

Automatic exchange of information

The US Foreign Account Tax Compliance Act (FATCA)

The Common Reporting Standards (CRS)

The EU Directive on Administration Cooperation (DAC)

Adviser guide

Edition 07

Introduction

As a UK financial institution, Nucleus is obliged to identify and report information on certain non-UK tax residents to HMRC. The reported financial information is then shared by HMRC with other countries, under different automatic exchange of information agreements. However, not all clients will fall under the scope of this, due to their tax residency or the accounts they hold with us.

Whilst the most recent agreement to come into force is the Common Reporting Standards (CRS), along with the related EU Directive on Administration Cooperation (DAC), we have also compiled information in this document on the US Foreign Account Tax Compliance Act (FATCA).

What do I need to do?

We would request that advisers review the accuracy of all their client details held on the Nucleus platform prior to the tax year end and that this is periodically reviewed.

We conduct regular monitoring procedures to identify clients who may have inaccuracies or discrepancies with their data on the platform. Following this we will contact advisers via Jira to confirm the accuracy of any flagged client data. However, please note that we cannot guarantee that we can identify all inaccuracies in client data on the platform, and we require advisers to ensure that the client data that we hold, such as addresses, tax residencies and tax identification number (TINs) are accurate and up to date.

If you believe that any client information on the Nucleus platform is inaccurate, please do not hesitate to contact your client relations manager if you require any assistance with updating this. If you have any queries regarding our reporting procedures and obligations under FATCA, or CRS/DAC, please feel free to contact our compliance team at compliance@nucleusfinancial.com. However, please be aware that Nucleus cannot give advice on establishing client tax residencies.

What is reported?

For clients who have been identified as reportable under these agreements, we will issue the following information to HMRC, who will in turn exchange this data with their country(ies) of tax residence:

- Name
- Address
- Date of birth

- Country(ies) of tax residence
- Tax identification number(s) (TINs)
- Country of registration (for trust and corporate clients)
- Entity type (for trust and corporate clients)
- Controlling persons (for trust and corporate clients)
- Account balance
- The gross interest, dividends, and any other income paid or credited to reportable accounts over the reporting period.

What happens if client data is inaccurate?

We may report client account information in our HMRC return that doesn't need to be included. Nucleus has to identify those accounts that are reportable to HMRC under the new tax reporting requirements. If client information is inaccurate, client accounts may be included in our HMRC return that may not need to be if full information was provided.

What are the implications of false reporting for my clients?

HMRC allows us to rely on information provided to us about clients' tax status. If false information is discovered to have been provided, or if we have not been informed of a change in a client's tax status, this could result in a withholding tax of 30% of a client's investments being applied and action being taken against firms that have failed to provide accurate client information.

Foreign Account Tax Compliance Act (FATCA)

What is it?

The introduction of FATCA required non-US financial institutions to report all assets held by US persons. However, Isas and pensions did not fall under the scope of this reporting. Nucleus has therefore been obliged to identify and report any US persons who hold either our General, General (Gross), Onshore and Offshore Bond accounts.

The criteria for a client to be classified as a reportable US person under FATCA can be seen in Appendix B, while appendix A contains useful key definitions in relation to FATCA.

Who will be affected?

Unfortunately, we no longer accept new business from US persons, and if we identify an existing client as a US person we now request that they sell down their assets and transfer off the Nucleus platform. Until this action is taken, any accounts held by US persons will be made inactive, which will prevent any further buy trades to be placed.

These tax reporting requirements affecting the UK came into effect on 1 July 2014, and Nucleus will continue to inform HMRC of US persons who have held reportable accounts with us during any reportable periods.

Common Reporting Standards (CRS) / Directive on Administration Co-operation (DAC)

What is it?

To help detect and deter tax evasion, the Organisation for Economic Co-operation and Development (OECD) approved the introduction of the Common Reporting Standards (CRS) in 2014. The new standard is based on similar principles to FATCA, and aims to apply the essence of this model on a multinational scale, involving over 100 jurisdictions, including the UK. All countries that have committed to CRS will exchange financial information to improve the transparency of tax affairs in an increasingly globalised financial sector.

To be compliant with CRS, Nucleus will inform HMRC of the required financial data on all reportable clients on our platform. HMRC will then exchange information on non-national tax residents with any other participating jurisdictions in which they are tax resident.

Who will be affected?

The potential scope of the CRS not only covers our individual clients, but also our trust and corporate clients. However, not all our clients will be subject to reporting, as this will be dependent on the type of account held with us, and their tax residency.

As with FATCA, Isa and Pension accounts will be exempt from reporting. However, clients with any other Nucleus accounts, who have a non-UK tax residency that is included in the following list of countries committed to CRS reporting are likely to be covered under the scope of CRS.

The relationship between CRS and the DAC

The UK's reporting requirements under CRS are administered through the EU Directive on Administration Cooperation (DAC) which requires the automatic exchange of financial information between all EU member states.

Where can I find out more information?

The OECD has comprehensive information available on CRS on their website. In particular, their pages on tax residency and tax identification numbers may provide useful information on how these can be established and identified.

Appendix A: FATCA – key definitions

The text below has been prepared with the intention of providing general assistance in the categorisation of clients. It is by no means exhaustive nor should it be used as the sole basis for any decision or action that may affect your business. For full and complete information referring to The Foreign Account Tax Compliance Act (FATCA) please refer to the statutory guidance provided by the HMRC.

Exempt beneficial owner

Exempt beneficial owners are entities which do not have to report or register any Financial Accounts that they maintain.

The categories which exempt beneficial owners fall under include:

- Foreign government and any political sub divisions of a foreign government or any wholly owned agency or instrumentality of such
- Central banks
- International organisations or any wholly owned agency or Instrumentality of such (e.g. IMF)
- Governments of US Territories
- Certain retirement funds
- Entities wholly owned by exempt beneficial owners

Non-UK Financial Institution

A financial institution not based in the UK

Passive NFFE

A passive NFFE is an NFFE that is not:

- an active NFFE; or
- a withholding foreign partnership or withholding foreign trust consistent with relevant US Treasury Regulations.

UK non-participating financial institution

The term non-participating FFI means an FFI other than a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner.

UK participating financial institution

The term Participating FFI means a Financial Institution that has agreed to comply with the requirements of a FFI Agreement[1].

Appendix B: FATCA – What is a US Person?

A US Person

The term “United States person” as defined by the US Internal Revenue Service (IRS) means:

- A citizen or resident of the United States
- A US domestic partnership
- A US domestic corporation
- Any US estate other than a foreign estate
- Any trust if:
 - a court within the United States is able to exercise primary supervision over the administration of the trust, and
 - one or more United States persons have the authority to control all substantial decisions of the trust
- Any other person that is not a foreign person.

US Citizenship and Residency

An individual is a citizen if that person was born in the United States or if the individual has been naturalized as a US citizen. You can also be a US citizen, even if born outside the United States if one or both of your parents are US citizens. You can also be a resident of the US for tax purposes without being a citizen if you meet green card test or the substantial presence tests outlined below.

Green Card Test

You are a lawful permanent resident of the United States, at any time, if you have been given the privilege, according to the immigration laws, of residing permanently in the United States as an immigrant. You generally have this status if the US Citizenship and Immigration Services (USCIS) issued you an alien registration card, form I551, also known as a “green card.”

You continue to have US resident status, under this test, unless:

- You voluntarily renounce and abandon this status in writing to the USCIS
- Your immigrant status is administratively terminated by the USCIS, or
- Your immigrant status is judicially terminated by a US federal court.

Substantial Presence Test

You will be considered a US resident for tax purposes if you meet the substantial presence test for the calendar year. To meet this test, you must be physically present in the United States on at least:

- 31 days during the current year, and
- 183 days during the 3-year period that includes the current year and the 2 years immediately before that, counting:
 - all the days you were present in the current year, and;
 - 1/3 of the days you were present in the first year before the current year, and;
 - 1/6 of the days you were present in the second year before the current year.

Appendix C: CRS – participating countries

Any Nucleus clients holding reportable accounts who are identified as tax resident in any of the CRS-participating countries below, other than the UK, will be subject to CRS reporting.

Jurisdictions currently involved in the Automatic Exchange of Information:

Andorra, Anguilla, Argentina, Antigua and Barbuda, Aruba, Australia, Austria, Azerbaijan, Barbados, Belgium, Bermuda, British Virgin Islands, Bulgaria, The Bahamas, Bahrain, Barbados, Belize, Brazil, Brunei Darussalam, Canada, Chile, China, Cook Islands, Costa Rica, Curaçao, Cayman Islands, Colombia, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Dominica, Estonia, Faroe Islands, Finland, France, Ghana, Greenland, Grenada, Germany, Gibraltar, Greece, Guernsey, Hong Kong (China), Hungary, Iceland, Indonesia, Israel, India, Ireland, Isle of Man, Italy, Japan, Jersey, Korea, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Marshall Islands, Macao (China), Malaysia, Mauritius, Monaco, Malta, Mexico, Montserrat, Nauru, New Zealand, Niue, Nigeria, Netherlands, Norway, Pakistan, Panama, Poland, Portugal, Romania, Russia, Qatar, San Marino, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Singapore, Sint Maarten, Switzerland, Trinidad and Tobago, Turkey, Turks and Caicos Islands, United Kingdom, United Arab Emirates, Uruguay, Vanuatu

Jurisdictions undertaking first exchange in 2020

Albania, Maldives

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