Persons, until change of circumstances
Yes
A self-certification with respect to the Controlling Persons is obtained
Is the self-certification valid?
No
Yes
Is there reason to know the self-certification is incorrect?
Yes
No
Are the Controlling Persons resident in a Reportable Jurisdiction?
No
Not reported in relation to the Controlling Persons, until change of circumstances
Yes
Reported in relation to Controlling Persons

AEIM103490 DUE DILIGENCE: SPECIAL DUE DILIGENCE RULES: RELIANCE ON SELF-CERTIFICATIONS AND DOCUMENTARY EVIDENCE

Where information already held by a financial institution, including knowledge about the customer held by a relationship manager, conflicts with any statements or self-certification, or the financial institution has reason to know that the self-certification or other Documentary Evidence is incorrect, it may not rely on that evidence or self-certification.

A Financial Institution will be considered to have reason to know that a self-certification or other documentation associated with an account is unreliable or incorrect if, based on the relevant facts, a reasonably prudent person would know this to be the case see AEIM103340.

Reliance upon an audited financial statement

Financial institutions may rely upon an audited financial statement to establish that an Account Holder meets a certain income or asset threshold, but are not obliged to where the entity's status can be established from other information or documentation that it holds).

If a financial institution does rely upon an audited financial statement to establish a status for an Account Holder it has reason to know that the status claimed is unreliable or incorrect only if the audited financial statement for the Account Holder or the notes or footnotes to the financial statement conflicts with the self-certification provided to it.

A financial institution will only be required to review the notes or footnotes to the financial statement where establishing the status for an Account Holder does not require the Account Holder to meet an asset or income threshold.

If a financial institution does rely upon other documentation to establish the Account Holder's status there is no need to review any financial statements that may have been provided to it as part of the account opening.

Reliance upon other documentation

Where a financial institution relies on organisational documents to establish that an Account Holder has a particular status, it will only be required to review the documents to the extent needed to establish that the requirements applicable to the particular status are met.

AEIM103500 DUE DILIGENCE: SPECIAL DUE DILIGENCE RULES: RELIANCE ON SELF-CERTIFICATIONS AND DOCUMENTARY EVIDENCE: LIMITS ON REASON TO KNOW

Pre-existing entity accounts

For the purposes of determining whether a financial institution that maintains a pre-existing entity account has reason to know that the status applied to the Entity is unreliable or incorrect, the financial institution is only required to review information that may contradict the claimed status claimed if such information is contained in:

- the most recent self-certification and Documentary Evidence;
- the current customer master file;
- the most recent account opening contract; and
- the most recent documentation obtained for AML/KYC procedures or for other regulatory purposes.

Multiple accounts

A financial institution that maintains multiple accounts for a single Account Holder will have reason to know that a claimed status for the person is inaccurate based on account information for another account held by the person only to the extent that the accounts are either required to be aggregated or because of any other 'reason to know'; for example, knowledge of a relationship manager.

Change of address within same jurisdiction

A change of address in the same jurisdiction as that of the previous address is not a reason to know that the self-certification or Documentary Evidence provided is inaccurate.

Conflicting indicia

A financial institution does not know or have reason to know that a self-certification or Documentary Evidence is unreliable or incorrect solely because it discovers any of the following indicia and such indicia conflicts with the self-certification or Documentary Evidence:

- one or more telephone numbers in a Reportable Jurisdiction and no telephone number in the jurisdiction of the Reporting Financial Institution; or
- standing instructions (other than with respect to a Depository Account in the case of the DAC/CRS) to transfer funds to an account maintained in a Reportable Jurisdiction; or
- currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction.

AEIM103520 DUE DILIGENCE: SPECIAL DUE DILIGENCE RULES: RELIANCE ON SELF-CERTIFICATIONS AND DOCUMENTARY EVIDENCE: LIMITS ON REASON TO KNOW: EXAMPLES

The following examples illustrate the application of the limits on the standards of ‘reason to know’:

Example 1: Reporting financial institution bank ‘A’ maintains a Depository Account for individual Account Holder ‘P’

P holds a pre-existing Depository Account with A. A has relied on the address in its records for P, as supported by his passport and a utility bill collected upon opening of the account, to determine that P is resident for tax purposes in jurisdiction X (application of the residence address test).

Five years later, P provides a power of attorney to his sister, who lives in jurisdiction Y, to operate his account. The fact that P has provided such power of attorney is not sufficient by itself to give A reason to know that the Documentary Evidence relied upon to treat P as a resident of jurisdiction X is unreliable or incorrect.

Example 2: Reporting Financial Institution insurance company ‘B’ has entered into a Cash Value Insurance Contract with individual Account Holder ‘D’

The contract is a New Individual Account. B has obtained a self-certification from D and confirmed its reasonableness on the basis of the AML/KYC documentation collected from D. The self-certification confirms that D is resident for tax purposes in jurisdiction V.

Two years after B entered into the contract with D, D provides a telephone number in jurisdiction T to B. Although B did not previously have any telephone number in its records for D, the sole receipt of a telephone number in jurisdiction T does not in itself constitute a reason to know that the original self-certification is unreliable or incorrect.

AEIM103540 DUE DILIGENCE: SPECIAL DUE DILIGENCE RULES: ALTERNATIVE PROCEDURES FOR CASH VALUE INSURANCE AND ANNUITY CONTRACTS

Individual beneficiary of a Cash Value Insurance Contract or an Annuity Contract

A financial institution can treat an individual beneficiary (other than the owner) who receives a death benefit under a Cash Value Insurance Contract or an Annuity Contract as a non-Reportable Person unless the financial institution has knowledge or reason to know that the beneficiary is in fact a Reportable Person. A financial institution has reason to know that a beneficiary of a Cash Value Insurance Contract or an Annuity Contract is a Reportable Person if the information collected and associated with the beneficiary contains indicia as described in paragraph B of Section III of the DAC.

Group Cash Value Insurance Contracts or group Annuity Contracts

A Financial Institution can treat an account that is a group Cash Value Insurance Contract or a group Annuity Contract, and that meets the requirements set out below, as a non-Reportable Account until the date on which an amount is payable to an employee/certificate holder or beneficiary (for FATCA, this is subject to a requirement that the financial institution obtains a certification from the employer that no employee/certificate holder (Account Holder) is a US Person).

A financial institution is not required to review all the account information collected by the employer to determine if an Account Holder's status is unreliable or incorrect.

The requirements are that:

- the group Cash Value Insurance Contract or group Annuity Contract is issued to an employer and covers twenty-five or more employees/certificate holders; and
- the employee/certificate holders are entitled to receive any contract value; and to name beneficiaries for the benefit payable upon the employee holders; and
- the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed $1,000,000.

AEIM103560 DUE DILIGENCE: SPECIAL DUE DILIGENCE RULES: ACCOUNT BALANCE AGGREGATION AND CURRENCY RULES

Aggregation of individual accounts and entity accounts

Identical rules apply to aggregation for individual and entity accounts.

An account held by one or more individuals as a partner(s) of a partnership is treated as an entity account and is not treated as an individual account.

Financial institutions are required to aggregate all financial accounts maintained by it or by a related entity, but only to the extent that the financial institution's computerised systems link the financial accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated.

Each joint holder of a financial account must be attributed the entire balance or value of the account for purposes of applying the aggregation requirements.

Special aggregation rule applicable to relationship managers – all accounts

In determining the aggregate balance or value of financial accounts held by a person to determine whether a financial account is a High Value Account, a financial institution is also required to aggregate all accounts held by that person which a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by that person.

Paragraph 18 of the Commentary to Section VII of the Common Reporting Standard contains examples that may be helpful.

Amounts read to include equivalent in other currencies

Where accounts are denominated in a currency other than US dollars then 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.

FATCA Guidance compared to the Automatic Exchange of Information Manual

FATCA Guidance Reference	AEIM Guidance Reference
1	Not Incorporated.
1.1	Not Incorporated.
1.2	Not Incorporated.
1.3	Not Incorporated.
2.1	AEIM 100600 contains 1st two paragraphs, the rest is not incorporated.
2.2	AEIM 100620
2.3	AEIM 100620
2.4	Not Incorporated.
2.5	Not Incorporated.
2.6	AEIM 105020 to the end of the bullet points on page 18, the rest is not incorporated.
2.7	Not Incorporated.
2.8	Not Incorporated.
2.9	Not Incorporated.
2.10	Not Incorporated.
2.11	Not Incorporated.
2.12	Not Incorporated.
2.13	Not Incorporated.
2.14	Not Incorporated.
2.15	Not Incorporated.
2.16	Not Incorporated.
2.17	Not Incorporated.
2.18	Not Incorporated.
2.19	AEIM 100720
2.20	Not Incorporated.
2.21	Not Incorporated.
2.22	Not Incorporated.
2.23	Not Incorporated.
2.24	Not Incorporated.
2.25	Not Incorporated.
2.25a	Not Incorporated.
2.25b	Not Incorporated.
2.26	AEIM 100740
2.27	AEIM 100640
2.28	AEIM 100740
2.28a	Not Incorporated.
2.29	AEIM 100840
2.30 (Hold Co/ Treasury Co)	Deleted from FATCA guidance. SEE AEIM100630
2.31	Not Incorporated.
2.32	Not Incorporated.
2.33	AEIM 100720
2.34	Not Incorporated.
2.35	Not Incorporated.
2.36	AEIM 100800, 100820, 100940, 100960
2.37	AEIM 100860
2.38	AEIM 100680
2.39	AEIM 100880
2.40	AEIM 100900
2.41	Not Incorporated.

3	AEIM 101500
3.1	AEIM 101520, expect page 70 paragraph 3 to page 71 (for accounts maintained by the FI) then part of 72 relates to cancellation rights.
3.2	Not Incorporated.
3.3	AEIM 101540, 101560
3.4	AEIM 101580, 101600
3.5	Not Incorporated.
3.6	AEIM 101640
3.7	AEIM 101680
3.8	AEIM 101700
3.9	Not Incorporated.
3.10	Not Incorporated.
3.11	AEIM 101720
3.12	AEIM 101760 – 101800
3.13	AEIM 101820
3.14	Not Incorporated.
3.15	AEIM 101860
3.16	Not Incorporated.
3.17	Not Incorporated.
3.18	AEIM 101900
3.19	Not Incorporated.
3.20	Not Incorporated.
3.21	Not Incorporated.
4.1	AEIM 102500, 102600
4.2	Not Incorporated.
4.3	Not Incorporated.
4.4	Not Incorporated.
4.5	Not Incorporated.
4.6	Not Incorporated.
4.7	Not Incorporated.
4.8	Not Incorporated.
4.9	Not Incorporated but see AEIM 103180.
4.10	AEIM 103140
4.11	Not Incorporated.
4.12	AEIM 103440
4.13	AEIM 103340
4.14	AEIM 103560 (Not Incorporated for examples).
4.15	Not Incorporated.
4.16	AEIM 103560
4.17	AEIM 102040
4.18	AEIM 102880, 103020, 103040
4.18a	Not Incorporated.
4.19	Not Incorporated.
4.20	Not Incorporated.
4.21	Not Incorporated.
5	AEIM 102640
5.1	AEIM 102565
5.2	Not Incorporated.
5.3	AEIM 102520
5.4	AEIM 102660
5.5	AEIM 102780, 102860
5.6	AEIM 102800
5.7	AEIM 102820
5.8	AEIM 102840
5.9	Not Incorporated.

5.10	Not Incorporated.
5.11	AEIM 102880
5.12	AEIM 102900
5.13	AEIM 102920
5.14	AEIM 102940
5.15	AEIM 102960
5.16	AEIM 102980, 103000
5.17	AEIM 103080
5.18	AEIM 100500
6	AEIM 103120
6.1	AEIM 102565
6.2	AEIM 101520
6.3	AEIM 102620
6.4	AEIM 103140
6.5	Not Incorporated.
6.6	Not Incorporated.
6.7	AEIM 103180
7	AEIM 103240
7.1	AEIM 103260
7.2	AEIM 103280
7.3	Not Incorporated.
7.4	AEIM 103300
7.5	AEIM 103320, 103360
7.6	Not Incorporated.
7.7	AEIM 103380, 103400
8	AEIM 103420
8.1	AEIM 102565
8.2	AEIM 103440
8.3	AEIM 103360
8.4	Not Incorporated.
8.5	AEIM 103440
8.6	AEIM 103460
9	AEIM 100520
9.1	AEIM 102000, 102170, 102200, 102240, 102260
9.2	AEIM 102280
9.3	AEIM 100520
9.4	Not Incorporated.
9.5	Not Incorporated.
9.6	Not Incorporated.
9.7	Not Incorporated.
9.8	Not Incorporated.
10	Not Incorporated.
10.1	Not Incorporated.
10.2	Not Incorporated.
10.3	Not Incorporated.
11	Not Incorporated.

CDOT Guidance compared to the Automatic Exchange of Information Manual

CDOT Guidance Reference	AEIM Guidance Reference
1.1	AEIM 100020
1.2	AEIM 100060
1.3	Not Incorporated.
2.1	AEIM 100600
2.2	Deleted from CDOT Guidance
2.3	Not Incorporated.
2.4	Not Incorporated.
2.5	Not Incorporated.
2.6	Not Incorporated.
2.7	Not Incorporated.
2.7.1	AEIM 102565
2.7.2	AEIM 102500
2.7.3	AEIM 101540
2.7.4	Not Incorporated.
2.7.5	Not Incorporated.
2.7.6	Not Incorporated.
2.8	Not Incorporated.
2.9	Not Incorporated.
3.1	AEIM 105000
3.2	AEIM 105020
3.2.1	Not Incorporated.
3.2.2	Not Incorporated.
3.2.3	Not Incorporated.
4.1	AEIM 101500
4.2	Not Incorporated.
4.3	AEIM 101720
5.1	AEIM 102500
5.2	Not Incorporated.
5.3	AEIM 103140
5.4	AEIM 103180
5.5	AEIM 102040
5.6	AEIM 103200
6.1	Not Incorporated.
6.2	AEIM 102780
6.3	AEIM 102520
6.4	Not Incorporated.
6.5	AEIM 102020
6.6	AEIM 102880
6.7	AEIM 102880
6.8	AEIM 102940
7	AEIM 103120
8.1	AEIM 103240
8.2	Not Incorporated.
9	AEIM 103420
10	Not Incorporated.

10.1	Not Incorporated.
10.2	Not Incorporated.
10.3	Not Incorporated.
10.4	AEIM 103300
11.1	AEIM 100540
11.2	AEIM 102040
11.3	AEIM 100540
12.1	Not Incorporated.
12.2	Not Incorporated.
12.3	Not Incorporated.
12.4	Not Incorporated.
12.5	Not Incorporated.
13	Not Incorporated.