Guidance Notes on the Implementation of FATCA in Ireland

Supplementary FAQ's

These Frequently Asked Questions (FAQ's) are designed to supplement the '*Guidance Notes on the Implementation of FATCA in Ireland*' published by Revenue on 1 October 2014 and will be amalgamated with the Guidance Notes at a later date. The headings act as a reference point to the Chapter in the Guidance Notes to which they relate. While every effort is made to ensure that the information given in this guide is accurate, it is not a legal document. Responsibility cannot be accepted for any liability incurred or loss suffered as a consequence of relying on any matter published herein.

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Chapter 1: FATCA Overview

Q1. Will Revenue be formally adopting the amended regulations as outlined by the US Treasury and the Internal Revenue Service in Notice 2014-33?

A1. The regulations outlined do not form a part of the FATCA Regulations in Ireland and are therefore not included in the guidance notes. However, Revenue will allow any Financial Institutions in Ireland that wish to avail of these transitional measures to do so.

Q2. Where a transparent entity which is owned by Irish resident companies and taxed in Ireland but established elsewhere and this leads to potentially having FATCA obligations in two countries, which country has priority in relation to FATCA registration?

A2. Revenue can only implement the IGA as it has been agreed and can only provide guidance on FATCA reporting obligations in Ireland.

Chapter 2: Reporting Financial Institutions

Q3. What is the FATCA status of a REIT in a group structure and where the principal company does not hold a direct interest in real property?

A3. In circumstances where there is not a direct interest in real property and an investment entity is managed by another investment entity, that entity falls within the definition of an Investment Entity for FATCA reporting purposes.

Q4. What is the FATCA status of a general partner in a partnership where a property is owned by the partnership and one of the partners is an authorised Qualifying Investor Alternative Investment Fund ("QIAIF"). Does the QIAIF continue to fall outside the scope of FATCA even though it does not hold a direct interest in the property?

A4. Where a direct interest in real property is not held by the QIAIF and an investment entity is managed by another investment entity, that entity does fall within the definition of an Investment Entity for FATCA reporting purposes.

Q5. What is the FATCA treatment of holding companies and treasury companies?

A5. Following further guidance issued by the IRS, Revenue has revised the treatment of Holding Companies and Treasury Companies for the purposes of FATCA as outlined in S.I. 292 of 2014 (FATCA Regulations) , and the related Guidance Notes (PDF 1.30 MB) published on the Revenue website. While Relevant Holding Company and Relevant Treasury Company have been included in the list of Financial Institution categories as outlined in Regulation 3 of the FATCA Regulations and Chapter 2 of the Guidance Notes, this is not consistent with the Ireland / United States Inter Governmental Agreement (IGA) , (PDF 243 KB) which defines a Financial Institution as "a Custodial Institution, a Depository Institution, an Investment Entity or a Specified Insurance Company".

Accordingly a Holding Company or Treasury Company will only be considered a Financial Institution if it meets the definition of the four Financial Institution categories specified in the definition above.
Where a Holding Company or Treasury Company does not fall into one of the above-mentioned categories of Financial Institution it will be classed as a Non-Financial Foreign Entity (NFFE), and will fall into the category of "active" or "passive" in accordance with the criteria set out in Appendix 2 of the Guidance Notes.

However, where a Holding Company or Treasury Company of a financial group no longer meets the definition of Financial Institution and had previously identified itself as a Relevant Holding Company or Relevant Treasury Company and completed its FATCA

registration as the lead Financial Institution of an Expanded Affiliated Group (EAG), Revenue will allow the entity to continue to treat itself as the lead Financial Institution for reporting purposes. While the entity may act as the lead Financial Institution for filing purposes, it will still not fall within the definition of Financial Institution and so will have no Irish reporting obligations in its own right.

Chapter 3: Reportable Accounts

Q6. In the case of a Unit Trust Scheme or Common Contractual Fund, who is the responsible party for FATCA compliance?

A6. The manager of a Unit Trust Scheme or Common Contractual Fund is responsible for ensuring compliance with FATCA.

Q7. In the case of an Investment Limited Partnership ("ILP"), who is the responsible party for FATCA compliance?

A7. The general partner of the ILP is responsible for ensuring the ILP's compliance with the Regulations.

Chapter 4: Reporting

Q8. Where an account is closed during the year and it is being reviewed for the purposes of identifying whether or not it exceeds a relevant de minimis or threshold, what exchange rate should be used to convert the threshold amount?

A8. Where an account has been closed during the year, a Financial Institution should use the spot rate on the date at which the closing balance is determined to translate the threshold amount.

Q9. When valuing accounts, a Reporting Financial Institution should use the normal valuation point for the account that is nearest to the 31st of December. Where an account is not valued at 31 December or it is not normal business practice to value accounts at this date, should the valuation point applied be pre or post December?

A9. The value to be used is the normal valuation point that is nearest to 31 December, whether this is before or after 31 December.

Q10. What information should be reported in respect of Cash Value Insurance Contracts?

A10. The information to be reported is:

The annual amount reported to the policy holder as the gross surrender value of the account,

OR

The gross surrender value of the account as calculated by the company on 31 December; and
Any part surrenders taken during the policy year.

Q11. What account information should be reported in respect of Annuity Contracts?

A11. The information to be reported is:
The annual amount reported to the policy holder as the surrender value of the account,

OR

The surrender value of the account as calculated by the company on 31 December; and
Any part surrenders taken during the policy year.

Q12. For reporting purposes, where the balance of a Cash Value Insurance Contract or an Annuity Contracts is required to be converted to USD at a date other than 31 December, what spot rate should be used?

A12. In these circumstances the spot rate on the date of valuation should be used.

Chapter 5: Identification and reporting of interests in Collective Investment Undertakings and other entities

Q13. In what circumstances can an account with a nil balance at 30th June 2014 be treated as a pre-existing account?

A13. The Irish FATCA regulations define a reportable account in relation to a financial institution as a "*U.S. reportable account that is maintained by that Institution*". As such, where an account with a nil balance is maintained by an institution at June 30th 2014 and a subsequent investment would not require further AML/KYC or other regulatory procedures to be carried out, the account may be treated as a pre-existing account for FATCA purposes. In order for the institution to treat the account as pre-existing at 30 June 2014 there would have had to be some activity in the account within the previous 12 months i.e. the account could not have been at a nil balance for more than 12 months.

Q14. What are the due diligence and reporting responsibilities of Exchange Traded Funds ("ETFs") under the FATCA Regulations?

A14. The Irish Guidance Notes state that "The term *Financial Account* includes *Equity and Debt Interests in an Investment Entity* other than interests that are regularly traded on an established securities market. In the context of *Investment Entities* which are *Collective Investment Schemes* (including sub-funds of umbrella *Collective Investment Schemes*) which are regularly traded on a recognised stock exchange, these shall not be considered to be *Financial Accounts."*

In this regard, such *Investment Entities* whose interests comprise entirely of interests which are regularly traded on recognised stock exchanges should have no responsibilities in respect of due diligence and reporting under the Regulations. In addition, payments in respect of such classes of interests should not fall in scope of Chapter 11 (Reporting of Payments made to Non-Participating Financial Institutions).

Chapter 6: Identification of Account Holders – Self Certification and Aggregation

Q15. What are the reporting requirements where a new account is opened on 1 July 2014 and full and up to date Self-Certification showing the account holders status as a non-U.S. Person is not provided until 1 December 2014 i.e. prior to the reporting date. Is this account reportable for 2014 on the basis that the Self-Certification was not received within the 90 day period or is it non-reportable due to proof of non U.S. status being received before the year end?

A15. As the Self-Certification was not received within the 90 day period they would be treated as "Reportable" from the day the account was opened, however as the Self-Certification was received prior to the year-end FATCA filing period, confirming the Non-U.S. Status of the investor they would be treated as non-reportable in the 2014 FATCA reporting period.

Q16. Are non-IRS certificates acceptable as a form of self-certification from an account holder or must all self-certification be in the form of IRS documentation such as a W8/W9?

A16. A Reporting Financial Institution can choose the form of wording to use in order to determine whether an Account Holder of a New Individual Account is resident in the US for tax purposes provided the self-certification form contains the following information:

a) the name and permanent resident address of the *Account Holder;*
b) city/town of birth;
c) confirmation that they are not resident in the US for tax purposes, and that they are not a US citizen; and
d) Taxpayer Identification Number ("TIN"), *this should be a US TIN if one exists.*

The form must be signed and dated by the *Account Holder* and be accompanied by documentary evidence that supports the individual's status as set out above. The form can include other information required for other purposes such as AML due diligence and can be in paper or electronic format.

Q17. What details should the self-certification for new individual accounts contain?

A17. A *Reporting Financial Institution* can choose the form of wording to use in order to determine whether an *Account Holder* of a *New Individual Account* is resident in the US for tax purposes provided the self-certification form contains the following information:

a) the name and permanent resident address of the *Account Holder*;
b) city/town of birth;
c) confirmation that they are not resident in the US for tax purposes, and that they are not a US citizen; and
d) Taxpayer Identification Number ("TIN").

The form must be signed and dated by the *Account Holder* and accompanied by the documentary evidence that supports the individual's status as set out above. The form can include other information required for other purposes such as AML due diligence and can be in paper or electronic format.

Q18. In what scenarios may aggregation of account apply?

A18. Aggregation should be applied to determine whether the following applicable thresholds have been exceeded:

a) $50,000 threshold for individuals;
b) $250,000 threshold for entities; and
c) $1 million threshold to determine whether or not an account is a High Value Account and subject to enhanced due-diligence.

See examples for Collective Investment Schemes below:

Examples of aggregation rules for Collective investment Schemes

a) **Example 1: Application of the $50,000 threshold for individuals**
Fund A is a *Reporting Financial Institution* and has elected to apply the de-minimis thresholds to individual *Account Holders*. It can link the following accounts of Specified Person X by a Tax Identification Number.

- Specified Person X has a holding in Fund A with a value of $25,000
- Specified Person X has another holding in Fund A with a value of $20,000

The aggregated total is below $50,000; therefore neither account will be reportable.

b) **Example 2: Application of the $250,000 threshold for entities**

Fund A is a *Reporting Financial Institution* and has elected to apply the de-minimis thresholds to entity *Account Holders* and can link the following accounts of Specified Person Y (an entity investor) with a Tax Identification Number or other corporate identifier.

- Specified Person Y has a holding in Fund A under account designation ABC with a value of $100,000
- Specified Person Y has a holding in Fund A under account designation DEF with a value of $50,000
- Specified Person Y has a holding in Fund A under account designation CASH with a value of $75,000

The aggregate total is below $250,000; therefore none of the accounts will be reportable.

c) **Example 3: Application of the $1million threshold to determine whether or not an account is a High Value account and subject to enhanced due diligence.**

Fund A is a *Reporting Financial Institution* and can link the accounts of individual Investor A by a Tax Identification Number found when conducting a review of pre-existing investors.

- Investor A has a holding in Fund A with a value of $800,000
- Investor A has a second holding in Fund A as part of a joint account with a value of $400,000

The entire value of the joint account is attributable to both holders of the joint account, therefore the aggregate value of Investor A's holding is $1,200,000. Therefore Investor A will be treated as a *High Value Account* for the purposes of performing due diligence."

Chapter 7: Due Diligence Process for Pre-existing Individual Accounts

Q19. Under the Irish Guidance and Regulations, high value individual accounts must be reviewed by 30 June 2015. What is the latest date that a Financial Institution should complete the review and documentation should be requested from the investor?

A19. The requirement to review high value accounts by 30 June 2015 requires that electronic and, where appropriate, paper record searches for US indicia etc. are to be carried out by that date. To the extent that U.S. indicia are identified and documentation (such as a self-certificate) is sought to verify the status to the person this should also be requested by 30 June 2015; allowing an additional reasonable period from that date for the account holder to provide the remaining documentation.

Q20. With respect to High Value Accounts, once the electronic system has the facility to capture the relevant fields of information, is the Financial Institution required to carry out a paper search?

A20. A paper record search does not have to be carried out where all of the required information is electronically searchable.

Chapter 9 : Due diligence process in the case of pre-existing Entity Accounts

Q21. When should the review of pre-existing entity accounts with an account balance or value that exceeds $250,000 as of 30 June 2014 be completed?

A21. The review of pre-existing entity accounts with an account balance or value that exceeds $250,000 as of 30 June 2014 should be completed by 30 June 2016.

Q22. Can Financial Institutions use information held on file and obtained for AML/KYC purposes as a basis for classifying Pre-existing Entity Account Holders?

A22. A *Reporting Financial Institution* can rely on information previously recorded in its files to classify entities in accordance with relevant AML/KYC requirements to assist them with classifying the Entity for pre-existing due-diligence obligations under FATCA.

Q23. Where a New Account is opened by an entity account holder and the entity account holder already holds a Pre-existing Account with the Financial Institution, can both accounts be treated as pre-existing accounts for due diligence and identification and documentation procedures?

A23. Where a New Account is opened by an entity account holder who already has a Pre-existing Account, the Reporting Financial Institution may treat both accounts on the same basis for the purposes of applying AML/KYC due diligence. In these circumstances, the Reporting Financial Institution may choose to apply the identification and documentation procedures for either Pre-existing or New Accounts to derive the FATCA classification for any New Account or Accounts opened on or after 1 July 2014 by the same entity.

Chapter 11 : Reporting of Payments made to Non-Participating Financial Institutions

Q24. Is what circumstances are payments made by a Financial Institution not reportable?

A24. Payments that need not to be reported are outlined in 11.3 of the Guidance Notes and include any other payments made by the *Financial Institution* that are not in respect of a *Financial Account.*

(Please note that payments to NPFIs do not need to be reported in June 2015).

Point 4 of Section 3. should read as follows:

- payments made in circumstances where the *Reporting Financial Institution* does not hold documentation to identify the payee as a *Non-Participating Financial Institution*, unless the payee is *prima facie a Financial Institution*.

Q25. How is the term "immediate payor" defined?

A25. The "immediate payor" is the person with withholding and reporting obligations to the US authorities.

Chapter 12: Miscellaneous Issues

Change of Circumstance –"Renouncing U.S Citizenship"

Q26. What are the reporting requirements where a Financial Institution has identified a new investor as a specified U.S. person in July 2015, however during August 2015, the investor notifies you of a change of circumstance and provides supporting documentation to state that they have renounced their U.S. Citizenship. Is the account reportable for year ended 31 December 2015?

A26. In the event of a Change of Circumstance the Financial institution should verify the account holder's actual status. Where the change of circumstance has been verified before the reporting date the updated status should be applied. In this scenario, the Investor has confirmed via a valid document that they have renounced their U.S. Citizenship. Therefore the investor would not be reportable for FATCA purposes for y/e 2015.

Q27. Terminated accounts where GIIN has been deleted - What are the obligations of the Financial Institution in the following scenario:
A fund completes its registration with the IRS after 1 July 2014 and obtains a GIIN but closes the Fund on 31 October 2014, prior to having completed any Pre-existing Due-diligence on the fund, and prior to any FATCA reporting being collated and filed with the tax authorities. On termination, the fund also deleted their GIIN with the IRS. What action should the Financial Institution now undertake to ensure FATCA compliance?

A27. To the extent that the fund had any reportable clients in 2014 these should be reported in the 2015 return in respect of the period ended December 2014. To the extent that there are no reportable accounts in the period then a NIL return would be appropriate. The GIIN should not be deleted until all filing obligations have been fulfilled. Where the GIIN has been deleted they should re-register for a GIIN in order to file the return.

Q28. Where Revenue has identified a Financial Institution who has demonstrated significant non-compliance with its FATCA obligations, is it expected that Revenue will agree measures and a timetable to resolve the non-compliance?

A28. Revenue will engage with the *Reporting Financial Institution* to:

- discuss the areas of non-compliance,
- discuss remedies/solutions to prevent future non-compliance,
- agree measures and a timetable to resolve its significant non-compliance
- apply non compliance procedures, including penalties where appropriate.

and, where appropriate, will inform the IRS of the outcome of these discussions.

Appendix 1: Non-Reporting Financial Institutions

Exempt Beneficial Owners (EBO)
Q29. What is the FATCA treatment of an entity in the following circumstances? Entity X has been categorised as an Exempt Beneficial Owner (EBO) in the UK, however it does not satisfy the Irish definition of an EBO. An Irish Financial Institution has requested self-certification from the entity, however the entity does not have a GIIN as it is not classed as a Financial Institution in its jurisdiction of domicile. What FATCA treatment applies?

A29. In this situation, you would look to the definition of EBO that exists in the domicile of the Entity. So in this situation if the UK Entity is an EBO under UK FATCA regulations then we can classify them as an EBO for FATCA purposes in Ireland.

Point 3a on page 89 has been amended to read as follows:

it has registered the *Financial Institution* with the IRS by the later of January 1, 2016, and the date that is 90 days after a US Reportable Account is first identified;

Appendix: 2 Definitions relevant to FATCA

Q30. What would Revenue consider an established securities market for FATCA purposes?

A30. If there is evidence that:

- the Stock Exchange is recognised and regulated by the appropriate authorities in the country where it is based,
- the Stock Exchange has the same level of recognition in the country where it is based as the Irish Stock Exchange does in Ireland, and
- provided a meaningful annual value of shares are traded on the exchange,

then the exchange would be considered to be an 'established securities market' for FATCA purposes. Alternatively, the definition contained in the US FATCA Treasury Regulations can be applied.

Appendix 3 : Registration and Filing Arrangements

Q31. What is the filing date for FATCA returns?

A31. FATCA returns must be submitted to Revenue by 30th June. However, for filing in 2015, the deadline has been extended to 31st July 2015.

Q32. How do I file a FATCA return and how do I check if I am registered to file?

A32. All FATCA returns (including nil returns) are required to be filed with Revenue via ROS in the form of an xml file. The option to file a FATCA return is linked to three taxheads in ROS Corporation Tax, Investment Undertaking Tax and ceased Income Tax registrations. If you are registered as an agent for your clients for any of these taxheads, the facility to file a FATCA return will automatically transfer across.

To check if you currently have the capacity to file FATCA returns, log into ROS using your agent certificate and select the client in question. The FATCA option should appear in the "Upload Form(s) Completed Off-Line" drop down box. If you are not seeing this option then you will have to register for one of the above mentioned taxheads to file a return.

Q33. I am not registered for Corporation Tax, Income Tax or Investments Undertaking Tax - how do I register to file a FATCA return?

A33. In circumstances where a financial institution is required to file a FATCA return and the financial institution does not have a ROS registration or is not registered for one of the taxheads linked to FATCA, agents should register the financial institution for Income Tax using the e-registration system on ROS. Agents should then de-register their client post filing. Where it is not possible for agents to register their clients for Income Tax, agents should register their client for Investments Undertaking Tax. Registration in these circumstances is solely for FATCA filing purposes does not constitute any further tax obligations.

Further details on registration can be found on Revenue's website http://www.revenue.ie/en/online/eregistration/index.html.

Q34. I am a Financial Institution and I have completed my due diligence. I have no reportable accounts – do I still have to file a return? If so, in what format?

A34. Where a Financial Institution holds no reportable accounts for a reporting period, a Financial Institution is still required to file a 'nil return'. For the 2014 reporting period, nil returns are to be filed in the same format as returns with reportable accounts i.e. they are required to upload an xml file. Revenue will be carrying out development work on the filing of nil returns at a later date to make it easier through the provision of a 'tick box' requirement, however this will not be available this year.

Q35. I have completed my due diligence and created my xml file/s for submission to Revenue. However, I want to check that they are valid. What should I do?

A35. In terms of the validation itself, there are two steps:

1) Ensure the schema follows the best practices as outlined by the IRS: http://www.irs.gov/Businesses/Corporations/FATCA-XML-Schema-Best-Practices-for-Form-8966
2) Ensure the XML conforms to the FATCA schema as published by the IRS: http://www.irs.gov/Businesses/Corporations/FATCA-XML-Schemas-and-Business-Rules-for-Form-8966

Once you have completed the above steps, use the Revenue's offline validator tool to verify your file https://rospublictest.ros.ie/devsupport/fatcavalidator.html in advance of upload.

Q36. Can returns for multiple Financial Institutions be filed in the one submission?

A36. No, a return cannot contain more than one GIIN. Where a return contains multiple GIIN's it will not pass validation.

Q37. Can a single return be comprised of more than one file?

A37. Yes, a return can be comprised of a number of xml files. (Please see the next question for further information on multiple file filing)

Q38. How should a Sponsoring Entity report it's sponsored entities?

A38. Sponsored entity reporting can be carried out in two ways.

1. One return per sponsored entity can be filed, or

2. An aggregated report containing the details of all sponsored entities can be filed. In circumstances where an aggregated report is filed, the return will have multiple FATCA elements – one for each sponsored entity. The "Reporting FI" element will contain the details of the sponsored Financial Institution and the "ReportingGroup" will contain the sponsor's details together with the accounts to be reported.

Aggregated reporting can be done for both Financial Institutions with reportable accounts and for Financial Institutions with no accounts to report and in instances where there are no reportable accounts, there will be no accounts within "ReportingGroup" element.

Where the Sponsoring Entity has FATCA reporting obligations itself a separate GIIN should be obtained and a separate return from that of its sponsored entities filed.

Q39. Where registration for a GIIN has been undertaken at the level of the sponsoring management company, and the sponsoring management company has sponsored funds administered by another Transfer Agent, can each Transfer Agent file separate returns which relate to the one GIIN? Or does the sponsoring entity have to consolidate information across its sponsored Financial Institutions and file one aggregated return?

A39. Multiple returns relating to one GIIN can be filed and each Transfer Agent can file a return on behalf of the sponsoring entity. It is not necessary for the sponsoring management company to consolidate reports for its sponsored entities.

Q40. Who's GIIN should I enter in the 'SendingCompanyIn' field (listed on page: 3 of the IRS schema document) in my FATCA file?

A40. The 'SendingCompanyIN' field should be populated with Revenue's GIIN: 000000.00000.TA.372.

Q41. What details should I enter in the 'TransmittingCountry' field and the 'ReceivingCountry' field (listed on page: 3 of the IRS schema document) in my FATCA file?

A41. The 'Transmitting Country' field should be populated with "IE" and the 'ReceivingCountry' field should be populated with "US".

Q42. What category/classification should a Reporting FI use in the IRS Schema for filing to Revenue for those account holders who are reportable by virtue of the fact that they have not provided a self-certification document under FATCA?

A42. A Reporting FI wishing to report account holders who have not provided a FATCA self-certification document, they should do the following:

Where the account holder is an individual, the Reporting FI should report the individual under category 1, 'specified US person'.

Where the account holder is an entity, the Reporting FI should report the entity under category 5, 'direct reporting NFFE'.