

## **CHAPTER 10**

### **DUE DILIGENCE: NEW INDIVIDUAL ACCOUNTS**

New accounts mean financial accounts opened and maintained by reporting financial institutions on or after 1 January 2017. New individual accounts are new accounts held by one or more individuals.

2. The due diligence procedures for new individual accounts require that a self-certification is obtained from the account holder.
3. If the self-certification establishes that the account holder is resident for tax purposes in a reportable jurisdiction, then the reporting financial institution must treat the account as a reportable account.
4. The wider approach that requires reporting financial institutions to identify the territory in which a person is tax resident irrespective of whether or not that territory is a reportable jurisdiction, applies to new accounts as well as pre-existing accounts. The self-certification process can be used for this purpose.
5. The procedures applying for the purposes of identifying reportable accounts among new individual accounts are described below.

#### **Obtaining a valid self-certification on account opening**

6. Upon account opening, the reporting financial institution must obtain a self-certification that allows the institution to determine the jurisdiction of residence for the account holder. It is expected that reporting financial institutions will maintain account opening processes that facilitate collection of a self-certification at the time of the account opening, whether that process is done face-to-face, online or by telephone. The reporting financial institution must also confirm the reasonableness of such self-certification based on the information obtained by the institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC procedures. If a reporting financial institution does not obtain the self-certification upon account opening for a new account, the reporting financial institution should not complete the account opening process. If the reporting financial institution opens the account in such circumstances, the reporting financial institution will not be compliant with the due diligence requirements. Penalty under Part 14 of the IRO will be imposed upon failure to obtain the self-certification. While the penalty may be remitted for failure to obtain a self-certification upon account opening with “reasonable excuse”, such “reasonable excuse” is only limited to the instances described in paragraph 7 below.

7. There are a limited number of instances, where due to the specificities of a business section it is not possible to obtain a self-certification on “day one” of the account opening process, for example where an insurance contract has been assigned from one person to another or in the case where an investor acquires shares in an investment trust on the secondary market and this does not come to the attention of the financial institution until after the event. In such circumstances, the self-certification should be both obtained and validated as quickly as feasible and in any case within a period of 90 days after the financial institution has knowledge that a new account has come into existence. Given that obtaining a self-certification for new accounts is a critical aspect of ensuring that the CRS is effective, strong measures must be in place to ensure that valid self-certifications are always obtained for new accounts. In all cases, reporting financial institutions must have processes and procedures in place to ensure that they have obtained and validated the self-certification in time to be able to meet their due diligence and reporting obligations with respect to the reporting period during which the account was opened.

#### ***Format of self-certification***

8. There is no prescribed format for a self-certification but it may, for example, form part of the account opening documentation. Whatever form it takes, it must allow the reporting financial institution to determine the account holder’s residence(s) for tax purposes, and confirm the reasonableness of such self-certification based on the information obtained by the reporting financial institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC procedures.

9. A self-certification must be signed by the account holder (or a person authorised to do so for her/him under domestic law), or in the case of an account opened by telephone or the internet the self-certification must be positively affirmed – that is, the account holder must confirm the information provided. The self-certification must be dated no earlier than the date the account holder received the form; undated self-certifications may be date stamped by the receiving financial institution on receipt and that date will be taken as the date of signature. A self-certification is required for all accounts, including those held in the names of minors.

10. The self-certification must include all of the following information for the account holder –

- (a) name;
- (b) residence address;

- (c) jurisdiction(s) of residence for tax purposes;
- (d) TIN with respect to each jurisdiction; and
- (e) date of birth.

11. Reporting financial institutions are also encouraged to collect place of birth as from the experience of our treaty partners, the collection of such information is necessary and proportionate for the purpose of enabling tax administrations to correctly and unequivocally identify the taxpayers concerned.

12. The self-certification may be pre-populated by the reporting financial institution to include the account holder's information, except for the jurisdiction(s) of residence for tax purposes, to the extent already available in its records. This includes records held in a central on-boarding system available across multiple jurisdictions in which the financial institution operates.

13. The self-certification may be provided in any manner and in any form, for example it can be in paper or electronic format. If the self-certification is provided electronically, the reporting financial institution must have systems in place to ensure that the information provided is that of the account holder and it must be able to provide a hard copy of all such self-certifications to the IRD on request.

14. Where an account holder provides a paper self-certification a financial institution may retain an original, certified copy, or photocopy (including a microfiche, electronic scan, or similar means of electronic storage) of the self-certification. Any documentation that is stored electronically must be made available by the financial institution in hard copy form to the IRD upon request.

### *Self-certifications: Examples*

15. The following examples illustrate how a self-certification may be provided:

- (a) **Example 1.** Individual A completes an online application to open an account with Bank-HK. All the information required for self-certification is entered by A on an electronic application (including a confirmation of A's jurisdiction of residence for tax purposes). A positively affirms that the information provided is correct by ticking a box on the application form.

A's information, as provided in the electronic self-certification, is confirmed by Bank-HK's service provider to be reasonable based on the

information it has collected pursuant to AML/KYC procedures.

A's self-certification is valid.

- (b) **Example 2.** Individual B makes an application in person to open an account with Bank-HK. B produces his driving licence as proof of identification and provides all the information required for self-certification to an employee of Bank-HK who enters the information into the Bank's systems.

The application is subsequently signed by B. B's self-certification is valid.

### *Self-certification incorrect or unreliable*

16. A self-certification remains valid unless the reporting financial institution knows, or has reason to know, that the original self-certification is incorrect or unreliable. This might be the case either at the time a new account is opened by an existing customer, or as a result of a change of circumstances reported by the account holder, for example, a change of address.

17. Whatever the cause, where the reporting financial institution cannot rely on the original self-certification it must obtain either –

- (a) a valid self-certification that establishes the residence(s) for tax purposes of the account holder, or
- (b) a reasonable explanation and documentation (as appropriate) supporting the validity of the original self-certification (and retain a copy or a notation of such explanation and documentation).

18. A reporting financial institution may have reason to know that a self-certification or documentary evidence is unreliable or incorrect. It may have information in its possession that suggests different facts pertaining to the account holder than those on the self-certification. This will include the knowledge of the relevant relationship managers. If a reasonably prudent person in the position of the reporting financial institution would question the information provided then that is reason to know that the information may be incorrect or unreliable.

19. A reporting financial institution also has reason to know that a self-certification or documentary evidence is unreliable or incorrect if there is information in the documentation or in the reporting financial institution's account files that conflicts with the person's claim regarding its status.

*Standards of knowledge applicable to self-certifications and documentary evidence*

20. A reporting financial institution has reason to know that a self-certification provided by a person is unreliable or incorrect if:

- (a) the self-certification is incomplete with respect to any item on the self-certification that is relevant to the claims made by the person,
- (b) the self-certification contains any information that is inconsistent with the person's claim, or
- (c) the reporting financial institution has other account information that is inconsistent with the person's claim.

21. A reporting financial institution that relies on a service provider to review and maintain a self-certification is considered to know or have reason to know the facts within the knowledge of the service provider.

22. A reporting financial institution may not rely on documentary evidence provided by a person if the documentary evidence does not reasonably establish the identity of the person presenting it.

23. A reporting financial institution may not rely on documentary evidence if it contains information that is inconsistent with the person's claim as to its status, the reporting financial institution has other account information that is inconsistent with the person's status, or the documentary evidence lacks information necessary to establish the person's status.

24. A reporting financial institution may choose to treat a person as having the same status that it had prior to the change in circumstances until the earlier of 90 calendar days from the date that the self-certification became invalid due to the change in circumstances, the date that the validity of the self-certification is confirmed, or the date that a new self-certification is obtained. A reporting financial institution may rely on a self-certification without having to inquire into possible changes of circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed.

25. If the reporting financial institution cannot obtain a confirmation of the validity of the original self-certification or a valid self-certification during such 90-day period, the reporting financial institution must treat the account holder as resident of the jurisdiction in which the account holder claimed to be resident in the original self-certification and the jurisdiction in which the account holder may be resident as a result of the change in circumstances.

## Change of circumstances

26. A self-certification can become invalid as a result of a change of the account holder's circumstances. Reporting financial institutions need to have procedures to ensure that any change that constitutes a change in circumstances is identified.

27. A reporting financial institution is expected to notify any person providing a self-certification of the person's obligation to notify the reporting financial institution of a change in circumstances.

28. A change in circumstances affecting the self-certification provided to the reporting financial institution will invalidate the self-certification with respect to the information that is no longer reliable until the information is updated.

29. A self-certification becomes invalid as soon as the reporting financial institution knows or has reason to know that circumstances affecting the correctness of the self-certification have changed. However, a reporting financial institution may treat the status of the account holder as unchanged until the earlier of –

- (a) 90 calendar days from the date that the self-certification became invalid due to the change in circumstances;
- (b) the date that the validity of the self-certification is confirmed (where appropriate); or
- (c) the date that a new self-certification is obtained.

30. A reporting financial institution may rely on a self-certification without having to inquire into possible changes of circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed.

31. If the reporting financial institution cannot obtain a confirmation of the validity of the original self-certification or a valid self-certification during the 90-day period, the reporting financial institution must continue to treat the account holder as resident in the jurisdiction identified in the original self-certification and must also treat the account holder as resident in the jurisdiction indicated by the change of circumstance.