

Implementation of the Agreement to Improve Tax Compliance and Provide for Reporting and Exchange of Information concerning Tax Matters (United States of America) Order 2013

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Introduction

Ireland concluded an Intergovernmental Agreement with the United States in December 2012 to Improve International Tax Compliance and Implement FATCA. This Agreement provides for a bilateral and reciprocal exchange of information with the US in relation to accounts held in Irish financial institutions by US persons, and accounts held in US financial institutions by Irish residents. In order for this exchange of information to take place, Irish financial institutions must report to Revenue details of such accounts held by them.

The legislation to implement the Agreement - Section 891E, TCA 1997 - was inserted by Section 32, Finance Act 2013 and Regulations were made in June 2014 compelling Irish financial institutions to collect and return the agreed information to Revenue. This information will then be transmitted to the IRS.

Financial Institutions must report the required information to Revenue by the end of June each year for exchange with the IRS in September each year. Revenue will receive similar information from the IRS regarding Irish taxpayers.

1. Treatment of holding companies and treasury companies

Following further guidance issued by the IRS, Revenue adopted Regulations (S.I. 501 of 2015) which revised the treatment of Holding Companies and Treasury Companies for the purposes of FATCA as outlined in [S.I. 292 of 2014](#) (FATCA Regulations). The related [Guidance Notes](#) were also updated to take account of this revised treatment.

While *Relevant Holding Company* and *Relevant Treasury Company* have been included in the list of Financial Institution categories as outlined in Regulation 3 of the FATCA Regulations and Chapter 2 of the Guidance Notes, this is not consistent with the [Ireland / United States Inter Governmental Agreement](#) (IGA), which defines a *Financial Institution* as “a Custodial Institution, a Depository Institution, an Investment Entity or a Specified Insurance Company”. Accordingly a Holding Company or Treasury Company will only be considered a Financial Institution if it meets the definition of the four Financial Institution categories specified in the definition above.

Where a Holding Company or Treasury Company does not fall into one of the above-mentioned categories of Financial Institution it will be classed as a Non-Financial Foreign Entity (NFFE), and will fall into the category of ‘active’ or ‘passive’ in accordance with the criteria set out in Appendix 2 of the Guidance Notes.

However, where a Holding Company or Treasury Company of a financial group no longer meets the definition of Financial Institution and had previously identified itself as a Relevant Holding Company or Relevant Treasury Company and completed its FATCA registration as the lead Financial Institution of an *Expanded Affiliated Group* (EAG), Revenue will allow the entity to continue to treat itself as the lead Financial Institution for reporting purposes. While the entity may act as the lead

Financial Institution for filing purposes, it will still not fall within the definition of Financial Institution and so will have no Irish reporting obligations in its own right.