
Global IRW Newsbrief

Information reporting and withholding (IRW)

9 January 2013

HMRC issues Draft Guidance Notes - Implementation of International Tax Compliance (United States of America) Regulations 2013

On 18 December 2012, HM Treasury and HMRC released the draft *International Tax Compliance (United States of America) Regulations 2013* (“UK Draft Regulations”) to implement the *Agreement to Improve International Tax Compliance and to Implement FATCA* (“UK-US IGA”). FATCA, which is an acronym for the provisions of Foreign Account Tax Compliance Act of 2009 (“FATCA”) which were enacted, as part of the *Hiring Incentives to Restore Employment Act of 2010* (“HIRE ACT”), with the goal of diminishing tax evasion by US taxpayers with direct and indirect ownership in non-US financial accounts. To the extent that a non U.S. institution does not comply with these provisions or an account holder does not provide the appropriate documentation, FATCA threatens to impose a 30-percent withholding tax on payments made to either the FFI or account holder.

Accompanying the UK Draft Regulations was the release of the *Draft Guidance Notes* (“UK Draft Guidance”) and a *Summary of responses* to the consultation which sought views on how the Government intends to legislate in order to deliver the commitments made in the UK-US IGA.

The UK Draft Guidance provides HMRC’s interpretation of the procedures that a financial institution within the UK will need to follow to identify and report ‘Specified US Persons’ beginning 1 January 2014. UK guidance notes are intended to assist financial institutions in complying by providing explanations and examples for financial institutions to follow, but these notes do not form part of the UK legislation.

HMRC has recognised that there are gaps in both the legislation and guidance and have undertaken to publish further details around issues such as the registration process, reporting format and transmission of data, as soon as such details are available. However, it is expected that these areas of significant uncertainty will remain at least until the final US FATCA regulations are published and details of any registration process a financial institution is required to undertake are available.

HMRC has requested further comments on the Finance Bill 2013, which will officially enact the UK legislation implementing the UK-US IGA when it is finalised in summer 2013, and becomes Finance Act 2013, which was published on the 11th December 2012, the UK Draft Regulations and Guidance, by the 13th February 2013.

The UK Draft Regulations, UK Draft Guidance the *Summary of responses* conclude a series of events that began on 26 July 2012 when , the US Department of Treasury (“US Treasury”), as well as the equivalent authorities of France, Germany, Italy, Spain, and United Kingdom released a model intergovernmental agreement (“Model IGA”) for implementing the broad-ranging provisions of the FATCA.

On 12 September 2012, the Government of the United Kingdom of Great Britain and Northern Ireland and the US Treasury signed the first IGA titled- *Agreement to Improve International Tax Compliance and to Implement FATCA* (the “UK-US IGA”). On 18 September, HMRC issued a consultative document to seek comments to enable legislation to be drafted which could be operated in the most efficient way by affected businesses. Finally, on 11 December, HMRC published the legislation as part of the "*Draft Clauses & Explanatory Notes for the Finance Bill 2013*".

This Newsbrief provides an overview of the key clarifications and gaps and includes an appendix with detailed analysis of, the UK Draft Guidance. A summary of responses to the consultation will be provided in a future Newsbrief.

See these 2012 Global IRW Newsbriefs for more information on the UK-US IGA:

- 16 September: *United States and United Kingdom Sign First Bilateral FATCA Intergovernmental Agreement*
- 20 September: *HMRC guidelines on new UK-US FATCA agreement provide insights and invite comments*
- 19 December: *HM Treasury and HMRC release details outlining the implementation of FATCA in the UK - key elements of the UK Draft Regulations*

Key Considerations:

- **Definition of UK Financial Institutions** - *The UK Draft Guidance sets out the process by which an entity must determine whether it is resident in the UK and subject to the UK Draft Regulations as a financial institution (“FI”). For FIs which are subject to the UK Draft Regulations (“UK FIs”), various exemptions may then apply at the entity or account level. UK FIs are required to follow the provisions of the UK Draft Regulations.*

PwC Observation: *In cases where a FI has dual residence, or UK residence is determined by management and control of an entity, there may be conflicts between the provisions of the UK Draft Regulations and the legislation of another country in which the entity is deemed to be resident.*

It is also unclear how the definition of an FI as carrying ‘on a business in the UK will work in practice. For example, the UK branch of a non UK parent entity may meet the definition of a custodial institution earning a substantial portion of its gross income from the holding of assets on behalf of others while the parent entity as a whole does not. In such circumstances, the branch may need to register as a UK FI while the parent entity could be classified as a Non Financial Foreign Entity (“NFFE”).

Furthermore, in circumstances where an entity is defined as United States FI (“US FI”) under the HIRE Act, the UK-US IGA cannot reclassify the entity as an FFI. Accordingly, the UK branches of any US FI will need to pay close attention to any obligations applicable to a US FI.

- **Registration process** - The UK Draft Guidance acknowledges that there is currently no guidance in respect of any registration process that a UK FI will be required to undertake, although it is clear that any registration is expected to be made with the US Internal Revenue Service (“IRS” through potential non-US intermediaries).. In particular, the potential requirement for branches to register individually and for the registration process to identify the residence of every branch has yet to be clarified.
- **Due Diligence process: self-certification** - The process of account holder self certification is explained in more detail in the UK Draft Guidance with a number of examples providing further guidance. However, the UK Draft Guidance does not address the provision that a UK FI may, instead of obtaining self-certification, follow the documentary evidence provisions of the proposed US FATCA regulations. Furthermore, self certification may not be adequate for the purposes of any existing US documentation obligations a UK FI may have under Chapters 3 or 61 of the US Tax Code.

The format and wording of any self certification are left to the discretion of the UK FI, with frequent references to US Tax Withholding Certificates such as IRS Forms W-8 or W-9 or a similar agreed form. Moreover the details of the process by which an UK FI must confirm the reasonableness of the self-certification is also left to the discretion of the UK FI, as it is based on information obtained which may include, but is not limited to, information obtained pursuant to its Anti-Money Laundering (AML) and Know Your Customer (KYC) procedures.

- **Due diligence process: Aggregation** - The requirement to aggregate the balance or value of accounts to determine which account holders are subject to due diligence and the extent of that due diligence extends to related entities in any territory and where relevant, to Relationship Managers in those entities. The aggregation process also requires the UK FI to exclude the balances or values of any exempt accounts, to treat any over drawn accounts as zero balances and include the value of all accounts that are linked by a common data element.
- **Pre-existing Insurance contracts** – The UK Draft Guidance provides additional clarity as to how certain exemptions will apply for pre-existing cash value insurance contracts. Additional clarification has been provided in relation to the treatment of pre-existing cash value insurance and annuity contracts which are subsequently assigned on or after 1 January 2014: they will be viewed as new accounts.
- **Definition of “Regularly Traded”** - Various exemptions will apply to entities or investments which are regularly traded on an established securities market. While the UK Draft Regulations attempt to link the definition of “regularly traded” to existing UK legislation, the proposed reference instead addresses the definition of an established securities market.

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- **Reporting on Non-participating FIs** -. Where a UK FI makes any payment to a NPFI in 2015 or 2016, the aggregate value of payments made to each NPFI will be required to be reported to HMRC, irrespective of whether the NPFI holds a 'financial account' with the UK FI or not.

PwC Observation: It is unclear whether there will be any reporting requirement in respect of future years or how any NPFI which suffers withholding, through notification to a US withholding agent, would reclaim that tax in the absence of any such reporting.

The UK Draft Guidance expands on this, confirming that the following types of payments are excluded from reporting: non-financial services, goods, and the use of property made in the 'ordinary course of business'. Ordinary course of business payments do not include dividends, any interest other than interest on outstanding accounts payable arising from the acquisition of nonfinancial services, goods, and other tangible property, dividend equivalent payments with respect to which the UK FI acts as custodian, intermediary, or agent, or bank or broking fees. Nevertheless, the definition of 'payments' reportable in relation to NPFIs remains broad under UK Draft Guidance.

- **Further information required in respect of reporting and Compliance** - For UK FIs that maintain financial accounts which are not exempt under the UK Draft Regulations ("UK Reporting FIs"), no detail has been provided in respect of the format and transmission of the required reporting or of the HMRC compliance process. However, the compliance process is linked to the Client Relationship Manager (CRM) function where relevant, or where there is no CRM, HMRC has stated that compliance will follow a risk based approach. The Draft UK Guidance makes no reference to the role of FATCA Responsible Officer set out in the proposed US FATCA regulations.

Some actions to think about

It is important for stakeholders to analyse the impact of the UK Draft Guidance and consider any representations they wish to make by **13 February 2013**. Key areas for review and comment are the treatment of the potential requirement to aggregate accounts across related entities, the requirements of the Client Relationship Manager enquiries, the process of self certification and the requirement to report payments to a non-participating financial institution as an account holder or otherwise.

In addition, the UK Draft Regulations and Guidance have not yet provide any insight in the areas primarily around any registration process, the method of transmission of data, the format of data to be reported, some insurance-specific issues, the way in which HMRC intends to monitor compliance, and any consideration of the Responsible Officer regime as set out in the proposed US FATCA Regulations.

With less than twelve months to go before UK FIs will need to take on New Accounts in a compliant manner and commence Pre-existing Account due diligence, stakeholders need to understand how to manage the implementation of compliance processes in view of the ongoing uncertainty so that costs and disruption to operations and customers are kept to a minimum.

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Appendix: Analysis of the UK Draft Guidance

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1. Background

The UK Draft Guidance makes the distinction between entities affected by FATCA as a UK FI, entities that will need to certify their entity “classification” for the purposes of FATCA, and entities that undertake FATCA obligations on behalf of FIs.

The UK Draft Guidance also sets out the scope of FATCA as stages of compliance including, confirmation that the entity is a FI, whether or not the FI holds financial accounts, identification of any account holders as Specified US Persons, as defined in the UK-US IGA, and application of the relevant due diligence to establish the presence of reportable accounts.

It is also noted that where an entity is a UK Reporting FI, there will be a reporting obligation in respect of reportable accounts and certain payments made to a Non Participating Financial Institution (NPFI).

***PwC Observation:** The distinction between financial institutions and entities that will need to certify their entity “classification” for the purposes of FATCA is consistent with provisions contained within the proposed US FATCA Regulations. The introduction of guidance in respect of entities that undertake FATCA obligations on behalf of financial institutions is intended to address the potential duplication of obligations of between entities which are categorised as financial institutions in accordance with the “Investment Entity” definition.*

In terms of the scope of the UK-US IGA, an entity first has to determine whether or not it is resident or located in the UK. An entity that is not located or resident in the UK is excluded from the scope of the UK-US IGA and subject to the intergovernmental agreement (“IGA”) and legislation of the country in which they are located, or the US FATCA regulations in the absence of an IGA.

It is unclear how the definition of an FI as “carrying on a business in the UK” will work in practice. For example, the UK branch of a non UK parent entity may meet the definition of a custodial institution earning a substantial portion of its gross income from the holding of assets on behalf of others while the parent entity as a whole does not. In such circumstances, the branch may need to register as a UK FI while the parent entity could be classified as an NFFE.

If an entity is resident or located in the UK, the next stage is to then ascertain whether or not any UK-US IGA exemptions apply at the entity level, and if not, to classify the entity. The entity categorisation is important because that classification determines the type of UK FI for the purposes of the UK Draft Regulations, which in turn determines the type of financial accounts that the UK FI can maintain (e.g. depositary, custodial, an interest in the UK FI or cash value insurance and certain annuity contracts).

In circumstances where an entity is defined as United States FI (“US FI”) under the HIRE Act, the UK-US IGA can not reclassify the entity as an FFI. Accordingly, the UK branches of any US FI will need to pay close attention to any obligations applicable to a US FI.

A financial institution which is resident in the UK (“UK FI”) must then establish which accounts, investments and interests are defined as financial accounts under the UK-US IGA. It is in respect of these financial accounts that a UK FI is required to identify account holders which are Specified US Persons and to report the financial accounts of such account holders (“Reportable Financial Accounts”). A UK FI will also have to report certain payments made to a NPFFI.

2. Financial institutions

The **residence** of an entity subject to the UK-US IGA is defined as being where it is resident for tax purposes in the UK. Specific examples of UK residence are given for a company or professional trust company where the company is incorporated or centrally managed and controlled in the UK, or a company which is not resident in the UK and carries on a trade in the UK through a permanent establishment in the UK. In the case of a Trust, examples include where all the trustees are resident in the UK for tax purposes or where some of the trustees are UK residents, if the settlor is both resident and domiciled in the UK for tax purposes. Examples provided for partnerships include where control and management of the business of the partnership as a reporting financial institution takes place in the UK, and where an entity is a dual resident in the UK and another country.

***PwC Observation:** If a non resident entity has a UK branch, the permanent establishment “threshold” test that should be applied to that branch remains the same as that applied for UK Corporation tax purposes. In circumstances where the tax laws of other jurisdictions do not apply a control and management test of this type, or where there is dual residence, the residence of the FI could be different depending on the jurisdiction. Where related FIs, in particular Partnerships and Trusts, are located in different jurisdictions the residence of each FI will need to be confirmed.*

Details are provided in the UK Draft Guidance in respect of the various categories of exempt **beneficial owners**, such as UK Government Organisations, the Central Bank, International Organisations, **non reporting financial institutions**, such as retirement funds and deemed compliant financial institutions (“DCFI”), and includes a **regulations exemption** to accommodate any additional or broader exemptions included in the final US FATCA regulations.

***PwC Observation:** A distinction is made between the exemption which applies to an Exempt Beneficial Owner and a non reporting FI. The Draft Guidance also states that there is no requirement for a UK Reporting FI to review or report on financial accounts held by Exempt Beneficial Owners.*

It appears clear that an Exempt Beneficial Owner has no obligation to review or report financial accounts. However, a UK Reporting FI will need to undertake some level of review of the relevant financial accounts in order to establish that the account holder is an Exempt Beneficial Owner.

DCFIs are defined as certain charitable and not for profit organisations and **FIs with a local client base**. In the case of FIs with a local client base, reporting of accounts can be required in certain circumstances. DCFIs which are Local Client Base FIs are required to meet nine criteria including residence of related entities, marketing for account holders, the value of financial accounts held by UK residents and the requirement to report certain accounts held by specified US persons as if they were a UK Reporting FI.

***PwC Observation:** DCFIs which are Local Client Base FIs, will need to be able to demonstrate the fact that they meet the criteria. It appears that it is possible for a UK Reporting FI to open an account for a specified US person and that reporting of financial accounts held by UK residents who are Specified US Persons, is not required in respect of financial accounts opened prior to 1 January 2014 for as long as the account holder remains a UK resident.*

The regulations exemption reflects the provisions within the UK-US IGA to allow FIs to apply any excepted FFI status under relevant US Treasury Regulations. It is also important to note that where HMRC intend to allow a UK Reporting FI to apply the final US FATCA Regulations, this facility will be explicitly stated in the UK regulations or guidance.

Custodial institutions are defined as earning a substantial portion of its gross income from the holding of assets on behalf of others and from related financial services with substantial meaning 20 percent or greater. Related services are defined as any ancillary service which is directly related to the holding of assets by the institution on behalf of others with examples of relevant institutions expected to include brokers, custodial banks, trust companies, clearing organisations and nominees.

Examples of **depository institutions** are provided which could include entities regulated in the UK as a savings or commercial bank, a credit union, industrial and provident societies and building societies. Entities that issue payment cards that can be pre-loaded with funds to be spent at a later date are specifically considered to be depository institutions, although the number of instances when the balance on such a card exceeds \$50,000 is expected to be rare.

***PwC Observation:** The UK Draft Regulations follow the UK-US IGA definitions of a UK reporting financial institution (“UKFI”) with further refinement in respect of the definition of a depository institution. The UK Draft Guidance attempts to refine the meaning of related financial services in the context of a custodial institution and to provide non exhaustive examples of the types of entity within the custodial and depository FI definitions.*

Insurance companies that only provide general insurance or term life insurance are excluded from the definition of specified insurance company subject to the UK Draft Regulations. An insurance company is only a **specified insurance company** if it writes or makes payments in relation to either cash value insurance products or annuity contracts.

In respect of **collective investment vehicles** (“CIV”), the only financial accounts that are relevant are the equity and debt interests in the collective investment vehicle. Where distributors hold legal title to assets on behalf of customers, and are part of the legal chain of ownership of interests in CIVs, the UK Draft Guidance defines the distributor as a custodial institution, regardless of the gross income test, places the obligation to review and report the owners of the custodial accounts maintained by the distributor, and requires aggregation at the customer level rather than the fund level. Distributors that act in an advisory-only capacity and are not in the chain of legal ownership of a collective investment vehicle will not be regarded as having maintained financial accounts in respect of any accounts they advise on. Such distributors will not be required to obtain self certifications from the investors. The UK Draft Guidance includes examples and a diagram setting out various investment scenarios and the related responsibilities for identifying and reporting the direct investors.

***PwC Observation:** In the context of CIVs, fund managers, investment managers, fund administrators, transfer agents, depositories and trustees of unit trust which are only within the definition of investment entity by virtue of investing, administering or managing; are not considered to have financial accounts for which the identification and reporting requirements will apply to the investors in the CIV.*

The UK Draft Guidance seeks to eliminate the risk of duplicative reporting where multiple entities fall within the investment entity definition in respect of CIVs. The treatment of relevant distributors as maintaining custodial accounts provides a practical solution to certain challenges in respect of investor identification and reporting. Where a distributor falls outside this treatment as maintaining custodial accounts, there may still be significant challenges in terms resolving identification and reporting obligations through negotiation of distribution agreements and the potential need for investor self certification.

Trusts are included within the definition of an entity for the purposes of the UK Draft Guidance and will generally be considered to be Non Financial Foreign Entities (“NFFE”) with the exception of Unit Trusts and Trusts which are managed by another investment entity, which fall within the Investment Entity definition.

Where a Trustee acts for the Trust and is a remunerated independent legal professional or a trust or company service provider as defined in the Money Laundering Regulations 2007, the Trustee is considered to be an FI. In these circumstances, the Trustee is required to complete the identification and reporting obligations on behalf of the Trust. For a Trust which is considered to be a NFFE, the FI that holds the account for the Trust is required to complete the identification and reporting obligations in respect of the NFFE and the Trust will be required to provide a self certification as an NFFE.

Partnerships are also an entity for the purposes of the UK Draft Guidance and may be considered as an FI depending on the type of activities undertaken by the partnership. Where a partnership is a FI it will need to identify any financial accounts it holds, this will include any equity interest. This means that a partnership will be required to identify, and where necessary, report on the capital or profits interest of any of the partners who are specified US persons.

An entity is a **Relate Entity** to another entity if one entity controls the other or both entities are under common control. Under the UK-US IGA, control includes direct or indirect ownership of more than 50 percent of the vote or value in an entity. However, HMRC may treat an entity as not being a related entity, if it is shown that it would not be a member of the same expanded affiliated group as defined in section 1471 (e) (2) of the US Internal Revenue Code where the test of control is direct or indirect ownership of more than 50 percent of the vote and value.

PwC Observation: *The UK Draft Guidance potentially changes the Related Entity test from a requirement to measure ownership by both voting rights and the valuation of interests to the measurement of voting rights or value. The use of voting rights or value enables UK FIs to include Related Entities on the basis of a single measurement.*

Again, in circumstances where HMRC are prepared to allow UK Reporting FIs to apply the US FATCA regulations, specific provision will have to be made under the UK regulations or related guidance.

While an NPFI is defined as an NPFI located in a jurisdiction that does not have an IGA with the US or where the FI is classified as being a NPFI after the procedures for significant non compliance have been concluded, it remains unclear how information in respect of residence and participation will be maintained and communicated. The absence of details about any registration process that FIs will be required to undertake remains a significant uncertainty in respect of FATCA compliance.

The inclusion in the definition of an Active NFFE of an entity where the stock, or the stock of a Related Entity, is regularly traded on an established securities market remains unclear. This is due to the absence of a definition of regularly traded on an established securities market.

The definitions of NPFI and NFFE follow the definitions included in the UK-US IGA and UK FIs will not be subject to withholding on US source income providing the FI is in compliance with UK regulations and guidance.

3. Financial accounts

The definition of a financial account is broader than would be the case in other UK legislation, including for example, any capital or profits interest in a partnership if that partnership is an Investment Entity.

A financial account is an account maintained by a UK FI or UK branch of a non-UK FI but excludes certain equity and debt interests in the FI which are regularly traded on a recognised securities market. A financial account is a reportable account, where it is held by one or more specified US persons, or by a non-US. Entity with one or more controlling persons that are specified US persons.

Financial Accounts include:

- **Depository accounts** such as commercial current accounts, a savings account that is evidenced by a certificate of deposit, investment certificates, certificates of indebtedness, or other similar instrument where cash is placed on deposit as well as pre-paid payment cards that can be pre-loaded with funds to be spent at a later date;
- **Custodial accounts** for the benefit of another person that holds any financial instrument or contract held for investment such as a share or stock in a corporation, a note, bond, debenture, or other evidence of indebtedness, a currency or commodity transaction, a credit default swap, a swap based upon a nonfinancial index, a notional principal contract, an Insurance Contract or Annuity Contract, and any option or other derivative instrument;
- **Cash value insurance and certain annuity contracts** where a Cash Value Insurance Contract means an insurance contract (other than an indemnity reinsurance contract between two insurance companies) that has a cash value greater than \$50,000, and a certain annuity contract is an annuity contract other than a noninvestment linked, non-transferable immediate life annuity that is issued to an *individual* and monetises a pension or disability benefit provided under an account, product, or arrangement identified as excluded from the definition of Financial Account in Annex II of the IGA; and
- **An equity or debt interest in an Investment Entity** which includes any debt or equity interest of an Investment Entity that is solely an Investment Entity (other than interests that are regularly traded on an established securities market).

The exemptions for certain products deemed to be low risk in terms of the likelihood of tax evasion follow the UK-US IGA Annex II which includes the facility to add or remove products in the future. The exemptions include specified retirement accounts and products, and certain other tax favoured accounts or products.

Joint account balances or values are to be attributed in full to each holder of the joint account for the purposes of both aggregation and reporting.

The definition of **debt or equity interests regularly traded on an established securities market** is intended to be applied in accordance with Schedule 26 Finance Act 2007 and guidance in respect of the following terms will be issued in due course Undesignated Accounts, Designated accounts, Segregated Accounts, Dormant Accounts and Deceased Persons.

***PwC Observation:** The definitions of a financial account generally follow the UK-US IGA as do the various exemptions for retirement and certain other tax favoured accounts or products. The exempt financial accounts are excluded from the requirement to aggregate financial accounts as well as from reporting.*

The attribution of joint account balances or values to each holder of the account is likely to present challenges in terms of the ability of FIs to both aggregate and report.

The UK Draft Guidance appears to clarify that in circumstances where a UK FI acts as solely as a counterparty to a derivative contract there is no financial account. Where the derivative contract is held in a custodial account, it is that custodial account that is the financial account.

The reference to Schedule 26 Finance Act 2007 is intended to provide an existing domestic legislative definition of regularly traded but in fact refers to an established securities market and should in fact reference s.1005 ITA2007. It would however appear that HMRC would like to move away from the formulaic method for determining regularly traded status as set out in the proposed US FATCA regulations.

4. Due diligence general requirements

The main objective of the UK Draft Regulations and Guidance is to require UK FIs to identify and report the financial accounts of specified US persons. The due diligence process focuses on the identification of certain US indicia linked to an account holder and allows for the possibility of obtaining further documents to cure or repair the finding of the indicia before the UK FI concludes that an account is a reportable US Reportable Account”.

As part of the due diligence process for individual and entity account holders and for identifying the controlling persons of entities, UK FIs can rely on a **self certification** unless the UK FI has reason to know that it is incorrect or unreliable.

The UK Draft Guidance provides examples of various self certification scenarios for telephone, on line and paper based formats for new accounts and sets out the type of information to be obtained and recorded without specifying the wording to be used to obtain such certifications.

A UK FI is required to **confirm the reasonableness** of the self-certification based on information obtained, which may include, but is not limited to, information obtained pursuant to its Anti-Money Laundering (AML) and Know Your Customer (KYC) procedures.

PwC Observation: The introduction of self certification is a central element of the UK-US IGA. In order to enable UK FIs to continue to rely on existing AML/KYC information, the UK-US IGA replaced many of the documentation requirements set out in the proposed US FATCA regulations with self certification.

However, UK FIs should note that in the case of Pre-existing accounts where US indicia are identified, the self certification that the UK FI is required to obtain is IRS Form W-8 or other similar agreed form in order to treat the account as other than a US Reportable Account. This appears to differ from the self certification requirements in respect of New Individual Accounts.

UK FIs will need to introduce new processes, details of which have not been provided, to confirm the reasonableness of Form W-8 or other similar agreed form in order to treat the account as other than a US Reportable Account.

UK FIs will also need to introduce new processes, details of which have not been provided, to confirm the reasonableness of the self certification and these processes will need to demonstrate how the self certification was compared to other information held.

UK FIs can meet their AML/KYC requirements by placing reliance on the AML procedures performed by other parties and may request that the party performing the AML procedures and on which it has placed reliance should obtain a self certification.

The UK FI should confirm the reasonableness of the self-certification based on information obtained by the third party, which can be by way of a certification from the third party. However, where the self-certification is received directly by the UK FI, there is no requirement to ensure that a third party performing AML procedures has confirmed its reasonableness. The UK FI is required to confirm this based on any other information it alone has obtained or holds.

PwC Observation: Where the due diligence processes are outsourced to a third party which will provide a certification of reasonableness, the UK FI will need to introduce some form of review procedures to demonstrate that those due diligence processes are appropriate.

The guidance stipulates that in circumstances where the UK FI obtains the self certification and a third party undertakes the AML/KYC there is no requirement to confirm the reasonableness of the self certification against the information held by the third party.

Following this type of due diligence approach may be difficult to justify if it is found that the AML/KYC information included US indicia which conflicts with any self certifications. UK FIs should consider whether they are deemed to have any reason to know what information is contained with AML/KYC information collected on their behalf.

The UK Draft Regulations include the provision that a UK FI may, instead of obtaining self-certification follow the documentary evidence provisions of the proposed US FATCA regulations. However, there is no mention of this approach in the UK Draft Guidance.

Where it has been established that an account holder is a specified US person, a UK FI is required to obtain, with no obligation to verify except where there UK FI has reason to know that it is inaccurate, a US Federal **Tax Identification Number** (“TIN”) for:

- Reportable pre-existing individual accounts, when a TIN exists in the records of the reporting UK FI, or in the absence of a record of the TIN, a date of birth should be provided, but again only where that is held by the reporting UK FI. UK FIs will be required to obtain the TIN for relevant Pre-existing individual account holders from the 1 January 2017.
- For New Individual Accounts identified as Reportable Accounts from 1 January 2014 onwards, the reporting UK FI must obtain a self-certification that includes a TIN from account holders identified as resident in the US. This self certification could be on IRS Form W9 or other similar agreed form.
- Where a New Individual Account is identified as a Reportable Account and the account holder fails to provide a TIN and the account becomes active, the account is to be treated as a US Reportable Account;

***PwC Observation:** The requirement to report and obtain TINs gives rise to a number of questions and concerns. For example, with respect to new accounts that are US Reportable Accounts, including recalcitrant accounts that are treated as US reportable accounts, the TIN is required to be reported. If the UK FI can not obtain the TIN, which will be the case with both US and non-US recalcitrants, the UK FI would not be able to meet the reporting requirement.*

For Pre-existing accounts, the UK Draft Guidance provides no indication of the extent to which a UK FI needs to review information held to identify a TIN or place of birth. This gives rise to the potential for extensive reviews of paper records in search of the required information.

In terms of New Individual Accounts, UK FIs need to consider whether it is more effective to collect a TIN at account opening, presumably based on the indicia being present, or after the due diligence process is complete.

UK FIs will also need to decide whether or not to use the IRS Form W-9 or seek to apply a suitable substitute form. In certain circumstances, a UK FI is required to treat an account as a US Reportable Account in the absence of adequate information. This gives rise to the potential for the information of non specified US persons to be sent to HMRC and the IRS.

A change of circumstances includes any change that results in the addition or alteration of information or otherwise conflicts with the self-certification or other previous documentation associated with an account if it indicates that an account holder’s US status has changed.

If there is a change of circumstances that causes the UK FI to know or have reason to know that the self-certification is incorrect or unreliable, the UK FI should obtain a new self-certification, within a period of 90 days, that establishes whether or not the account holder is a US citizen or US tax resident.

When the account holder fails to respond to a request for a self certification or other documentation to verify the account holder’s status, then the UK FI should treat the account as a US Reportable Account until the necessary information is provided.

PwC Observation: The new account guidance appears to allow UKFIs to apply one set of information in respect of an account holder to all of the accounts held by that account holder where it is possible to reliably associate the required information to each account. This will be an important approach in terms of minimising the disruption to the customer experience that multiple information requests would cause.

5. Aggregation

Aggregation must be applied to all financial accounts to establish the balance or value against which to apply the various due diligence thresholds. A UK FI will need to consider aggregation of financial accounts of both individuals and entities to the extent that a UK FI's computerised system can link the account by reference to a common data element such as a customer or taxpayer identification number or by a name and address. It is not necessary for the computer system to sum or total the balances of the financial accounts for the aggregation rule to apply.

PwC Observation: In terms of aggregation, UK FIs need to ensure that where financial accounts across all Related Entities can be linked by a common data element, even where the system does not provide an aggregated balance of the financial accounts, aggregation must be applied. Numerous systems can provide a customer with a single view of accounts without the ability to aggregate those balances and values. While not a definitive test, the UK FI would need to demonstrate why those accounts are not linked by a common data element and pay close attention to Related Entities which may be located outside the UK.

While aggregation must be applied to all financial accounts to establish the balance or value against which to apply the various due diligence thresholds, exempt accounts are excluded from the requirement to aggregate. Once the status of the account holder as a low value or high value account holder has been established, the various thresholds, such as for depository accounts, can be applied on an account type basis. For UK FI's systems to be able to aggregate and then filter accounts in this way will be challenging.

For purposes of determining whether the aggregate balance or value of financial accounts held by a person exceeds \$1 million to determine whether an account is a High Value Account, a UK FI is required, in the case of any financial accounts that a relationship manager knows or has reason to know are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such financial accounts.

The term Relationship Manager is defined elsewhere in the Draft UK Guidance as any person who is an officer or other employee of the Financial Institution who is assigned responsibility for specific account holders on an ongoing basis, who advises the account holders regarding their accounts and arranges for the overall provision of financial products, services and other related assistance.

PwC Observation: There is a requirement to aggregate the accounts of high value account holders on the basis of a Relationship Manager's knowledge or reason to know. The UK FI will need to introduce procedures to demonstrate that an enquiry with the Relationship Manager has taken place and to record the results.

If a product is exempt from being treated as a Financial Account it does not need to be taken into account for the purposes of aggregation.

In the case of Funds, aggregation is required at the Fund level to include sub funds and different share classes within that fund. However, where two or more Funds have a common third party who is fulfilling the due diligence obligations of the Funds it is not intended that aggregation will apply across the different funds.

Where a computer system links financial accounts across Related Entities, wherever they are located, then the UK FI will need to aggregate all Financial Accounts in considering whether any of the reporting thresholds apply.

Financial Accounts will generally be **valued** on the last working day on or before 31st December unless the account is closed on a date before that. Financial Accounts other than Depository Accounts where it is not possible or usual to value an account at 31st December, the normal valuation point for the account that is nearest to the 31st December is to be used.

The balance or value to be recorded when an account is closed, will be the balance or value at the time the UK FI receives instructions from the account holder to close the account. Where financial accounts are denominated in a currency other than US dollars, the due diligence threshold limits must be **converted** into the currency in which the financial accounts are denominated using a published spot rate as of 31 December.

***PwC Observation:** There is useful clarification provided in respect of the valuation of Funds at the Fund level, the valuation of certain assets other than depository accounts, the closure of accounts and changes in circumstance. In many cases, UK Funds currently report at the sub fund level and accordingly, further changes may be required to accommodate the requirement to report at the fund level.*

The approach to valuation appears to allow UK FIs to rely on existing reporting processes although the requirement to apply the various due diligence thresholds will need to be incorporated into the process.

The requirements in respect of the closure of accounts and changes in circumstance both introduce the need to new monitoring processes which identify the relevant fact patterns and initiate follow up and review of the accounts with a proposed timeframe of 90 days in respect of a change in circumstances.

6. Pre-existing individual accounts

A Pre-existing account is an account opened on or before 31 December 2013. High Value Accounts are Pre-existing individual accounts with an aggregated balance or value that exceeds \$1,000,000 at 31 December 2013 or at 31 December of any subsequent year.

Low Value Accounts are Pre-existing individual accounts with an aggregated balance or value that exceeds the appropriate threshold of \$50,000 (for depository and other Pre-existing individual accounts) or \$250,000 (for Cash Value Insurance Contracts and certain annuity contracts), but do not exceed \$1,000,000.

A UK FI may elect not to review, identify or report the following Pre-existing individual accounts:

- Any Depository Accounts with a balance or value of \$50,000 or less;
- Pre existing individual accounts with a balance not exceeding \$50,000 at 31 December 2013, unless the account subsequently becomes a High Value Account;
- Pre existing individual accounts that qualify as Cash Value Insurance Contracts or certain annuity contracts with a balance or value of \$250,000 or less as of 31 December 2013 unless the account subsequently becomes a High Value Account; and
- Pre-existing Cash Value Insurance Contracts and Annuity Contracts held by individuals only, regardless of the value or balance, if the issuing insurance company is not licensed to sell insurance in any state of the United States and is not registered with the Securities and Exchange Commission.

PwC Observation: *The ability of UK FIs to elect to apply thresholds may give rise to Data Protection concerns where a UK FI consequently, reviews and reports accounts when it is not obliged to do so. HMRC have posted a Data Protection Q&A to try and assist UKFIs with such concerns.*

It should be noted that the exemption in respect of Pre-existing Cash Value Insurance Contracts and Annuity Contracts held by individuals also requires that the insurance contracts are subject to either reporting or withholding for UK resident clients. It is unclear whether for these purposes, UK Life insurance corporate taxation (“I-E”) equates to withholding or UK Chargeable Events reporting (“CECs”) equates to reporting. However, the relevant definitions included in respect of a Local FFI indicate that I-E and CEC will meet the criteria for withholding and reporting

In circumstances where a Pre-existing cash value insurance contract or annuity contract is assigned to another person, the contract will be treated as a new account. For UK life, insurers this will mean undertaking an additional due diligence process for pre-existing individual accounts, assigned on or after 1st January 2014.

US indicia search

A UK FI must review its electronically searchable data for any of the following US indicia and then obtain either a US TIN in the case of a US Reportable Account or the following relevant information to treat the account as other than a US Reportable Account:

| Indicia found | Required Documentation to Remediate Account |
|--|---|
| Identification of the account holder as a U.S. citizen or resident | Collect U.S. Tax Identification Number (Such accounts can not be remediated) |

| Indicia found | Required Documentation to Remediate Account |
|---|--|
| Unambiguous indication of a US place of birth | <ol style="list-style-type: none"> (1) A self certification showing that the account holder is neither a US Citizen nor a US resident for tax purposes. This may be an IRS W8 form or other similar agreed form. (2) Evidence of the account holder's citizenship or nationality in a country other than the US (e.g. passport or other government-issued identification); and (3) A copy of the account holder's Certificate of Loss of Nationality of the United States or a reasonable explanation of, the reason the account holder does not have such a certificate, or the reason the account holder did not obtain US citizenship at birth. |
| Current U.S. mailing or residence address (including P.O Box and 'care of' addresses) | <ol style="list-style-type: none"> (1) A self certification that the account holder is neither a US Citizen nor a US resident for tax purposes. This may be an IRS W8 form or other similar agreed form; and (2) Evidence of the account holder's citizenship or nationality in a country other than the US (e.g. passport or other government-issued identification) |
| One or more US telephone numbers that are the only numbers associated with the account | |
| An "in care of" or "hold mail" address that is the sole address the FI holds for the account holder. An in care of address outside the US shall not be treated as US indicia for Lower Value Accounts | |
| Standing instructions to transfer funds to an account maintained in the U.S. | <ul style="list-style-type: none"> • A self certification that the account holder is neither a US Citizen nor a US resident for tax purposes. This may be an IRS W8 form or other similar agreed form; and • Acceptable documentary evidence which establishes the account holder non US status. This evidence can be : <ul style="list-style-type: none"> • A certificate of residence issued by an appropriate tax official of the country in which the payee claims to be a resident. • Any valid identification issued by an authorized government body that includes the individual's name and is typically used for identification purposes. • Any financial statement, third-party credit report, bankruptcy filing, or US Securities and Exchange Commission report. • Any of the documents other than a Form W-8 or W-9 referenced in the jurisdiction's attachment to the QI agreement for identifying individuals. For the UK the documents are: <ol style="list-style-type: none"> a) Passport b) National identity card c) Armed Forces identity card d) Driving licence e) Shotgun certificate issued by a UK police authority |

| Indicia found | Required Documentation to Remediate Account |
|--|---|
| Current effective power of attorney or signatory authority granted to a person with a U.S. address | <ul style="list-style-type: none"> A self certification showing that the account holder is neither a US Citizen nor a US resident for tax purposes. This may be an IRS W8 form or other similar agreed form; or Acceptable documentary evidence which establishes the account holder non US status. See above. |

When carrying out an electronic search there is no requirement to search systems of related entities. Where indicia are found and the UK FI attempts to verify or cure those by contacting the account holder, but there is no response then the account should be treated as reportable after 90 days of initiating contact.

The review of Pre-existing accounts that are Low Value accounts at 31 December 2013 must be completed by 31 December 2015 and for Higher Value Accounts by 31 December 2014.

***PwC Observation:** The search for indicia and separation of High Value and Low Value Accounts follows the type of process set out in the proposed US FATCA Regulations with specified information required in respect of each US indicia found. UK FIs will need to develop processes to undertake the electronic search when appropriate, record the result and remediate any accounts for which US indicia are identified. It appears that the requirement to treat an account with unresolved US indicia as a US Reportable Account 90 days after requesting the required information applies within the relevant remediation timeframes.*

Paper record search

A paper record search will be required in respect of High Value Accounts where the electronic searchable databases do not capture all the details on the following information:

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

The Paper Record search should include a review of the current customer master file and, to the extent they are not contained in the current master file, the following documents associated with the account and obtained by the UK FI within the last 5 years:

- The most recent documentary evidence collected with respect to the account;
- The most recent account opening contract or documentation;
- The most recent documentation obtained by the Financial Institution for AML/KYC Procedures or for other regulatory purposes;
- Any power of attorney or signature authority forms currently in effect; and
- Any standing instructions to transfer funds currently in effect.

A UK FI is not required to perform the paper record search for any pre-existing individual account with respect to which it has obtained a Form W-8BEN and documentary evidence which establishes the account's status as an account other than a US reportable account.

Relationship Manager

The UK FI must consider whether any Relationship Manager associated with the account, including any accounts aggregated with such account, has actual knowledge that would identify the account holder as a specified US person. Procedures must be in place to capture any change of circumstance in relation to a High Value individual account, made known to the Relationship Manager.

The electronic and paper searches must be performed once for each High Value account, while the relationship manager enquiry must be carried out annually.

***PwC Observation:** UK FIs with High Value Accounts should look closely at the data required in order to take advantage of the paper record search exception. Where the exception cannot be applied, a UK FI will have to undertake a manual documentation exercise in respect of these accounts.*

The documentation exercise will have to incorporate a Relationship Manager enquiry process and it is important to note that this may extend to Relationship Managers in Related Entities which in turn may be outside the UK. The definition of a Relationship Manager is helpful, but UK FIs should consider carefully whether further definition is required.

Previously documented accounts

A UK FI that has previously obtained documentation from an account holder to establish the account holder's status in order to meet its obligations under a Qualified Intermediary ("QI"), Withholding Foreign Partnership ("WFP") or Withholding Foreign Trust ("WFT") agreement, or to fulfil its reporting obligations as a US payor under chapter 61 of the US Internal Revenue Code, is not required to perform the electronic or paper search in relation to those accounts.

***PwC Observation:** This provision appears to apply the approach set out in the proposed US FATCA regulations for QIs, FWP's, FWT's and US payors where accounts subject to those agreements have previously been documented, as well as a broader relief from the paper search for High Value Accounts where the UK FI has previously obtained a Form W-8BEN and documentary evidence which establishes the account's status as an account other than a US reportable account.*

This approach was not explicitly included in Annex I of the IGA and it is unclear whether a UK FI is required to apply the approach set out in the proposed US FATCA regulations to all Pre-existing accounts or can limit the use of this provision to accounts previously documented in this way.

Timing of review

For Reportable Accounts with a balance over \$1,000,000 at 31 December 2013, the Reporting UK FI must report for both the year ending 31 December 2013 and the year ended 31 December 2014.

Where the balance or value of an account does not exceed \$1,000,000 as of 31 December 2013, but does as of the last day of a subsequent calendar year, the Financial Institution must perform the procedures described for High Value Accounts by 30 June of the year following the year in which the balance or value exceeded \$1,000,000.

***PwC Observation:** It is worth noting the requirement to report information for both 2013 and 2014 in respect of Reportable Accounts which were High Value Accounts as at 31 December 2013. Furthermore, in circumstances where an account becomes a High Value Accounts as at 31 December 2014, the review must be completed by 30 June 2015.*

7. New individual accounts

A New Individual Account is an account opened on or after 1 January 2014. Where such an account opened with a UK FI by an individual with a Pre-existing account the UK FI must apply the due diligence requirements to the new account. The due diligence may then be relied upon for any subsequent accounts the individual opens and applied to any Pre-existing accounts yet to be reviewed.

A UK FI may elect not to review, identify or report the following New Individual Accounts:

- Depository Accounts unless the account balance exceeds \$50,000; and
- Cash Value Insurance Contracts unless the cash value exceeds \$50,000.

For accounts that are not exempted, the Financial Institution must carry out the following procedures upon opening an account:

- Obtain a self certification that allows the UK FI to determine whether the account holder is US tax resident (for these purposes a US citizen is considered to be resident in the US for tax purposes even where they are also tax resident in another country); and
- Confirm the reasonableness of this self-certification based on the information the UK FI obtains in connection with the opening of the account, including any documentation obtained for AML/KYC Procedures

Where it is established that the holder of a New Individual Account is a resident in the US for tax purposes then the account must be treated as a reportable account. A UK FI can rely on information provided by an account holder unless it knows or has reason to know that the self certification or other documentary evidence is incorrect.

A UK FI is 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 that a reasonably prudent person would question the claims made.

PwC Observation: While UK FIs are required to apply due diligence to the New Accounts of existing customers, the UK Draft Guidance allows the UK FI to associate the information collected to a number of accounts, both New and Pre-existing.

As with the Pre-existing Account thresholds, the ability of UK FIs to elect to apply the thresholds may give rise to Data Protection concerns.

In the case of a Depository Account, there does not appear to be any clear guidance on monitoring the balance of an account where the opening balance was less than \$50,000 and subsequently exceeds this amount.

A UK FI is required to obtain a self certification for all New Accounts, confirm the reasonableness of the self-certification based the standard of reason to know.

The UK Draft Guidance does not address the provision in the UK Draft Regulations to allow the UK FI to replace self certification with documentary evidence as set out in the proposed US FATCA regulation. It is also not clear what the course of action should be where the self-certification provided does not correspond with any 'reasonableness' check.

8. Pre-existing entity accounts

Pre-existing entity accounts are entity-owned accounts that are in existence at 31 December 2013. The review of Pre-existing Entity Accounts with an account balance or value that exceeds \$250,000 as of 31 December 2013 must be completed by 31 December 2015.

Pre-existing entity accounts with a balance or value that does not exceed \$250,000 at December 31st 2013, but exceeds \$1,000,000 as of December 31 of any subsequent year, must be completed by 30 June of the following year.

A UK FI may elect not to review, identify or report accounts where the account balance or values does not exceed \$250,000 at 31 December 2013 until the account balance exceeds \$1,000,000.

An account is only reportable where the account is held by one or more specified US persons or by Passive NFFEs with one or more Controlling Persons who are US citizens or residents.

Controlling persons are defined as natural persons who exercise control over an entity. In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust. In the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term "Controlling Persons" shall be interpreted in a manner consistent with the Recommendations of the Financial Action Task Force.

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

A UK FI should identify whether the Pre-existing entity account holder is a:

| | |
|--|--|
| Specified US Person | <ul style="list-style-type: none"> US place of incorporation or organisation, or a US address would be examples of information indicating that an entity is a Specified US Person. In such a case then the account should be treated as a US reportable account unless a self certification is obtained from the account holder which shows that the account holder is not a Specified US Person |
| Financial Institution | <ul style="list-style-type: none"> For a UK FI or a FI in another IGA territory ("IGA FI") no further review, identification or reporting will normally be required except where the FI is identified as an NPFI by the IRS following significant non compliance. If FI is not a UK FI or an IGA FI, then it should be treated as a NPFI unless the entity provides a self-certification stating that it is a certified DCFFI, an exempt beneficial owner, or an excepted FI; unless the Financial Institution is able to verify that the entity is a participating Financial Institution or registered deemed-compliant Financial Institution for instance from its FATCA identifying number. |
| Non Participating Financial Institution | <ul style="list-style-type: none"> If the account holder is a NPFI then the UK FI will need to report on payments made in 2015 and 2016. |
| Non Financial Foreign Entity | <ul style="list-style-type: none"> If the account holder is not a specified US person or an FI, then the UK FI must consider whether the entity is a Passive NFFE. An entity will be a Passive NFFE if is not an Active NFFE. UK FI must obtain a self-certification from the account holder establishing its status, unless it has information in its possession or that is publicly available, which enable the UK FI to reasonably determine that the entity is an Active NFFE. |
| Controlling persons of a Passive NFFE | <ul style="list-style-type: none"> To determine whether the Controlling persons of a Passive NFFE are citizens or residents of the United States for tax purposes, a UK FI may rely on: <ul style="list-style-type: none"> Information collected and maintained pursuant to AML/KYC Procedures in the case of an account, held by one or more NFFEs, with a balance that does not exceed \$1,000,000. <p>If the balance exceeds \$1,000,000, self-certification is required from an account holder or Controlling Person in the case of an account, held by one or more NFFEs.</p> |

PwC Observation: The Pre-existing entity account holder review requires a UK FI to apply a process of elimination to establish whether the entity is a specified US person, FI, NFFE and then if a Passive NFFE, whether the Controlling persons of a Passive NFFE are citizens or residents of the United States for tax purposes.

To undertake the identification a UK FI can rely on information maintained for regulatory or customer relationship purposes and in the case of an Active NFFE, information that is publicly available. UK FIs should consider the information available to make these determinations and balance the convenience of such sources against the risk on making an incorrect determination with no self certification from the account holder.

In the event that a UK FI has no public information or self-certification from the entity that it can rely upon, there does not appear to be clear guidance as to how the account should be classified. There is a possibility that the client could be either a Passive NFFE or NPFI (presumably the latter), but within the UK Draft Guidance an example of how such scenarios should be classified could be useful for UK FIs.

The timing of the review procedures is as expected, although it is worth noting that where an account with a balance or value that did not exceed \$250,000 at 31 December 2013 exceeds \$1 million as at 31 December 2014, the review must be completed by 30 June 2015.

9. New entity accounts

A New Entity Account is an account opened on or after 1 January 2014. All New Entity Accounts are subject to the review and the due diligence procedures and an account holder of a New Entity Account must be classified, documented and reported as follows:

| Category | Documentation | Reporting |
|---|---|---|
| Specified US Person | Self certification that includes a US TIN (which could be IRS Form W9) | <ul style="list-style-type: none"> US Reportable Account |
| UK FI or IGA FI | A UK FI may rely on publicly available information or information within the UK FI's possession to identify | <ul style="list-style-type: none"> Not a US Reportable Account No further review, identification or reporting will normally be required the exception is the Financial Institution is a NPFI by the IRS following significant non compliance. |
| NPFI | Not applicable | <ul style="list-style-type: none"> Report on certain payments made to NPFI |
| Participating FFI, a DCFI, an exempt beneficial owner, or an excepted FFI, (as defined in relevant US Treasury Regulations) | Self certification or verification, for example from its FATCA identifying number | <ul style="list-style-type: none"> Not a US Reportable Account |
| Active NFFE | Publicly available information or information within the UK FI's possession to identify | <ul style="list-style-type: none"> Not a US Reportable Account |
| Passive NFFE | <ul style="list-style-type: none"> Identify the Controlling Persons of the entity as determined under AML/KYC procedures Self certification from the account holder or Controlling Person | <ul style="list-style-type: none"> US Reportable Account where one or more Controlling Person is a citizen or resident of the US |

PwC Observation: A UK FI may rely on information that is publicly available to identify UK FIs, IGA FIs and Active NFFE and identify the Controlling Persons of a Passive NFFE as determined under AML/KYC Procedures. UK FIs should consider the information available to make these determinations and also the changes required to obtain self certifications for other entity account holders.

10. Reporting

Once a Financial institution has applied the procedures and due diligence in respect of the accounts it holds and has identified reportable accounts it must then report certain information regarding those accounts to HMRC.

| Reportable Year | Information to be reported | | Date to Report to HMRC | Date that HMRC reports to IRS |
|-----------------|--|--|------------------------|-------------------------------|
| | Reportable Account Reporting | Payments made to NPFI Reporting | | |
| 2013 | <ul style="list-style-type: none"> Name Address, US TIN (For Pre-Existing accounts a date of birth can be provided if no US TIN available) | N/A | 31 March 2015 | 30 Sep 2015 |
| 2014 | <ul style="list-style-type: none"> Account number (or functional equivalent) Name and identifying number of the reporting institution Account balance or value | N/A | [31 May 2015] (Note 1) | 30 Sep 2015 |
| 2015 | In addition to the above: <ul style="list-style-type: none"> For Custodial Accounts - the total gross interest, total gross dividends and the total gross amount of other income generated with respect to the assets held in the account. For Depository Accounts - the total gross amount of the interest paid or credited to the Account For any other account - the total gross proceeds paid or credited to the Account Holder. | <ul style="list-style-type: none"> Name of the Non-Participating Financial Institution Total amount of payments made to each Non-Participating Financial Institution | [31 May 2016] (Note 1) | 30 Sep 2016 |
| 2016 | In addition to all the above: The total gross proceeds from the sale or redemption of property paid or credited to the Account | Same as above | [31 May 2017] (Note 1) | 30 Sep 2017 |
| 2017> | All of the above | TBC (Note 2) | [31 May 2018] (Note 1) | 30 Sep 2018 |

- (1) The UK Draft Regulation currently suggests, through the use of brackets, that the due date for reporting is [31 May] indicating that there is further discussion to be had in respect of this deadline.
- (2) Article 10 'Term of Agreement' specifies that 'Parties shall, **prior to December 31, 2016**, consult in good faith to amend this Agreement as necessary to reflect progress on the commitments set forth in Article 6.' Article 6 highlights that the Parties are committed to work together to develop a practical and effective alternative approach to achieve the policy objectives of foreign passthru payment and gross proceeds withholding that minimizes burden.

QIs which have elected to assume primary withholding responsibility have to withhold on US source Withholdable payments to an NPFI.

Where a UK FI makes a payment of, or acts as an intermediary, in respect of a “US source withholdable Payment” to any NPFI, then the UK FI must provide information required for withholding and reporting to occur, with respect to the payment, to “any immediate payor” (i.e. only where there is an immediate payor). The information required for withholding and reporting to occur is to be pooled withholding rate information.

Any HMRC audit of systems and processes may also encompass a review of whether or not a Financial Institution is able to correctly identify its account holders and meets its reporting obligations. This will either be part of the Customer Relationship Manager (CRM) process or by adopting a risk based approach.

Any Reporting UK FI can rely on third party service providers to meet some of its obligations under this legislation, however fulfilling all those obligations remain the responsibility of the Reporting UK FI.

The format in which reporting will be required and the way in which Reporting UK FIs will submit the information to HMRC is still to be finalised.

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

PwC Observation: *The reporting obligations are being phased in so UK FIs will need to consider scheduling the work to develop, test and deploy the changing requirements.*

The exclusion of consideration given for the provision of goods or non-financial services from the definition of payment to a NPFI is a welcome reduction in the scope of reporting. The term non-financial service has yet to be defined in the proposed US FATCA Regulations and the UK Draft Regulations. However, the requirement to report payments made to a non-participating financial institution as an account holder or otherwise remains a significant challenge and appears to be broader than the reporting required in respect of payments to NPFIs under the Model II IGA.

While a UK FI which makes a payment of, or acts as an intermediary, in respect of a “US source withholdable Payment” to any NPFI is only required to provide information required for withholding and reporting to any immediate payor, it should be noted that withholding under Chapters 3 or 6 would still apply. Furthermore, the suspension of withholding in respect to recalcitrant account holders is not absolute but subject to the reporting obligations.

The UK Draft Regulations introduce the requirement for a UK FI to track the date of receipt of the instructions to close an account

The absence of details in respect of the method and format of the data transmission is an area of considerable uncertainty in the UK Draft Regulations and HMRC have stated that these are areas of ongoing discussion. It is not yet clear how a UK FI will be required to obtain a TIN.

It is also clear from the UK Draft Guidance that HMRC intend to undertake some form of Compliance monitoring which could either be via the CRM, or even through a separate specialist unit. Further clarity around how this would operate is still awaited.

11. Compliance

In the event that the information reported is corrupted or incomplete the IRS will be able to contact the reporting financial institution directly to try and resolve the problem.

For more specific enquiries, for instance regarding a specific individual or entity, the IRS will need to contact the UK Competent Authority who will then contact the financial institution.

Significant non compliance may be determined from either an IRS or HMRC perspective. In either event the relevant competent authorities will notify the other regarding the circumstances. Where one competent authority notifies the other of significant non-compliance there is an 18 month period in which the UK FI must resolve the non compliance.

Where HMRC is notified of significant non-compliance (examples are provided), by a UK FI HMRC will apply any relevant penalties under this legislation and engage with the UK FI to discuss the areas of non-compliance and remedies to prevent future non-compliance. HMRC will inform the IRS of the outcome of these discussions. In the event that the issues remain unresolved after a period of 18 months then the financial institution will be treated as a NPFI. The IRS will publish a list of entities that are to be treated as a NPFI.

Details of how such an entity can correct NPFI status will be published at later date.

***PwC Observation:** No details have been provided in respect of any registration process that the UK FI will have to follow. The IRS registration portal is expected to be available in the first half of 2013 and it appears that HMRC expect UKFIs to follow this process.*

There is no equivalent to the Responsible Officer as set out in the proposed US FATCA regulations. However, compliance will be incorporated into the CRM relationship management activity for UK FIs where one exists, and in other circumstances a risk based approach will be followed.

12. Anti avoidance

The UK Draft Regulations include an Anti avoidance measure which is aimed at arrangements taken by any person to avoid the obligations placed upon them by the regulations. It is intended that 'arrangements' will be interpreted widely and the effect of the rule is that the regulations will apply, as if the arrangements had not been entered into.

***PwC Observation:** It is unclear whether any further guidance will be forthcoming in respect of the anti avoidance provisions or simply incorporated into the compliance provisions.*