100630 - Financial Institutions: Holding Companies and Treasury Centres

100630 – Financial Institutions: 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 the 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 Overseas 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 on 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 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.

100660 - Financial Institutions: Custodial Institutions: Execution Only Broker

Source URL: http://haydonperryman.com/gb/guidance/dac/aeim100660/

100660 – Financial Institutions: Custodial Institutions: 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.

100700 - Financial Institutions: Custodial Institutions: Trusts

Source URL: http://haydonperryman.com/gb/guidance/dac/aeim100700/

100700 – Financial Institutions: Custodial Institutions: 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 an NFE. Where a trust meets one of the definitions of 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

100760 - Financial Institutions: Investment Entities

Source URL: http://haydonperryman.com/gb/guidance/dac/aeim100760/

100760 – Financial Institutions: Investment Entities

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 performing 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 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.

100780 - Financial Institutions: Investment Entities: Examples

Source URL: http://haydonperryman.com/gb/guidance/dac/aeim100780/

100780 – Financial Institutions: Investment Entities: 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 some clients. The securities meet the definition of 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 revenues 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 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.

100800 - Financial Institutions: Investment Entities: Trusts

Source URL: http://haydonperryman.com/gb/guidance/dac/aeim100800/

100800 – Financial Institutions: Investment Entities: 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 an NFE. Where a trust meets one of the definitions of 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 a 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.

100820 - Financial Institutions: Investment Entities: Trust: Trusts Managed by a Financial Institution

Source URL: http://haydonperryman.com/gb/guidance/dac/aeim100820/

100820 – Financial Institutions: Investment Entities: Trust: Trusts Managed by a Financial Institution

A trust is typically regarded as being managed by a Financial Institution where either one or more of the trustees is a financial institution 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 the 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.

100930 - Financial Institutions: Non-Reporting Financial Institutions: Owner Documented Financial Institutions

Source URL: http://haydonperryman.com/gb/guidance/dac/aeim100930/

100930 – Financial Institutions: Non-Reporting Financial Institutions: Owner Documented Financial Institutions

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.

103225 - Due Diligence: Entity Accounts: Investment Entity with Regularly Traded Securities

Source URL: http://haydonperryman.com/gb/guidance/dac/aeim103225/

103225 – 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. Following existing AML practice, incomplete applications could be accepted, and the missing information be requested but if the missing information were 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.

02.01 - Introduction

Source URL: http://haydonperryman.com/gb/guidance/fatca/02-01/

02.01 – Introduction

2.1 Introduction

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

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

- Depository Institution Section 2.26
- Custodial Institution Section 2.27
- Investment Entity Section 2.28
- Specified Insurance Company Section 2.29

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

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

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

Non-Reporting UK Financial Institutions

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

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

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

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

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

Reporting UK Financial Institutions

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

02.03 - Subsidiaries and Branches

Source URL: http://haydonperryman.com/gb/guidance/fatca/02-03/

02.03 – Subsidiaries and Branches

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

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

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

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

Example 1

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

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

Under the terms of the Agreement:

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

Example 2 Where an overseas bank has a branch located in the UK

Oceania Bank of Australia has a branch Z, which is a permanent establishment for tax purposes, located in London.

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

02.04 - Related Entities

Source URL: http://haydonperryman.com/gb/guidance/fatca/02-04/

02.04 – Related Entities

For FATCA, an entity is regarded as being related to another entity if one entity controls the other or the two entities are under common control the "related entity group."

For this purpose, control is taken as including the direct or indirect ownership of more than 50 percent of the vote and value in an entity.

An entity that is a member of a related entity group will not be a Financial Institution if-

- The entity does not maintain Financial Accounts (other than accounts maintained for members of its related entity group);
- The entity does not hold an account with or receive U.S. source withholdable payments from any withholding agent other than a member of its related entity group;
- The entity does not make U.S. source withholdable payments to any person other than to members of its related entity group that are not limited FIs or limited branches; and
- The entity has not agreed to undertake reporting as a Sponsoring Entity or otherwise act as an agent regarding the Agreement on behalf of any Financial Institution, including a member of its related entity group.
  Related Entities are relevant in the context of the obligations placed on UK Financial Institutions, in respect of any related entities that are Non-Participating Financial Institutions (NPFI).

Where a UK Financial Institution has any Related Entities that, as a result of the jurisdictions they operate in, are unable to comply with FATCA, then the UK Financial Institution must treat the related entity as an NPFI and fulfil obligations in respect of that NPFI as set out in Article 4 of the Agreement. Further guidance on these obligations is set out in more detail at Section 9.4.

Exemption for Investment Entities

Investment Entities that have received seed capital from a member of a group to which the Investment Entity belongs will not be considered a Related Entity for the purposes of the Agreement.

In general a seed capital investment is an initial capital contribution (that is intended as a temporary investment), made to an Investment Entity. This will generally be for the purposes of establishing a performance record before selling interests in the entity to unrelated investors, or for purposes otherwise deemed appropriate by the manager.

Specifically, an Investment Entity will not be considered a Related Entity as a result of a contribution of seed capital by a member of the group if:

- the member of the group that provides the seed capital is in the business of providing seed capital to Investment Entities that it intends to sell to unrelated investors;
- the Investment Entity is created in the course of its business;
- any equity interest more than 50% of the total value of stock of the Investment Entity is intended to be held for no more than three years from the date of acquisition; **and**
- in the case of an equity interest that has been held for over three years, its value is less than 50% of the total value of the stock of the Investment Entity.

02.23 Financial Institutions with only Low Value Accounts

Source URL: http://haydonperryman.com/gb/guidance/fatca/02-23/

02.23 Financial Institutions with only Low Value Accounts

The Financial Institution **must not**:

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

02.28 - Investment Entity

Source URL: http://haydonperryman.com/gb/guidance/fatca/02-28/

02.28 – Investment Entity

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

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

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

- trading in money market instruments (cheques, bills, certificates of
  deposit, derivatives, etc.);
- foreign exchange;
- interest rate and index instruments;
- transferable securities and commodity futures trading;
- individual and collective portfolio management;
- otherwise investing, administering or managing funds or money on behalf of other persons.

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

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

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

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

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

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

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

An Investment Entity meets the "financial assets test" if the entity's gross income attributable to such activities is equal to or exceeds 50 percent of the entity's gross income during the shorter of:

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

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

Further guidance on when another Financial Institution is managing the assets on behalf of the entity can be found in section 2.36.
Where an entity is managed by an individual, the managed entity will not be an Investment Entity because an individual cannot be an Investment Entity.
Section 2.32 provides further guidance on how the rules apply to Collective Investment Schemes.
Section 2.36 provides further guidance on how the rules apply to Trusts.

02.39 - Personal Investment Companies

Source URL: http://haydonperryman.com/gb/guidance/fatca/02-39/

02.39 – Personal Investment Companies

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

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

Source URL: http://haydonperryman.com/gb/guidance/fatca/03-09/

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

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

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

17.14. Expanded definition of Related Entity.

Map

Expanded definition of Related Entity. Related Entities are generally defined as one entity that controls another entity or two or more entities that are under common control. Control is defined to include direct or indirect ownership of more than 50 percent of the vote and value in an Entity. As provided in the Commentary, most funds will likely not qualify as a Related Entity of another fund, and thus will not be able to apply the rules described above for treating certain New Accounts as Preexisting Accounts or apply the account aggregation rules to Financial Accounts maintained by Related Entities. A jurisdiction may modify the definition of Related Entity so that a fund will qualify as a Related Entity of another fund by providing that control includes, with respect to Investment Entities described in subparagraph (A)(6)(b), two entities under common management, and such management fulfils the due diligence obligations of such Investment Entities. A similar approach can be achieved under FATCA by applying the Sponsoring Regime. The EU Directive also provides this modification.
Comp p.183

28. Transitional challenge resulting from staggered adoption of CRS.

Map

The CRS contains a so-called "look through" provision pursuant to which Reporting Financial Institutions must treat an Account Holder that is an Investment Entity described in Section VIII, subparagraph (A)(6)(b) (or branch thereof) that is not a Participating Jurisdiction Financial Institution as a Passive nonfinancial entity (NFE) and report the Controlling Persons of such Entity that are Reportable Persons. For purpose of this provision, a Participating Jurisdiction is a jurisdiction with which an agreement is in place pursuant to which there is an obligation to automatically exchange information on Reportable Accounts and is identified on a published list.
CRS p. 58
Com p. 195

103.

Map

The general rule is that a **Passive NFE** is an NFE that is not an Active NFE. The definition of Active NFE essentially excludes Entities that primarily receive passive income or primarily hold amounts of assets that produce passive income (such as dividends, interest, rents etc.), and includes entities that are publicly traded (or related to a publicly traded Entity), Governmental Entities, International Organisations, Central Banks, or a holding NFEs of nonfinancial groups. An exception to this is an Investment Entity that is not a Participating Jurisdiction Financial Institution, which is always treated as a Passive NFE.

Investment Entity

Source URL: http://haydonperryman.com/terms-and-definitions/investment-entity/

Investment Entity

The term "Investment Entity" means any Entity:a) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer

i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;

ii) individual and collective portfolio management; orHi) otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; orb) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, aCustodial Institution, a Specified Insurance Company, or anInvestment Entity described in subparagraph A(6)(a).An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph A(6)(a), or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for purposes of subparagraph A(6)(b), if the Entity's gross income attributable to the relevant activities equals or exceeds 50% of the Entity's gross income during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or (ii) the period during which the Entity has been in existence. The term "Investment Entity" does not include an Entity that is an Active NFE because it meets any of the criteria in subparagraphs D(9)(d) through (g).This paragraph shall be interpreted in a manner consistent with similar language set forth in the definition of "financial institution" in the Financial Action Task Force Recommendations.

FATCA

(4)(i) In general [§1.1471-5(e)(4)(i)]

The term investment entity means any entity that is described in paragraph (e)(4)(i)(A), (B), or (C) of this section.

(i)(A) The entity primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer- [§1.1471-5(e)(4)(i)(A)]

(1) Trading in money market instruments (checks, bills, certificates of deposit, derivatives, etc.); foreign currency; foreign exchange, interest rate, and index instruments; transferable securities; or commodity futures; [§1.1471-5(e)(4)(i)(A)(1)]

(2) Individual or collective portfolio management; or [§1.1471-5(e)(4)(i)(A)(2)]

(3) Otherwise investing, administering, or managing funds, money, or financial assets on behalf of other persons. [§1.1471-5(e)(4)(i)(A)(3)]

(i)(B) The entity's gross income is primarily attributable to investing, reinvesting, or trading in financial assets (as defined in paragraph (e)(4)(ii) of this section) and the entity is managed by another entity that is described in paragraph (e)(1)(i), (ii), (iv), or (e)(4)(i)(A) of this section. For purposes of this paragraph (e)(4)(i)(B), an entity is managed by another entity if the managing entity performs, either directly or through another third-party service provider, any of the activities described in paragraph (e)(4)(i)(A) of this section on behalf of the managed entity. [§1.1471-5(e)(4)(i)(B)]

(i)(C) The entity functions or holds itself out as a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in financial assets. [§1.1471-5(e)(4)(i)(C)]

UK *Inter Governmental Agreement* and Statutory Instrument

For the purposes of these Regulations a person (person A) carries on business in the United Kingdom as an investment entity if—

(a) person A undertakes any of the activities referred to in sub-paragraph 1(j)(1) to (3) of Article 1 of the treaty in the course of carrying on business in the United Kingdom, and A's gross income from that business for the applicable period wholly or mainly derives from those activities, or

(b) on behalf of person A, a financial institution (person B) undertakes any of the activities referred to in sub-paragraph 1(j)(1) to (3) of Article 1 of the treaty in the course of carrying on business in the United Kingdom, and person A's gross income from the activities undertaken on behalf of person A by person B for the applicable period wholly or mainly derives from investing or dealing in financial assets. [UKSI.2014 No. 1506]

The term "Investment Entity" means any entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:
(1) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest
rate and index instruments; transferable securities; or commodity futures trading;
(2) individual and collective portfolio management; or
(3) otherwise investing, administering, or managing funds or money on behalf of other persons. This subparagraph 1(j) shall be interpreted in a manner consistent with similar language set forth in the definition of "financial institution" in the Financial Action Task Force Recommendations. [UK IGA]

AEIM 100760