



FORWARD GROUP
Private Client | Corporate | Funds

GUIDANCE NOTE

FATCA / CRS

Introduction

This Guidance Note is a summary of the requirements of the Foreign Account Tax Compliance Act (“FATCA”) and the Common Reporting Standard (“CRS”).

We are required to hold appropriate and up to date Customer Due Diligence (“CDD”) documentation throughout the duration of a business relationship with our clients. This CDD requirement requires us to obtain information regarding tax circumstances about individuals and whether they are a controlling person.

The guide will not be able to answer all of the detailed questions that clients may have and it is not intended to be comprehensive advice.

What is FATCA and CRS?

FATCA is a United States (“US”) federal law, which was enacted in 2010, requiring all non-US Foreign Financial Institutions (“FFIs”) to report assets and identity information for customers with a connection to the US. It is a framework to combat tax evasion by US taxpayers imposing obligations on financial institutions to report such assets and identities of such persons to the US Department of the Treasury. More information can be obtained from the US Internal Revenue Service website www.irs.gov.

CRS is a global standard for the Automatic Exchange Of Information (“AEOI”) between financial institutions and tax authorities. It came into force on 1 January 2016 and was developed by the Organisation for Economic Co-operation and Development (“OECD”). CRS provides an international legal framework for the prevention of illegal tax evasion and was based on the US FATCA implementation agreements. More information can be obtained from the OECD’s website www.oecd.org.

The classifications below are to assist in compliance with the tax regulations which are very complex and we recommend that you seek the assistance of a professional tax adviser in respect of any queries. The information provided in this Guidance Note is subject to change as and when tax regulations and/or guidance notes are updated.

FATCA

Reporting Model 1 FFI (Foreign Financial Institution) is where the entity has been issued with its own Global Intermediary Identification Number (“GIIN”).

Reporting Model 2 FFI (Foreign Financial Institution) is where the entity has been issued with its own Global Intermediary Identification Number (“GIIN”).

Registered deemed compliant FFI (Foreign Financial Institution) is where a Financial Institution (“FI”) has entered into a sponsoring agreement with another FI who will fulfil the sponsored entities reporting and due diligence requirements under the regime.

Certified deemed compliant sponsored, closely held investment vehicle includes only low value accounts, advisory only investment managers and advisors and any other entity included in Annex II of the relevant International Governmental Agreement.

Non-Reporting IGA FFI (International Governmental Agreement Foreign Financial Institution) includes any entity that is not compliant under FATCA, is not registered with the IRS as an FFI or does not have an alternative FATCA compliant status such as a Trustee Documented Trust or Sponsored Closely Held Investment Vehicle.

Active NFFE (Non-Participating Financial Foreign Entity) such as an asset holding company where less than 50% of the entity’s income is from passive sources, such as investment income, rents and interest.

Passive NFFE (Non-Participating Financial Foreign Entity) such as a property holding company where more than 50% of the entity’s income is derived from passive sources such as rent from property.

The classifications under CRS are slightly different to the above FATCA classifications as detailed below.

CRS

Reporting Financial Institution means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company. Please see the relevant domestic guidance and the CRS for further classification definitions that apply to Financial Institutions.

Non-Reporting Financial Institution means any Financial Institution that is:

- a Governmental Entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution; or
- a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; a Pension Fund of a Governmental Entity, International Organisation or Central Bank; or a Qualified Credit Card Issuer; or
- an Exempt Collective Investment Vehicle; or
- a Trustee-Documented Trust: a trust where the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported with respect to all Reportable Accounts of the trust; or
- any other defined in a countries domestic law as a Non-Reporting Financial Institution.

NFE (Non-Financial Entity) is an entity that is not Financial Institution.

Passive NFE (Non-Financial Entity) means any:

- NFE that is not an Active NFE; and
- Investment Entity located in a Non-Participating Jurisdiction and managed by another Financial Institution.

Active NFE (Non-Financial Entity) if it meets any of the criteria listed below.

- active NFEs by reason of income and assets; or
- Governmental Entities, International Organisations, Central Banks, or their wholly owned Entities; or
- holding NFEs that are members of a nonfinancial group; or
- start-up NFEs; or
- NFEs that are liquidating or emerging from bankruptcy; or
- treasury centres that are members of a nonfinancial group; or
- non-profit NFEs.

Controlling Persons

Under CRS there is a specific requirement that, where an Entity is deemed to be a controlling person of a Passive NFE, the Entity must be looked through in order to determine who the underlying individual controlling persons are. As per the Common Reporting Standard the term 'Controlling Persons' means the natural person(s) who exercise control over an Entity. In the case of a trust such term means the settlor(s), the trustee(s), the protector(s), the beneficiary(ies) or classes of beneficiary(ies) and any other natural person(s) exercising ultimate, effective control of the trust. In the case of a legal arrangement other than a trust, such terms mean those persons in equivalent or similar positions.

FATCA penalties

Per the link below, the following FATCA penalties apply –

[Taxation \(Implementation\) \(International Tax Compliance\) \(United States of America\) \(Jersey\) Regulations 2014](#)

Failure to deliver a return

If you do not file the FATCA return on time, you will be liable to a penalty of £250.

Failure to comply

If you fail to comply with any obligation under the FATCA regulations, you will be liable to a penalty of £300.

Daily default penalty

If you continue not to comply after you have been notified of the penalty, you will be liable to further penalties of up to £60 per day.

Inaccurate information

If you knowingly provide inaccurate information, you could be liable to a penalty of up to £3,000.

CRS penalties

Per the link below, the following CRS penalties apply –

[Taxation \(Implementation\) \(International Tax Compliance\) \(Common Reporting Standard\) \(Jersey\) Regulations 2015](#)

Failure to comply

If you fail to comply with any obligation under the CRS regulations, you will be liable to a penalty of £300.

Daily default penalty

If you continue not to comply after you have been notified of the penalty, you will be liable to further penalties of up to £60 per day.

Inaccurate information

If you knowingly provide inaccurate information, you could be liable to a penalty of up to £3,000.

As a Financial Institution, Forward Group is not able to give tax advice. If you have any questions, then please contact your tax adviser or domestic tax authority.



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