

## CHAPTER 12

### DUE DILIGENCE: NEW ENTITY ACCOUNTS

New accounts mean financial accounts opened and maintained by reporting financial institutions on or after 1 January 2017. The due diligence procedures for new entity accounts are broadly the same as those for pre-existing entity accounts except that there is no de minimis threshold.

2. Reporting financial institutions must determine:
  - (a) whether a new entity account is held by one or more entities that are reportable persons; and
  - (b) whether a new entity account is held by one or more entities that are passive NFEs with one or more controlling persons who are reportable persons.

#### Self-certification

3. Where a new entity account is held by one or more entities that are reportable persons, then the account must be treated as a reportable account. To determine this, reporting financial institutions must obtain a self-certification as part of the account opening procedure and confirm the reasonableness of such self-certification based on the information obtained in connection with the opening of the account, including any documentation collected pursuant to AML/KYC procedures. In practice, this means the reporting financial institution must not know or have reason to know that the self-certification is incorrect or unreliable. If the self-certification fails the reasonableness test, a new valid self-certification must be obtained. Reporting financial institutions are not, however, expected to carry out an independent legal analysis of relevant tax laws to confirm the reasonableness of a self-certification.

4. The following examples illustrating the application of the reasonableness test:
  - (a) **Example 1.** A reporting financial institution obtains a self-certification from the account holder upon account opening. The address contained in the self-certification conflicts with that contained in the documentation collected pursuant to AML/KYC procedures. Due to the conflicting information, the self-certification is incorrect or unreliable and, as a consequence, it fails the reasonableness test.

- (b) **Example 2.** A reporting financial institution obtains a self-certification from the account holder upon account opening. The documentation collected pursuant to AML/KYC procedures only indicates the account holder's place of incorporation. In the self-certification, the account holder claims to be resident for tax purposes in a jurisdiction that is different from its jurisdiction of incorporation. The account holder explains to the reporting financial institution that under relevant tax laws its residence for tax purposes is determined by reference to place of effective management, and that the jurisdiction where its effective management is situated differs from the jurisdiction in which it was incorporated. Thus, because there is a reasonable explanation of the conflicting information, the self-certification is not incorrect or unreliable and, as a consequence, passes the reasonableness test.
- (c) **Example 3.** A reporting financial institution obtains a self-certification from the account holder upon account opening. The self-certification does not contain a TIN, but the information included on the AEOI Portal developed by the OECD indicates that reportable jurisdiction issues TINs to all tax residents. Due to the conflicting information, the self-certification is incorrect or unreliable and, as a consequence, it fails the reasonableness test. To enhance the quality of the information collected and minimize the administrative burden associated with any follow up concerning reporting of an incorrect TIN, reporting financial institutions may nevertheless wish to confirm the format and other specifications of a TIN with the information provided on the AEOI Portal. In this case, reporting financial institutions may also use regional and national websites providing a TIN check module for the purpose of further verifying the accuracy of the TIN provided in the self-certification.

5. The self-certification must allow determining the account holder's residence(s) for tax purposes (see paragraphs 10 to 13 below). With respect to new entity accounts, a self-certification is valid only if it complies with the requirements for the validity of self-certifications for pre-existing entity accounts.

6. There is an exception to the requirement to obtain a self-certification where the reporting financial institution can reasonably determine, based on information in its possession or that is publicly available, that the account holder is not a reportable person. For example, where such information shows that the entity is a corporation that is publicly traded, or a governmental entity.

7. If the self-certification indicates that the account holder is resident in a reportable jurisdiction, the reporting financial institution must treat the account as a

reportable account. An exception applies where the financial institution can reasonably determine, based on information in its possession, or that is publicly available that the account holder is not a reportable person in respect to that jurisdiction. For example, where the entity is a corporation that is publicly traded, or is a government entity.

### ***Timing of self-certification***

8. 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. There may be circumstances where it is not possible or practical 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.

9. In such circumstances, the self-certification should be obtained as soon as possible and in any case within a period of 90 days after the reporting financial institution has knowledge that a new account has come into existence. This must be in sufficient time for the account to be reported, where the account holder is a reportable person, for the period in which the financial institution identifies the account. Reporting financial institutions must make proper endeavours to obtain the self-certification in these circumstances. Financial Institutions likely to be affected by this must have processes and procedures in place to ensure that self-certifications are sought from such account holders.

### **Jurisdiction of residence**

10. The domestic laws of the various jurisdictions lay down the conditions under which an entity is to be treated as fiscally resident.

11. Generally, an entity will be resident for tax purposes in a jurisdiction if, under the laws of that jurisdiction, it is liable to tax by reason of its domicile, residence, place of management or incorporation, or any other criterion of a similar nature.

12. Where an entity such as a partnership, limited liability partnership or similar legal arrangement has no residence for tax purposes it shall be treated as resident in the jurisdiction in which its place of effective management is situated or, in the case of a trust, the jurisdiction(s) in which the trustee(s) is/are resident.

13. The following examples illustrating how an entity's residence for tax purposes may be determined:

- (a) **Example 1:** A company is incorporated in Jurisdiction A and has its place of effective management in Jurisdiction B. Under the laws of Jurisdiction A, residence for tax purposes is determined by reference to place of incorporation. The same applies under the laws of Jurisdiction B. Thus, the company is resident only in Jurisdiction A.
- (b) **Example 2:** Same facts as Example 1, except that, under the laws of Jurisdiction B, residence for tax purposes is determined by reference to place of effective management. Thus, the company is resident in both Jurisdictions A and B.
- (c) **Example 3:** Same facts as Example 1, except that, under the laws of Jurisdictions A and B, residence for tax purposes is determined by reference to place of effective management. Thus, the company is resident only in Jurisdiction B.
- (d) **Example 4:** Same facts as Example 1, except that, under the laws of Jurisdiction A, residence for tax purposes is determined by reference to place of effective management and, under the laws of Jurisdiction B, residence for tax purposes is determined by reference to place of incorporation. Thus, the company is not resident in either Jurisdiction A or B.

### **Passive NFE, controlling persons**

14. Reporting financial institutions must determine whether a new entity account holder is a passive NFE with one or more controlling persons who are reportable persons. If so, then the account must be treated as a reportable account. In making this determination the reporting financial institution must follow the guidance below but may do so in the order most appropriate under the circumstances.

### **Determining whether the account holder is a passive NFE**

15. A reporting financial institution may obtain a self-certification from the account holder to establish its status, or instead may use:

- (a) information in its possession (such as information collected pursuant to AML/KYC procedures); or



- (b) information that is publicly available (such as information published by an authorised government body) based upon which it can reasonably determine that the account holder is an active NFE or a financial institution.

16. Note though that a managed investment entity resident in a non-participating jurisdiction is always treated as a passive NFE, notwithstanding that it would be treated as a financial institution if it were resident in a participating jurisdiction (this ensures that it is not possible for controlling persons to avoid reporting by setting up such entities in non-participating jurisdictions).

### ***Determining controlling persons***

17. For the purposes of determining the controlling persons of an account holder, a reporting financial institution may rely on information collected and maintained pursuant to AML/KYC procedures if these procedures are in accordance with the 2012 FATF Recommendations.

### ***Determining whether a controlling person is a reportable person***

18. For the purposes of determining whether a controlling person of a passive NFE is a reportable person, a reporting financial institution may only rely on a self-certification from either the entity account holder or the controlling person.

### **Change in circumstances**

19. If there is a change in circumstances that causes the reporting financial institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the reporting financial institution must re-determine the status of the account in accordance with the procedures described in Chapter 11 (Due Diligence: Pre-existing Entity Accounts) by the later of the last day of the relevant calendar year or other appropriate reporting period, or 90 days following the notice or discovery of the change in circumstances.