



Foreign Account Tax Compliance Act (FATCA)

Due diligence guidance notes



Contents

BACKGROUND	4
INTRODUCTION	4
KEY DEFINITIONS AND CONCEPTS	5
How is the balance or value of an account determined?	5
What is the relevant date for determining the balance or value of an account for FATCA purposes?	5
What does the reference to value in the phrase balance or value mean?	5
How are U.S. account balance or value thresholds that are referred to in the IGA converted to New Zealand dollars?	5
What is a Specified U.S. Person?	6
What is self-certification and when is it required?	7
Self-certification by individuals	7
Self-certification by entities	8
Is there a self-certification form?	8
What is a Passive Non-Financial Foreign Entity (Passive NFFE)?	9
What is a Non-Participating Financial Institution (NPFI)	10
PRE-EXISTING INDIVIDUAL ACCOUNTS	12
Introduction	12
Accounts not required to be reviewed, identified or reported (exempt accounts)	12
Reportable Accounts	12
Due Diligence Requirements - Lower Value Accounts	13
Reviewing for U.S. Indicia	13
Exceptions to treating an individual account as a U.S. Reportable Account	14
Indication of U.S. place of birth	14
Current U.S. mailing or residence address or only U.S. telephone numbers associated with account	14
Standing instructions to transfer funds to an account maintained in the U.S	14
Power of attorney or signatory authority granted to person with a US address; in- care-of or hold mail address that is in the U.S; U.S. and non U.S. telephone numbers associated with account	14
Documentary evidence establishing the account holder's Non-U.S. Status	15
Review and reporting obligations	15
Due Diligence Requirements - High Value Accounts	15
Electronic Review	16
Paper Based Review	16
Effect of finding U.S. indicia	16
Relationship Manager Inquiry for actual knowledge	16
Review and Reporting Obligations High Value Accounts	17
High Value Accounts as of 30 June 2014	17
Accounts that become High Value Accounts	17
NEW INDIVIDUAL ACCOUNTS	18
Accounts not required to be reviewed, identified or reported (exempt accounts)	18
Other New Individual Accounts	19
PRE-EXISTING ENTITY ACCOUNTS	21
Entity Accounts Not Required to Be Reviewed, Identified or Reported (exempt accounts)	21
Entity Accounts Subject to Review and Reporting	21
Review procedures for identifying entity accounts with respect to which reporting is required	21
Timing of Review and Additional Procedures Applicable to Pre-existing Entity Accounts	23

NEW ENTITY ACCOUNTS	24
Entity Accounts Not Required to Be Reviewed, Identified or Reported (exempt accounts)	24
IRS Notice 2014-33 - Further Guidance on the Implementation of FATCA and Related Withholding Provisions (IRS Notice 2014-33)	24
Other New Entity Accounts	25
U.S. REPORTABLE ACCOUNTS - INFORMATION THAT WOULD NEED TO BE REPORTED TO INLAND REVENUE	25
ACCOUNTS THAT ARE HELD BY NON-PARTICIPATING FINANCIAL INSTITUTIONS - INFORMATION THAT WOULD NEED TO BE REPORTED TO INLAND REVENUE	26
SPECIAL RULES	26
Reliance on Self-Certifications and Documentary Evidence	26
Aggregation of Account Balances	26
Aggregation of Individual Accounts	26
Aggregation of Joint Accounts	28
Aggregation of Entity Accounts	28
Special Aggregation Rule Applicable to Relationship Managers	29
Currency Translation Rule	29
Documentary Evidence	29
Alternative Procedures for Financial Accounts Held by Individual Beneficiaries of a Cash Value Insurance Contract	30
Reliance on Third Parties	30
DEFINITIONS	30

Background

1. FATCA is specific United States (U.S.) legislation that aims to reduce tax evasion by U.S. citizens, U.S. tax residents and U.S. entities.
2. The New Zealand Government signed an Intergovernmental Agreement (IGA) with the U.S. on 12 June 2014. The relevant enabling legislation was passed on 30 June 2014, effective from 1 July 2014. The IGA has been brought into effect by Order in Council and came into force on 3 July 2014.
3. The IGA provides that Reporting New Zealand financial institutions (Reporting NZFIs)¹ need to carry out FATCA due diligence procedures on accounts that they maintain to determine whether those accounts are U.S. Reportable Accounts (certain accounts held by U.S. citizens, U.S. tax residents, U.S. entities that are specified U.S. persons, and non-U.S. entities² that are controlled by U.S. tax residents or U.S. citizens) or held by non-participating financial institutions (NPFIs).
4. The IGA requires that Reporting NZFIs report information (set out in Article 2(2) of the IGA) about such U.S. Reportable Accounts and payments that they make to account holders that are NPFIs. Inland Revenue will then exchange this information with the U.S.
5. **Important:** Under FATCA law and the associated U.S. Treasury Regulations, NZFIs are liable for complying with the U.S. requirements. If a NZFI does not comply with their FATCA obligations and is a NPFI, the U.S. FATCA law and associated regulations require U.S. withholding agents³ to impose a 30 percent penalty on the NZFI's U.S. source income.⁴

Introduction

6. The following guidance is issued by the Inland Revenue to assist Reporting NZFIs to meet their due diligence obligations as required by FATCA and the IGA.
7. Inland Revenue will, subject to the following, require Reporting NZFIs to apply the due diligence procedures contained in Annex I of the IGA to identify and report to Inland Revenue on U.S. Reportable Accounts and payments to accounts held by NPFIs.
8. Alternatively, Reporting NZFIs can choose to rely on the procedures described in the U.S. Treasury Regulations (in lieu of the procedures in Annex I of the IGA) to establish whether an account is a U.S. Reportable Account or held by a NPFI. Reporting NZFIs will be able to make such choices (to rely on the procedures in the U.S. Treasury Regulations) separately for each section of Annex I either with respect to all relevant financial accounts or, separately, with respect to any clearly identified group of such accounts (such as by line of business or the location of where the account is maintained). For example, Annex I could be applied to pre-existing individual accounts, whereas the U.S. Treasury Regulations could be applied to new individual accounts⁵. Additionally, different due diligence procedures may be permitted to be used in regard to the same type of financial account, where those accounts can be clearly identified as a group of accounts based on, for example, the line of business or location where the accounts are held. **[However, these guidance notes focus on the due diligence procedures set out in Annex I of the IGA. Reporting NZFIs should refer directly to the U.S. Treasury Regulations (and related guidance provided by the U.S. on the application of those Regulations) if they choose to rely on the procedures in the Regulations instead.]**
9. The type of review procedures that a Reporting NZFI is required to undertake under Annex I of the IGA to identify such accounts (U.S. Reportable Accounts and accounts held by NPFIs) depends on various matters: the balance or value of the account, whether the account is an individual or entity account and whether the account is pre-existing or a new account. These matters are explained in detail below.

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- 1 Information about how to find out if you are a Reporting New Zealand Financial Institution is available on our website at: www.ird.govt.nz/international/nzwithos/fatca/ It is also noted that non-reporting NZFIs (for example, sponsored investment entities and controlled foreign corporations and financial institutions with a local client base coming within Annex II of the IGA) can also have some limited FATCA due diligence obligations. These matters are outlined in detail in Inland Revenue's registration guidance notes. To the extent that these due diligence guidance notes refer to a Reporting NZFI's due diligence obligations these references should also be read as applying to such Non-reporting NZFIs that also have such obligations.
 - 2 As explained below, this point applies in relation to accounts that are held by passive NFFEs that are controlled by specified U.S. Persons.
 - 3 This requirement to withhold 30% also extends to certain Reporting NZFIs that make U.S. Source Withholdable Payments to any NPFI (see Article 4(1)(d) of the IGA). This is explained in more detail below.
 - 4 This applies in relation to U.S. Source Withholdable Payments.
 - 5 These types of accounts are explained in more detail below.

Key definitions and concepts

10. Before covering in detail the due diligence procedures that Reporting NZFIs will need to undertake, in relation to the financial accounts that they maintain, there are certain key definitions and concepts that are included in these procedures that need to be understood:
- How is the balance or value of an account determined?
 - What is a Specified U.S. Person?
 - What is self-certification and when is it required?
 - What is a passive Non-Financial Foreign Entity (NFFE)?
 - What is a NPFI?

How is the “balance or value” of an account determined?

11. The balance or value of an account is an important concept that flows through the IGA and is discussed in detail in these guidance notes. It can affect whether an account is in scope (or exempt), the type of due diligence that needs to be carried out on an account, and the information that needs to be reported about an account. These guidance notes will now briefly address the following matters that are relevant when determining the balance or value of an account: the relevant date for determining the balance or value of an account, how to determine what the reference to value in the phrase balance or value means, and how the U.S. account balance or value thresholds that are referred to in the IGA are converted to New Zealand dollars.

What is the relevant date for determining the balance or value of an account for FATCA purposes?

12. As explained in detail below, Annex I of the IGA contains a number of references to the balance or value of an account *at a particular point*. The relevant reference points (in this regard) are referred to throughout the IGA as 30 June 2014, the end of any calendar year or other appropriate reporting period, or the end of a calendar year. The balance or value at these various reference points, in turn, determines matters such as whether the relevant account is above the threshold for reporting and, indeed, the nature of the account (for example, whether an individual account is a low value account or a high value account – discussed below).
13. Sections I(B)(2) and (3) of Annex I of the IGA, when read in conjunction with section 185M of the Tax Administration Act 1994⁶, mean that:
- Any reference in the IGA to the balance or value of an account as of 30 June 2014 needs to be read as being 30 June 2014 (as the IGA does specify this date and is not discretionary); and
 - Any reference in the IGA to the balance or value of an account at the end of any calendar year or other appropriate reporting period, or the end of calendar year needs to be read as being 31 March of the relevant year.

These principles are outlined in more detail below.

What does the reference to “value” in the phrase “balance or value” mean?

14. Where a financial institution is seeking to determine the value of a financial account that they maintain they should use the most accurate valuation methodology that is available in the circumstances.
15. For what would ordinarily be an investor’s account, this would normally be the value of that interest reported to the investor. We would expect that the value reported to investors will generally align with market value (that value being of most interest to investors).
16. Where market value cannot be reasonably determined, an alternative method (such as book value) may be used. Reporting NZFIs should use the method that most reasonably determines the current value of the account that can be used in the circumstances.

How are U.S. account balance or value thresholds that are referred to in the IGA converted to New Zealand dollars?

17. The IGA also sets out such balance or value thresholds in U.S. dollars (and these guidance notes are set out on this basis). To determine whether any particular threshold has been exceeded or not, the U.S. dollar threshold amounts must be converted to New Zealand dollars based on a published spot exchange rates.
18. The IGA provides, in this regard, that for the purposes of determining the value of financial accounts denominated in a currency other than the U.S. dollar (such as the New Zealand dollar), a Reporting NZFI must convert the U.S. dollar threshold amounts described in Annex I of the IGA into such currency using a published spot rate determined as of the last day of the calendar year preceding the year in which the Reporting NZFI is determining the balance or value.

⁶ Section 185M of the Tax Administration Act 1994 provides that where the IGA does not specify or is discretionary as to the period to which FATCA information must relate, the information must relate to a tax year (31 March of the relevant year).

19. Inland Revenue will accept as an appropriate spot exchange rate, the wholesale mid-rate, based on the last price at which the New Zealand dollar was traded, on the date that the conversion of the U.S. dollar threshold to New Zealand dollars is required to be determined. If the date of calculation is not a business day then the rate for the last preceding business day should be used. These rates can be obtained from any of the major trading banks in New Zealand, Reuters and Bloomberg. The Inland Revenue also publishes end of month rates on its website: www.ird.govt.nz
20. An example of how the currency translation rule operates is set out at paragraph 118 of these guidance notes.

What is a Specified U.S. Person?

21. One of the other main elements of the FATCA due diligence procedures is the concept of Specified U.S. Person. These persons are the key target of FATCA.
22. Colloquially, the objective of FATCA is to reduce and deter U.S. tax evasion by U.S. citizens. However, not all U.S. citizens and tax residents are within FATCA's scope. This is because certain U.S. Persons are considered to pose a low risk of U.S. tax evasion (e.g. accounts held by the U.S. Government and any wholly owned agency or instrumentality, are not reportable accounts).⁷ These low risk persons are defined in the IGA as being U.S. Persons that are not Specified U.S. Persons. In order to reduce the scope of FATCA, it targets for review (due diligence) and reporting, financial accounts maintained by Reporting NZFIs that are held by Specified U.S. Persons and certain non-U.S. entities controlled by such persons. These are⁸ U.S. Reportable Accounts.⁹ In summary, a Specified U.S. person, is a U.S. Person (also defined in the IGA), other than certain listed persons.
23. More specifically the term Specified U.S. Person means a U.S. person other than the following¹⁰
 - a corporation the stock of which is regularly traded on one or more established securities markets [For the purposes of the IGA, interests are regularly traded if there is a meaningful volume of trading with respect to the interests on an on-going basis, and an established securities market¹¹ means an exchange that is officially recognized and supervised by a governmental authority in which the market is located and that has a meaningful annual value of shares traded on the exchange];
 - any corporation that is a member of the same expanded affiliated group as a corporation the stock of which is regularly traded (see above) on one or more established securities markets;
 - the U.S. or any wholly owned agency or instrumentality thereof;
 - any State of the U.S, any U.S. Territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing;
 - any regulated investment company as defined in section 851 of the U.S. Internal Revenue Code or any entity registered with the U.S. Securities and Exchange Commission under the *Investment Company Act of 1940* (15 U.S.C. 80a-64);
 - a dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the U.S. or any State;
 - any one of the following as specifically defined in the U.S. Internal Revenue Code: certain organizations exempt from taxation (including certain trusts that are tax exempt or that are otherwise described in the U.S. Internal Revenue Code), certain individual retirement plans, certain banks, certain real estate investment trusts, any common trust fund, certain brokers.¹²
24. A U.S. Person means:
 - a U.S. citizen or resident individual;
 - a partnership or corporation organized in the U.S. or under the U.S. law;
 - a trust if it is subject to U.S. law in terms of its administration and is controlled by a U.S. person;
 - the estate of a deceased U.S. citizen or resident.

7 These accounts that are identified as being held by U.S. persons that are **not** Specified U.S. Persons are not U.S. Reportable accounts.

8 This is assuming that the accounts are not exempted or otherwise excluded. These exemptions are set out in detail in these guidance notes. The exclusions are also outlined in Inland Revenue's reportable accounts guidance notes.

9 As explained in more detail below, Reporting NZFIs will also need to report on accounts they maintain that are held by financial institutions that are NPFIs.

10 This is a summary of the definition of Specified U.S. Person in the IGA. The reader should consult the definition of Specified U.S. Person in the IGA to see the full definition.

11 The Inland Revenue considers that the New Zealand Stock Market as administered by NZX Limited, the Australian Stock Market as administered by the Australian Securities Exchange, and the New York Stock Exchange registered under the *U.S. Securities Exchange Act 1934* are examples of established securities markets.

12 The reader should consult the definition of Specified U.S. Person in the IGA to identify the specific section references in the U.S. Internal Revenue Code relating to these entities or persons.

25. For a more complete version of the definitions of U.S. Person and Specified U.S. Person, the reader should refer to either the IGA or the list of definitions at the end of these guidance notes.

Example 1: ABC Limited is a U.S. corporation organised in the U.S. It is listed on and is a regularly traded stock on the New York Stock Exchange (NYSE). There is a meaningful volume of trading with respect to the ABC Limited's interests on an on-going basis.

Is ABC Limited a Specified US Person?

No. ABC Limited is a corporation that is organised in the U.S. Therefore, it is a U.S. Person. However, it is not a Specified U.S. Person. This is because a Specified U.S. Person does **not** include a U.S. corporation whose stock or shares are regularly traded on one or more established securities markets. NYSE is an officially recognised and supervised by a governmental authority in which the market is located and that has a meaningful annual value of shares traded on the exchange. Therefore, the NYSE is an established securities market. There is also a meaningful volume of trading with respect to the ABC Limited's interests on an on-going basis. This means that ABC Limited is a corporation the stock of which is regularly traded on an established securities market. Therefore, ABC Limited is excluded from the definition of Specified U.S. Person.

Example 2: BCD Incorporated is organised in the U.S. (a U.S. Person). It is not a trust (or corporate trustee). Its stock (and the stock of the members of its affiliated group) is not regularly traded on any established securities market. It is not a wholly owned agency or instrumentality of the U.S., any State of the U.S., any U.S. Territory or any political subdivision. It is not tax exempt under the U.S. Internal Revenue Code. It is not an individual retirement plan. It is not a bank, real estate investment trust, or regulated investment company as defined in the US Internal Revenue Code or an entity registered with the U.S. Securities and Exchange Commission. It is not a common trust fund. It is not a dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the U.S. or any State. It is also not a broker as defined in the U.S. Internal Revenue Code.

Is BCD incorporated a Specified U.S. Person?

Yes. BCD is a US Person that is a Specified U.S. Person.

What is self-certification and when is it required?

26. Another key element of the due diligence procedures in the IGA is the concept of self-certification.
27. Generally speaking, self-certification is the process by which:

- an individual financial account holder certifies whether they are a U.S. citizen or U.S. tax resident; or
- an entity financial account holder certifies their status as a particular type of entity for FATCA purposes.¹³

Self-certification is a central pillar of the financial account due diligence process. A Reporting NZFI that maintains an account will be able to rely on an account holder's self-certification indefinitely for FATCA purposes, unless they know or have reason to know that such a self-certification is incorrect or unreliable (i.e. for instance, the self-certification is contradicted or called into question by information that the Reporting NZFI has obtained or knows about). The test for when the Reporting NZFI knows or has reason to know that a self-certification is incorrect or unreliable, in this context, will be applied based on looking at what the reasonably prudent Reporting NZFI would do in the circumstances. We have set out in these guidance notes examples of circumstances when a Reporting NZFI will know or have reason to know that a self-certification is incorrect and unreliable such that they can no longer rely on it.

Self-certification by individuals

28. A Reporting NZFI that maintains an account that is held by an individual may obtain self-certification from the account holder as follows:
- (a) In order to establish that a pre-existing individual account¹⁴ holder is neither a U.S. citizen nor a U.S. tax resident in relation to either a lower or high value account, where U.S. indicia have been identified in connection with that account. Generally, the account holder self-certification must be accompanied by other evidence of the holder's non-U.S. status before the Reporting NZFI can treat the account as a non-U.S. Reportable Account. However, a Reporting NZFI can exercise the option simply to report, in such circumstances, and choose not to take steps to cure the U.S. indicia. These matters are explained in more detail below.
 - (b) To determine whether a new individual account holder is a U.S. citizen or U.S. tax resident. Where such new account holder self-certifies that they are a U.S. citizen or U.S. tax resident, the Reporting NZFI must obtain a further self-certification which includes the account holder's U.S. Tax Information Number (TIN). In most cases this will be the individual's U.S. social security number. This is explained in more detail below.

¹³ As will be explained in more detail below, in the context of entity accounts this self-certification can also sometimes be obtained from a person that is a controlling person of the entity (for example, a controlling person of an NFFE). The meaning of controlling person and NFFE is explained in detail below.

¹⁴ This type of account is explained in detail below.

- (c) If there is a change of circumstances in respect of a new individual account which renders the original self-certification incorrect or unreliable, then the Reporting NZFI must obtain a valid self-certification that establishes whether the account holder is a U.S. citizen or U.S. tax resident. We have set out below examples of what would constitute such a change in circumstances. In circumstances where a Reporting NZFI is unable to obtain a valid self-certification, the Reporting NZFI must treat the account as a U.S. Reportable Account.

Self-certification by entities

29. A Reporting NZFI that maintains an account that is held by an entity may also obtain self-certification from the account holder as follows:
- (a) For pre-existing entity accounts above the due diligence and reporting threshold,¹⁵ where a review of information maintained for regulatory or customer relationship purposes indicates that an account holder is a U.S. Person, then the Reporting NZFI must, presumptively, treat the account as a U.S. Reportable Account. However, one of the exceptions to this is if the Reporting NZFI obtains a self-certification from the account holder that it is not a Specified U.S. Person.¹⁶
 - (b) For pre-existing entity accounts above the due diligence and reporting threshold, where a Reporting NZFI determines that the entity account holder is a financial institution that is **not** a Reporting NZFI or Partner Jurisdiction FI. In such instances, the account holder will presumptively be deemed to be a NPFI. However, one of the ways that the deemed NPFI status can be rebutted is if the account holder provides a self-certification (which may be on IRS Form W-8 or similar agreed form) to the Reporting NZFI that it is certified deemed compliant¹⁷ or an exempt beneficial owner as defined in the U.S. Treasury Regulations¹⁸.
 - (c) For pre-existing entity accounts above the due diligence and reporting threshold, to enable an account holder that is not identified as a Specified U.S. Person or a Financial Institution to establish its status as an Active NFFE or a Passive NFFE¹⁹.
 - (d) For pre-existing entity accounts with a balance or value that exceeds U.S. \$1,000,000, where the Reporting NZFI identifies the account holder as being a passive NFFE they need to obtain a self-certification from the account holder (or a controlling person of the account holder) for the purposes of determining whether a controlling person of the passive NFFE is a U.S. citizen or resident for tax purposes.
 - (e) For new entity accounts, to establish an account holder's status where a Reporting NZFI that maintains the account has not otherwise been able to determine that the account holder is an active NFFE or NZFI or other partner jurisdiction financial institution. For instance, the Reporting NZFI may obtain a self-certification from the account holder that it is a passive NFFE and as to whether any controlling person of the passive NFFE is a U.S. citizen or resident. A controlling person of such a passive NFFE can also provide a self-certification as to whether any controlling person (of the passive NFFE) is a U.S. citizen or resident.

Is there a self-certification form?

30. The IGA does not prescribe a mandatory self-certification form and Inland Revenue does not intend to prescribe a form. Reporting NZFIs have the flexibility to adopt whatever form or method of self-certification they wish, subject only to the overarching rule that the form or method of self-certification results in information which is reliable. The methods by which a Reporting NZFI can obtain a self-certification are:
- Verbally e.g. where a customer opens a new account over the phone and certifies as part of the account opening process whether they are a U.S. citizen or tax resident. The financial institution would need to keep a record of such verbal self-certifications.
 - In writing (including on-line) e.g. where a customer completes account opening documentation and that documentation includes questions which enable the customer to self-certify. For example, if the account holder is a new entity account holder, that account holder can self-certify its FATCA status e.g. whether it is a passive NFFE.
 - On IRS Forms W8 or W9. Where an account holder has completed such forms, for example, the W8 BEN for individuals and W8 BEN E for entities, which they have supplied to a U.S. withholding agent or payer, then those forms can be used for FATCA self-certification purposes. Additionally, any other account holder may complete such forms as a means of self-certification if they wish. It is not mandatory. The IGA generally²⁰ provides that self-certification may be on an IRS Form W8 or W9 or a similar agreed form. The use of the word may, in this context, means that it is not mandatory for those forms to be used or that that self-certification must be by way of a FATCA specific form. Other methods of self-certification will be permissible. This is, of course, subject to the reliability requirement outlined above. We have set out examples below regarding how such self-certification can be obtained in a practical sense.

15 A pre-existing entity account that has an account balance or value that exceeds U.S. \$250,000 as at 30 June 2014, or which does not exceed that amount as at that date, but exceeds U.S. \$1,000,000 on 31 March of any subsequent year (see section I B(3) of Annex I of the IGA, section IV(A) and (B) of Annex I of the IGA, and section 185M of the Tax Administration Act 1994). The threshold for the various types of accounts and how due diligence will apply to such accounts is outlined in detail below.

16 Alternatively, the Reporting NZFI can rely on information in its possession or which is publicly available to rebut the presumption that the entity is a specified U.S. person.

17 An FFI is a foreign financial institution from a U.S. perspective.

18 Alternatively, the Reporting NZFI can verify that the account holder is a participating FFI or registered deemed-compliant FFI, and not a NPFI, by its Global Intermediary Identification Number (GIIN) on the published IRS FFI list.

19 The definitions of active NFFE and passive NFFE are explained below.

20 No form of self-certification is specified for new entity account openings.

- By similar agreed form to IRS Form W8 or W9. The Inland Revenue does not intend to prescribe a similar agreed form to the IRS Form W8 or W9, as it is not mandatory that self-certification be either in IRS Form W8 or W9, or similar agreed form.

What is a Passive Non-Financial Foreign Entity (“Passive NFFE”)?

31. Another key aspect of due diligence procedures in the IGA is the concept of an NFFE. This is a type of entity. An NFFE means any non-US entity²¹ that is not an FFI as defined in relevant U.S. Treasury Regulations or is an entity described in section VI B(4) (j) of Annex I of the IGA, and also any non-U.S. entity that is established in New Zealand or another Partner Jurisdiction and that is not a financial institution.
32. FATCA includes within its scope certain entities described as Passive NFFEs, where such entities are controlled by Specified U.S. Persons (U.S. Controlling Persons). The rationale is that tax evasion by U.S. citizens or U.S. tax residents could be facilitated by such persons through the use of controlled entities (i.e. a passive NFFE). In anticipation of such possibility, FATCA has a regime which requires a Reporting NZFI to identify whether accounts that they maintain, are held by an entity that is a Passive NFFE and whether any controlling persons of that entity are Specified U.S. Persons.
33. If a Reporting NZFI identifies (after applying the due diligence procedures in the IGA) that an account they maintain (and that is not exempted or excluded)²² is held by a Passive NFFE²³ that is controlled by a U.S. citizen or resident, the account will be a U.S. Reportable account. However, if a Reporting NZFI identifies an entity account holder as being an Active NFFE they will not be required to look through the Active NFFE to identify its controlling persons, and the account will not be a U.S. Reportable Account.
34. Inland Revenue accepts that once a Reporting NZFI identifies an account as being held by an NFFE it may want to ask the Controlling Persons question first (i.e. determining whether the NFFE account holder has any U.S. Controlling Persons before determining whether it is an active or passive NFFE). This is because if an account holder is an NFFE that has no U.S. controlling persons the account will not be a U.S. Reportable Account, irrespective of whether the NFFE is a passive or active NFFE. If a Reporting NZFI adopts this ordering approach there will be a group of NFFEs (those with no U.S. Controlling Persons) that will not be categorised as either active or passive. However, the fact that a Reporting NZFI adopting such an approach would have identified that the account holder NFFE *has no U.S. Controlling persons* means that **they can also determine (on this basis) that the account holder is not a passive NFFE with U.S. Controlling Persons (as there is an absence of any such persons)**. Therefore, the account would not be a U.S. Reportable Account.
35. As noted above, the IGA draws a distinction between passive and active NFFEs. Reporting NZFIs will need to be familiar with the definitions of NFFE, passive NFFE, and active NFFE in the IGA.
36. A Passive NFFE is defined in section VI (B)(3) of Annex I of the IGA as meaning any NFFE that is not an Active NFFE, or a withholding foreign partnership or withholding foreign trust²⁴ in terms of the U.S. Treasury Regulations.
37. An Active NFFE is defined in section VI (B)(4) of Annex I as meaning any NFFE that meets any of the following criteria:
 - (a) Less than 50 percent of the NFFE’s gross income for the preceding calendar year or other appropriate reporting period is passive income²⁵ and less than 50 percent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
 - (b) The stock of the NFFE is regularly traded on an established securities market or the NFFE is a related entity of an entity the stock of which is regularly traded on an established securities market;
 - (c) The NFFE is organized in a U.S. Territory and all of the owners of the payee are bona fide residents of that U.S. Territory;
 - (d) The NFFE is a government (other than the U.S. Government), a political subdivision of such government (which, for the avoidance of doubt, includes a state, province, county, or municipality), or a public body performing a function of such government or a political subdivision thereof, a government of a U.S. Territory, an international organization, a non-U.S. central bank of issue, or an entity wholly owned by one or more of the foregoing;
 - (e) Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a financial institution, except that an NFFE shall not qualify for this status if the NFFE functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
 - (f) The NFFE is not yet operating a business and has no prior operating history, out is investing capital into assets with the intent to operate a business other than that of a financial institution, provided that the NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial organization of the NFFE;

21 A trust will be a common type of entity that is an NFFE, albeit that a trust can alternatively be a financial institution.

22 These exemptions/exclusions are explained in more detail below.

23 In such circumstances it will be the passive NFFE itself that will be the account holder. However, as will be explained in more detail below, a Reporting NZFI that maintains an account that is held by a passive NFFE will need to apply the entity due diligence procedures in the IGA to determine if any of the passive NFFE’s controlling persons are U.S. citizens or residents.

24 The expression withholding foreign trust is defined in the U.S. Treasury Regulations to mean a foreign grantor trust or foreign simple trust that has executed an agreement described in §1.1441-5(e)(5)(v).

25 Passive income would include dividends (and substitute amounts), interest (and substitute amounts), rents and royalties (other than rents and royalties derived in the active conduct of a trade/business), annuities, and amounts received under cash insurance contracts.

- (g) The NFFE was not a financial institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a financial institution;
- (h) The NFFE primarily engages in financing and hedging transactions with or for related entities that are not financial institutions, and does not provide financing or hedging services to any entity that is not a related entity, provided that the group of any such related entities is primarily engaged in a business other than that of a financial institution;
- (i) The NFFE is an excepted NFFE as described in relevant U.S. Treasury Regulations; or
- (j) The NFFE meets all of the following requirements:
 - i. It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organization, business league, chamber of commerce, labour organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare;
 - ii. It is exempt from income tax in its jurisdiction of residence;
 - iii. It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
 - iv. The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents do not permit any income or assets of the NFFE to be distributed to, or applied for the benefit of, a private person or non-charitable entity other than pursuant to the conduct of the NFFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFFE has purchased; and
 - v. The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents require that, upon the NFFE's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organization, or escheat to the government of the NFFE's jurisdiction of residence or any political subdivision thereof.

Example 3: Bank A is tax resident in New Zealand and carries on the business of deposit taking (satisfying the definition of depository institution in Article 1(1)(i) of the IGA) and custodial services (satisfying the definition of custodial institution in Article 1(1)(h) of the IGA).

Bank A is not a NFFE because it is a foreign financial institution²⁶.

Example 4: ABC Limited is a NFFE and its passive income in the preceding reporting period amounts to 33 percent of gross income and 40 percent of its total assets in the preceding reporting period are assets that produce or are held for the production of passive income. The stock of NFFE is not listed on an established securities market.

ABC Limited is an Active NFFE as only one of the criteria listed in the definition of Active NFFE (i.e. the criteria related to the NFFE's income and assets) is required to be satisfied.

Example 5: YXZ is a NFFE which derives only passive income and all of its assets are attributable to the derivation of that income. YXZ was established and is operated exclusively for charitable purposes and is exempt from income tax in New Zealand.

There are no members of YXZ which have a proprietary or beneficial interest in the income or assets of YXZ. YXZ's formation documents do not permit any income or assets of YXZ to be distributed or applied for the benefit of a private person or non-charitable entity. The formation documents require that on YXZ's liquidation or dissolution that the assets of YXZ be distributed to Charity Ltd (a non-profit organisation).

YXZ is an Active NFFE (as that term is defined in the IGA) notwithstanding that all of its income is passive.

What is a Non-Participating Financial Institution (“NPFI”)

- 38. Another key aspect of the FATCA due diligence procedures in the IGA is the concept of a NPFI. The term NPFI is defined in Article 1(1)(r) of the IGA as meaning a NPFI, as that term is defined in relevant U.S. Treasury Regulations (including certain foreign financial institutions that have not entered into a FATCA agreement with the U.S.),²⁷ but does not include a NZFI or other Partner Jurisdiction FI other than a financial institution treated as a NPFI by the U.S because of significant non-compliance in terms of Article 5(2)(b) of the IGA (or a corresponding provision in a Partner Jurisdiction IGA respectively). Where a Reporting NZFI maintains an account that is held by a NPFI the account is not a U.S. Reportable Account. However, the Reporting NZFI will have obligations to report or provide information in relation to payments made to the NPFI. Therefore, the concept of NPFI is a key part of the IGA.
- 39. A financial institution can be classified as a NPFI in the following circumstances:
 - (a) In terms of Article 5(2)(b) of the IGA, where the IRS notifies the Inland Revenue that a Reporting NZFI has been significantly non-compliant with its FATCA obligations, the Inland Revenue must apply such relevant domestic law and remedies to address the significant non-compliance. If such enforcement action does not resolve the significant non-compliance after

²⁶ It is a foreign financial institution from a U.S. perspective.

²⁷ The definition of non-participating FFI is set out in §1.1471-1(b)(75) of the U.S. Treasury Regulations. It means a foreign financial institution other than a participating foreign financial institution, a deemed compliant foreign financial institution, or an exempt beneficial owner.

18 months, then the IRS will treat that Reporting NZFI as a NPFI. The definition of NPFI also covers financial institutions treated as NPFIs pursuant to the corresponding provision in an agreement between the U.S. and a Partner jurisdiction (i.e. pursuant to another IGA that the U.S. has entered into with another country). [Examples of significant non-compliance²⁸ could include on-going or repeated failure to register as a Reporting NZFI, the deliberate or negligent failure to identify U.S. Reportable Accounts, the on-going or repeated failure to adopt and implement appropriate due diligence procedures to identify U.S. Reportable Accounts, or repeated failure to provide to Inland Revenue details of U.S. Reportable Accounts by the due date.]

- (b) In terms of section IV D (3)(b) of Annex I of the IGA, where the account holder is a NZFI or Partner Jurisdiction FI treated by the IRS as a NPFI (see above).
 - (c) In terms of section IV D (3)(c) of Annex I of the IGA, where the account holder is a financial institution that is not a NZFI or Partner Jurisdiction FI, then the Reporting NZFI that maintains the account must treat the account holder presumptively as being a NPFI unless the Reporting NZFI obtains a self-certification that the account holder is certified deemed compliant or an exempt beneficial owner, or the Reporting NZFI confirms the accounts holder's status as a participating FFI or registered deemed compliant FFI on the published IRS FFI list [by verifying the account holder's Global Intermediary Identification Number (GIIN) on the published IRS FFI list].
 - (d) In terms of section V B (3)(d) of Annex I of the IGA, where the account holder is a NPFI (including a NZFI or Partner Jurisdiction FI treated by the IRS as a NPFI - see above).
40. The IGA requires that, for each of the 2015 (the period ended 31 March 2016) and 2016 (the period ended 31 March 2017) FATCA years, Reporting NZFIs report annually the name of each NPFI to which it has made payments and the aggregate amount of such payments.
41. The payments that are to be reported on are²⁹:
- (a) Non-U.S. source interest paid on a financial account held by a NPFI;
 - (b) Non-U.S. source dividends paid on a financial account held by a NPFI;
 - (c) Payments to a NPFI in connection with a securities lending transaction, sale- repurchase transaction, forward, future, option, swap, or similar transaction which are directly or indirectly contingent upon or determined by reference to, the payment of interest or a dividend from U.S. sources; and
 - (d) Non-US source payments to a NPFI that are the proceeds or benefits of a cash value insurance contract or annuity contract.
42. However, the Reporting NZFI will not need to report the following:
- (a) Any payments made that are not in respect of a Financial Account held by the Financial Institution;
 - (b) Payments for the following: services (including wages and other forms of employee compensation (such as stock options)), the use of property, office and equipment leases, software licenses, transportation, freight, gambling winnings, awards, prizes, scholarships, and interest on outstanding accounts payable arising from the acquisition of goods or services;
 - (c) Payments where the Reporting NZFI has only a passive role in the payment process and so, alternatively either has no knowledge of the facts that give rise to the payment or no control over the payment or no custody of the property which relates to the payment (e.g. processing a cheque or arranging for the electronic transfer of funds on behalf of one of its customers, or receives payments credited to a customer's account); and
 - (d) Capital markets payments in paragraph 41 (c) above that are not directly traceable to a U.S. source.
43. A Reporting NZFI that maintains an account that is held by a NPFI will be treated as having paid an amount to the NPFI if an amount has been paid or credited to the NPFI. The Reporting NZFI will need to report the aggregate amount of such applicable payments during the year, irrespective of whether the payee only became a NPFI part way through the year. The amount of income to be aggregated, in this respect, is the net amount of the income payment made. There is no requirement to consider amounts withheld.
44. As well as the obligation of a Reporting NZFI to report on payments to NPFIs, a Reporting NZFI must satisfy its withholding obligations and disclosure obligations to U.S. withholding agents, in the following circumstances, to comply with its FATCA obligations:
- a. Under Article 4 (1)(d) of the IGA to the extent that a Reporting NZFI is (i) acting as a qualified intermediary that has elected to assume primary withholding responsibility under chapter 3 of subtitle A of the U.S. Internal Revenue Code; (ii) a foreign partnership that has elected to act as a withholding foreign partnership (for the purposes of both sections 1441 and 1471 of the U.S. Internal Revenue Code); or (iii) a foreign trust that has elected to act as a withholding foreign trust (for the purposes of both sections 1441 and 1471 of the U.S. Internal Revenue Code), and withholds 30 percent of any U.S. source withholdable payment to any NPFI.

28 This can be compared with minor or administrative errors which would include:

- (i) Data fields missing or incomplete;
- (ii) Data that has been corrupted; and
- (iii) Use of an incompatible format.

Continual/repeated minor or administrative errors could (depending on the circumstances) be considered as significant non-compliance.

29 The limitation of payments generally to financial accounts held by NPFIs is consistent with section IV (C) of Annex I of the IGA, which requires payments on pre-existing entity financial accounts held by a NPFI to be reported as part of the aggregate payments required to be reported to the IRS in terms of Article 4(1)(b) of the IGA.

- b. Under Article 4 (1)(e) of the IGA, where the Reporting NZFI is not a NZFI as described in Article 4 (1)(d), and the Reporting NZFI makes a payment of, or acts as an intermediary with respect to U.S. source withholdable payments to any NPFI, the Reporting NZFI provides the immediate payor of such U.S. source withholdable payment the information required for withholding and reporting to occur with respect to such payment. For example, that the beneficial owner of the U.S. source payment is a NPFI.
45. These guidance notes will now, having set out certain key FATCA definitions and concepts that are in the IGA, outline how FATCA due diligence will apply to the various types of accounts.

PRE-EXISTING INDIVIDUAL ACCOUNTS

Introduction

46. A pre-existing individual account is an individual financial account opened on or before 30 June 2014. Pre-existing accounts will fall into one of three categories depending on the balance or value of the account and type of account.
47. These categories of accounts are:
- Exempt accounts;
 - Lower value accounts; and
 - High value accounts.

Accounts not required to be reviewed, identified or reported (“exempt accounts”)

48. The IGA provides that, unless the Reporting NZFI elects to do so, either with respect to all pre-existing individual accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in New Zealand provide for such an election,³⁰ the following pre-existing individual accounts are not required to be reviewed, identified, or reported as U.S. Reportable Accounts (i.e. they are exempt):
- (a) An account with a balance or value of U.S. \$50,000 or less as of 30 June 2014³¹.
 - (b) A cash value insurance contract or annuity contract with a balance or value of U.S. \$250,000 or less as of 30 June 2014³².
 - (c) A cash value insurance contract or annuity contract where the laws or regulations in the U.S. or New Zealand effectively prevent the sale of such contract to a U.S. resident.
 - (d) A depository account with a balance of U.S. \$50,000 or less.

Reportable Accounts

49. A Reporting NZFI that maintains a pre-existing individual account that is both not an exempt account and not an excluded account³³ will need to apply the pre-existing individual account due diligence procedures to determine whether the account is a U.S. Reportable account³⁴.
50. The due diligence procedures that the Reporting NZFI needs to undertake in relation to such financial accounts to identify U.S. Reportable Accounts are set out below. There are separate due diligence procedures for lower value accounts and high value accounts.

30 Section 185F (7) of the Tax Administration Act 1994 has an excluded choice provision that relates to such elections. The exclusion (in this context) relates to the reporting aspect of the threshold exemptions (for the various types of accounts). **Therefore, the implementing rules in New Zealand do not allow Reporting NZFIs to elect to report accounts below the relevant thresholds.** However, Reporting NZFIs would still be able to carry out FATCA due diligence on all financial accounts. They would merely not be able to report those financial accounts below the relevant thresholds.

31 However, this is subject to the exception that if a pre-existing individual account is not a high value account as of 30 June 2014, but becomes a high value account as of 31 March of any subsequent year (see section I B(3) of Annex I of the IGA, section II E(2) of Annex I of the IGA, and section 185M of the Tax Administration Act 1994), the Reporting NZFI must complete the enhanced review procedures in relation to high value accounts. The meaning of high value account, and the nature of the due diligence procedures that Reporting NZFIs will need to carry out in relation to such accounts, is outlined in detail below.

32 However, this is subject to the exception that if a pre-existing individual account is not a high value account as of 30 June 2014, but becomes a high value account as of 31 March of any subsequent year (see section I B(3) of Annex I of the IGA, section II E(2) of Annex I of the IGA, and section 185M of the Tax Administration Act 1994), the Reporting NZFI must complete the enhanced review procedures in relation to high value accounts. The meaning of high value account, and the nature of the due diligence procedures that Reporting NZFIs will need to carry out in relation to such accounts, is outlined in detail below.

33 For instance, the account may come within the exclusions in Annex II of the IGA, and, therefore, be excluded from the definition of financial account and so not be treated as a U.S. Reportable Account. These exclusions are outlined in detail in Inland Revenue’s reportable accounts guidance notes.

34 A financial account shall not be treated as a U.S. Reportable Account if such account is not identified as a U.S. Reportable Account after application of the due diligence procedures in Annex I of the IGA (unless there is a change of circumstance, or balance or value that means that further due diligence needs to be carried out and the account is then identified as being a U.S. Reportable Account).

Due Diligence Requirements - Lower Value Accounts

51. A lower value pre-existing individual account (lower value account) is an account with a balance or value that exceeds the appropriate threshold of U.S. \$50,000 as of 30 June 2014 for depository accounts and other pre-existing individual accounts (or U.S. \$250,000 in the case of cash value insurance contracts and annuity contracts), but does not exceed U.S. \$1,000,000.
52. Reporting NZFIs will generally need to undertake the following due diligence procedures in relation to lower value accounts that they maintain. The exception to this general rule is where a Reporting NZFI has previously obtained documentation from an account holder to establish the account holder's status as neither a U.S. citizen nor a U.S. resident in order to meet its obligations under a qualified intermediary, withholding foreign partnership, or withholding foreign trust agreement with the IRS, or to fulfil its obligations under chapter 61 of Title 26 of the U.S. Code. In these circumstances the Reporting NZFI is not required to perform the review procedures with respect to lower value accounts³⁵.

Reviewing for U.S. Indicia

53. For such lower value accounts the Reporting NZFI must undertake a review (to be completed by 30 June 2016) of electronically searchable data for any of the following U.S. indicia (U.S. indicia):
 - (a) Identification of the account holder as a U.S. citizen or U.S. resident (for example, a certificate of U.S. citizenship or a U.S. birth certificate);
 - (b) Unambiguous indication of a U.S. place of birth (for example, that the account holder was born in New York)³⁶;
 - (c) Current U.S. mailing or residence address (including a U.S. post office box);
 - (d) Current U.S. telephone number³⁷;
 - (e) Standing instructions to transfer funds to an account maintained in the U.S. (this would not include an isolated payment instruction that is given in advance).
 - (f) Currently effective power of attorney or signatory authority granted to a person with a U.S. address; or
 - (g) An in-care-of or hold mail address that is the sole address, which the Reporting NZFI has on file for the account holder, and that address is in the U.S. However, in the case of a pre-existing individual account that is a lower value account, an in-care-of address outside the U.S. or hold mail address shall not be treated as U.S. indicia.
54. If none of these U.S. indicia are identified in the electronic search, then no further action is required in respect of that individual account until:
 - There is a change of circumstance resulting in one or more of the U.S. indicia being associated with that account (e.g. if the account holder subsequently records a U.S. mailing or residence address) or;
 - The account becomes a high value account, in relation to which the Reporting NZFI will need to carry out enhanced review procedures (explained below).
55. If as a consequence of the electronic search or through a change of circumstances any U.S. indicia are identified with an individual account, then the Reporting NZFI must treat that account as a U.S. Reportable Account, unless the Reporting NZFI elects to apply one of the exceptions discussed below (and the exception applies) in relation to the account. These exceptions apply to cure or repair the U.S. indicia.

Example 6: Person A has a depository account at a Reporting NZFI that (as of 30 June 2014) has a balance of U.S. \$70,000. The Reporting NZFI reviews its electronically searchable data for U.S. indicia (in relation to the account). Person A is identified, as a result of this review, as having a U.S. place of birth (U.S. indicia). Therefore, the Reporting NZFI must treat that account as a U.S. Reportable Account unless the Reporting NZFI elects to apply one of the exceptions discussed below (and the exception applies) in relation to the account.

Example 7: Person A has a depository account at a Reporting NZFI that (as of 30 June 2014) has a balance of U.S. \$70,000. The Reporting NZFI reviews its electronically searchable data for U.S. indicia (in relation to the account). No such indicia are found. However, one month after the review Person A informs the Reporting NZFI that they now have a current U.S. telephone number (U.S. indicia). The Reporting NZFI updates its records accordingly. Therefore, the Reporting NZFI must treat that account as a U.S. Reportable Account unless the Reporting NZFI elects to apply one of the exceptions discussed below (and the exception applies) in relation to the account.

³⁵ However, where there is a change of circumstances and any of the U.S. indicia become associated with the lower value account, then the Reporting NZFI must treat the account as a U.S. Reportable Account unless the indicia is cured/repared (see below).

³⁶ This could be compared with a circumstance such as where the account holder's birth place is listed as being Cambridge. Inland Revenue considers that such information is ambiguous because it could be referring to either Cambridge in the U.S. or Cambridge in England.

³⁷ Inland Revenue notes that there are a number of internet sites (for example <http://countrycode.org/usa>) that financial institutions may find to be of assistance in determining whether a phone number is a U.S. phone number. There may sometimes be uncertainty as to whether a phone number is U.S. or not (for example, a mobile phone number). In such circumstances, Inland Revenue would expect that the Reporting NZFI will take reasonable steps to establish whether or not the number is a U.S. number.

Exceptions to treating an individual account as a U.S. Reportable Account

56. There are a number of separate exceptions that can apply depending on the type of U.S. indicia³⁸ that the Reporting NZFI identifies in relation to the account that they maintain.
57. If the Reporting NZFI makes an election³⁹ to cure any U.S. indicia discovered as part of the electronic search in relation to the account and a relevant exception applies (relating to the U.S. indicia identified), they will not be required to treat the account as a U.S. Reportable Account (i.e. the indicia will be cured or repaired). For instance, a Reporting NZFI may decide to make such an election because their electronic records are out of date and they want to cure the U.S. indicia associated with the account in question.
58. Reporting NZFIs will have 90 days to obtain the information required to cure/remedy the U.S. indicia before they have to start treating the account as a U.S. Reportable Account.
59. The exceptions apply (such that the Reporting NZFI will not be required to treat an account as a U.S. Reportable Account) when the Reporting NZFI has made an election and the following circumstances are satisfied.

Indication of U.S. place of birth

60. Where the account holder information unambiguously indicates a U.S. place of birth, the Reporting NZFI obtains, or has previously reviewed and maintains a record of⁴⁰:
- (a) A self-certification that the account holder is neither a U.S. citizen nor a U.S. resident for U.S. tax purposes (which may be on an IRS Form W-8 or other similar agreed form)⁴¹;
 - (b) A non-U.S. passport or other government issued identification evidencing the account holder's citizenship or nationality in a country other than the U.S.; and
 - (c) A copy of the account holder's Certificate of Loss of Nationality of the U.S.; or a reasonable explanation as to why the account holder does not have such a certificate despite relinquishing U.S. citizenship or the reason the account holder did not obtain U.S. citizenship at birth.

Current U.S. mailing or residence address or only U.S. telephone numbers associated with account

61. Where the account holder information contains a current U.S. mailing or residence address, or one or more U.S. telephone numbers that are the only telephone numbers associated with the account, the Reporting NZFI obtains, or has previously reviewed and maintains a record of:
- (a) A self-certification that the account holder is neither a U.S. citizen nor a U.S. resident for U.S. tax purposes (which may be on an IRS Form W-8 or other similar agreed form); and
 - (b) Documentary evidence as described below, establishing the account holder's non-U.S. status.

Standing instructions to transfer funds to an account maintained in the U.S.

62. Where the account holder information contains standing instructions to transfer funds to an account maintained in the U.S, the Reporting NZFI obtains, or has previously reviewed and maintains a record of:
- (a) A self-certification that the account holder is neither a U.S. citizen nor a U.S. resident for U.S. tax purposes (which may be on an IRS Form W-8 or other similar agreed form); and
 - (b) Documentary evidence as described below, establishing the account holder's non-U.S. status.

Power of attorney or signatory authority granted to person with a US address; "in-care-of" or "hold mail" address that is in the U.S.; U.S. and non U.S. telephone numbers associated with account

63. Where the account holder information contains a currently effective power of attorney or signatory authority granted to a person with a U.S. address, has an in-care-of address or hold mail address that is the sole address identified for the account holder, or has one or more U.S. telephone numbers (if a non-U.S. telephone number is also associated with the account), the Reporting NZFI obtains, or has previously reviewed and maintains a record of:
- (a) A self-certification that the account holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); or
 - (b) Documentary evidence as described below, establishing the account holder's non-U.S. status.

38 The exceptions apply to all U.S. indicia other than the indicia identifying the account holder as a U.S. citizen or resident. As a practical matter this is not actually an indicia, because if established it actually proves that the individual is a U.S. citizen or resident. On the other hand, the other indicia are in fact indicia of U.S. citizenship or residence. The exceptions only apply to these other indicia because they are rebuttable indicia/presumptions. That said, it is accepted that a Reporting NZFI that has identified an account holder as being a U.S. citizen or resident (for instance, on the basis of out of date records) can cure this by obtaining self-certification/documentary evidence establishing non-U.S. status. This would require obtaining a self-certification showing that the account holder is neither a U.S. citizen nor a U.S. resident for tax purposes and documentary evidence (as set out in the IGA) of non-U.S. status. If the account is cured in this way, it would not be a U.S. Reportable Account i.e. the Reporting NZFI would have determined that the account is not held by a Specified U.S. Person, so there would be nothing to report.

39 Inland Revenue notes that it is not mandatory (in terms of the IGA) that a Reporting NZFI makes such an election and cures U.S. indicia associated with an account.

40 Inland Revenue considers that matters (a) — (c) are cumulative requirements.

41 However, this is subject to an overarching rule that a Reporting NZFI may not rely on a self-certification or documentary evidence if it knows or has reason to know that the self-certification or documentary evidence is incorrect or unreliable. This rule applies to any situation where a NZFI seeks to rely on self-certification or documentary evidence for the purposes of meeting a requirement set out in the IGA.

Documentary evidence establishing the account holder's Non-U.S. Status

64. Acceptable documentary evidence (that is relevant to individuals) includes any of the following:
- (a) A certificate of residence issued by an authorised government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a tax resident.
 - (b) Any valid identification issued by an authorised government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes.
Examples of New Zealand issued documents would include: a New Zealand Driver's licence, New Zealand Passport and New Zealand birth certificate.
 - (c) With respect to a financial account maintained in a jurisdiction with anti- money laundering rules that have been approved by the IRS in connection with a QI⁴² agreement (as described in relevant U.S. Treasury Regulations), 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.
 - (d) Any financial statement, third-party credit report, bankruptcy filing, or U.S. Securities and Exchange Commission report.

Review and reporting obligations

65. Reporting NZFIs must complete their review of pre-existing individual lower value accounts that they maintain for U.S. indicia by 30 June 2016.
66. Any pre-existing individual lower value account that has been identified as a U.S. Reportable Account is required to be reported to Inland Revenue. It is also required to be treated as such for all subsequent years (and reported on annually) unless the account holder ceases to be a Specified U.S. Person or the account in question is a depository account with a balance of U.S. \$50,000 or less as at 31 March of any subsequent year.

Example 8: A Reporting NZFI maintains a custodial account that is held by a Specified U.S. person. The account has a balance of U.S. \$80,000 as of 30 June 2014. As of 31 March 2016 the Reporting NZFI has identified U.S. indicia in relation to the account and these indicia have not been cured/repared. Therefore, the account is a U.S. Reportable Account. The Reporting NZFI will need to report this account. The following year the U.S. person withdraws US \$60,000 from the account bringing the balance down to U.S. \$20,000 as of 31 March 2017. The Reporting NZFI will still need to report this account to Inland Revenue as a U.S. Reportable Account. This is because the account is not a depository account and the account holder has not ceased to be a Specified U.S. Person⁴³.

Example 9: A Reporting NZFI maintains a depository account that is held by a Specified U.S. person. The account has a balance of U.S. \$80,000 as of 30 June 2014. As of 31 March 2016 the Reporting NZFI has identified US indicia in relation to the account and these indicia have not been cured/repared. Therefore, the account is a U.S. Reportable Account. The Reporting NZFI will need to report this account. The following year the U.S. person withdraws U.S. \$60,000 from the account bringing the balance down to U.S. \$20,000 as of 31 March 2017. As the balance is now below the U.S. \$50,000 threshold for depository accounts, the Reporting NZFI will no longer need to report it⁴⁴.

Due Diligence Requirements - High Value Accounts

67. A high value account (high value account) is an account that a Reporting NZFI maintains with a balance or value that exceeds U.S. \$1,000,000 as at 30 June 2014 or 31 March of any subsequent year.⁴⁵
68. Reporting NZFIs will generally need to undertake the following due diligence procedures in relation to such high value accounts. The exception⁴⁶ to this general rule is where the Reporting NZFI has previously obtained documentation from an account holder to establish the account holder's status as neither a U.S. citizen nor a U.S. tax resident in order to meet its obligations under a qualified intermediary, withholding foreign partnership, or withholding foreign trust agreement with the IRS, or to fulfil its obligations under chapter 61 of Title 26 of the US Code⁴⁷.

⁴² Qualified Intermediary.

⁴³ Section II(C)(3) of Annex 1 of the IGA.

⁴⁴ Section II(C)(3) of Annex 1 of the IGA.

⁴⁵ Section II(E)(2) of Annex I of the IGA refers to the ...last day of 2015 or any subsequent calendar year. However, section I(B)(3) of Annex 1 of the IGA provides that where a balance or value threshold (in relation to an account) is to be determined as of the last day of a calendar year under Annex I (i.e. 31 December), the relevant balance or value shall be determined as of the last day of the calendar year (i.e. 31 December) or other appropriate reporting period (i.e. 31 March). **Section 185M of the Tax Administration Act 1994, in turn, provides that the relevant period that needs to be applied in relation to parts of the IGA that provide such discretion regarding the relevant period, will be the period ended 31 March.** This is why the relevant reference here should be read as being 31 March of any subsequent year.

⁴⁶ However, where there is a change in circumstances and any of the U.S. indicia become associated with the high value account, then the Reporting NZFI that maintains the account must treat the account as a U.S. Reportable Account, unless the indicia is cured/repared.

⁴⁷ This exception does not apply to a high value account assigned to a relationship manager, where the relationship manager has actual knowledge that the account holder is a Specified U.S. Person.

Electronic Review

69. The Reporting NZFI must review electronically searchable data for any U.S. indicia (set out above in relation to lower value accounts) associated with the high value account.
70. If the Reporting NZFI's electronically searchable databases include fields for, and captures the following information, then no further paper search is required:
 - (a) The account holder's nationality or residence status (i.e. citizenship, residency, or tax residency);
 - (b) The account holder's residence address and mailing address currently on file with the Reporting NZFI;
 - (c) The account holder's telephone number(s) currently on file, if any, with the Reporting NZFI;
 - (d) Whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting NZFI or another financial institution);
 - (e) Whether there is a current in-care-of address or hold mail address for the account holder; and
 - (f) Whether there is any power of attorney or signatory authority for the account.

Paper Based Review

71. However, if the Reporting NZFI's electronically searchable databases do not capture this information, then, the Reporting NZFI must also undertake a paper based review of the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting NZFI within the last five years, for any of the U.S. indicia described above:
 - (a) The most recent documentary evidence collected with respect to the account;
 - (b) The most recent account opening contract or documentation;
 - (c) The most recent documentation obtained by the Reporting NZFI pursuant to Anti-Money Laundering/Know Your Customer (AML/KYC) Procedures or for other regulatory purposes;
 - (d) Any power of attorney or signature authority forms currently in effect; and
 - (e) Any standing instructions to transfer funds currently in effect.
72. The definition of customer master file would include the Reporting NZFI's primary files for maintaining account holder information, such as information used for contacting account holders and for satisfying AML due diligence. The emphasis here is on documents actually contained in the file and that can be reviewed. However, as noted above, certain documents that the Reporting NZFI has obtained and that are associated with the account, but not actually contained in this file, will also need to be reviewed.

Effect of finding U.S. indicia

73. If any of the U.S. indicia are discovered in the enhanced review of high value accounts, or if there is a subsequent change in circumstances that results in one or more U.S. indicia being associated with the account, then the Reporting NZFI must treat the account as a U.S. Reportable Account unless it elects to apply one of the exceptions discussed above (in relation to lower value accounts) with respect to that account and the exception applies.
74. Reporting NZFIs will have 90 days to obtain the information required to cure/remedy the U.S. indicia before they have to start treating the account as a U.S. Reportable account.

Relationship Manager Inquiry for actual knowledge

75. In addition to the electronic and paper based searches described above, the Reporting NZFI must treat as a U.S. Reportable Account any high value account that they maintain which is assigned to a relationship manager (including any financial accounts aggregated with such high value accounts) if the relationship manager has actual knowledge that the account holder is a Specified U.S. Person.
76. The definition of relationship manager, in this context, would cover an officer or employee of a Reporting NZFI who is assigned responsibility for specific account holders on an on-going basis, and who advises the account holders about their accounts and arranges for the provision of financial products, services and other related assistance. Inland Revenue considers that a relationship manager must be actively involved in arranging and advising the account holder. Those advisers who are not officers or employees of the Reporting NZFI would not constitute relationship managers.

Example 10: Reporting NZFI maintains a financial account that is held by Person A as of 30 June 2014. The account has a balance of US \$2,000,000 (a high value account). Caroline works for Reporting NZFI and is a relationship manager for Person A. Both an electronic and paper based search, in relation to Person A, do not reveal any U.S. indicia. However, Caroline is aware that Person A is a Specified U.S. Person. Reporting NZFI must treat Person A's account as a U.S. Reportable Account and report this account to Inland Revenue.

77. Inland Revenue expects that a Reporting NZFI will have in place appropriate procedures to ensure that relationship managers are sufficiently familiar with the definition of Specified U.S. Person⁴⁸ and other relevant definitions in the IGA, to be able to make a reasonable determination as to whether or not an account holder meets that definition.

⁴⁸ The definition of Specified U.S. Person in the IGA covers U.S. persons (including U.S. citizens and residents) that are not excluded.

Review and Reporting Obligations High Value Accounts

High Value Accounts as of 30 June 2014

78. If a pre-existing individual account is a high value account as of 30 June 2014, the Reporting NZFI that maintains the account must complete the enhanced review procedures⁴⁹ (referred to above) with respect to such account by 30 June 2015. If based on this review such account is identified as a U.S. Reportable account on or before 31 December 2014, the Reporting NZFI must report the required information about such account in their first FATCA report on the account (for the period ending 31 March 2015) and, provided that the account remains a U.S. Reportable Account, subsequently on an annual basis. Where an account is identified as a U.S. Reportable Account after 31 December 2014 and on or before 30 June 2015, the Reporting NZFI is not required to report information about that account in their first FATCA report (for the period ending 31 March 2015), but must report information about that account in their second FATCA report (for the period ending 31 March 2016) and, provided that the account remains a U.S. Reportable Account, subsequently on an annual basis.
79. Any pre-existing high value individual account identified as a U.S. Reportable Account, remains a U.S. Reportable Account for all subsequent years, unless the account holder ceases to be a Specified U.S. Person, or the account is a depository account and the balance of that account reduces to U.S. \$50,000 or less as at 31 March of any subsequent year.
80. Conversely, any pre-existing high value individual account which is not initially identified as a U.S. Reportable Account, remains so, until there is either a change in circumstances that results in one or more U.S. indicia being associated with that account (which is/are not cured) or the high value account relationship manager becomes aware that the account holder is a Specified U.S. Person.

Example 11: On 30 June 2014, Reporting NZFI maintains a pre-existing high value individual account. On 2 December 2014, the Reporting NZFI identifies the account as being a U.S. Reportable Account. The Reporting NZFI needs to report this account in its first FATCA report (for the period ended 31 March 2015) and subsequently on an annual basis (unless the account holder ceases to be a Specified U.S. Person or the account is a depository account with a balance of U.S. \$50,000 or less as at 31 March of any subsequent year).

Example 12: On 30 June 2014, Reporting NZFI maintains a pre-existing high value individual account. On 10 June 2015, the Reporting NZFI identifies the account as being a U.S. Reportable Account. The Reporting NZFI needs to report this account in its second FATCA report (for the period ended 31 March 2016) and every year thereafter (unless the account holder ceases to be a Specified U.S. Person or the account is a depository account with a balance of U.S. \$50,000 or less as at 31 March of any subsequent year).

Accounts that become High Value Accounts

81. If a pre-existing individual account is not a high value account as of 30 June 2014, but becomes a high value individual account as of 31 March of a subsequent year⁵⁰, the Reporting NZFI that maintains the account must complete the enhanced review procedures with respect to such account within six months after 31 March of the year in which the account becomes a high value account (by 30 September of the relevant year). If based on this review such account is identified as a U.S. Reportable account, the Reporting NZFI must report the required information about such account with respect to the year in which it is identified as a U.S. Reportable account and subsequent years on an annual basis. However, an exception to this is if the account holder ceases to be a Specified U.S. Person, or it is a depository account with a balance of U.S. \$50,000 or less as at 31 March of any subsequent year.

Example 13: A Reporting NZFI maintains a depository account that is held by Person A. The account has a balance of U.S. \$40,000 as at 30 June 2014. On 10 August 2015 Person A then deposits U.S. \$1,000,000 into the account (taking the balance in the account to U.S. \$1,040,000). The balance of the account remains over U.S. \$1,000,000 as of 31 March 2016, and for subsequent years. This means that the account has become a high value account. Therefore, the Reporting NZFI must complete the enhanced review procedures with respect to such account within six months after that date (by 30 September 2016). For instance, suppose the Reporting NZFI completed the enhanced review procedures on 15 June 2016 and identifies the account as a U.S. Reportable Account. Reporting NZFI must report the required information about such account with respect to the year in which it is identified as a U.S. Reportable Account (the year ended 31 March 2017) and subsequent income years on an annual basis (unless the account holder ceases to be a Specified U.S. Person or the account has a balance of U.S. \$50,000 or less as at 31 March of any subsequent year).

⁴⁹ A Reporting NZFI is only required to apply the enhanced review procedures to a high value account once. In other words, the Reporting NZFI is not required to re-apply such procedures to the same account in any subsequent year. However, this does not apply to the relationship manager inquiry, which must be applied annually. A Reporting NZFI must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the account holder has a new mailing address in the U.S, the Reporting NZFI is required to treat the new address as a change in circumstances. The Reporting NZFI must treat the account as a U.S. Reportable Account unless it elects to apply one of the exceptions discussed above with respect to that account. In those circumstances, the Reporting NZFI is required to obtain the appropriate documentation to establish the account holder's non-U.S. status.

⁵⁰ Section II(E)(2) of Annex I of the IGA refers to the ...last day of 2015 or any subsequent calendar year. However, section I(B)(3) of Annex 1 of the IGA provides that where a balance or value threshold (in relation to an account) is to be determined as of the last day of a calendar year under Annex I (i.e. 31 December), the relevant balance or value shall be determined as of the last day of the calendar year (i.e. 31 December) or other appropriate reporting period (i.e. 31 March). **Section 185M of the Tax Administration Act 1994, in turn, provides that the relevant period that needs to be applied in relation to parts of the IGA that provide such discretion regarding the relevant period, will be the period ended 31 March.** This is why the relevant reference here should be read as being 31 March of any subsequent year.

NEW INDIVIDUAL ACCOUNTS⁵¹

82. The following rules and procedures apply for the purposes of Reporting NZFIs identifying U.S. Reportable Accounts⁵² that they maintain that are held by individuals and opened on or after 1 July 2014 (new individual accounts)⁵³.
83. The due diligence procedures that the Reporting NZFI needs to undertake to identify such U.S. Reportable Accounts are set out below.

Accounts not required to be reviewed, identified or reported (“exempt accounts”)

84. Unless the Reporting NZFI elects otherwise, either with respect to all new individual accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in New Zealand provide for such an election,⁵⁴ the following new individual accounts are not required to be reviewed, identified, or reported as U.S. Reportable Accounts:
- (a) A depository account unless the account balance exceeds U.S. \$50,000 at the end of the appropriate reporting period⁵⁵ (31 March of the relevant year).
 - (b) A cash value insurance contract unless the cash value exceeds U.S. \$50,000 at the end of the appropriate reporting period (31 March of the relevant year).

Example 14: On 1 August 2014, Person A opens a depository account with Reporting NZFI. The account has an initial balance of U.S. \$70,000. On 1 September 2014, Person A withdraws U.S. \$60,000 from the account. At 31 March 2015 (the end of the reporting period) the account has a balance of U.S. \$10,000. The account is an exempt account. Reporting NZFI is not required and cannot report this account as a U.S. Reportable Account (in relation to that reporting period ended 31 March 2015).

51 The mere rolling over of an account will not create a new account.

52 An account shall not be treated as a U.S. Reportable account if such account is not identified as a U.S. Reportable account after application of the due diligence procedures in Annex I of the IGA (unless there is a change of circumstance, or balance or value that means that further due diligence needs to be carried out and the account is then identified as being a U.S. Reportable Account).

53 A NZFI may treat a new account opened for a pre-existing account holder as a **pre-existing account** and not a new account as long as the NZFI treats the accounts as consolidated obligations and, if required to conduct AML due diligence on the account, can rely on AML due diligence conducted for the existing account. This is in line with the definitions of pre-existing account and pre-existing obligation in the U.S. Treasury Regulations.

54 Section 185F (7) of the Tax Administration Act 1994 has an excluded choice provision that relates to such elections. The exclusion (in this context) relates to the reporting aspect of the threshold exemptions (for the various types of accounts). **Therefore, the implementing rules in New Zealand do not allow Reporting NZFIs to elect to report accounts below the relevant thresholds.** However, Reporting NZFIs would still be able to carry out FATCA due diligence on all financial accounts. They would merely not be able to report those financial accounts below the relevant thresholds.

55 Section III A(1) of Annex 1 of the IGA refers to ...at the end of the calendar year or other appropriate reporting period... **Section 185M of the Tax Administration Act 1994, in turn, provides that the relevant period that needs to be applied in relation to parts of the IGA that provide such discretion regarding the relevant period, will be the period ended 31 March.** This is why the relevant reference here should be read as being the period ended 31 March.

56 An account which is in Annex II of the IGA and is excluded from the definition of financial account shall not be treated as being a U.S. Reportable account.

57 Section III (B) of Annex I of the IGA refers to ...the end of the calendar year...in which the account ceases to be described... in section III (A) of Annex I of the IGA (i.e. if the balance or value threshold is now exceeded). However, section I(B)(3) of Annex 1 of the IGA provides that where a balance or value threshold (in relation to an account) is to be determined as of the last day of a calendar year under Annex I change of circumstance, or balance or value that means that further due diligence needs to be carried out and the account is then identified as being a U.S. Reportable Account).

53 A NZFI may treat a new account opened for a pre-existing account holder as a pre-existing account and not a new account as long as the NZFI treats the accounts as consolidated obligations and, if required to conduct AML due diligence on the account, can rely on AML due diligence conducted for the existing account. This is in line with the definitions of pre-existing account and pre-existing obligation in the U.S. Treasury Regulations.

54 Section 185F (7) of the Tax Administration Act 1994 has an excluded choice provision that relates to such elections. The exclusion (in this context) relates to the reporting aspect of the threshold exemptions (for the various types of accounts). Therefore, the implementing rules in New Zealand do not allow Reporting NZFIs to elect to report accounts below the relevant thresholds. However, Reporting NZFIs would still be able to carry out FATCA due diligence on all financial accounts. They would merely not be able to report those financial accounts below the relevant thresholds.

55 Section III A(1) of Annex 1 of the IGA refers to ...at the end of the calendar year or other appropriate reporting period... Section 185M of the Tax Administration Act 1994, in turn, provides that the relevant period that needs to be applied in relation to parts of the IGA that provide such discretion regarding the relevant period, will be the period ended 31 March. This is why the relevant reference here should be read as being the period ended 31 March.

Other New Individual Accounts

85. With respect to new individual accounts that are not either exempt accounts or otherwise excluded⁵⁶, upon account opening [or within 90 days after the end of the reporting period⁵⁷ (31 March of the relevant year) in which the account ceases to be exempt], the Reporting NZFI that maintains the account must obtain a self-certification, which may be part of the account opening documentation, that allows it to determine whether the account holder is resident in the U.S. for tax purposes (for this purpose, a U.S. citizen is considered to be resident in the U.S. for tax purposes, even if the account holder is also a tax resident of another jurisdiction) and confirm the reasonableness of such self-certification (see below) based on the information obtained by the Reporting NZFI in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures⁵⁸.
86. A Reporting NZFI can obtain such a self-certification from such an account holder in a number of different ways (for example, by telephone, online or on application forms - discussed below).
87. However, this self-certification needs to be done in a way that is sufficient for the account holder to confirm whether they are resident in the U.S. for tax purposes. Therefore, the self-certification would need to allow the account holder to confirm the country or countries where they are tax resident and if they are a U.S. citizen (a U.S. citizen is considered to be a U.S. resident for tax purposes even if they are also tax resident elsewhere).
88. If the self-certification establishes that the account holder is resident in the U.S. for tax purposes, the Reporting NZFI must treat the account as a US Reportable Account and obtain a further⁵⁹ self-certification that includes the account holder's U.S. TIN (which may be included in an IRS Form W-9 or other similar agreed form). Reporting NZFIs will have 90 days from the opening of a new account [or 90 days after the end of the reporting period (31 March of the relevant year) in which the account ceases to be exempt] to obtain any self-certification that is required and to complete the due diligence procedures. [We note that an NZFI is only required to report on accounts that are **finally** determined as U.S. Reportable Accounts at the end of the reporting period each year (31 March of the relevant year). A Reporting NZFI will not have to report on an account if the 90 day period is still running at end of the reporting period and the due diligence procedures for that account have not yet been completed by that date. This is because the account cannot be considered to be a U.S. Reportable Account until such time as the due diligence procedures are completed or the 90 day period expires (whichever is earlier).]

Example 15: On 1 August 2014, Person A makes a telephone call to a Reporting NZFI to open an account. Reporting NZFI's employee asks Person A to state the countries in which they are a tax resident and whether they are a U.S. citizen. Person A explains that they are a New Zealand tax resident, are not a tax resident of any other country, and are not a U.S. citizen. Therefore, Person A has certified that they are not a resident of the U.S. for tax purposes. Reporting NZFI then sends paperwork to Person A to confirm the details of their account opening. This includes Person A's response to the self-certification questions and requires that Person A contacts Reporting NZFI in the event that these details are not correct. The Reporting NZFI confirms the reasonableness of such self-certification based on the information they have in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures. There is nothing in the account opening information that it holds which contradicts the self-certification (i.e. there are no U.S. indicia). Person A does not contact Reporting NZFI to correct any of their account opening details (as the details that they provided were correct). Reporting NZFI does not know or have reason to know that the self-certification is incorrect or unreliable.⁶⁰ Therefore, Reporting NZFI will be able to rely on Person A's self-certification and treat the account as not being a U.S. Reportable Account.

56 An account which is in Annex II of the IGA and is excluded from the definition of financial account shall not be treated as being a U.S. Reportable account.

57 Section III (B) of Annex I of the IGA refers to ...the end of the calendar year...in which the account ceases to be described... in section III (A) of Annex I of the IGA (i.e. if the balance or value threshold is now exceeded). However, section I(B)(3) of Annex 1 of the IGA provides that where a balance or value threshold (in relation to an account) is to be determined as of the last day of a calendar year under Annex I (i.e. 31 December), the relevant balance or value shall be determined as of the last day of the calendar year (i.e. 31 December) or other appropriate reporting period (i.e. 31 March). **Section 185M of the Tax Administration Act 1994, in turn, provides that the relevant period that needs to be applied in relation to parts of the IGA that provide such discretion regarding the relevant period, will be the period ended 31 March.** This is why the relevant reference here should be read as being the period ended 31 March.

58 AML/KYC Procedures means the customer due diligence procedures of a Reporting NZFI pursuant to the anti-money laundering or similar requirements of New Zealand to which such Reporting NZFI is subject.

59 This self-certification could be conducted virtually contemporaneously with the original self-certification, although sequentially as a second step. For instance, if the account holder has identified (self-certified) that they are a U.S. resident, the Reporting NZFI that maintains the account can then simply obtain the account holder's U.S. TIN. Of course, the Reporting NZFI would need to confirm the reasonableness of such self-certification (in accordance with the terms of the IGA).

60 Section VI(A) of Annex I in the IGA sets out the overarching requirement that a Reporting NZFI cannot rely on a self-certification that they know or have reason to know is incorrect or unreliable.

Example 16: On 1 August 2014 Person A, completes an application form to open an account at a Reporting NZFI. The form requires Person A to indicate the country or countries in which they are tax resident whether they are a U.S. citizen. Person A enters New Zealand as being the country in which they are a tax resident and fills in yes to the question of whether they are a U.S. citizen. Person A signs this form. Therefore, person A has certified that they are a resident of the U.S. for tax purposes.

The Reporting NZFI then confirms the reasonableness of such self-certification (that person A is a US resident for tax purposes) based on the information that they have obtained in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures. The Reporting NZFI must treat the account as a U.S. Reportable Account and obtain a further self-certification that includes person A's U.S. TIN (which may be included in an IRS Form W-9 or other similar agreed form).

89. If there is a change of circumstances with respect to a new individual account that causes the Reporting NZFI that maintains the account to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting NZFI cannot rely on the original self-certification and must obtain a valid self-certification that establishes whether the account holder is a U.S. citizen or resident for U.S. tax purposes.
90. A Reporting NZFI will be 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, a reasonably prudent person would question the accuracy of the self-certification.
91. If the Reporting NZFI is unable to obtain a valid self-certification, it must treat the account as a U.S. Reportable Account. A Reporting NZFI will have 90 days to obtain such a self-certification.

Example 17: On 1 August 2014, Person A completes an application form to open an account at a Reporting NZFI. The form requires Person A to indicate the country or countries in which they are tax resident and whether they are a U.S. citizen. Person A enters New Zealand as being the only country in which they are a tax resident and fills in no to the question of whether they are a U.S. citizen. Person A signs this form. Therefore, person A has certified that they are not a resident of the U.S. for tax purposes.

The Reporting NZFI then confirms the reasonableness of such self-certification based on the information that they have obtained in connection with the opening of the account.

However, on 1 November 2014, Person A rings Reporting NZFI explaining that they consider that they are actually a U.S. tax resident (i.e. Person A initially misunderstood the U.S. tax residence rules). This means that there has been a change of circumstances that causes Reporting NZFI to know, or have reason to know, that the original self-certification was incorrect or unreliable. Therefore, the Reporting NZFI cannot rely on the original self-certification. Reporting NZFI would then need to obtain a valid self-certification that establishes whether Person A is a US citizen or resident for U.S. tax purposes. If Reporting NZFI is unable to obtain such a self-certification they must treat the account as a U.S. Reportable Account.

Example 18: On 1 August 2014, Person A accesses the website of a Reporting NZFI to open an account. On the account opening site, Person A is asked to select the country or countries in which they are tax resident and whether they are a U.S. citizen. Person A enters New Zealand as being the only country in which they are a tax resident and fills in no to the question of whether they are a U.S. citizen. Therefore, person A has certified that they are not a resident of the U.S. for tax purposes.

The Reporting NZFI then confirms the reasonableness of such self-certification based on the information that they have obtained in connection with the opening of the account.

On 1 September 2014, Person A rings Reporting NZFI to explain that they have moved houses (from Auckland to Wellington) and want to add the new address to the account (i.e. the Wellington address). Therefore there has been a change in relation to the account. However, this change does not result in any new U.S. indicia being associated with the account. It does not call into question the correctness or reliability of the original self-certification (that Person A is not a U.S. citizen or resident). Therefore, the Reporting NZFI can still rely on Person A's original self-certification and treat the account as not being a U.S. Reportable Account.

Example 19: On 1 August 2014, Person B accesses the website of a Reporting NZFI to open an account. On the account opening site, Person B is asked to select the country or countries in which they are tax resident and whether they are a U.S. citizen. Person B enters New Zealand as being the only country in which they are a tax resident and fills in no to the question of whether they are a U.S. citizen. Therefore, person B has certified that they are not a resident of the U.S. for tax purposes.

The Reporting NZFI then confirms the reasonableness of such self-certification based on the information that they have obtained in connection with the opening of the account.

On 1 September 2014, Person B rings Reporting NZFI to add a U.S. address and U.S. phone number to their account. This is U.S. indicia calls into question the correctness/reliability of Person B's original self-certification (that they are not a U.S. citizen/resident). Therefore, Reporting NZFI must obtain a valid self-certification that establishes whether Person B is a U.S. citizen or resident for U.S. tax purposes. If Reporting NZFI is unable to obtain a valid self-certification, they must treat the account as a U.S. Reportable Account.

PRE-EXISTING ENTITY ACCOUNTS

92. The following rules and procedures apply for the purposes of Reporting NZFIs identifying and reporting on pre-existing entity financial accounts that they maintain (accounts held by entities) opened on or before 30 June 2014 that are U.S. Reportable Accounts or accounts held by NPFIs (pre-existing entity accounts).
93. A pre-existing entity account will be reportable to Inland Revenue if the account:
- Is not excluded from being a financial account;⁶¹
 - Is not exempt from being reported; and
 - Is identified as being a U.S. Reportable Account.⁶²

Pre-existing entity accounts held by a NPFI will also need to be reported to Inland Revenue (see Article 4(1)(b) of the IGA).

Entity Accounts Not Required to Be Reviewed, Identified or Reported (“exempt accounts”)

94. Unless the Reporting NZFI elects otherwise, either with respect to all pre-existing entity accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in New Zealand provide for such an election,⁶³ a pre-existing entity account with an account balance or value that does not exceed U.S. \$250,000 as of 30 June 2014, is not required to be reviewed, identified, or reported as a U.S. Reportable account until the account balance or value exceeds U.S. \$1,000,000 as of 31 March of any subsequent year.⁶⁴

Entity Accounts Subject to Review and Reporting

95. A pre-existing entity account that has an account balance or value that exceeds U.S. \$250,000 as of 30 June 2014, and a pre-existing entity account that does not exceed U.S. \$250,000 as of 30 June 2014, but has a balance or value of which later exceeds US \$1,000,000 as of 31 March of any subsequent year, must be reviewed in accordance with the procedures set out below. Of these accounts, only those accounts that are held by one or more entities that are Specified U.S. Persons, or by Passive NFFEs (described earlier) with one or more controlling persons who are U.S. citizens or U.S. tax residents, shall be treated as US Reportable Accounts. In addition, accounts held by NPFIs shall be treated as accounts for which aggregate payments are reported to Inland Revenue for the 2015⁶⁵ and 2016⁶⁶ years in accordance with Article 4(1)(b) of the IGA.

Review procedures for identifying entity accounts with respect to which reporting is required

96. For pre-existing entity accounts that are subject to review, a Reporting NZFI must apply the following procedures to determine whether the account is held by one or more Specified U.S. Persons, by Passive NFFEs with one or more controlling persons who are US citizens or U.S. tax residents, or by NPFIs:
1. *Determine whether the entity is a Specified U.S. Person*
 - a. Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC procedures) to determine whether the information indicates that the account holder is a U.S. Person. Information indicating that the account holder is a U.S. Person includes a U.S. place of incorporation or organisation, or a U.S. address. The U.S. indicia listed above (in relation to pre-existing individual accounts) would (to the extent that they are applicable to entities)⁶⁷ also be examples of information indicating that an entity is a Specified U.S. Person. [Inland Revenue notes that the emphasis here is on the Reporting NZFI reviewing information that they maintain for these purposes. A Reporting NZFI is not obliged to collect further information for FATCA purposes to satisfy this particular requirement. Inland Revenue accepts that the amount of information maintained in relation to

61 These exclusions are outlined in detail in Inland Revenue’s reportable accounts guidance.

62 An account shall not be treated as a U.S. Reportable Account if such account is not identified as a U.S. Reportable account after application of the due diligence procedures in Annex I of the IGA (unless there is a change of circumstance, or balance or value that means that further due diligence needs to be carried out and the account is then identified as being a U.S. Reportable Account).

63 Section 185F (7) of the Tax Administration Act 1994 has an excluded choice provision that relates to such elections. The exclusion (in this context) relates to the reporting aspect of the threshold exemptions (for the various types of accounts). **Therefore, the implementing rules in New Zealand do not allow Reporting NZFIs to elect to report accounts below the relevant thresholds.** However, Reporting NZFIs would still be able to carry out FATCA due diligence on all financial accounts. They would merely not be able to report those financial accounts below the relevant thresholds.

64 Section IV(B) of Annex I of the IGA refers to the ...last day of 2015 or any subsequent calendar year. However, section I(B)(3) of Annex 1 of the IGA provides that where a balance or value threshold (in relation to an account) is to be determined as of the last day of a calendar year under Annex I (i.e. 31 December), the relevant balance or value shall be determined as of the last day of the calendar year (i.e. 31 December) or other appropriate reporting period (i.e. 31 March). **Section 185M of the Tax Administration Act 1994, in turn, provides that the relevant period that needs to be applied in relation to parts of the IGA that provide such discretion regarding the relevant period, will be the period ended 31 March.** This is why the relevant reference here should be read as being 31 March of any subsequent year.

65 The 2015 year is the period ended 31 March 2016.

66 The 2016 year is the period ended 31 March 2017.

67 For instance, the unambiguous indication of a U.S. place of birth indicia would not apply to the entity account due diligence in this regard. This is because such indicia clearly only applies to individuals, as opposed to entities.

AML procedures may, because of its recent introduction, sometimes be minimal for pre-existing accounts. In these circumstances a Reporting NZFI may need to assess the reliability of that information, in light of the over-arching requirement in the IGA that a Reporting FI is not able to rely on documentation that they know or have reason to know is incorrect or unreliable.]

- b. If the information indicates that the account holder is a U.S. Person, the Reporting NZFI must treat the account as a U.S. Reportable Account unless it obtains a self-certification from the account holder (which may be on an IRS Form W-8 or W-9, or a similar agreed form), or reasonably determines based on information in its possession or that is publicly available, that the account holder is not a Specified U.S. Person.
2. *Determine whether a Non-U.S. Entity is a Financial Institution*
 - a. Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC procedures) to determine whether the information indicates that the account holder is a financial institution. [Inland Revenue notes that the emphasis here is on the Reporting NZFI reviewing information that they maintain for these purposes. A Reporting NZFI is not obliged to collect further information for FATCA purposes to satisfy this particular requirement. Inland Revenue accepts that the amount of information maintained in relation to AML procedures may, because of its recent introduction, sometimes be minimal for pre-existing accounts. In these circumstances a Reporting NZFI may need to assess the reliability of that information, in light of the over-arching requirement in the IGA that a Reporting FI is not able to rely on documentation that they know or have reason to know is incorrect or unreliable.]
 - b. If the information indicates that the account holder is a financial institution, or the Reporting NZFI verifies the account holder's GIIN on the published IRS FFI⁶⁸ list, then the account is not a U.S. Reportable Account. However, as explained below, the Reporting NZFI will still have reporting obligations if the financial institution account holder is a NPFI (see below).
 3. *Determine Whether a Financial Institution is a Non-participating Financial Institution⁶⁹ payments to which are subject to aggregate reporting under subparagraph 1(b) of Article 4 of the Agreement*
 - a. Article 4(1)(b) of the IGA applies in relation to financial institution account holders that are NPFIs.
 - b. A Reporting NZFI may determine that the account holder is a NZFI or other Partner Jurisdiction Financial Institution if the Reporting NZFI reasonably determines that the account holder has such status on the basis of the account holder's GIIN on the published IRS FFI list or other information that is publicly available or in the possession of the Reporting NZFI, as applicable. In such case, no further review, identification, or reporting is required with respect to the account unless the account holder is a NPFI.
 - c. If the account holder is a NZFI or other Partner Jurisdiction Financial Institution treated by the IRS as a NPFI, then the account is not a U.S. Reportable Account, but payments to the account holder must be reported under Article 4(1)(b). [The IRS will be issuing a non- participating FFI list. Reporting NZFIs that maintain accounts that are held by financial institutions will be able to identify whether such account holders have been treated by the IRS as being NPFIs by looking at this list.]
 - d. If the account holder is not a NZFI or other Partner Jurisdiction Financial Institution, then the Reporting NZFI must treat the account holder as a NPFI, payments to which are reportable under Article 4(1)(b) of the IGA, unless the Reporting NZFI:
 - i. Obtains a self-certification (which may be on an IRS Form W-8 or similar agreed form) from the account holder that it is a certified deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations; or
 - ii. In the case of a participating FFI or registered deemed-compliant FFI, verifies the account holder's GIIN on the published IRS FFI list.
 4. *Determine Whether an Account Held by an NFFE Is a U.S. Reportable Account*

With respect to an account holder of a pre-existing entity account that is not identified as either a U.S. Person or a Financial Institution, the Reporting NZFI must identify: (i) whether the account holder has controlling persons, (ii) whether the account holder is a Passive NFFE, and (iii) whether any of the controlling person of the account holder is a U.S. citizen or U.S. tax resident. [The term Controlling Persons is defined in Article 1(1)(mm) of the IGA as meaning the 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, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term Controlling Persons must be interpreted in a manner consistent with the Financial Action Task Force Recommendations.]

In making these determinations the Reporting NZFI must follow the guidance in the following paragraphs in the order most appropriate under the circumstances.

68 Foreign financial institution.

69 Article 1(1)(r) of the IGA defines non-participating financial institution as meaning a non-participating FFI, as that term is defined in relevant U.S. Treasury Regulations, but does not include a New Zealand Financial Institution or other Partner Jurisdiction Financial Institution other than a Financial Institution treated as a Non-participating Financial Institution pursuant to subparagraph 2(b) of Article 5 of the IGA or the corresponding provision in an agreement between the U.S. and a Partner Jurisdiction.

- a. For purposes of determining the controlling persons of an account holder, a Reporting NZFI may rely on information collected and maintained pursuant to AML/KYC procedures.
- b. For purposes of determining whether the account holder is a Passive NFFE, the Reporting NZFI must obtain a self-certification (which may be on an IRS Form W-8 or W-9, or on a similar agreed form) from the account holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the account holder is an Active NFFE.
- c. For purposes of determining whether a controlling person of a Passive NFFE is a U.S. citizen or resident for U.S. tax purposes, a Reporting NZFI may rely on:
 - i. Information collected and maintained pursuant to AML/KYC procedures in the case of a pre-existing entity account held by one or more NFFEs with an account balance or value that does not exceed US \$1,000,000; or
 - ii. A self-certification (which may be on an IRS Form W-8 or W-9, or on a similar agreed form) from the account holder or such controlling person in the case of a pre-existing entity account held by one or more NFFEs with an account balance or value that exceeds US \$1,000,000.
- d. If any controlling person of a Passive NFFE is a U.S. citizen or U.S. tax resident, the account shall be treated as a U.S. Reportable account.

Example 20: Reporting NZFI maintains an account that is held by Entity A (a New Zealand company that is a hedge fund) as of 30 June 2014 with a balance of U.S. \$400,000. Reporting NZFI applies the due diligence procedures and determines that Entity A is a NZFI. Reporting NZFI is also aware that the IRS has treated Entity A as being a NPFI. The account is not a U.S. Reportable Account. However, as Entity A is a NPFI, Reporting NZFI will still be required to report on payments that it makes to Entity A.

Example 21: Reporting NZFI maintains an account that is held by Entity A (a trust) as of 30 June 2014 with a balance of U.S. \$400,000. Reporting NZFI applies the due diligence procedures and determines that Entity A is not a Specified U.S. Person or a Financial Institution. Instead, Reporting NZFI determines that Entity A is a NFFE. Reporting NZFI identifies that Entity A is a passive NFFE and that it has a controlling person (Person A - who was a trustee of the trust) that is a U.S. citizen. Reporting NZFI has, therefore, identified that Entity A is a passive NFFE and that it has a controlling person (Person A) that is a U.S. citizen. Therefore, Reporting NZFI would need to treat the entity account as being a U.S. Reportable account and report on this account (this would include reporting Person A's name, address, and U.S. TIN).

Example 22: Reporting NZFI maintains an account that is held by Entity A (a trust) as of 30 June 2014 with a balance of U.S. \$400,000. Reporting NZFI applies the due diligence procedures and determines that Entity A is not a Specified U.S. Person or a Financial Institution. Instead, Reporting NZFI determines that Entity A is a NFFE. Entity A is a charitable entity listed on the charities register. Reporting NZFI reasonably determines - based on the fact that Entity A is a registered charity - that Entity A is an active NFFE. Therefore, Entity A's account is not a U.S. Reportable Account and Reporting NZFI will not need to report on this account.

Timing of Review and Additional Procedures Applicable to Pre-existing Entity Accounts

97. The review of pre-existing entity accounts with an account balance or value that exceeds U.S. \$250,000 as of 30 June 2014 must be completed by 30 June 2016.
98. The review of pre-existing entity accounts with an account balance or value that does not exceed U.S. \$250,000 as of 30 June 2014, but exceeds U.S. \$1,000,000 as of 31 March of any subsequent year, must be completed within six months after 31 March of the year in which the account balance or value exceeds U.S. \$1,000,000 (i.e. by 30 September of the relevant year).
99. If there is a change of circumstances with respect to a pre-existing entity account that causes the Reporting NZFI to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting NZFI must re-determine the status of the account in accordance with the review procedures set out above. Reporting NZFIs will have 90 days to re-determine the status of the account in this regard.

Example 23: Reporting NZFI maintains an account that is held by Entity A as of 30 June 2014 with a balance of U.S. \$400,000. On 1 September 2014 Reporting NZFI reviews the information that they have maintained for regulatory and customer relationship purposes to determine the status of Entity A. There are no U.S. indicia associated with the account. Reporting NZFI determines that Entity A is not a Specified U.S. Person or a financial institution. Instead, Reporting NZFI determines that Entity A is an NFFE that is an Active NFFE. However, on 1 October 2014 Entity A rings up Reporting NZFI to link a U.S. address to the account where Entity A has an office (US indicia). The Reporting NZFI updates its records accordingly. This linking of the US address to the account indicates that Entity A is in fact a Specified U.S. Person (see section IV D(1) of Annex I of the IGA), as opposed to being an NFFE. This is a change of circumstances that would cause the Reporting NZFI to have reason to know that the documentation associated with the account (which until that point had no U.S. indicia) is unreliable. Therefore, Reporting NZFI would need to re-determine the status of the account (section IV E(3) of Annex I of the IGA) in accordance with the procedures set out in section IV D of Annex I of the IGA.

Example 24: Reporting NZFI maintains an account that is held by Entity A as of 30 June 2014 with a balance of U.S. \$400,000. On 1 October 2014 Reporting NZFI applies the due diligence procedures in the IGA and determines that Entity A is a financial institution in a non-IGA country. On 10 October 2014 Entity A certifies that they are a certified deemed compliant FFI. However, on 1 December 2014 Entity A calls Reporting NZFI to explain that they are no longer a certified deemed compliant FFI. This is a change of circumstances that would cause the Reporting NZFI to know that Entity A's original self-certification was incorrect. Therefore Reporting NZFI would need to re-determine the status of the account (section IV E(3) of Annex 1 of the IGA) in accordance with the procedures set out in section IV D of Annex I of the IGA.

Example 25: Reporting NZFI maintains an account that is held by Trust A as of 30 June 2014 with a balance of U.S. \$800,000. On 1 October 2014 Reporting NZFI applies the due diligence procedures in the IGA and reviews the documentation related to the account and determines that Trust A is an NFFE that is a Passive NFFE and that none of Trust A's controlling persons are U.S. citizens or residents.

However, on 1 November 2014 a trustee of Trust A calls the Reporting NZFI to explain that the trust has had a change of trustee and that they want to add the new trustee's name to the account. The trustee explains to the Reporting NZFI that the new trustee is a U.S. citizen. The IGA deems a trustee to be a controlling person in relation to an entity (such as a trust). This means that a controlling person of the trust is now a U.S. citizen. This is a change of circumstance that causes Reporting NZFI to know or have reason to know that the documentation associated with an account (which until that point showed that none of Trust A's controlling persons were U.S. citizens or residents) is unreliable. Therefore, Reporting NZFI would need to re-determine the status of the account (section IV E(3) of Annex I of the IGA) in accordance with the procedures set out in section IV D of Annex I of the IGA.

NEW ENTITY ACCOUNTS

100. The following rules and procedures apply for the purposes of Reporting NZFIs identifying U.S. Reportable Accounts and accounts held by NPFIs among financial accounts that they maintain and that are held by entities and are opened on or after 1 July 2014 (new entity accounts).⁷⁰
101. A new entity account will be reportable to Inland Revenue if the account:
- Is not excluded from being a financial account under Annex II of the IGA;
 - Is not exempt from being reported; and
 - Is identified as a U.S. Reportable Account⁷¹.
102. New entity accounts held by a NPFI will also need to be reported to Inland Revenue (see Article 4(1)(b) of the IGA).

Entity Accounts Not Required to Be Reviewed, Identified or Reported (“exempt accounts”)

103. Unless the Reporting NZFI elects otherwise, either with respect to all new entity accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in New Zealand provide for such election,⁷² a credit card account or a revolving credit facility treated as a new entity account is not required to be reviewed, identified, or reported, provided that the Reporting NZFI maintaining such account implements policies and procedures to prevent an account balance owed to the account holder exceeding U.S. \$50,000.

IRS Notice 2014-33 – Further Guidance on the Implementation of FATCA and Related Withholding Provisions (“IRS Notice 2014-33”)

104. Reporting NZFIs should consider the contents of IRS Notice 2014-33, which includes proposed changes to the U.S. Treasury Regulations and the Model 1 IGA which will have the effect of allowing Reporting NZFIs to treat new entity financial accounts opened on or after 1 July 2014 and before 1 January 2015 as pre-existing accounts for due diligence purposes.

⁷⁰ A NZFI may treat a new account opened for a pre-existing account holder as a **pre-existing account** and not a new account as long as the NZFI treats the accounts as consolidated obligations and, if required to conduct AML due diligence on the account, can rely on AML due diligence conducted for the existing account. This is in line with the definitions of pre-existing account and pre-existing obligation in the U.S. Treasury Regulations.

⁷¹ An account shall not be treated as a U.S. Reportable Account if such account is not identified as a U.S. Reportable account after application of the due diligence procedures in Annex I of the IGA (unless there is a change of circumstance, or balance or value that means that further due diligence needs to be carried out and the account is then identified as being a U.S. Reportable Account).

⁷² Section 185F (7) of the Tax Administration Act 1994 has an excluded choice provision that relates to such elections. The exclusion (in this context) relates to the reporting aspect of the threshold exemptions (for the various types of accounts). **Therefore, the implementing rules in New Zealand do not allow Reporting NZFIs to elect to report accounts below the relevant thresholds.** However, Reporting NZFIs would still be able to carry out FATCA due diligence on all financial accounts. They would merely not be able to report those financial accounts below the relevant thresholds.

105. At page 6 of IRS Notice 2014-33 the IRS advise that prior to the publication of the proposed amendments to the U.S. Treasury Regulations, a partner jurisdiction (in this case New Zealand) may rely on the provisions of the IRS Notice 2014-33 to permit a reporting Model 1 FFI (i.e. Reporting NZFIs) to treat entity financial accounts opened on or after 1 July 2014 and before 1 January 2015 as pre-existing accounts for due diligence purposes. The application of the proposed amendments to the due diligence procedures is permitted in terms of section I(C) of Annex I of the IGA which allows the Inland Revenue (acting on behalf of New Zealand) to permit Reporting NZFIs use due diligence procedures in the U.S. Treasury Regulations in lieu of the procedures in the IGA.
106. New Zealand has made a decision (under section I(C) of Annex I) allowing Reporting NZFIs to use the procedures in the U.S. Treasury Regulations in lieu of the procedures in Annex I. This decision has been published on the FATCA webpage. This means that, as a corollary of this decision, Reporting NZFIs are permitted to treat new entity financial accounts opened on or after 1 July 2014 and before 1 January 2015 as pre-existing accounts for due diligence purposes (in the way referred to in IRS Notice 2014-33). However, as set out in the Notice, the ability to treat such accounts as pre-existing accounts does not permit application to such accounts of the U.S. \$250,000 exception for pre-existing entity accounts that are not required to be reviewed, identified, or reported.

Other New Entity Accounts

107. With respect to new entity accounts not exempted or otherwise excluded, the Reporting NZFI must determine whether the account holder is: (i) a Specified U.S. Person; (ii) a NZFI or other Partner Jurisdiction Financial Institution; (iii) a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations; or (iv) an Active NFFE or Passive NFFE.
- (a) A Reporting NZFI may determine that the account holder is an Active NFFE, a NZFI, or other Partner Jurisdiction Financial Institution if the Reporting NZFI reasonably determines that the account holder has such status on the basis of the account holder's GIIN or other information that is publicly available or in the possession of the Reporting NZFI as applicable.
- (b) If the account holder is a NZFI, or other Partner Jurisdiction Financial Institution then the account is not a U.S. Reportable account. However, if the account holder is a NZFI or other Partner Jurisdiction Financial Institution treated by the IRS as a NPFI, payments to the account holder must be reported.
- (c) In all other cases, a Reporting NZFI must obtain a self-certification from the account holder to establish the account holder's status. Based on the self-certification, the following rules apply:
- i. If the account holder is a Specified U.S. Person, the Reporting NZFI must treat the account as a U.S. Reportable Account.
 - ii. If the account holder is a Passive NFFE, the Reporting NZFI must identify the controlling persons as determined under AML/KYC procedures, and must determine whether any such person is a U.S. citizen or U.S. resident on the basis of a self-certification from the account holder or such person. If any such person is a U.S. citizen or U.S. resident, the Reporting NZFI must treat the account as a U.S. Reportable account.
 - iii. If the account holder is: (i) a U.S. Person that is not a Specified U.S. Person; (ii) a NZFI or other Partner Jurisdiction Financial Institution that is not treated by the IRS as a NPFI; (iii) a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations; (iv) an Active NFFE; or (v) a Passive NFFE none of the controlling persons of which is a U.S. citizen or U.S. tax resident, then the account is not a U.S. Reportable account, and, subject to the following paragraph, no reporting is required with respect to the account.
 - iv. If the account holder is a NPFI (including a NZFI or other Partner Jurisdiction Financial Institution treated by the IRS as a NPFI) payments to the account holder must be reported.
108. Reporting NZFIs will have 90 days from the opening of a new account to obtain any self-certification that is required and to complete the due diligence procedures.

U.S. REPORTABLE ACCOUNTS - INFORMATION THAT WOULD NEED TO BE REPORTED TO INLAND REVENUE

109. If a Reporting NZFI has identified that financial accounts that they maintain are U.S. Reportable Accounts (as a result of undertaking the due diligence procedures) it will need to report annually to Inland Revenue certain information (set out in Article 2(2)(a) of the IGA) about these accounts. Section 185M of the Tax Administration Act 1994 provides that the relevant FATCA reporting period is for the period ended 31 March. The first FATCA report will be for the reporting period ended 31 March 2015 (the 2014 FATCA year). Reporting NZFIs will have until 30 June of the year in question (3 months from the end of the reporting period) to report the information to Inland Revenue.

ACCOUNTS THAT ARE HELD BY NON-PARTICIPATING FINANCIAL INSTITUTIONS - INFORMATION THAT WOULD NEED TO BE REPORTED TO INLAND REVENUE

110. Reporting NZFIs will also need to report to Inland Revenue the following information in relation to accounts that they maintain and that they have identified (as a result of undertaking the due diligence procedures) as being held by NPFI:

- The name of the NPFI; and
- the aggregate amount of payments made to the NPFI for the years 2015 (the reporting period ended 31 March 2016) and 2016 (the reporting period ended 31 March 2017).

Reporting NZFIs will, as is the case for U.S. Reportable Accounts, have until 30 June (3 months from the end of the reporting period) of the relevant year to report this information.

SPECIAL RULES

111. The following additional rules and definitions set out in the IGA apply in implementing the due diligence procedures described above.

Reliance on Self-Certifications and Documentary Evidence

112. A Reporting NZFI may not rely on a self-certification or documentary evidence if the Reporting NZFI knows or has reason to know that the self-certification or documentary evidence is incorrect or unreliable. Inland Revenue has set out above some examples of when this would be the case.

Aggregation of Account Balances

113. There are also aggregation rules in the IGA for the purposes of determining the balance or value of accounts. These rules are particularly important because the application of a number of the provisions in the IGA (to a particular account) turns on the balance or value of the account. Only FATCA financial accounts form part of any such aggregation (i.e. depository, custodial, debt interest equity interest, cash value and annuity contracts).⁷³

Aggregation of Individual Accounts

114. For the purposes of determining the aggregate balance or value of financial accounts held by an individual, a Reporting NZFI is required to aggregate all financial accounts maintained by the Reporting NZFI or by a related entity, but only to the extent that the Reporting NZFI's computerised systems link the financial accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to be aggregated. Each holder of a jointly held financial account shall be attributed the entire balance or value of the jointly held financial account for purposes of applying the aggregation requirements.⁷⁴

Example 26: Bank X is a NZFI. Bank X has a wholly owned subsidiary, Bank Y. Both Bank X and Bank Y are Reporting NZFIs and each bank reports separately to the Inland Revenue. Customer A holds the following depository accounts and balances as at 30 June 2014:

- Depository account 1 with Bank X U.S. \$25,000
- Depository account 2 with Bank X U.S. \$10,000
- Depository account 3 with Bank Y U.S. \$30,000

Bank X and Y have a common computing system which enables Customer A's accounts to be aggregated according to a common client number. The aggregate balance of Customer A's accounts is U.S. \$65,000, so that Customer A will be subject to the due diligence procedures relating to lower value accounts. Both Bank X and Bank Y will be required to undertake the due diligence procedures and, if any U.S. indicia is identified and not cured/repared, report separately to the Inland Revenue.

⁷³ These types of accounts are outlined in detail in Inland Revenue's reportable accounts guidance.

⁷⁴ Subsidiary banks, without linked systems, are not required to aggregate customers' balances where there are no common customer numbers.

Example 27: Bank X is a Reporting NZFI which offers depository and custodial accounts to its customers. Bank X's computer system can link a customer's account according to a common client number. Customer A is a Specified U.S. Person and has the following pre-existing accounts and balances as at 30 June 2014 with Bank X:

- Depository account 1 with Bank X U.S. \$25,000
- Custodial account 2 with Bank X U.S. \$45,000

The aggregate balance of the financial accounts is U.S. \$70,000. However, the balance of the depository account is below the U.S. \$50,000 threshold for reviewing, identification and reporting of depository accounts for individuals. The depository account will not be a US Reportable Account. The balance of the custodial account of U.S. \$45,000 will be a U.S. Reportable account⁷⁵ because the aggregated balance of the accounts exceeds the U.S. \$50,000 thresholds for pre-existing individual accounts, and there is no custodial account exemption (similar to the U.S. \$50,000 depository account exemption).

Example 28: Bank X is a Reporting NZFI which offers depository and custodial accounts to its customers. Bank X's computer system can link a customer's account according to a common client number. Customer A is a Specified U.S. Person and has the following pre-existing accounts and balances as at 30 June 2014 with Bank X:

- Depository account 1 with Bank X U.S. \$25,000
- Custodial account 2 with Bank X U.S. \$45,000
- Depository account 3 with Bank X (U.S. \$8,000) - treated as nil

The depository account which is in overdraft (negative balance) will be treated as having a nil balance.

The aggregate balance of the financial accounts is U.S. \$70,000. However, the balance of the depository account is below the U.S. \$50,000 threshold for reviewing, identification and reporting of depository accounts for individuals. The depository account will not be a U.S. Reportable Account. The balance of the custodial account of U.S. \$45,000 will be a U.S. Reportable Account⁷⁶ because the aggregated balance of the accounts exceeds the U.S. \$50,000 thresholds for pre-existing individual accounts, and there is no custodial account exemption (similar to the U.S. \$50,000 depository account exemption).

Example 29: Bank X is a Reporting NZFI which offers depository and custodial accounts to its customers. Bank X's computer system can link a customer's account according to a common client number. Customer A is a Specified U.S. Person and has the following pre-existing accounts and balances as at 30 June 2014 with Bank X:

- Depository account 1 with Bank X U.S. \$15,000
- Custodial account 2 with Bank X U.S. \$30,000

The aggregate balance of the financial accounts is U.S. \$45,000. This is below the threshold for reviewing, identification and reporting on pre-existing individual accounts. Therefore, Bank X is not required to review, identify, or report these accounts.

Example 30: Insurance Company A is a Reporting NZFI which offers depository accounts and insurance services to its customers. Insurance Company A's computer system can link a customer's account according to a common client number. Customer A is a Specified U.S. Person and has the following pre-existing accounts and balances as at 30 June 2014 with Insurance Company A:

- Depository account 1 U.S. \$25,000
- Annuity Contract U.S. \$230,000

The aggregate balance of the financial accounts is U.S. \$255,000. However, both account balances are below the relevant thresholds i.e. the depository account is below U.S. \$50,000 and the value of the annuity contract is less than U.S. \$250,000. Insurance Company is not required to report on Customer A as neither account is a U.S. Reportable Account.

75 This example is based on the assumption that U.S. indicia have been identified and not cured/repared.

76 This example is based on the assumption that U.S. indicia have been identified and not cured/repared.

Aggregation of Joint Accounts

115. Each holder of a jointly held financial account is attributed the entire balance or value of the jointly held financial account for the purposes of financial account aggregation.

Example 31: Bank X is a Reporting NZFI. Customer A and Customer B are Specified U.S. persons and each has an individual account with Bank X, and there is a single joint account with the following balances as at 30 June 2014:

- Customer A depository account 1 U.S. \$25,000
- Customer B depository account 2 U.S. \$10,000
- Joint depository account U.S. \$30,000

A data element in Bank X's computer system allows all three accounts to be associated and allows the balances to be aggregated. The entire balance of the joint account must be attributed to each of Customers A and B. The financial account balances are then:

- Customer A depository account 1 U.S. \$55,000
- Customer B depository account 2 U.S. \$40,000

Bank X will be required to treat Customer A as a U.S. Reportable Account⁷⁷. Customer B's account is not a U.S. Reportable account because it is below the U.S. \$50,000 threshold for depository accounts.

If Bank X's computer system could not link the joint account to Customer A, then there would be no reporting on Customer A as the balance of depository account 1 would be U.S. \$50,000 or less (exempt).

Example 32: Mrs R is a Specified U.S. Person and is married to Mr R, who is not a Specified U.S. Person. Mrs R has a depository account at Bank XY which is a Reporting NZFI. Mrs R also has a joint account with Mr R at Bank XY. The accounts have the following balances as at 30 June 2014:

- Mrs R depository account U.S. \$40,000
- Joint depository account (Mr and Mrs R) U.S. \$30,000.

Bank XY's computerised systems link the financial accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to be aggregated.

Bank XY will need to aggregate the balances of the two depository accounts held by Mrs R in her own name and jointly with Mr R (U.S. \$70,000). This is in excess of the U.S. \$50,000 threshold for pre-existing individual accounts and depository accounts. Therefore, Reporting NZFI will need to report on these accounts.⁷⁸ It is also irrelevant for the purposes of aggregation that joint account holder Mr R is not a Specified U.S. Person.

Aggregation of Entity Accounts

116. For the purposes of determining the aggregate balance or value of financial accounts held by an entity, a Reporting NZFI is required to take into account all financial accounts that are maintained by the Reporting NZFI, or by a related entity, but only to the extent that the Reporting NZFI's computerized systems link the financial accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to be aggregated.

Example 33: Bank X is a NZFI. Bank X has a wholly owned subsidiary, Bank Y. Both Bank X and Bank Y are Reporting NZFIs and each bank reports separately to the Inland Revenue. Entity A holds the following depository accounts and balances as at 30 June 2014:

- Depository account 1 with Bank X U.S. \$250,000
- Depository account 2 with Bank X U.S. \$250,000
- Depository account 3 with Bank Y U.S. \$250,000

Bank X and Y have a common computing system which enables Entity A's accounts to be aggregated according to a common client number. The aggregate balance of Entity A's accounts with the two banks is U.S. \$750,000 (exceeding the U.S. \$250,000⁷⁹ reporting threshold), so that Entity A will be subject to the due diligence procedures relating to pre-existing entity accounts. Both Bank X and Bank Y will be required to undertake the due diligence procedures on these accounts to determine if they are U.S. Reportable Accounts. If the accounts are identified as being U.S. Reportable Accounts,⁸⁰ both Bank X and Bank Y will need to report separately to the Inland Revenue.

77 This example is based on the assumption that U.S. indicia have been identified and not cured/repared.

78 This example is based on the assumption that U.S. indicia have been identified and not cured/repared.

79 See section IV (B) of Annex I of the IGA.

80 Bank X and Bank Y would also have reporting obligations if the accounts are not U.S. Reportable Accounts, but Entity A is a NPFI (see Article 4(1)(b) of the IGA).

Special Aggregation Rule Applicable to Relationship Managers

117. For the purposes of determining the aggregate balance or value of financial accounts held by a person to determine whether a financial account is a high value account, a Reporting NZFI is also 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 accounts.

Example 34: Reporting NZFI maintains an account that is held by Person A (a Specified U.S. Person). The account has a balance of U.S. \$700,000 as of 30 June 2014. Person A owns 100% of Company A, which also holds an account with Reporting NZFI. That account has a balance of U.S. \$700,000 as of 30 June 2014. Tom works for Reporting NZFI and is a relationship manager for Person A. Tom is aware that Person A is a Specified U.S. Person and that Person A holds and controls these accounts. The aggregate balance of Person A's accounts is U.S. \$1,400,000 (high value account). Reporting NZFI must treat Person A's account as a U.S. Reportable Account.

However, for reporting purposes, Reporting NZFI would need to **disaggregate** the amounts of these two accounts. Person A's individual account (a U.S. Reportable Account) should be reported as having a balance of U.S. \$700,000.

Reporting NZFI would also need to apply the entity due diligence procedures to Company A's account to determine whether that account needs to be reported.⁸¹ The balance or value of this account would be U.S. \$700,000,⁸² which is above the relevant threshold for pre-existing entity accounts (U.S. \$250,000 as of 30 June 2014).

Currency Translation Rule

118. For the purposes of determining the balance or value of financial accounts denominated in a currency other than the US dollar, a Reporting NZFI must convert the U.S. dollar threshold amounts described in Annex I into New Zealand dollars using a published spot rate determined as of the last day of the calendar year preceding the year in which the Reporting NZFI is determining the balance or value.

Example 35: Reporting NZFI maintains a pre-existing individual depository financial account that is held by Terry. The account has a balance or value of New Zealand \$200,000 as of 30 June 2014. On 29 July 2014 Reporting NZFI applies the due diligence procedures and determines that Terry is a U.S. citizen. The account is denominated in a currency other than the U.S. dollar (i.e. New Zealand dollars). This means that Reporting NZFI must convert the U.S. dollar threshold amount (U.S. \$50,000 for such pre-existing individual depository financial accounts) in Annex I of the IGA into New Zealand dollars using a published spot rate determined as of the last day of the calendar year preceding the year in which Reporting NZFI is determining the balance or value (i.e. 2013). Reporting NZFI applies a spot rate at 31 December 2013 and, using this spot rate, determines that the U.S. dollar threshold as of 30 June 2014 is New Zealand \$70,000. The balance or value of Terry's account on 30 June 2014 is New Zealand \$200,000, and, therefore, exceeds the threshold amount (of New Zealand \$70,000). Therefore, the account is a U.S. Reportable Account. The Reporting NZFI will need to report this account to Inland Revenue.

Documentary Evidence

119. An account holder may provide documentary evidence to support their non U.S. status⁸³. Annex I of the IGA defines acceptable documentary evidence to include any of the following:
- (a) A certificate of residence issued by an authorized government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a tax resident.
 - (b) With respect to an individual, any valid identification issued by an authorized government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes. Examples of New Zealand issued documents would include: a New Zealand Driver's licence, New Zealand Passport and New Zealand birth certificate.
 - (c) With respect to an entity, any official documentation issued by an authorized government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the jurisdiction (or U.S. Territory) in which it claims to be a tax resident or the jurisdiction (or U.S. Territory) in which the Entity was incorporated or organized. Examples of New Zealand issued documents would include: Company Certificate of Incorporation and Income Tax Statement of Account issued by Inland Revenue.

⁸¹ For instance, Company A could be a passive NFFE controlled by Person A (a Specified U.S. Person) or could be a NPFI. If so, the Reporting NZFI would need to report Company A's account as well.

⁸² The balance or value of this entity account will be U.S. \$700,000. The aggregation of the balance of this account with the individual account only applies for the purposes of determining the account or balance of the individual account (i.e. Person A's account) for due diligence purposes. The relationship manager aggregation rule does not apply to aggregate the entity account balance or value (i.e. the entity account balance or value will be U.S. \$700,000, not U.S. \$1,400,000).

⁸³ For example sections II B(4)(b)(2), II B(4)(c)(2) and II B(4)(d)(2) of Annex I of the IGA.

- (d) With respect to a financial account maintained in a jurisdiction with anti- money laundering rules that have been approved by the IRS in connection with a QI⁸⁴ agreement (as described in relevant U.S. Treasury Regulations), 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 or entities.
- (e) Any financial statement, third-party credit report, bankruptcy filing, or U.S. Securities and Exchange Commission report.

Alternative Procedures for Financial Accounts Held by Individual Beneficiaries of a Cash Value Insurance Contract

120. A Reporting NZFI may presume that an individual beneficiary (other than the owner) of a cash value insurance contract receiving a death benefit is not a Specified U.S. Person and may treat such financial account as other than a U.S. Reportable account unless the Reporting NZFI has actual knowledge, or reason to know, that the beneficiary is a Specified U.S. Person. A Reporting NZFI has reason to know that a beneficiary of a cash value insurance contract is a Specified U.S. Person if the information collected by the Reporting NZFI and associated with the beneficiary contains U.S. indicia as described in section II B(1) of Annex I of the IGA. If a Reporting NZFI has actual knowledge, or reason to know, that the beneficiary is a Specified U.S. Person, the Reporting NZFI must follow the procedures in section II B(3) of Annex I of the IGA.

Reliance on Third Parties

121. New Zealand permits a Reporting NZFI to engage a third party to undertake its due diligence procedures, to the extent provided in the U.S. Treasury Regulations. However, such Reporting NZFIs will still remain accountable for FATCA purposes.

Example 36: A Reporting NZFI hires Company A to perform their FATCA due diligence obligations. Company A carries out these due diligence activities and reports to Inland Revenue (i.e. regarding U.S. Reportable accounts that the Reporting NZFI maintains and payments that the Reporting NZFI makes to NPFIs) on behalf of the Reporting NZFI.

Reporting NZFI would, therefore, have (through Company A) complied with its due diligence obligations. However, to the extent that Company A fails to comply with such obligations this failure will be attributable to the Reporting NZFI.

DEFINITIONS

122. The following definitions which are relevant to due diligence are contained in the IGA or Annex I of the IGA:

“AML/KYC Procedures” means the customer due diligence procedures of a Reporting New Zealand Financial Institution pursuant to the anti-money laundering or similar requirements of New Zealand to which such Reporting New Zealand Financial Institution is subject.

An **“NFFE”** means any Non-U.S. Entity that is not an FFI as defined in relevant U.S. Treasury Regulations or is an Entity described in subparagraph B(4)(j) of this section, and also includes any Non-U.S. Entity that is established in New Zealand or another Partner Jurisdiction and that is not a Financial Institution.

A **“Passive NFFE”** means any NFFE that is not (i) an Active NFFE, or (U) a withholding foreign partnership or withholding foreign trust pursuant to relevant U.S. Treasury Regulations.

An **“Active NFFE”** means any NFFE that meets any of the following criteria:

- (a) Less than 50 percent of the NFFE's gross income for the preceding calendar year or other appropriate reporting period is passive income⁸⁵ and less than 50 percent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
- (b) The stock of the NFFE is regularly traded on an established securities market or the NFFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
- (c) The NFFE is organized in a U.S. Territory and all of the owners of the payee are bona fide residents of that U.S. Territory;
- (d) The NFFE is a government (other than the U.S. Government), a political subdivision of such government (which, for the avoidance of doubt, includes a state, province, county, or municipality), or a public body performing a function of such government or a political subdivision thereof, a government of a U.S. Territory, an international organization, a non-U.S. central bank of issue, or an Entity wholly owned by one or more of the foregoing;

⁸⁴ Qualified intermediary.

⁸⁵ Passive income would include dividends (and substitute amounts), interest (and substitute amounts), rents and royalties (other than rents and royalties derived in the active conduct of a trade/business), annuities, and amounts received under cash insurance contracts.

- (e) Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an NFFE shall not qualify for this status if the NFFE functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- (f) The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial organization of the NFFE;
- (g) The NFFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- (h) The NFFE primarily engages in financing and hedging transactions with or for Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution;
- (i) The NFFE is an excepted NFFE as described in relevant U.S. Treasury Regulations; or
- (j) The NFFE meets all of the following requirements:
 - i. It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organization, business league, chamber of commerce, labor organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare;
 - ii. It is exempt from income tax in its jurisdiction of residence;
 - iii. It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
 - iv. The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents do not permit any income or assets of the NFFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFFE has purchased; and
 - v. The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents require that, upon the NFFE's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organization, or escheat to the government of the NFFE's jurisdiction of residence or any political subdivision thereof.

The term **"U.S. Person"** means a U.S. citizen or resident individual, a partnership or corporation organized in the United States or under the laws of the United States or any State thereof, a trust if (i) a court within the United States would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust; and (ii) one or more U.S. persons have the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the United States. This subparagraph 1(ee) shall be interpreted in accordance with the U.S. Internal Revenue Code.

The term **"Specified U.S. Person"** means a U.S. Person, other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a member of the same expanded affiliated group, as defined in section 1471(e)(2) of the U.S. Internal Revenue Code, as a corporation described in clause (i); (iii) the United States or any wholly owned agency or instrumentality thereof; (iv) any State of the United States, any U.S. Territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing; (v) any organization exempt from taxation under section 501(a) of the U.S. Internal Revenue Code or an individual retirement plan as defined in section 7701(a)(37) of the U.S. Internal Revenue Code; (vi) any bank as defined in section 581 of the U.S. Internal Revenue Code; (vii) any real estate investment trust as defined in section 856 of the U.S. Internal Revenue Code; (viii) any regulated investment company as defined in section 851 of the U.S. Internal Revenue Code or any entity registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-64); (ix) any common trust fund as defined in section 584(a) of the U.S. Internal Revenue Code; (x) any trust that is exempt from tax under section 664(c) of the U.S. Internal Revenue Code or that is described in section 4947(a)(1) of the U.S. Internal Revenue Code; (xi) a dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State; (xii) a broker as defined in section 6045(c) of the U.S. Internal Revenue Code; or (xiii) any tax-exempt trust under a plan that is described in section 403(b) or section 457(b) of the U.S. Internal Revenue Code.

Inland Revenue's role in the Foreign Account Tax Compliance Act

To reduce the FATCA compliance burden for individual Reporting NZFIs, and to create specific exemptions from reporting, the New Zealand Government has entered into an IGA with the U.S.

The IGA allows Reporting NZFIs⁸⁶ to send their FATCA reports directly to Inland Revenue [identifying their Global Intermediary Identification Number (GIIN) in this correspondence] to exchange with the IRS, instead of such NZFIs dealing individually with the IRS. Inland Revenue will provide the secure electronic system to receive and send on the FATCA reports. Inland Revenue is providing technical guidance to Reporting NZFIs about their FATCA obligations. However, under FATCA law and the associated regulations, financial institutions are still liable for complying with the U.S. requirements.

Key dates to know about

The below table contains key dates for Reporting NZFIs.

Date	Requirement
Ongoing	Registration with the IRS is available to financial institutions. The IRS allocates a unique GIIN to registered financial institutions
2 June 2014	IRS published their first list of registered financial institutions
12 June 2014	IGA signed between U.S. and New Zealand
30 June 2014	Royal Assent for domestic enabling legislation
1 July 2014	Financial institutions start collecting FATCA data, to be reported to us
31 December 2014	Final date for registration with the IRS
1 April 2015	New Zealand Financial Institutions to start providing FATCA data to us
30 September 2015	This is the final date we must complete exchanging first year FATCA data with the IRS

Find out more

IRD website:⁸⁷

New Zealand Reporting Financial Institutions obligations for identifying and reporting on U.S. Reportable Accounts

- Pre-existing entity accounts as at 30 June 2014
- New entity accounts opened on or after 1 July 2014
- Pre-existing individual accounts as at 30 June 2014
- Individual accounts opened on or after 1 July 2014

Related documents

- Glossary of terms
- Registration Guidance Notes

Related sites:

- United States Internal Revenue Service - Foreign Account Tax Compliance Act (FATCA).⁸⁸
- United States Internal Revenue Service - Notice provides six month extension for FATCA withholding.⁸⁹

⁸⁶ The registration requirements are set out in Inland Revenue's registration guidance notes (see www.ird.govt.nz/international/nzwithos/fatca/).

⁸⁷ www.ird.govt.nz/international/nzwithos/fatca/.

⁸⁸ [www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-\(FATCA\)](http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-(FATCA))

⁸⁹ content.govdelivery.com/accounts/USIRS/bulletins/8338d3