

## 02.12 - Deemed Compliant Financial Institutions

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

- Registered Deemed Compliant Financial Institution
- Certified Deemed-Compliant Financial Institution,
- Owner Documented Financial Institutions.

Regarding Deemed-Compliant Financial Institutions, only a Registered Deemed Compliant Financial Institution or in certain circumstances a Local Client Base Financial Institution (See [Section 2.13](#)), are required to register with the IRS.

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

i. Non-profit organisations: Under the Agreement these are to be regarded as Deemed Compliant Financial Institutions and will not have any reporting requirements in relation to any Financial Accounts that they may hold. This applies to:

- Any entity registered as a charity with the Charity Commission of England and Wales
- Any entity registered with HMRC for charitable tax purposes
- Any entity registered as a charity with the Office of the Scottish Charity Regulator
- Any Community Amateur Sports Club if registered as such with HMRC

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

## 02.13 - Local Client Base Financial Institutions

Source URL: <http://haydonperryman.com/gb/guidance/fatca/02-13/>

## 02.13 – Local Client Base Financial Institutions

There are ten criteria that must all be met before a Financial Institution can be treated as a Local Client Base Financial Institution. A Financial Institution should self-assess whether it meets these criteria and maintain appropriate records to support its self-assessment. The criteria are listed below:

a) The Financial Institution must be licensed and regulated under the laws of the UK. For example, this would include where a Financial Institution is an Authorised Person under Section 31 FSMA 2000 or where closed ended investment companies qualify as an Investment Trust Company under s1158 of the Corporation Tax Act 2010, or as a Venture Capital Trust under part 6 Income Tax Act 2007.

b) The Financial Institution must have no fixed place of business outside the UK other than where the location outside of the UK houses solely administrative functions and is not publically advertised to customers.

This applies even if the fixed place of business is within a jurisdiction that has entered into an Agreement with the US concerning FATCA.

c) The Financial Institution must not solicit potential Financial Account holders outside the UK. For this purpose, a Financial Institution shall not be considered to have solicited such customers outside the UK merely because it operates a website, provided that the website does not specifically indicate that the Financial Institution provides accounts or services to non-UK residents or otherwise target or solicit US customers.

A Financial Institution will also not be considered to have solicited potential Financial Account holders outside the UK if it advertises in either print media or on a radio or television station and the advertisement is distributed or aired outside the UK, as long as the advertisement does not specifically indicate that the Financial Institution provides services to non-residents. Also, a Financial Institution issuing a prospectus will not, in itself, amount to soliciting Financial Account holders, even when it is available to US Persons in the UK. Likewise, publishing information such as Reports and Accounts to comply with the Listing Rules, Disclosure Rules and Transparency or AIM rules to support a public listing or quotation of shares will not amount to soliciting customers outside the UK.

d) The Financial Institution is

- required under the tax laws of the UK to perform information reporting, such as the reporting required under Schedule 23 FA 2011 or the withholding of tax with respect to accounts held by residents of the UK, or
- is required to identify whether account holders are resident in the UK as part of the AML/KYC procedures.

For insurance products the following reporting or taxing regimes will apply to this section:

- Chargeable events reporting regime.
- Income minus Expense Regime (I-E).
- Basic rate tax deducted from the interest portion of a Purchased Life Annuity.

e) At least 98 per cent of the Accounts by value, provided by the Financial Institution must be held by people who reside in the UK or another Member State of the European Union.

The 98 per cent threshold can include the Accounts of US Persons if they are resident within the UK. It applies to both Individual and Entity Accounts.

A Financial Institution will need to assess whether it meets this criterion annually. The measurement can be taken at any point of the preceding calendar year for it to apply to the following year, as long as the measurement date remains the same from year to year.

f) Subject to subparagraph g) below, beginning on 1 July 2014, the Financial Institution does not provide Financial Accounts to:

- any Specified US Person, who is not a resident of the UK (including a US Person that was a resident of the UK when the account was opened, but subsequently ceases to be a resident of the UK),
- a Non-Participating Financial Institution, or
- any Passive NFFE with Controlling Persons who are US citizens or resident for tax purposes who are not resident in the UK.

Where a Local Client Base Financial Institution provides Financial Accounts to US citizens who are resident in the UK, these Financial Accounts do not need to be reported to HMRC unless the account holder subsequently ceases to be a resident of the UK.

g) On or before 1 July 2014, the Financial Institution must implement policies and procedures to establish and monitor whether it provides (meaning opens and maintains) Financial Accounts to the persons described in subparagraph (f) above. If any such Financial Account is discovered, the Financial Institution must either report that account as though the Financial Institution were a Reporting UK Financial Institution, or close the account, or transfer the account to a Participating Foreign Financial Institution, Reporting Model 1 Foreign Financial Institution or a US Financial Institution.

This means that even if Financial Accounts have been provided to Specified US Persons, a Non-Participating Financial Institution or any Passive NFFE with Controlling Persons who are US citizens or residents prior to the 1 July 2014, the Financial Institution can still be a Financial Institution with a Local Client Base provided that the appropriate reporting is carried out.

h) With respect to each Financial Account that is held by an individual who is not a resident of the UK or by an entity, and that is opened prior to the date that the Financial Institution implements the policies and procedures described in subparagraph (g) above, the Financial Institution must review those accounts in accordance with the procedures applicable to Pre-existing Accounts, described in Annex I of the Agreement, to identify any US Reportable Account or Financial Account held by a Non-Participating Financial Institution. Where such accounts are identified, they must be closed, or transferred to a Participating Foreign Financial Institution, Reporting Model 1 Foreign Financial Institution or a US Financial Institution or the Financial Institution must report those accounts as if it were a Reporting UK Financial Institution.

This allows a Financial Institution with a Local Client Base to maintain its status while reporting on relevant Financial Accounts that were opened before the adoption of the requirements set out in this section. This means that where a Local Client Base Financial Institution has a reportable account then it is required to Register and report (or close) the account.

i) Each Related Entity of the Financial Institution, where the Related Entity is itself a Financial Institution must be incorporated or organised in the UK and must also meet the requirements for a Local Client Base Financial Institution with the exception of a retirement plan classified as an Exempt Beneficial Owner.

j) The Financial Institution must not have policies or practices that discriminate against opening or maintaining accounts for individuals who are Specified US Persons and who are residents of the UK.

## 02.05 - Non-Reporting Financial Institutions

Source URL: <http://haydonperryman.com/gb/guidance/cdot/02-05/>

## 02.05 – Non-Reporting Financial Institutions

Under the UK's regulations to implement CD and Gibraltar reporting the definition of a Non-Reporting Financial Institution is more limited than it is under the regulations to implement US FATCA. If a financial institution is a Deemed-Compliant Financial Institution for US FATCA reporting, then this does not mean that it will automatically be a Non-Reporting Financial Institution for CD & Gibraltar reporting.

For US FATCA reporting, the following types of financial institution

- Non-Profit Organisations
- Local Client Base Financial Institutions
- Non-Registering Local Banks

are Deemed-Compliant, Non-Reporting Financial Institutions.

However, under the International Tax Compliance (Crown Dependencies and Gibraltar) Regulations 2014, where they qualify as Financial Institutions these institutions **will not be** Deemed-Compliant and will instead be Reporting Financial Institutions for CD and Gibraltar due diligence and reporting purposes.

Further details of the obligations that will be faced by these Financial Institutions is given at section [2.7](#) Depending on the activities and business practices of the institution some entities may be able to comply using simplified due diligence techniques.

## 02.07 - Local Client Base Financial Institutions

Source URL: <http://haydonperryman.com/gb/guidance/cdot/02-07/>

## 02.07 – Local Client Base Financial Institutions

Under the UK's regulations to implement the US IGA a Financial Institution with a Local Client Base is classified as a 'Deemed Compliant Financial Institution'.

*The "Deemed Compliant" category relates primarily to withholding implications under the US FATCA and is not replicated in the UK-CD and Gibraltar Agreements.*

Despite this, the obligations faced by a Financial Institution with a Local Client Base under the UK-US agreement are substantially the same as the 'full' obligations under the standard due diligence and reporting terms for the UK-CD and Gibraltar agreements.

Under the UK-US Agreement, a Financial Institution with a Local Client Base must, amongst other things (see section [2.13](#) of the US Guidance), implement policies and procedures to establish and monitor whether it provides Financial Accounts to:

- any Specified US Person, who is not a resident of the UK,
- any Passive NFFE with Controlling Persons who are US citizens or resident for tax purposes who are not resident in the UK.

If any such Financial Account is discovered, the Financial Institution must either: report, close or transfer the account.

This means that even though a Financial Institution is a Financial Institution with a Local Client Base, and is 'Deemed Compliant' under the UK-US Agreement, it must still undertake certain elements of due diligence on the accounts that it holds. The key aspect here is the requirement under the regulations to implement the US agreement to test for account holders that are *not resident in the UK*.

Under the regulations to implement the CD & Gibraltar agreements all but two of the indicia are linked to holding an address in the relevant CD & Gibraltar – for US reporting purposes this would already qualify as an address outside the UK. Below is a summary of the obligations faced by a Financial Institution with a Local Client Base under the regulations to implement both the UK-US and the UK-CD & Gibraltar Agreements.

**Under the regulations to implement the US Agreement**

A Financial Institution with a Local Client Base must establish and monitor whether it provides Financial Accounts to:

- any Specified US Person, who is not a resident of the UK,

This means that either:

- the Financial Institution with a Local Client Base must apply the due diligence tests, and then confirm whether any Reportable Accounts identified are held by Specified US Persons who are not UK resident, or,
- the Financial Institution with a Local Client Base must 'establish and monitor' whether it provides accounts to any person who is NOT a resident of the UK. If so, it will have to apply due diligence, but only to those accounts identified.

**Under the regulations to implement the UK-CD and Gibraltar Agreements**

Financial Institutions, including those with a Local Client Base, will have to apply full due diligence but the nature of the indicia being searched for means that for most, the tests will be very similar to what is required of them under the US Agreement. I.e. the obligation to search for non-UK residents. Chapters 6 to 9 contain specific guidance on what the application of the CD or Gibraltar indicia tests will mean for Local Client Base Institutions.

For those Financial Institutions with a Local Client Base that are already applying the due diligence tests, they will already have to confirm whether any Reportable Accounts identified as held by Specified US Persons are held by persons who are not UK resident. These Financial Institutions will then have to apply those due diligence tests to include residence indicia for Specified CD or Gibraltar Persons.

This will be a change to the system, but, in this case, the Financial Institution is already applying the full due diligence tests across its client base.

For those Financial Institutions with a Local Client Base that are choosing to 'establish and monitor' whether they provide accounts to any person who is NOT a resident of the UK. The tests to identify accounts held by Specified CD or Gibraltar Persons are detailed in section 6 of this guidance and include a specific comment regarding what this will mean for Local Client Base Financial Institutions.

## 02.0706 - Pre-existing Individual Accounts over \$1,000,000

Source URL: <http://haydonperryman.com/gb/guidance/cdot/02-0706/>

## 02.0706 – Pre-existing Individual Accounts over \$1,000,000

Under the regulations to implement the CD and Gibraltar Agreements all pre-existing accounts over \$1,000,000 in value will be subject to enhanced review.

This will be an additional requirement on all Financial Institutions with a Local Client Base under the regulations to implement the CD and Gibraltar Agreements. However, it is expected that this enhanced procedure will apply only to a low number of higher value accounts.

## 06.05 - Current CD or Gibraltar mailing address/residence address (including “in-care-of” or “hold mail” address)

Source URL: <http://haydonperryman.com/gb/guidance/cdot/06-05/>

## 06.05 – Current CD or Gibraltar mailing address/residence address (including “in-care-of” or “hold mail” address)

Financial Institutions must already search the current addresses held for each account holder under the regulations to implement the US agreement (see sections [5.8](#) and [5.11](#) of the US guidance).

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

- a self certification that the account holder is not a CD or Gibraltar resident for tax purposes; **and**
- a certificate of documentary evidence, as defined in paragraph VI.D. of Annex I in the CD and Gibraltar Agreements, establishing the Account Holder's non-residence status,

• the provision of a local tax identification number of the country or jurisdiction in which the Account Holder claims to be resident, and, a passport issued by the jurisdiction in which the Account Holder claims to be a resident.

**Financial Institution with a Local Client Base**

Identification of the Account Holder as having a mailing address in a CD or Gibraltar would mean that the account would be identified as provided to a person who is NOT a resident of the UK.

This category of account would also be subject to due diligence by a Financial Institution with a Local Client Base that is a Deemed Compliant Financial Institution under the regulations to implement the US agreement.

## 06.06 - Current a currently effective power of attorney or signatory authority granted to a person with an address in a CD or Gibraltar

Source URL: <http://haydonperryman.com/gb/guidance/cdot/06-06/>

## 06.06 – Current a currently effective power of attorney or signatory authority granted to a person with an address in a CD or Gibraltar

Financial Institutions must already search the current addresses held for each account holder under the regulations to implement the US agreement (see sections [5.8](#) and [5.11](#) of the US guidance).

Where the indicia found is a currently effective power of attorney or signatory authority with a CD or Gibraltar address, the account must be reported unless the UK Financial Institution obtains or currently maintains a record of the following:

- a self certification that the account holder is not a CD or Gibraltar resident for tax purposes; **and**
- any piece of documentary evidence, as defined in paragraph VI.D. of Annex I in the CD and Gibraltar Agreements, establishing the Account Holder's non-residence status.

**Financial Institution with a Local Client Base**

Identification of the Account Holder as having a mailing address in a CD or Gibraltar would mean that the account would be identified as provided to a person who is NOT a resident of the UK.

This category of account would also be subject to due diligence by a Financial Institution with a Local Client Base that is a Deemed Compliant Financial Institution under the regulations to implement the US agreement.

## 06.07 - Standing Instructions to transfer funds to an account maintained in the CD or Gibraltar

Source URL: <http://haydonperryman.com/gb/guidance/cdot/06-07/>

## 06.07 – Standing Instructions to transfer funds to an account maintained in the CD or Gibraltar

In the case of the regulations to implement the CD and Gibraltar agreements this indicia check only needs to be undertaken for accounts that are NOT depositary accounts.

This means that there is no requirement to check the destination of any standing instructions from the majority of current or savings bank accounts.

Where the indicia found is a Standing Instruction to transfer funds from a non-depository account to an account maintained in a CD or Gibraltar, the account must be reported unless the UK Financial Institution obtains or currently maintains a record of the following:

- a self certification that the account holder is not a CD or Gibraltar resident for tax purposes; **and**
- a piece of documentary evidence, as defined in paragraph VI.D. of Annex I in the CD and Gibraltar Agreements, establishing the Account Holder's non-residence status.

**Financial Institution with a Local Client Base**

As this test applies for accounts that are Not Depository Accounts, it will be an additional test for Financial Institutions such as Mutual Insurance and Savings Institutions which fell under the Financial Institution with a Local Client Base category for the US agreement. (See section [2.7](#) of this guidance).

It is expected that standing instructions out of Investment, Custodial or Insurance accounts will be limited in number.