

CHAPTER 4

NON-REPORTING FINANCIAL INSTITUTIONS

Part 2 of Schedule 17C to the IRO excludes certain financial institutions from being reporting financial institutions. They are defined as non-reporting financial institutions. Non-reporting financial institutions are specifically not required to perform the due diligence procedures and report information on financial accounts due to posing a low risk of being used to evade tax. Each category of the non-reporting financial institution is described in the following paragraphs:

1. Governmental entity

A governmental entity, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a specified insurance company, custodial institution or depository institution, is a non-reporting financial institution.

2. International organization

An international organization, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a specified insurance company, custodial institution or depository institution, is a non-reporting financial institution.

3. Central bank

A central bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a specified insurance company, custodial institution or depository institution, is a non-reporting financial institution.

4. Hong Kong Monetary Authority

The Hong Kong Monetary Authority, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a specified insurance company, custodial

institution or depository institution, is a non-reporting financial institution.

5. Pension fund of governmental entity, international organization, central bank or Hong Kong Monetary Authority

A fund is a non-reporting financial institution if it is established by a governmental entity, international organization, central bank or the Hong Kong Monetary Authority to provide retirement, disability, or death benefits to beneficiaries or participants who -

- (a) are current or former employees (or persons designated by such employees); or
- (b) are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services rendered for the governmental entity, international organization, central bank or the Hong Kong Monetary Authority.

6. Broad participation retirement fund

A fund is a non-reporting financial institution if -

- (a) it is established to provide retirement, disability or death benefits, or any combination of the above, to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered; and
- (b) it -
 - (i) does not have a single beneficiary with a right to more than 5% of the fund's assets;
 - (ii) is subject to government regulation and provides information reporting to the tax authorities; and
 - (iii) meets any of the following conditions -
 - (A) the fund is generally exempt from tax on investment income,

or taxation of such income is deferred or taxed at a reduced rate, owing to its status as a retirement or pension plan;

- (B) the fund receives at least 50% of its total contributions (other than transfers of assets from other funds described in this paragraph or paragraph 5 or 7 of this Chapter or from a retirement and pension account described in paragraph 1 of Chapter 6 on excluded accounts) from the sponsoring employers;
- (C) distributions or withdrawals from the fund are allowed only on the occurrence of specified events related to retirement, disability or death (except rollover distributions to other retirement funds described in this paragraph or paragraph 5 or 7 of this Chapter or to a retirement and pension account described in paragraph 1 of Chapter 6 on excluded accounts), or penalties apply to distributions or withdrawals made before such specified events;
- (D) contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to the earned income of the employee, or may not exceed \$390,000 annually, applying the rules of account aggregation and currency set out in the due diligence requirements in Schedule 17D to the IRO.

7. Narrow participation retirement fund

A fund is a non-reporting financial institution if -

- (a) it is established to provide retirement, disability or death benefits to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered; and
- (b) it -
 - (i) has less than 50 participants;

- (ii) is sponsored by an employer that is not an investment entity or a passive NFE; and
- (iii) meets all of the following conditions -
 - (A) the employee and employer contributions to the fund (other than transfers of assets from a retirement and pension account described in paragraph 1 of Chapter 6 on excluded accounts) are limited by reference to the earned income and compensation of the employee;
 - (B) the participants who are not residents for tax purposes for the jurisdiction in which the fund is established are not entitled to more than 20% of the fund's assets;
 - (C) the fund is subject to government regulation and provides information reporting to the tax authorities.

8. Qualified credit card issuer

An entity is a non-reporting financial institution if -

- (a) the entity is a financial institution and it is so solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the credit card of the customer and the overpayment is not immediately returned to the customer; and
- (b) by 1 January 2017, the entity has begun to implement policies and procedures -
 - (i) to prevent a customer from making an overpayment in excess of \$390,000; or
 - (ii) to ensure that any customer overpayment in excess of \$390,000 is refunded to the customer within 60 days,

in each case applying the rules of account aggregation and currency set out in the due diligence requirements in Schedule 17D to the IRO.

For the purposes of paragraph (b) above, a customer overpayment does not refer to credit balances to the extent of disputed charges but includes credit balances resulting from merchandise returns.

9. Exempt collective investment vehicle

An investment entity is a non-reporting financial institution if -

- (a) the investment entity is regulated as a collective investment vehicle; and
- (b) all of the interests in the investment entity are held by or through any of the following -
 - (i) individuals who are not reportable persons;
 - (ii) entities that are not reportable persons.

The paragraph above does not apply to an investment entity if -

- (a) any of the interests in the entity is held by, or through, an entity that is a passive NFE; and
- (b) any one of the controlling persons of the passive NFE is a reportable person.

An investment entity that is regulated as a collective investment vehicle does not fail to qualify under the paragraph above as a non-reporting financial institution solely because the investment entity has issued physical shares in bearer form, if

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- (c) the investment entity has not issued, and does not issue, any physical shares in bearer form after 1 January 2017;
- (d) the investment entity retires all such shares on surrender;

- (e) the investment entity applies the due diligence requirements in Schedule 17D to the IRO and reports any information required to be reported with respect to any such shares when such shares are presented for redemption or other payment; and
- (f) the investment entity has in place policies and procedures to ensure that such shares are redeemed or immobilized as soon as possible, and in any event prior to 1 January 2018.

10. Trustee-documented trust

A trust is a non-reporting financial institution if it is established to the extent that the trustee of the trust is a reporting financial institution and reports all information required to be reported pursuant to the IRO with respect to all reportable accounts of the trust.

11. Grant Schools Provident Fund and Subsidized Schools Provident Fund

The Grant Schools Provident Fund maintained for teachers under the Grant Schools Provident Fund Rules (Cap. 279 sub. leg. C) is a non-reporting financial institution.

The Subsidized Schools Provident Fund maintained for teachers under the Subsidized Schools Provident Fund Rules (Cap. 279 sub. leg. D) is a non-reporting financial institution.

12. Mandatory provident fund schemes, occupational retirement schemes and credit union

With effect from 1 January 2020, mandatory provident fund schemes, occupational retirement schemes, pooling agreements, approved pooled investment funds and credit unions that fall within the definition of a reporting financial institution are removed from the list of non-reporting financial institution and will not be exempt from performing the obligations under Part 8A of the IRO.