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FATCA reporting and compliance

Meeting FATCA obligations in New Zealand



FATCA Guidance

Disclaimer

The following guidance sets out the Commissioner's considered views on the application of Foreign Account Tax Compliance Act (FATCA) in New Zealand. This guidance is not binding on the Commissioner and should not be used as a substitute for legal, business, accounting, tax or other professional advice.

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1 **Objective of the Foreign Account Tax Compliance Act (FATCA)**

- 1.1 The purpose of FATCA is, at a high level, to reduce and combat tax evasion by U.S. citizens/residents/entities,¹ by requiring foreign financial institutions (FFIs) to identify and annually report to the United States IRS prescribed information for financial accounts they maintain that are held/controlled by such U.S. persons. As set out below, New Zealand Financial Institutions (NZFIs) report this information for their financial accounts **to Inland Revenue** pursuant to the FATCA Intergovernmental Agreement. We will then exchange this information with the United States.
- 1.2 Where an FFI fails to comply with its FATCA obligations, a 30% withholding is imposed by the U.S. on certain U.S. sourced payments made to that non-complying FFI.

2 **FATCA Intergovernmental Agreement**

- 2.1 On 12 June 2014 the Intergovernmental Agreement (IGA) between the U.S. and New Zealand to improve international tax compliance and to implement FATCA was signed. The obligations for NZFIs under the IGA have been incorporated into part IIB of the Tax Administration Act 1994 (TAA).² A fundamental aspect of the IGA is that NZFIs with FATCA obligations³ will need to carry out the steps set out below:

Step One: Register	Register with the IRS.
Step Two: Due diligence	Carry out due diligence on their financial accounts to identify U.S. Reportable Accounts and collect prescribed information for such accounts. ⁴ These U.S. Reportable Accounts are accounts held by Specified U.S. Persons (U.S. citizens/residents/entities that are not excluded from the definition of Specified U.S. Persons) or held by passive non-financial foreign entities (passive NFFEs) that have controlling persons that are Specified U.S. Persons.
Step Three: Report	Annually report to Inland Revenue prescribed financial and identify information about such U.S. Reportable accounts. NZFIs were also required in the 2015 (period ended 31 March 2016) and 2016 (period ended 31 March 2017) periods to report to Inland Revenue accounts held by non-participating financial institutions. However, given that there is no corresponding requirement for subsequent periods, this guidance will not expand on this reporting requirement in detail.

NZFIs are also required to comply where applicable with the obligations set out in Article 4(1)(d) and (e) of the IGA in relation to U.S. Sourced withholdable payments to any non-participating financial institution.

- 2.2 Inland Revenue will in turn, annually exchange the reported information with the U.S. IRS. **New Zealand is a Model 1 IGA Jurisdiction.**
- 2.3 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 non-

¹ The references in this guidance to U.S. citizens/residents/entities should be read as applying to those U.S. Persons that are **Specified** U.S. Persons (as set out in the FATCA IGA) unless the context requires otherwise.

² See ss 185F-185M of the TAA.

³ As explained below, this generally applies to those NZFIs that are **Reporting** NZFIs.

⁴ The persons and entities connected to the account (for example, account holders and controlling persons) also have obligations under s 185P of the TAA to provide the required information to the Reporting NZFI.

participating financial institution, the U.S. FATCA law and associated regulations require U.S. withholding agents to impose 30% withholding on the NZFI's U.S. source income. This requirement to withhold 30% also extends to **certain** Reporting NZFIs that make U.S. Source Withholdable Payments to any non-participating financial institution (see Article 4(1)(d) of the IGA). This is explained in more detail below.

3 Structure of FATCA guidance

3.1 This FATCA guidance is arranged in the following order:

- Part 1: FATCA - registration requirements
- Part 2: FATCA - due diligence requirements
- Part 3: FATCA - reporting requirements

3.2 This guidance is intended to provide a high-level summary of the FATCA obligations of NZFIs. The reader should refer to the FATCA IGA and where applicable the relevant U.S. Treasury Regulation for further detail.

[If a NZFI is familiar with their FATCA registration requirements and is seeking to understand their FATCA due diligence and reporting obligations they should go to [5.1] of this guidance further below.]

4 Part 1: FATCA - registration requirements

Summary

4.1 Reporting NZFIs are required to register with the IRS, carry out FATCA due diligence to identify U.S. Reportable Accounts and collect prescribed information about such accounts,⁵ and report annually to Inland Revenue prescribed financial and identify information about such accounts.

4.2 Non-reporting NZFIs **generally** do not have such FATCA registration, due diligence, and reporting obligations. However, as explained in detail below, New Zealand sponsored investment entities and sponsored controlled foreign corporations, and NZFIs with a local client base are types of Non-reporting NZFIs that can, depending on the circumstances, be required to register with the IRS, and carry out FATCA due diligence and reporting. Non-Reporting NZFIs that are Registered Deemed Compliant FFIs as defined in the U.S. Treasury Regulations also need to register with the IRS.

Reporting NZFI

4.3 A Reporting New Zealand Financial Institution is a New Zealand Financial Institution that is **not** a Non-Reporting New Zealand Financial Institution (see below). Reporting NZFIs will need to register with the IRS for FATCA and comply with their FATCA due diligence and reporting requirements under the IGA.

4.4 There are two key definitions that feed into the definition of Reporting NZFI - New Zealand Financial Institution, and Financial Institution.

⁵ NZFIs are also required to comply (where applicable) with the obligations set out in Article 4(1)(d) and (e) of the IGA in relation to U.S. Sourced withholdable payments to any non-participating financial institution.

New Zealand Financial Institution

- 4.5 The term New Zealand Financial Institution is defined in the Article 1(1)(l) of the IGA to mean any financial institution resident in New Zealand excluding any branches located outside New Zealand, and any branch of a financial institution not resident in New Zealand, if the branch is located in New Zealand.

Example

Bank Ltd is incorporated in New Zealand and carries on a banking business, which includes deposit taking and on-lending. Bank Ltd conducts the same business through a branch in Partner Jurisdiction 1 and operates through a subsidiary (not resident in New Zealand) in Partner Jurisdiction 2. Bank Ltd is a Reporting NZFI and will be required to report to Inland Revenue on its U.S. Reportable Accounts. It will not be required to report to New Zealand on such accounts held by its branch or subsidiary in Partner Jurisdictions 1 and 2 respectively. The branch and subsidiary will report to the tax authorities of the relevant Partner Jurisdictions.

Financial Institution

- 4.6 A financial institution is, in turn, defined in Article 1(1)(g) of the IGA to mean a custodial institution, a depository institution, an investment entity, or a specified insurance company.
- 4.7 Each of the above types of financial institutions has within their respective definitions in the IGA a reference to the term “entity.” That expression is in turn, defined in Article 1(1)(gg) of the IGA as meaning a legal person or a legal arrangement such as a trust. An entity for the purposes of FATCA covers any legal arrangement, whether or not a separate legal entity is created. It therefore covers e.g. companies, joint ventures, partnerships, limited partnerships, and trusts including unit trusts and discretionary trusts. As will be explained in more detail below, whether such entities are financial institutions and, if so, the type of financial institution that they are, will turn on the nature of the activities that they undertake. An entity can also be a financial institution under the IGA where it is managed by an investment entity even if it is not otherwise a financial institution on the basis of the activities that it undertakes.
- 4.8 Another key aspect of each of these types of financial institutions is that the entity is undertaking a business (or, in the case of an investment entity, is managed by an entity that conducts such a business). This qualification is likely to exclude entities that have engaged in transactions on an isolated or irregular basis. In short, they will not satisfy the financial institution definition and will not need to register with the IRS under FATCA and will have no reporting obligations under the IGA.

Custodial Institution

- 4.9 A custodial institution is defined in Article 1(1)(h) of the IGA as meaning any entity that holds, as a substantial portion of its business, financial assets for the account of others.
- 4.10 Custodial activities are a substantial portion of an institution's business if the gross income attributable to the holding of financial assets and related financial services equals or exceeds 20% of the entity's gross income during the shorter of the entity's last three accounting periods, or the period during which the entity has been in existence.
- 4.11 There is a special rule for start-up entities that would not otherwise meet the 20% threshold. An entity will be treated as a custodial institution where it is expected to meet the 20% gross income threshold based on anticipated functions, assets and employees.

- 4.12 Custodial institutions would include, for instance, nominee entities, trust companies, that hold, as a substantial portion of their businesses, financial assets for the account of others and meet the threshold test outlined above.

Example

A company carries on a business pursuant to which it holds the legal title to various debt and equity instruments (financial assets) as custodian on bare trust for a unit trust (and performs various related financial services for the unit trust). The company has been in existence for five years. 80% of the company's gross income in the preceding 3 years was attributable to the holding of these financial assets and related financial services. The company is a custodial institution, and, therefore, a financial institution.

Depository Institution

- 4.13 A depository institution is defined in Article 1(1)(i) of the IGA as meaning any entity that accepts deposits in the ordinary course of a banking or similar business.
- 4.14 An entity is considered to be engaged in a banking or similar business if, in the ordinary course of its business with customers, the entity accepts deposits or other similar investments of funds **and** regularly engages in one or more of the following activities:
- (i) Makes personal, mortgage, industrial, or other loans or provides other extensions of credit.
 - (ii) Purchases, sells, discounts, or negotiates accounts receivable, instalment obligations, notes, drafts, checks, bills of exchange, acceptances, or other evidence of indebtedness;
 - (iii) Issues letters of credit and negotiates drafts drawn thereunder.
 - (iv) Provides trust or fiduciary services.
 - (v) Finances foreign exchange transactions; or enters into, purchases, or disposes of finance leases or leased assets.
- 4.15 An entity which accepts deposits from persons as collateral or security pursuant to a lease, loan, or similar financing arrangement is not a depository institution.
- 4.16 In New Zealand, a depository institution which accept deposits as part of its ordinary banking or similar business will include a registered bank under the Reserve Bank Act 1989 undertaking such activity, non-bank deposit takers supervised by the Reserve Bank e.g. credit unions and mutual building societies, and treasury centres.

Investment Entity

An investment entity is defined in Article 1(1)(j) of the IGA as meaning any entity that conducts as a business (or is managed by an entity that conducts such a business) one or more of the following activities or operations for or on behalf of a customer:

- (i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading.
 - (ii) individual and collective portfolio management; or
 - (iii) otherwise investing, administering, or managing funds or money on behalf of other persons.
- 4.17 This definition should be interpreted in a manner consistent with similar language in the definition of financial institution in the Financial Action Task Force Recommendations.

4.18 This definition would include (but is not limited to):

Collective investment vehicles	Pooled funds managed in certain unit trusts (collective portfolio management), private equity funds and hedge funds. This would include managed investment schemes as defined in the Financial Markets Conduct Act 2013.
DIMS providers	Entities that carry on a business that include the provision of discretionary investment management services (DIMS services) for customers. However, as explained below, such entities may, depending on the circumstances, be non-reporting NZFIs.
Businesses that invest, administer, or manage funds or money on behalf of other persons	Entities that carry on a business of facilitating transactions for other persons and, in the process of doing so, engage in portfolio management or otherwise invest, administer, or manage funds or money on behalf of other persons. A number of trusts will also be managed investment entity NZFIs through being managed by an in-business investment entity.

Example

A unit trust carries on a business pursuant to which it receives funds from investors and invests those funds. The unit trust issues units to the investors in consideration for this investment. The unit trust makes periodic payments of income to the unit holders. The unit trust is an investment entity, and, therefore, a financial institution.

Specified Insurance Company

4.19 A specified insurance company is defined in Article 1(1)(k) of the IGA as meaning any entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

4.20 The term cash value is, in turn, defined in Article 1(1)(z) of the IGA as meaning the greater of:

- (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and
- (ii) the amount the policyholder can borrow under or with regard to the contract.

4.21 However, the term Cash Value does not include an amount payable under an Insurance Contract as:

- (i) a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against.
- (ii) a refund to the policyholder of a previously paid premium under an Insurance Contract (other than under a life insurance contract) due to policy cancellation or termination, decrease in risk exposure during the five year period of the Insurance Contract, or arising from a redetermination of the premium due to correction of posting or other similar error; or
- (iii) a policy holder dividend based upon the underwriting experience of the contract or group involved.

- 4.22 The term insurance contract is defined in Article 1(1)(w) as meaning a contract (other than an Annuity Contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.
- 4.23 The term Cash Value Insurance Contract is defined in Article 1(1)(v) of the IGA as meaning an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value greater than \$ U.S. 50,000.
- 4.24 The effect of the definition of Cash Value Insurance Contract is that an insurance company which either issues or is an obligor of insurance contracts relating to for example home insurance, contents insurance, motor vehicle insurance and loss of earnings insurance arising from a personal injury or sickness of the insured, should not be a specified insurance company. This is because of the exclusion from cash value of any amount payable under a personal injury or sickness benefit or benefit providing indemnification of an economic loss. Therefore, such contracts will not be Cash Value Insurance Contracts.
- 4.25 The term Annuity Contract is defined in Article 1(1)(x) of the IGA as meaning a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.
- 4.26 Companies that provide only general insurance, and that do not issue or have obligations to make payments with respect to Cash Value Insurance Contracts or Annuity Contracts as defined in the IGA, will not satisfy the definition of specified insurance company.

Non-Participating Financial Institution

- 4.27 Any Reporting NZFI which does not comply with their FATCA obligations can be subject to the 30% withholding on withholdable payments if they are treated by the IRS as a NPFI.
- 4.28 In the circumstances where there is significant non-compliance by a Reporting NZFI and Inland Revenue has been notified by the IRS of such non-compliance; Inland Revenue will investigate and apply such enforcement action as necessary to address the non-compliance.
- 4.29 Examples of significant non-compliance could include ongoing or repeated failure to register as a Reporting NZFI, the deliberate or negligent failure to identify U.S. Reportable Accounts, ongoing or repeated failure to adopt and implement appropriate due diligence procedures to identify U.S. Reporting Accounts, repeated failure to provide to Inland Revenue details of U.S. Reportable Accounts by the due date, or a failure to obtain and report valid US TINs for account holders or controlling persons.⁶
- 4.30 Where enforcement action by Inland Revenue against a Reporting NZFI does not resolve the significant non-compliance, the U.S. will treat the Reporting NZFI as being a NPFI, which, in turn, will mean the entity can be subject to U.S. withholding (as set out above).

⁶ The IRS has published Notices on temporary relief from the requirement to provide valid US TINs, at the time of writing the most recent being Notice 2024-78.

Non-Reporting NZFI

- 4.31 Non-Reporting NZFIs **generally do not** have FATCA registration, due diligence, and reporting obligations. However, New Zealand sponsored investment entities and sponsored controlled foreign corporations, and NZFIs with a local client base coming within Annex II of the IGA are types of Non-Reporting NZFIs that can, depending on the circumstances, be required to register with the IRS and carry out FATCA due diligence and reporting. Registered Deemed Compliant FFIs as defined in the U.S. Treasury Regulations will also need to register with the IRS.
- 4.32 The reader should refer to the FATCA IGA and the U.S. Treasury Regulations for further detail about the types of Non-Reporting NZFIs and the circumstances when they have FATCA obligations. The guidance set out below is intended to be a high-level summary of the types of Non-Reporting NZFIs set out in Annex II of the FATCA IGA and the circumstances when they have FATCA obligations including FATCA registration obligations.

Annex II of the FATCA IGA

- 4.33 The definition of Non-Reporting NZFI includes entities that are described in Annex II of the IGA as being Non-reporting NZFIs that are exempt beneficial owners or deemed compliant FFIs as follows:

Government entities	This, for the avoidance of doubt includes the New Zealand Superannuation Fund, the Guardians of New Zealand Superannuation, the Accident Compensation Corporation, the Earthquake Commission, the Māori Trustee, the New Zealand Local Government Funding Agency Limited, and the Reserve Bank of New Zealand as per section 5, and all branches and agencies as per section 6, of the Reserve Bank of New Zealand Act 1989.
International Organisation	Any international organisation or wholly owned agency or instrumentality thereof as defined in the IGA.
Māori authorities	Māori authorities as defined in section HF 1(1) of the Income Tax Act 2007 (ITA).
Treaty qualified retirement fund	A KiwiSaver scheme registered under the KiwiSaver Act 2006 or superannuation scheme registered under the Financial Markets Conduct Act 2013 will be a Treaty-qualified retirement fund, provided the fund satisfies any conditions in Article 16 of the NZ/U.S. DTA (limitation of benefits Article). A Treaty qualified retirement fund that has mostly New Zealand resident members will fall within the scope of this exemption.
Specified types of retirement and pension funds	Broad participation retirement fund, Narrow participation retirement fund, and Pension fund of an exempt beneficial owner.
Certain types of investment entity	Investment entity wholly owned by exempt beneficial owners.
Financial institutions with a local client base	Certain financial institutions with a local client base set out on broadly similar terms as the local FFI type of deemed compliant FFI in the U.S. Treasury Regulations. However, there are two key differences in this category of Annex II in the IGA.

	<p>First, the 98% financial account holder test applies to residents of New Zealand or Australia. Second, the relevant financial institution can be licensed or regulated as a financial institution under the laws of New Zealand, as opposed to needing to be both licensed and regulated under the laws of New Zealand.</p> <p>These institutions will need to register with the IRS for FATCA purposes if they maintain certain accounts that they identify as being reportable and report such accounts. These accounts are:</p> <ul style="list-style-type: none"> • any financial account that is identified as held by a Specified U.S. Person who is not a resident of New Zealand or by a Passive NFFE with Controlling Persons who are U.S. residents or U.S. citizens who are not residents of New Zealand, and • with respect to a Pre-existing Account held by an individual who is not a resident of New Zealand or by an Entity, any U.S. Reportable Account or Financial Account held by a NPFI that is identified.
Certain locally focused financial institutions	Certain non-registering local banks, credit unions or similar cooperative credit organisations, such as building societies, which are locally focused.
Certain financial institutions with low value accounts	Certain financial Institutions that are not investment entities and that have only low value accounts.
Certain specified credit card issuers	Certain entities that are financial institutions solely because they issue credit cards that accept deposits where the institution implements various required policies and procedures in relation to deposits.
Trustee-documented Trusts	A trust that is an investment entity and that is established under the laws of New Zealand to the extent that the trustee of the trust is a Reporting U.S. Financial Institution, Reporting Model 1 FFI, or Participating FFI and reports all information required to be reported pursuant to the IGA with respect to all U.S. Reportable Accounts of the trust.
Sponsored Investment Entity and Controlled Foreign Corporation	<p>The sponsored entity in this category needs to be an entity that is a financial institution described in section IV B(1) or B(2) of Annex II of the IGA and that has a sponsoring entity that:</p> <ul style="list-style-type: none"> (i) is authorised to act on behalf of the sponsored entity (such as a fund manager, trustee, corporate director, or managing partner) to fulfil applicable FATCA registration requirements. (ii) has registered as a sponsoring entity for FATCA purposes. (iii) if they identify any U.S. Reportable accounts with respect to the sponsored entity, registers the sponsored entity with the IRS (on or before the later of 31 December 2015 and the date that is 90 days after any U.S. Reportable Account is first identified).

	<ul style="list-style-type: none"> (iv) agrees to perform on behalf of the sponsored entity all due diligence, withholding, reporting, and other FATCA requirements. (v) identifies the sponsored entity and includes the identification number (Global Intermediary Identification Number - GIIN) of the sponsored entity in all reporting completed on behalf of the sponsored entity; and (vi) has not had its status as a sponsor revoked.
Sponsored Closely Held Investment Vehicle	<p>The sponsored closely held investment vehicle category is highly prescriptive. However, a key aspect of this definition is that certain closely held financial institutions that are solely investment entities and do not hold themselves out as being investment vehicles for unrelated parties will be able to be sponsored entities provided that the sponsoring entity also complies with its obligations (see below).</p> <p>The sponsoring entity that has registered as a sponsoring entity for FATCA purposes and has not had its status as sponsor revoked will need to be a Reporting U.S. financial institution, Reporting Model 1 FFI, or participating FFI that is authorised to act on behalf of the sponsored entity (such as a professional manager, trustee, or managing partner) and agrees to perform on behalf of the sponsored entity all due diligence, withholding, reporting, and other FATCA requirements (and retains documentation collected with respect to the sponsored entity for a period of 6 years), and will need to identify the sponsored entity in all such reporting.</p>
Investment Advisors and Investment Managers	<p>An investment entity established in New Zealand that is a financial institution solely because it:</p> <ul style="list-style-type: none"> (1) renders investment advice to, and acts on behalf of, or (2) manages portfolios for, and acts on behalf of, <p>a customer for the purposes of investing, managing, or administering funds deposited in the name of the customer with a financial institution other than a NPFI.</p> <p>(This category may, depending on the circumstances, be relevant to investment entity DIMS providers and other entities that facilitate investments between customers and financial institutions).</p>
Certain collective investment entities	<p>An investment entity established in New Zealand that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle (including debt interests in excess of U.S. \$50,000) are held by or through one or more exempt beneficial owners, Active NFFEs described in section VI (B)(4) of Annex I of the IGA, U.S. Persons that are not Specified U.S. Persons, or financial institutions that are not NPFI.</p>

FATCA Registration Requirements – types of entities

- 4.34 This guidance will now set out how the FATCA registration requirements referred to above apply to various types of entities.

Partnerships

- 4.35 A partnership for FATCA IGA purposes will include a partnership as defined in the Partnership Law Act 2019 and a limited partnership as defined in the Limited Partnership Act 2008. This would cover, for instance, certain limited partnerships that carry on business activities (for example, private equity funds).
- 4.36 A partnership will be a Reporting NZFI if it is resident in New Zealand (or has a branch in New Zealand), carries on a business that meets the financial institution definition (or is managed by an investment entity that meets the financial institution definition), and is not a Non- Reporting NZFI.
- 4.37 A Partnership that is a Reporting NZFI will need to register with the IRS. A partnership that is a Non-Reporting NZFI will generally not need to register with the IRS.
- 4.38 However, a partnership that is a Non-Reporting NZFI will need to be registered with the IRS in the following circumstances:

Sponsored investment entity	The partnership is a sponsored investment entity, and the sponsoring entity identifies that the partnership maintains any U.S. Reportable accounts. The sponsoring entity would, in such a situation, need to register the partnership with the IRS (on or before the later of December 31, 2015, and the date that is 90 days after such a U.S. Reportable Account is first identified).
Financial institution with a local client base	The Non-Reporting NZFI partnership is a financial institution with a local client base that maintains certain reportable accounts outlined above.
Registered Deemed Compliant FFI	The partnership is a Registered Deemed Compliant FFI.

Collective Investment Vehicles

- 4.39 Many collective investment vehicles will carry out collective portfolio management activities and will satisfy the definition of investment entity in the IGA as so will be financial institutions. This will include pooled funds managed in certain unit trusts, private equity funds and hedge funds. A Collective investment vehicle will be a Reporting NZFI if it is resident in New Zealand (or has a branch in New Zealand), carries on a business that meets the financial institution definition (or is managed by an investment entity that meets the financial institution definition), and is not a Non-Reporting NZFI.
- 4.40 Collective investment vehicles that are Reporting NZFIs will need to register with the IRS. Collective investment vehicles that are Non-Reporting NZFI will generally not need to register with the IRS. We have set out below the types of categories of Non-Reporting NZFI that collective investment vehicles should consider and where the category still requires that the entity registers with the IRS.
- 4.41 A collective investment vehicle could, depending on the circumstances, come within the following categories of Non-reporting NZFI in Annex II of the IGA - treaty qualified retirement fund, broad participation retirement fund, narrow participation retirement fund, pension fund of an exempt

beneficial owner, investment entity wholly owned by exempt beneficial owners, financial institution with a local client base (can have registration obligations – see above), trustee documented trust, sponsored investment entity (can have registration obligations – see above), sponsored closely held investment vehicle, and defined collective investment vehicle.

- 4.42 A collective investment vehicle could also, depending on the circumstances, come within the following categories of Non-reporting NZFI in the U.S. Treasury Regulations - treaty qualified retirement fund, broad participation retirement fund, narrow participation retirement fund, a fund formed pursuant to a plan similar to a section 401(a) plan, investment vehicle established exclusively to earn income for certain retirement funds, pension fund of an exempt beneficial owner, local FFI, qualified collective investment vehicle, restricted fund, sponsored investment entity, sponsored closely held investment vehicle, limited life debt investment entity, and owner documented FFI.

Retirement Funds

- 4.43 A retirement fund will be a Reporting NZFI if it is resident in New Zealand (or has a branch in New Zealand), carries on a business that meets the financial institution definition (or is managed by an investment entity that meets the financial institution definition), and is not a Non-Reporting NZFI. Retirement funds that are Reporting NZFIs (and Non-Reporting NZFIs that have registration obligations – outlined above) will need to register with the IRS.
- 4.44 Whether such a New Zealand retirement fund will be a Reporting NZFI will depend on whether it meets any of the non-reporting exemptions in the IGA or the U.S. Treasury Regulations.
- 4.45 Article 4(3) of the IGA provides one such exemption. Article 4(3) provides that any New Zealand retirement plan that is described and identified in Annex II of the IGA will be a Non-Reporting NZFI. For this purpose, a New Zealand retirement plan would include an entity established or located in and regulated in New Zealand, or a predetermined contractual or legal arrangement, operated to provide pension or retirement benefits under New Zealand law, and regulated with respect to contributions, distributions, reporting, sponsorship, and taxation. The category of retirement plan in Annex II of the IGA that is likely to have the most application to NZFI retirement funds is the Treaty qualified retirement fund category.
- 4.46 We expect that any KiwiSaver scheme registered under the KiwiSaver Act 2006 or superannuation scheme registered under the Financial Markets Conduct Act 2013, that have mostly New Zealand resident members, would fall within the scope of a Treaty-qualified retirement fund in Annex II of the IGA and be an exempt beneficial owner that is a Non-Reporting NZFI. Such retirement funds will not need to register with the IRS.
- 4.47 A retirement fund could also come within the following other categories of Annex II of the IGA - broad participation retirement fund, narrow participation retirement fund, pension fund of an exempt beneficial owner, investment entity wholly owned by exempt beneficial owners, financial institution with a local client base (can have registration obligations – see above), trustee documented trust, sponsored investment entity (can have registration obligations – see above), sponsored closely held investment vehicle, and defined collective investment vehicle.
- 4.48 However, as noted above, the category of retirement plan in Annex II of the IGA that is likely to have the most application to NZFIs that are retirement funds is the Treaty qualified retirement fund category.
- 4.49 A retirement fund may also be a Non-Reporting NZFI pursuant to the U.S. Treasury Regulations. The categories that could apply to such funds, depending on the circumstances are - Treaty qualified retirement fund, broad participation retirement fund, narrow participation retirement

fund, a fund formed pursuant to a plan similar to a section 401(a) plan, an investment vehicle established exclusively to earn income for certain retirement funds, pension fund of an exempt beneficial owner, local FFI, qualified collective investment vehicle, restricted fund, sponsored investment entity, sponsored closely held investment vehicle, and owner documented FFI.

- 4.50 However, as noted above, it is the Treaty-qualified retirement fund category that is most likely to be relevant to NZFIs that are retirement funds. A Treaty qualified retirement fund will not need to register with the IRS.

Trusts

- 4.51 A trust will be a Reporting NZFI if it is resident in New Zealand (or has a branch in New Zealand), carries on a business that meets the financial institution definition (or is managed by an investment entity that meets the financial institution definition), and is not a Non-Reporting NZFI. The FATCA residency rules for trusts are set out below.

Trust residency

Unit Trusts

- 4.52 Section YD 2 of the ITA provides rules for the residency of companies including entities which are deemed to be companies for the purposes of the ITA. A unit trust is deemed to be a company for the purposes of the ITA. The residency rules for companies in section YD 2 of the ITA should be applied to unit trusts subject to necessary modification to accommodate the differences in legal formation and governance to determine whether such trusts are resident in New Zealand under the IGA.

Trusts that are not unit trusts

- 4.53 Trusts that are not unit trusts are not separate legal entities in New Zealand, and thus New Zealand does not have residency rules for income tax purposes for such trusts.
- 4.54 The Competent Authorities of the U.S. and New Zealand have entered into a Competent Authority Arrangement ("the Arrangement") concerning the meaning of the term "resident in New Zealand" that applies to a financial institution that is a trust (other than a "unit trust" which, as noted above, is deemed to be a company for purposes of the ITA).
- 4.55 The Arrangement provides that from 1 April 2017⁷ the term "resident in New Zealand" means, in the context of a financial institution that is a trust (other than a unit trust), a trust that has one or more trustees resident in New Zealand for New Zealand income tax purposes at any time during the reporting period, or is managed by a branch of a trustee located in New Zealand provided that the branch of the trustee is subject to regulatory supervision in New Zealand. However, a financial institution that is a trust (other than a unit trust) would not be considered "resident in New Zealand" if the trust is resident in a Partner Jurisdiction or in another jurisdiction that permits the trust to comply with the requirements of a participating FFI under the U.S. Treasury Regulations, and the trust reports all the information required to be reported pursuant to the Partner Jurisdiction's IGA or the U.S. Treasury Regulations, as applicable, with respect to financial accounts maintained by the trust.

⁷ Prior to 1 April 2017 a trust other than a unit trust was able to rely on any reasonable definition for the term "resident in New Zealand", including a trust that is established under the laws of New Zealand whereby the trust is settled, executed, and governed by New Zealand law.

Trusts that are Financial Institutions

- 4.56 A trading trust, which engages in custodial, depository, or investment activities, will generally be a financial institution for the purposes of FATCA. We would also expect that any unit trust would satisfy the definition of investment entity in the IGA. A unit trust would come within the definition of managed investment scheme in the Financial Markets Conduct Act 2013 and would be an investment entity that is a financial institution.
- 4.57 On the other hand, it is likely that many trusts will not be financial institutions because they are not in the business of providing financial services to customers. That is, they do not accept deposits in the ordinary course of a banking business, do not hold financial assets on account of others as a substantial part their business, do not conduct a business of investment (and, indeed, are not managed by an entity that conducts a business of investment), and are not a specified insurance company. However, a number of trusts will be managed investment entity NZFIs.

Trusts as Managed Investment Entities

- 4.58 The IGA definition of investment entity deems an entity to be an investment entity where the entity is “managed” by an “in business” investment entity.
- 4.59 An entity such as a trust will be “managed” by an investment entity in this way where the “managing” investment entity oversees, administers and regulates, or maintains some control or influence over the “managed” entity’s activities. This includes management of the entity’s assets in whole or part.
- 4.60 The issue of whether an entity “manages” another entity will always be a question of fact. However, an “in business” investment entity trustee of a trust will generally manage the trust. An “in business” investment entity discretionary fund manager that performs specified investment activities for a trust can also manage the trust. However, where a trust obtains merely ad hoc advice on its portfolio management from an “in business” investment entity and the trustees of that trust: (a) are not investment entities; and (b) are otherwise responsible for the management of the trust/trust’s assets (including considering such advice, making investment decisions, and managing the portfolio), this will not constitute “management” by an investment entity under the IGA and the trust will not be a “deemed” investment entity under the IGA definition.

Example 1

A discretionary family trust is not in business. The trust’s assets consist of a share portfolio and the family home. The share portfolio represents 20% of the trust’s assets. The trustee is not an investment entity. The trustee out-sources the management of the share portfolio to Fund Manager (which is an “in business” investment entity). Fund Manager has a written mandate to acquire and sell shares subject to the terms of the mandate. Fund Manager regularly buys and sells shares in accordance with this mandate.

Is the trust “managed” by Fund Manager, in terms of the IGA definition of a “deemed” investment entity?

Yes. The trust is managed by Fund Manager (an “in business” investment entity), which regularly performs specified investment activities for it and manages the share portfolio. Fund Manager is not required to manage all the trust’s assets in order for it to manage the trust. The trust is a “deemed” investment entity, and, therefore, a financial institution, under the IGA definition.⁸

⁸ An entity such as a trust is able to elect to use the U.S. Treasury Regulations definition of “investment entity” - which has a 50% gross income threshold test for income related to specified investment activities - in lieu of the IGA definition of “investment entity” .

Example 2

A discretionary trust is not in business. The trust's assets consist of shares and bonds. The trust has two individual trustees. Trustee A (one of the individual trustees) has been empowered to manage and administer all of the assets of the trust. Trustee A manages the trust and does not out-source the management to an "in business" investment entity.

Is the trust a "deemed" investment entity under the IGA definition?

No. The trust is managed by Trustee A, who is an individual and, therefore, cannot be an "entity" under the IGA. It follows that Trustee A cannot be an "in business" investment entity. Trustee A also does not out-source the management to an "in business" investment entity. Therefore, the family trust is not a "deemed" investment entity under the IGA definition and is not a financial institution.

Trusts that are required to register for FATCA purposes

- 4.61 Trusts that are Reporting NZFIs (and Non-Reporting NZFIs that have registration obligations – outlined above) will need to register with the IRS. However, a trustee-documented trust (a type of Non-Reporting NZFI) will not need to register with the IRS.

FATCA Registration Requirements – Obtaining a GIIN

- 4.62 Certain NZFIs will, as set out above, need to register with the IRS. In terms of the IGA, all Reporting NZFIs and Registered Deemed Compliant FFIs will need to register with the IRS. Non-Reporting NZFIs generally are not required to register with the IRS. However, as set out above, certain Non-Reporting NZFIs that have reportable accounts, will need to register with the IRS.
- 4.63 NZFIs that register with the IRS in this way will be issued with a Global Intermediary Identification Number (GIIN) by the IRS. The IRS will publish a list of FFIs (the IRS FFI List) which have registered. This list will be updated periodically. U.S. payers (referred to as withholding agents for FATCA purposes) are able to rely on the published list of compliant FFIs and will not deduct the 30% withholding on payments to those registered FFIs.
- 4.64 NZFIs that want to register are currently able to do so through the IRS website on the FATCA Registration Portal (FATCA portal).

5 Part 2: FATCA - due diligence requirements

- 5.1 This guidance will now - having set out the FATCA registration requirements - provide a high-level outline of the FATCA due diligence requirements that Reporting NZFIs have. The reader should refer to the FATCA IGA for further detail of these due diligence requirements.
- 5.2 The FATCA IGA provides that Reporting NZFIs⁹ need to carry out FATCA due diligence procedures contained in Annex I¹⁰ on financial accounts that they maintain to determine whether those accounts are U.S. Reportable Accounts (held by Specified U.S. Persons or by passive NFFEs that are controlled by Specified U.S. persons).¹¹ The IGA requires that Reporting NZFIs annually report prescribed information set out in Article 2(2) of the IGA about such U.S. Reportable Accounts¹².

⁹ The references in this guidance to Reporting NZFI's due diligence obligations should also be read as applying to such Non-reporting NZFIs that also have such obligations.

¹⁰ 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.

¹¹ NZFIs are also required to comply where applicable with the obligations set out in Article 4(1)(d) and (e) of the IGA in relation to U.S. Sourced withholdable payments to any non-participating financial institution.

¹² NZFIs were also required in the 2015 (period ended 31 March 2016) and 2016 (period ended 31 March 2017) periods to report to Inland Revenue accounts held by non-participating financial institutions.

Inland Revenue will then annually exchange this information with the U.S. **New Zealand is a Model 1 IGA Jurisdiction.**

- 5.3 The type of FATCA due diligence procedures that a Reporting NZFI is required to undertake under Annex I of the IGA to identify such U.S. Reportable Accounts depends on 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 points are explained in detail further below.

Key Concepts and Definitions

- 5.4 Before outlining the FATCA due diligence procedures that Reporting NZFIs need to undertake on their financial accounts, this guidance will **first** explain some key definitions and concepts that feed into these due diligence procedures (as follows):

Financial Account	What is a financial account for FATCA purposes?
Maintained	When is a financial account “maintained” by a Reporting NZFI?
Balance or value	How is the balance or value of a financial account maintained by a Reporting NZFI determined?
Account holder	How does a Reporting NZFI that maintains a financial account determine who “holds” the account?
Specified U.S. Person	What is a Specified U.S. Person?
Self-certification	What is a self-certification and when is it required for FATCA due diligence?
Passive NFFE/ controlling persons	What is a passive Non-Financial Foreign Entity (NFFE) and who are their controlling persons?
NPFI	What is a NPFI?
Aggregation rules	What are the aggregation rules for FATCA due diligence?
Documentary evidence	What documentary evidence can be relied on for FATCA due diligence?
Third parties	When can third parties be used for FATCA due diligence?

- 5.5 If the reader is familiar with these key concepts and definitions they should go to the detailed outline of the FATCA due diligence procedures set out further below from [5.87] of this guidance.

What is a financial account?

- 5.6 Reporting NZFIs are required to carry out FATCA due diligence on **their financial accounts**. The term financial account is broadly defined and may include products or obligations that would not normally be regarded as a financial account in ordinary commercial terms e.g. an equity interest in an investment entity or a cash value insurance contract.
- 5.7 The term “financial account” is defined in Article 1(1)(s) of the IGA and means an account maintained by a financial institution and includes the following accounts (unless excluded accounts).¹³

Equity interests and debt interests

- 5.8 In the case of a Reporting NZFI that is a financial institution solely because it is an investment entity, any equity or debt interest (other than interests that are regularly traded on an established securities market) in the NZFI is a financial account.

¹³ The term “financial account” does **not** include any account, product, or arrangement that is **excluded from** the definition of financial account in Annex II of the IGA.

Furthermore, in the case of a Reporting NZFI not described above, any equity or debt interest in the NZFI (other than interests that are regularly traded on an established securities market) is a financial account if both of the following are satisfied. First, the value of the debt or equity interest is determined, directly or indirectly, primarily by reference to assets that give rise to U.S. source withholdable payments. Second, the class of interests was established with a purpose of avoiding reporting in accordance with the IGA.

- 5.9 For the purposes of the “regularly traded” exclusion (referred to above), interests are “regularly traded” if there is a meaningful volume of trading with respect to the interests on an ongoing basis, and an “established securities market” 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. For the purposes of this definition of “financial account” in the IGA, an interest in a Reporting NZFI is not “regularly traded” and shall be treated as a financial account if the holder of the interest (other than a financial institution acting as an intermediary) is registered on the books of such NZFI. The preceding sentence will not apply to interests first registered on the books of such NZFI prior to July 1, 2014, and with respect to interests first registered on the books of such NZFI on or after July 1, 2014, a financial institution was not required to apply the preceding sentence prior to January 1, 2016.

Whether there is a “meaningful volume of trading” (referred to above) will be a question of fact and degree. Inland Revenue considers that if, for instance, interests are traded on an established securities market and relate to a “widely held company” based on the ITA definition there can be a presumption that a meaningful volume of trading has occurred, unless this presumption is rebutted by evidence to the contrary such as the entity being a dormant entity.

- 5.10 This guidance will now set out in further detail what is meant by “equity interest” and “debt interest”.

Equity Interest

- 5.11 An “equity interest” is defined in Article 1(1)(v) of the IGA to mean, in the case of a partnership that is a financial institution, either a capital or profits interest in the partnership.
- 5.12 In the case of a trust that is a financial institution, an equity interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Specified U.S. Person is treated as a beneficiary of a trust if they have the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution (“mandatory beneficiary”) or may receive, directly or indirectly, a discretionary distribution from the trust (“discretionary beneficiary”). In broad terms, a mandatory beneficiary has an entitlement to an amount of property at a set time, whereas a discretionary beneficiary does not have an enforceable right to an amount of property at any set time. In determining whether a discretionary beneficiary is the holder of an “equity interest”, a Reporting NZFI investment entity trust is also permitted to apply the definition of “equity interest” in §1.1471-5(b)(3)(iii)(B) of the U.S. Treasury Regulations in lieu of the corresponding definition in the IGA. Under that definition a discretionary beneficiary can be treated as being an equity interest account holder for a period only where they have received a distribution directly or indirectly from the trust in that period. Furthermore, at a high level, the circumstances when an equity interest held by a beneficiary will be a pre-existing account (on the one hand) or a new account (on the other hand), as discussed in detail further below, will depend on **when** such a beneficiary is appointed or otherwise receives its first distribution. For example, a mandatory beneficiary that was first appointed on or after 1 July 2014, and a discretionary beneficiary that received its first distribution on or after that date, would hold a new account for FATCA due diligence purposes.

- 5.13 In the context of a company or corporation, an equity interest will be either shares or stock which represents an ownership interest in the company or corporation.

Debt interest

- 5.14 The expression "debt interest" is not defined in the IGA or the U.S. Treasury Regulations. The Inland Revenue considers that a debt interest is any interest created when a lender lends money to a borrower. In the FATCA context any loan by a lender to a financial institution will create a debt interest in the financial institution. The debt interest can arise through, for example, a simple loan, a bond issue or note issue. As noted above, for depository institutions, there could be an overlap between the definition of debt interest and the definition of depository account due to the breadth of the definition of depository account (i.e. an account could have the character of being both a debt interest and a depository account in the context of such businesses).

Example 1

Reporting NZFI is a property investment trust that is a managed investment scheme under the Financial Markets Conduct Act 2013. Units in the property trust are listed on the NZX. There is a meaningful volume of trading with respect to these interests on an ongoing basis. The NZX is an exchange that is officially recognized and supervised by a governmental authority in New Zealand and that has a meaningful annual value of shares traded on the exchange. Therefore, the NZX is an "established securities market." Reporting NZFI is an investment entity and does not satisfy any of the other "financial institution" definitions in the IGA. On 1 June 2016 Custodial Institution Limited (a custodial institution) obtains 1,000,000 units in Reporting NZFI (with a value of U.S. \$1,000,000) as a custodial intermediary for underlying individual investors, which include Specified U.S. Persons. Custodial Institution Limited is registered as the holder of the units on the books of Reporting NZFI.

Is the interest that Custodial Institution Limited holds in Reporting NZFI (because of holding the units) a "financial account" that could be a U.S. Reportable Account from Reporting NZFI's perspective?

No. Reporting NZFI is a financial institution "solely" because it is an investment entity. This means that paragraph (1) of the definition of "financial account" in Article 1(1)(s) of the IGA is relevant. The units are "equity interests" in Reporting NZFI. This is because the unit holders are beneficiaries of the unit trust. These "equity interests" are "regularly traded" on an established securities market (the NZX). Custodial Institution Limited is the holder of these units and is registered as such on Reporting NZFI's books. Custodial Institution Limited is a financial institution acting as an intermediary (for the underlying investors). Therefore, Custodial Institution Limited's interest in Reporting NZFI is an equity interest that is "regularly traded" and is excluded from the definition of "financial account", and, therefore, cannot be a U.S. Reportable Account. This means that Reporting NZFI will not need to carry out due diligence in relation to this account. On the other hand, Custodial Institution Limited will be required to report on any Specified U.S. Persons, which are account holders (i.e. the underlying individual investors) of the custodial account.

Example 2

Reporting NZFI is a property investment trust that is a managed investment scheme under the Financial Markets Conduct Act 2013. Units in the property trust are listed on the NZX. There is a meaningful volume of trading with respect to these interests on an ongoing basis. The NZX is an exchange that is officially recognized and supervised by a governmental authority in New Zealand and that has a meaningful annual value of shares traded on the exchange. Therefore, the NZX is an "established securities market." Reporting NZFI is an investment entity and does not satisfy any of the other "financial institution" definitions in the IGA. On 1 June 2016 Mr Toms obtains 1,000,000 units in Reporting NZFI (with a value of U.S. \$1,000,000). Mr Toms is registered as the holder of the units on the books of Reporting NZFI.

Is the interest that Mr Toms holds in Reporting NZFI (because of holding the units) a "financial account" that could be a U.S. Reportable Account?

Yes. Reporting NZFI is a financial institution "solely" because it is an investment entity. This means that paragraph (1) of the definition of "financial account" in Article 1(1)(s) of the IGA is relevant. The units are "equity interests". This is because the unit holders are beneficiaries of the unit trust (the Reporting NZFI). Mr Toms is the holder of these units that is registered as such on Reporting NZFI's books. Mr Toms is not a financial institution. The definition of "financial account" in the IGA deems an equity or debt interest to be not "regularly traded", where the holder of that interest (other than a financial institution acting as an intermediary) is "registered on the books" of the financial institution. Therefore, even though the units are factually regularly traded on an established securities market, Mr Toms' interest in Reporting NZFI is an equity interest that is deemed to **not** be "regularly traded" (the interest was acquired after the effective dates of the transitional provisions). This means that this interest is a financial account and could be a U.S. Reportable Account. Therefore, Reporting NZFI will need to carry out due diligence in relation to this account. We note that this answer would be the same even if Mr Toms' interest was held through a non-financial intermediary (that is not a financial institution) as nominee. In such an instance, Mr Toms would still be the relevant account holder.

Example 3

The same facts as the above example, other than as to when Mr Toms acquires the units. On 1 August 2014 Mr Toms obtains 1,000,000 units in Reporting NZFI (with a value of U.S. \$1,000,000). Mr Toms is registered as the holder of the units on the books of Reporting NZFI. On 1 January 2016 Mr Toms remains the holder of the interests.

Does Reporting NZFI need to carry out FATCA due diligence on the account of Mr Toms?

Yes. Reporting NZFI is a financial institution "solely" because it is an investment entity. This means that paragraph (1) of the definition of "financial account" in Article 1(1)(s) of the IGA is relevant. The units are "equity interests". This is because the unit holders are beneficiaries of the unit trust (the Reporting NZFI). Mr Toms is the holder of these units that is registered as such on Reporting NZFI's books. Mr Toms is not a financial institution. The definition of "financial account" in the IGA deems an equity or debt interest (held from 1 January 2016) to be not "regularly traded", where the holder of that interest (other than a financial institution acting as an intermediary) is "registered on the books" of the financial institution. Therefore, even though the units are factually regularly traded on an established securities market, Mr Toms' interest in Reporting NZFI is an equity interest that is (from 1 January 2016) deemed to **not** be "regularly traded". This means that this interest is a financial account and could be a U.S. Reportable Account. Therefore, Reporting NZFI will need to carry out due diligence in relation to this account.

Example 4

The same facts as the above example, other than as to when Mr Toms obtains and sells the units. On 1 August 2014 Mr Toms obtains 1,000,000 units in Reporting NZFI (with a value of U.S. \$1,000,000). Mr Toms is registered as the holder of the units on the books of Reporting NZFI. On 1 December 2015 Mr Toms sells all of his units in Reporting NZFIs.

Did Mr Toms ever have a financial account that Reporting NZFI would need to carry out due diligence on?

No. Reporting NZFI is a financial institution "solely" because it is an investment entity. This means that paragraph (1) of the definition of "financial account" in Article 1(1)(s) of the IGA is relevant. The units are "equity interests" in the Reporting NZFI and are factually regularly traded. They were also sold before 1 January 2016. They were not financial accounts from the point they were purchased until when they were sold (as the "regularly traded" exclusion from the definition of "financial account" applied - due to the transitional provision). This means that Mr Toms never held a financial account. Therefore, Reporting NZFI does not need to carry out FATCA due diligence on the account that Mr Toms held.

Example 5

Reporting NZFI is a depository institution. Reporting NZFI has issued outstanding bonds with a face value of U.S. \$200,000,000 listed on the NZX Debt Market ("NZDX"). There is a meaningful volume of trading with respect to these interests on an ongoing basis. The NZDX is an established securities market. The bonds were not established with a purpose of avoiding reporting in accordance with the IGA. On 1 June 2016 Ms Glen purchases U.S. \$500,000 of Reporting NZFI's corporate bonds. Ms Glen is registered as the holder on the books of Reporting NZFI.

Is Ms Glen's interest in Reporting NZFI a "financial account" that could be a U.S. Reportable Account?

No. The bonds are "debt interests" in a depository institution. Therefore, Reporting NZFI is not a financial institution "solely" because it is an investment entity (i.e. it is a depository institution). This means that paragraph (2) of the definition of "financial account" in Article 1(1)(s) of the IGA is relevant. The bonds are factually regularly traded on an established securities market. However, Ms Glen is registered as the holder of the bonds on Reporting NZFI's books. Ms Glen is not a financial institution. Therefore, the bonds are deemed to not be "regularly traded". However, Reporting NZFI did not establish the bonds with a purpose of avoiding reporting in accordance with the IGA. Therefore, in terms of paragraph (2) of the definition of "financial account", the bonds are not a debt interest financial account. This means that, provided that the bonds do not constitute depository accounts, Reporting NZFI will not need to carry out due diligence in relation to this account.

Example 6

Bank Magic Ltd is a depository institution and a Reporting NZFI. To strengthen its capital adequacy position it issues 5-year mandatory conversion convertible notes ("MCCNs") which pay an interest rate based on a standard commercial benchmark. The MCCNs convert to shares in Bank Magic Ltd, at the lower of \$20 or a 2% discount to the average of the daily volume weighted average price of the shares for the previous 14 business days. A meaningful volume of the MCCNs are regularly traded on the NZX (an established securities market) on an on-going basis. On 1 June 2016 Custodial New Zealand Limited (a custodial institution) purchases U.S. \$500,000 of Bank Magic Ltd's MCCNs. Custodial New Zealand Limited is registered as such on the books of Bank Magic Ltd as being the holder of the interest as a custodial intermediary for underlying individual investors, which include Specified US Persons.

Is Custodial New Zealand Limited's interest in Bank Magic Ltd a "financial account" maintained by Bank Magic Ltd that could be a U.S. Reportable Account?

No. The MCCNs are "debt/equity interests" in a depository institution. Therefore, Bank Magic Ltd is not a financial institution "solely" because it is an investment entity. This means that paragraph (2) of the definition of "financial account" in Article 1(1)(s) of the IGA is relevant. The MCCNs are hybrid securities having both debt and equity characteristics. The MCCNs clearly constitute a "debt or equity interest" in terms of paragraph (2) of the definition of "financial account." The MCCNs are regularly traded on an established securities market and are held by a financial institution acting as an intermediary. Therefore, they come within the "regularly traded" exclusion in paragraph (2) of the definition of "financial account". Accordingly, Custodial New Zealand Limited's interest in Bank Magic Ltd is not a debt or equity interest "financial account". This means that, provided that the interest does not constitute a depository account, Bank Magic Ltd will not need to carry out due diligence in relation to this account. However, Custodial Institution Limited will be required to report on any Specified U.S. Persons, which are account holders (i.e. the underlying individual investors) of the custodial account.

Depository Accounts

- 5.15 A depository account maintained by a financial institution will (unless excluded) also be a financial account. The term "depository account" is defined in Article 1(1)(t) of the IGA and includes any commercial, checking, savings, time,¹⁴ or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a financial institution in the ordinary course of a banking or similar business. A depository account also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest. A depository account does not require that interest be paid on the account to the account holder. A depository account will also include credit cards (where the financial institution permits deposits to be made by the account holder in excess of the amount due to the financial institution) and pre-loaded cash cards e.g. pre-loaded foreign currency travel cards.
- 5.16 Therefore, the definition of depository account is broad and extends beyond conventional depository accounts to cover, for example, certificates of indebtedness and instruments maintained by depository institutions in the ordinary course of their business. The breadth of this definition means that, as explained below, for depository institutions there may be an overlap between "depository accounts" and "debt interests." In other words, an account may be both a depository account and a debt interest. This is conceptually similar to how the same entity can be two types of financial institution for FATCA purposes (for example, an entity could be both a depository institution and an investment entity).

Custodial accounts

- 5.17 A custodial account maintained by a financial institution will (unless excluded) also be a financial account. The term "custodial account" is defined in Article 1(1)(u) of the IGA and means an account (other than an insurance contract or annuity contract) for the benefit of another person that holds any financial instrument or contract held for investment (including, but not limited to, a share or stock in a corporation, a note, bond, debenture, or other evidence of indebtedness, a currency or commodity transaction, a credit default swap, a swap based upon a non-financial

¹⁴ Inland Revenue views a "time account" as simply the same as a term deposit account. Where a term deposit is in whole or in part rolled over at maturity, the new term deposit is not required to be treated as a "new" account. This will apply to term deposits where the roll-over decision is made prior to maturity, or within a reasonable time after the term deposit matures.

index, a notional principal contract, an insurance contract or annuity contract, and any option or other derivative instrument).

- 5.18 An insurance (including a cash value insurance contract) or annuity contract are not custodial accounts, but can be assets held in a custodial account.

Example 1

Custodial Limited is a custodial institution and a Reporting NZFI and provides a safe custody service for securities e.g. debt interest or shares, held on behalf of its customers. Custodial Limited holds the securities as bare trustee for their clients who are the beneficial owners. Custodial Limited carries out all administrative aspects related to holding the securities i.e. collection of income, taking care of corporate actions relating to shares, sales and acquisitions, and dealing with all correspondence.

Is this a custodial account?

Yes, it is an account for the benefit of clients which holds financial instruments i.e. shares, debt interests, etc. Custodial Limited will (provided that the accounts are not excluded – see below) need to carry out due diligence on the account holders (the clients who are the beneficial owners) to determine whether the accounts are U.S. Reportable Accounts, and, therefore, need to be reported.

Example 2:

On-line Escrow Ltd provides an online escrow service for buyers and suppliers of goods and services. On-line Escrow Ltd is a custodial institution and a Reporting NZFI. John has an antique vase which Julie wishes to buy for U.S. \$75,000. To secure the purchase price, John opens an online escrow account with On-line Escrow Ltd and specifies that he is the supplier and Julie is the buyer. Julie deposits 10% of the purchase price into the online escrow account as security, pending completion of the transaction. Julie then receives the vase, pays the remaining 90% of the purchase price into the account, and notifies On-line Escrow Ltd that the purchase price (less escrow fees) can be released to John. There is no income earned on the assets in the account.

Is John's escrow account a financial account?

No, whilst it satisfies the definition of custodial account, it is excluded from the definition of financial account under the escrow exclusion in Annex II of the IGA, because it is an account to secure Julie's obligation to pay the purchase price of personal property and the other elements of the escrow account exclusion are satisfied.

Example 3:

Margin Ltd is a custodial institution and a Reporting NZFI. It provides margin lending to customers to acquire shares. Vanessa is a Specified U.S. Person, and approaches Margin Ltd for a loan. Vanessa has U.S. \$200,000 to invest and based on the margin lending ratio of 50%, Margin Ltd is prepared to lend Vanessa U.S. \$200,000. In total then she has U.S. \$400,000 to invest in approved securities. To secure the loan to Vanessa, the shares are transferred into the name of Margin Ltd and held as security until the loan is repaid. Dividends on the shares are credited to Vanessa during the term of the security arrangement. A fall in the market value of the shares below U.S. \$400,000 will trigger a margin call on the loan to restore the margin lending ratio to 50%.

Is Vanessa's margin loan a U.S. Reportable Account?

Yes, it is a custodial account held by a Specified U.S. Person. The financial account exclusion in Annex II of the IGA for escrow accounts does not apply to margin lending accounts.

Cash Value Insurance Contract

- 5.19 A "cash value insurance contract" issued or maintained by a financial institution will (unless excluded) also be a financial account.
- 5.20 The term "cash value insurance contract" is defined in Article 1(1)(y) of the IGA as meaning an insurance contract (other than an indemnity reinsurance contract between two insurance companies) that has a cash value greater than U.S. \$50,000. "Insurance contract" and "cash value" are, in turn, also defined in the IGA.
- 5.21 "Insurance contract" is defined in Article 1(1)(w) of the IGA as meaning a contract (other than an annuity contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.
- 5.22 "Cash value" is defined in Article 1(1)(z) of the IGA as meaning the greater of
- (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and
 - (ii) the amount the policyholder can borrow under or with regard to the contract.
- 5.23 Notwithstanding the foregoing, the term "cash value" does **not** include an amount payable under an insurance contract as:
- (1) a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against.
 - (2) a refund to the policyholder of a previously paid premium under an insurance contract (other than under a life insurance contract) due to policy cancellation or termination, decrease in risk exposure during the effective period of the insurance contract, or arising from a redetermination of the premium due to correction of posting or other similar error; or
 - (3) a policyholder dividend based upon the underwriting experience of the contract or group involved.

Annuity Contract

- 5.24 An annuity contract maintained by a financial institution will (unless excluded) also be a financial account provided that it is not a non-investment-linked, non-transferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit provided under an account that is excluded from the definition of financial account in Annex II of the IGA.
- 5.25 The term "annuity contract" is defined in Article 1(1)(x) of the IGA as meaning a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an annuity contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.

Reporting NZFIs maintaining different types of accounts

- 5.26 A Reporting NZFI may maintain more than one type of account. For example, an entity that is a depository institution may maintain both depository and custodial accounts.

Example

Reporting NZFI is a depository institution that also provides trustee and custodial services. Reporting NZFI maintains both depository accounts and custodial accounts.

Reporting NZFI receives gross income from custodial services (the holding of financial assets and related financial services) that equates to 15% of its total gross income (during the previous three years ending 31 December). Therefore, Reporting NZFI is not a custodial institution.

Reporting NZFI carries out due diligence in relation to these depository and custodian accounts and identifies that four of them (two of the depository accounts and two of the custodial accounts) have a balance or value that exceeds the reporting threshold and are held by Specified U.S. Persons.

Is Reporting NZFI required to report on these accounts?

Yes. Reporting NZFI is a depository institution as defined in the IGA. It is irrelevant that Reporting NZFI is not a custodial institution. The only requirement is that the entity is at least one type of financial institution as defined in the IGA and is a Reporting NZFI.

Excluded Accounts

- 5.27 The following accounts are **excluded from** the definition of "financial account" and therefore shall not be treated as U.S. Reportable Accounts:

(a) Equity or debt interests which are regularly traded on an established securities market as outlined in the IGA and that are not depository accounts or custodial accounts (set out above).

(b) A non-investment-linked, non-transferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit provided under an account, product or arrangement that is excluded from the definition of financial account in Annex II of the IGA.

(c) Any account, product or arrangement excluded from being a financial account in Annex II of the IGA. These products have been agreed as being low risk (in terms of the likelihood that they will be used for tax evasion), and, therefore, are excluded from being financial accounts.

Equity or debt interests which are regularly traded on an established securities market

- 5.28 As noted above, there is an exemption from reporting by any Reporting NZFI of any equity or debt interest which is regularly traded (as outlined in the definition of "financial account" in Article 1(1)(s) of the IGA – set out above) on an established securities market. These accounts are excluded from the definition of "financial account" and therefore shall not be treated as U.S. Reportable Accounts unless, for example, they constitute depository accounts or custodial accounts.

Non-investment linked annuities (conventional annuity)

- 5.29 The non-investment linked annuity exclusion from the definition of "financial account" only applies to an annuity which has all the following characteristics:
- It is non-investment linked.
 - It is a non-transferable immediate life annuity.
 - It is issued to an individual and monetizes a pension or disability benefit provided under an account, product, or arrangement that is excluded from the definition of financial account in Annex II of the IGA. There are only a limited number of pension benefits excluded from the definition of financial account in Annex II of the IGA (discussed below).
- 5.30 These annuities are excluded from the definition of "financial account", and, therefore, shall not be treated as U.S. Reportable Accounts.

Example:

Mr ABC has an investment linked life insurance policy. The policy allows the amount payable on termination to exceed the annual premiums paid for the contract. Mr ABC decides to terminate the policy and use the proceeds (U.S. \$800,000) to acquire a non-investment linked, non-transferable immediate life annuity from Insurance Company LIFE Limited – a Reporting NZFI. The balance of the account is U.S. \$800,000.

Is this annuity a financial account?

Yes, the account is an "annuity contract" (a type of financial account) as defined in the IGA and is not an excluded account. The exclusion for annuities only applies where it "monetises a pension or disability benefit provided under an account that is excluded from the definition of financial account in Annex II" of the IGA (discussed below). In this example Mr ABC has monetised an investment linked life insurance contract, which is not excluded from the definition of financial account in Annex II of the IGA. Instead, the account is a financial account. The account balance also exceeds the reporting thresholds. Therefore, the Reporting NZFI will need to carry out due diligence on the account to determine if it is a U.S. Reportable Account.

Excluded Financial Accounts in Annex II of the IGA

- 5.31 The following accounts are also excluded financial accounts in Annex II of the IGA, and, therefore, shall not be treated as U.S. Reportable Accounts.
- Whai Rawa approved retirement savings scheme
- 5.32 Membership of the Whai Rawa approved retirement savings scheme operated by Te Rūnanga o Ngāi Tahu is excluded from the definition of financial account and therefore shall not be treated as a U.S. Reportable Account.

Retirement and Pension Account

- 5.33 A retirement or pension account maintained in New Zealand that satisfies the following requirements under the laws of New Zealand is excluded from the definition of financial account and therefore shall not be treated as a U.S. Reportable Account:
- (a) The account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits).
 - (b) The account is tax-favoured (i.e. contributions to the account that would otherwise be subject to tax under New Zealand law are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
 - (c) Annual information reporting is required to the tax authorities in New Zealand with respect to the account.
 - (d) Withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and
 - (e) Either:
 - (i) annual contributions are limited to U.S. \$50,000 or less, or
 - (ii) there is a maximum lifetime contribution limit to the account of U.S. \$1,000,000 or less, in each case applying the rules set out in Annex I of the IGA for account aggregation and currency translation.

Non-Retirement Savings Accounts

- 5.34 An account maintained in New Zealand (other than an insurance or annuity contract) that satisfies the following requirements under the laws of New Zealand is excluded from the definition of financial account and therefore shall not be treated as a U.S. Reportable Account:
- (a) The account is subject to regulation as a savings vehicle for purposes other than for retirement.
 - (b) The account is tax-favoured (i.e. contributions to the account that would otherwise be subject to tax under New Zealand law are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
 - (c) Withdrawals are conditioned on meeting specific criteria related to the purpose of the savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and
 - (d) Annual contributions are limited to U.S. \$50,000 or less, applying the rules set out in Annex I for account aggregation and currency translation.

Certain Term Life Insurance Contracts

- 5.35 A life insurance contract maintained in New Zealand with a coverage period that will end before the insured individual attains age 90 is excluded from the definition of financial account and therefore shall not be treated as a U.S. Reportable Account, provided that the contract satisfies the following requirements:
- (a) Periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter.
 - (b) The contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract.
 - (c) The amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and
 - (d) The contract is not held by a transferee for value.

Account Held by an Estate

- 5.36 An account maintained in New Zealand that is held solely by an estate is also excluded from the definition of financial account and therefore shall not be treated as a U.S. Reportable Account if the documentation for such account includes a copy of the deceased's will or death certificate.
- 5.37 This exclusion would not include any account held by trustees of a testamentary trust created under the will of a deceased. The exclusion also does not apply when there are two or more account holders, even when an estate is one of the account holders.

Escrow Accounts

- 5.38 An account maintained in New Zealand established in connection with any of the following is also excluded from the definition of financial account and therefore shall not be treated as a U.S. Reportable Account:
- (a) Legislation, a court order or judgment. [For example, if an account is maintained in New Zealand and has been established in connection with a Court order or judgment (such as by the Family Court or under the Protection of Personal and Property Rights Act 1988) it will be excluded from the definition of financial account and shall not be treated as a U.S. Reportable Account.]
 - (b) A sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:
 - i. The account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property;
 - ii. The account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any

contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;

iii. The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;

iv. The account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and

v. The account is not associated with a credit card account.

(c) An obligation of a financial institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time.

(d) An obligation of a financial institution solely to facilitate the payment of taxes at a later time.

Example

Individual A is a Specified U.S. person. Individual A sells a farm property for U.S. \$2,000,000. The purchaser pays a 10% deposit (U.S. \$200,000) to the real estate agent as security, which the real estate agent deposits into their trust account with Bank X, which is a Reporting NZFI, on behalf of the Individual A (the vendor). The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser or individual A (including to satisfy such person's obligation) when the property is sold.

The account is a depository account which exceeds all relevant depository thresholds for reporting. However, Bank X is not required to treat the account as a U.S. Reportable Account as it meets the criteria of being an exempt "escrow account" under Annex II (V) (E) of the IGA. Therefore, the account is excluded from the definition of financial account and is not a U.S. Reportable Account.

Partner Jurisdiction Accounts

- 5.39 The following type of "partner jurisdiction account" is also excluded from the definition of financial account and therefore shall not be treated as a U.S. Reportable Account. That is, an account maintained in New Zealand that is excluded from the definition of financial account under an agreement between the U.S. and another Partner Jurisdiction to facilitate the implementation of FATCA, provided that such account is subject to the same requirements and oversight under the laws of such other Partner Jurisdiction as if such account were established in that Partner Jurisdiction and maintained by a Partner Jurisdiction Financial Institution in that Partner Jurisdiction.

Example

Reporting NZFI writes pension business into Country A but does not have a permanent establishment there. Reporting NZFI maintains these pension accounts in New Zealand. The U.S. has entered into an IGA with Country A. These accounts are excluded from the definition of financial account under the IGA entered into between the U.S. and Country A. The accounts are subject to the same requirements and oversight under Country A's laws as if the account were established in Country A and maintained by a Country A financial institution in Country A. Therefore, these pension accounts are excluded from the definition of financial account and are not U.S. Reportable Accounts.

Tax Pooling Accounts

- 5.40 An account that is an interest in a trust established by a tax pooling intermediary for the purposes of administering a "tax pooling account" (as defined in section RP 17B of the ITA) is also excluded from the definition of financial account and therefore shall not be treated as a U.S. Reportable Account.¹⁵

When is a financial account "maintained" by a Reporting NZFI?

- 5.41 Another key element of the definition of "U.S. Reportable Account" is that the financial account (set out above) is "maintained" by a Reporting NZFI. This is relevant because Reporting NZFIs are required to carry out due diligence on the financial accounts that they **maintain**.
- 5.42 A custodial account is "maintained" by a Reporting NZFI that holds custody over the assets in the account. A depository account, cash value insurance contract or annuity contract is "maintained" by a Reporting NZFI that is obligated (excluding an agent) to make payments in respect of the account or contract. Any equity or debt interest in a Reporting NZFI is "maintained" by the issuing NZFI.

Example

Mr H has a depository account at Bank A (a Reporting NZFI). The account is a financial account. Bank A is obligated to make payments to Mr H in respect of this account. Therefore, this account is a financial account that is maintained by Bank A.

How is the "balance or value" of an account determined?

- 5.43 The **balance or value** of such financial accounts maintained by Reporting NZFIs is another important concept that flows through the IGA. The balance or value can affect whether an account is in scope for due diligence and reporting (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.
- 5.44 This guidance 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?

- 5.45 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 references 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 respectively.
- 5.46 The balance or value at these various reference points, in turn, determines matters such as whether the relevant account is above the threshold for due diligence and 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).

¹⁵ See Annex II(V)(G) of the IGA.

- 5.47 Sections I(B)(2) and (3) of Annex I of the IGA, when read in conjunction with section 185M of the TAA, mean that:

30 June 2014	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).
31 March of the relevant year	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 points are outlined in more detail further below.

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

- 5.48 Where a Reporting NZFI 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.
- 5.49 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.
- 5.50 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?

- 5.51 The IGA also sets out such balance or value thresholds in U.S. dollars and this guidance is 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 rate.
- 5.52 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.
- 5.53 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: ird.govt.nz.

How does a Reporting NZFI that maintains a financial account determine who “holds” the account?

- 5.54 As set out above, Reporting NZFIs are required to conduct due diligence on their financial accounts to identify U.S. Reporting Accounts. A key element of the definition of "U.S. Reportable Account" involves determining who "holds" the financial account (i.e. whether the account is **held** by one or more Specified U.S. persons or by a non-U.S. entity passive NFFE with one or more controlling persons that are Specified U.S. persons).
- 5.55 The IGA does not define "held by". However, the definition of "account holder" in Article 1(1)(dd) of the IGA is relevant for determining what "held by" means in this context.
- 5.56 An "account holder" is defined in Article 1(1)(dd) of the IGA to mean:
- ... the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for the purposes of this Agreement, and such other person is treated as holding the account. For purposes of the immediately preceding sentence, the term "Financial Institution" does not include a Financial Institution organized or incorporated in a U.S. Territory. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.
- 5.57 A "person" is defined in §1.471-1(b)(94) of the U.S. Treasury Regulations to mean a person defined in section 7701(a)(1) of the Internal Revenue Code. Under section 7701(a)(1) the term "person" includes an individual, a trust, estate, partnership, association, company, or corporation. It is clear for the purposes of FATCA, that an account holder can be an entity (e.g. trust or partnership) that would not ordinarily have a separate legal personality. This means that trusts and partnerships are "persons" that can be account holders for the purposes of FATCA.
- 5.58 In the case of a cash value insurance contract or annuity contract, the account holder is any person entitled to access the cash value or change the beneficiary of the contract. If no person can access the cash value or change the beneficiary, the account holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a cash value insurance contract or an annuity contract, each person entitled to receive a payment under the contract is treated as an account holder.
- 5.59 An "account holder" does not include a person (other than a financial institution) who holds an account for another person as "...agent, custodian, nominee, signatory, investment advisor, or intermediary..." for the benefit or account of another person. In these circumstances the person **on whose behalf** the account is held is the account holder. The Inland Revenue expects that Reporting NZFIs will have in place reasonable procedures to determine whether an account holder holds an account on behalf of another person. Where a Reporting NZFI follows those procedures and determines that there is no "on behalf of" relationship, then it will be appropriate for the Reporting NZFI to treat the person that is "listed or identified" as holding the account as being the account holder. For new individual account openings, it would be appropriate that a Reporting NZFI would include questions as to what capacity the account opener intends to hold a financial

account so that they are in a position to determine whether such an "on behalf of" relationship exists.

Example 1

On 1 August 2014 Ms B opens up a bank account (a financial account)¹⁶ with a Reporting NZFI and requests that her daughter Lucy be included as a signatory to the account. The account holder is Ms B. Lucy is not an account holder as she is only a signatory to the account. The Reporting NZFI will need to apply the new individual account due diligence procedures in relation to Ms B's account to determine whether it is a U.S. Reportable Account.

Example 2

Ms C is a trustee of her discretionary family trust. The beneficiaries include Ms C's four children. On 1 August 2014 Ms C opens up an account (a financial account) with a Reporting NZFI and it is noted in the account opening documentation that Ms C and the other trustees hold the account in their capacity as trustees for Ms C's family trust. The account holder is the trust (an entity) and not Ms C or other trustees or any of the beneficiaries. The Reporting NZFI will need to apply the new entity account due diligence procedures in relation to the trust's account to determine whether it is a U.S. Reportable Account.

Example 3

Mr B is a trustee of his fixed family trust. The beneficiaries are Mr B's two children. On 1 August 2014 Mr B opens up an account with a Reporting NZFI but does not advise in the account opening documentation or otherwise that the account is to be held in his capacity as trustee for Mr B's family trust. The Reporting NZFI does not know or have reason to know of the existence of the trust relationship. The account holder will be Mr B and not the trust. The Reporting NZFI will need to apply the new individual account due diligence procedures in relation to Mr B's account to determine whether it is a U.S. Reportable Account.

What is a Specified U.S. Person?

- 5.60 As set out above, the objective of FATCA is to reduce and deter U.S. tax evasion by U.S. citizens/residents/entities by requiring Reporting NZFIs to identify and report their U.S. Reporting Accounts. Therefore, one of the main elements of the FATCA due diligence procedures is the concept of **Specified U.S. Person**. These persons are the key target of FATCA (i.e. an account is reportable if it is held by Specified U.S. Persons or by a passive NFFE with a controlling person that is a Specified U.S. Person).
- 5.61 A "U.S. Person" is defined in Article 1(1)(ee) of the IGA to mean the following - a U.S. citizen or resident individual, a partnership or corporation organized in the U.S. or under the U.S. law, certain trusts that are subject to U.S. law in terms of their administration which are controlled by a US person, or an estate of a deceased U.S. citizen or resident.

¹⁶ It is assumed, for the purposes of examples 1-3 below, that the account balance or value exceeds the threshold exemptions in the IGA and that the account is not an excluded account.

5.62 "Specified U.S. Persons" is defined in Article 1(1)(ff) of the IGA to mean a "U.S. person" **other than**:¹⁷

- a corporation the stock of which is regularly traded on one or more established securities markets.
- any corporation that is a member of the same expanded affiliated group as a corporation the stock of which is regularly traded 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; or
- 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.

What is self-certification and when is it required for FATCA due diligence?

- 5.63 Another key element of the FATCA due diligence procedures in the IGA is the concept of self-certification. At a high level, this generally involves the Reporting NZFI obtaining a self-certification from their account holders (and in certain circumstances controlling persons) about whether the account is held and/or (in the case of a passive NFFE) controlled by a Specified U.S. Person. The circumstances when self-certifications are obtained are set out in detail in appendix 1 to this guidance.
- 5.64 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 a self-certification for FATCA purposes, unless they know or have reason to know that such a self-certification is incorrect or unreliable (for instance, the self-certification is contradicted or called into question by information that the Reporting NZFI has obtained or knows about).
- 5.65 The test for when the Reporting NZFI knows or has reason to know that a self-certification is incorrect or unreliable will be applied based on looking at what the reasonably prudent Reporting NZFI would do in the circumstances.
- 5.66 We have set out below in this guidance 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.

¹⁷ This is a summary of the definition of "Specified U.S. Person" in the IGA. The reader should refer to the definition of "Specified U.S. Person" in Article 1(1)(ff) of the IGA for the full definition.

- 5.67 The FATCA IGA does not prescribe a mandatory self-certification form for FATCA due diligence purposes and Inland Revenue does not 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 as follows:

Verbally	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)	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.

What is a Passive Non-Financial Foreign Entity ("Passive NFFE") and who are their controlling persons?

- 5.68 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 entity 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-US entity that is established in New Zealand or another Partner Jurisdiction and that is not a financial institution.
- 5.69 FATCA includes within its scope for reporting 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, if so, whether any controlling persons of that entity are Specified U.S. Persons.
- 5.70 The term "controlling person" is, in turn, defined in Article 1(1)(mm) of the IGA as meaning a natural person who exercises control over an entity. This would include the following:
- Shareholders and directors of private or publicly listed companies that exercise control over the company.
 - Natural person partners of a partnership that exercise control over the partnership.
 - The IGA specifically defines controlling persons in regard to trust as the settlor, trustees, the protector (if any), beneficiaries or a class of beneficiaries, and any other natural person exercising ultimate effective control over a trust.
 - In the case of legal arrangements other than a trust, control is held by person in "equivalent or similar positions".

The term "controlling persons" must be interpreted in a manner consistent with the Financial Action Task Force Recommendations.

- 5.71 If a Reporting NZFI identifies - after applying the due diligence procedures in the IGA - that an account they maintain is held by a Passive NFFE that is controlled by a Specified U.S. Person 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.

Important:

Circumstance	Action
If the Reporting NZFI determines that the entity account holder is a Specified U.S. Person.	The Reporting NZFI must treat the account as a U.S. Reportable Account and therefore is not required to look through to identify the controlling persons.
If the Reporting NZFI determines that the entity account holder is not a Specified U.S. Person and that the entity is a Passive NFFE.	The Reporting NZFI must identify the controlling persons to determine if any such person is a Specified U.S. Person (broadly, a U.S. citizen or U.S. resident) and, if so, the account will be a U.S. Reportable Account.

- 5.72 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.
- 5.73 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.
- 5.74 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 trust in terms of the U.S. Treasury Regulations.
- 5.75 An Active NFFE is defined in section VI (B)(4) of Annex I as meaning any NFFE that meets **any** of the following criteria:

Active NFFE by reason of income and assets	<p>Less than 50 percent of the NFFE's gross income for the preceding calendar year or other appropriate reporting period is passive income 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.</p> <p>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.</p>
NFFEs with stock that is regularly traded	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.
NFFE Organized in a U.S. Territory	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.
Government	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.
Certain NFFEs that provide holding, financing and services to subsidiaries that are not financial institutions	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.
Certain NFFEs with no operating history	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.
Certain NFFEs that are liquidating or reorganizing	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.
Certain NFFEs that engage in financing and hedging transactions with or for related entities that are not financial institutions	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
Excepted NFFE	The NFFE is an excepted NFFE as described in relevant U.S. Treasury Regulations

<p>Certain NFFEs where the NFFE 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.</p>	<p>The NFFE meets all of the following requirements:</p> <ul style="list-style-type: none"> (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. (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.
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Example 1

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 (for example, the criteria related to the NFFE's income and assets) is required to be satisfied.

Example 2

YXZ Limited is a NFFE and its passive income in the preceding reporting period amounts to 60 percent of gross income and 60 percent of its total assets in the preceding reporting period are assets that produce or are held for the production of passive income (so, YXZ Limited is not an active NFFE by reason of income and assets). Furthermore, none of the other categories of active NFFE in section VI (B)(4)(b)-(j) of Annex I are satisfied. YXZ Limited is a passive NFFE.

What is a Non-Participating Financial Institution ("NPFI")?

- 5.76 Another key aspect of the FATCA due diligence procedures in the IGA is the definition of 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. However, a NPFI 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.

- 5.77 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 had obligations to report payments made to the NPFI for the 2015 (period ended 31 March 2016) and 2016 (period ended 31 March 2017) periods. NZFIs are also required to comply (where applicable) with the obligations set out in Article 4(1)(d) and (e) of the IGA in relation to U.S. Sourced withholdable payments to any NPFI. Therefore, the definition of NPFI, and the circumstances when a financial institution can be classified as a NPFI, is a key part of the IGA.
- 5.78 A financial institution can be classified as a NPFI in the following circumstances:

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 domestic law and remedies to address the significant non-compliance. If such enforcement action does not resolve the significant non-compliance after 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-compliance 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, repeated failure to provide to Inland Revenue details of U.S. Reportable Accounts by the due date, or a failure to obtain and report valid US TINs for account holders or controlling persons. ¹⁸
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).
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.
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).

¹⁸ The IRS has published Notices on temporary relief from the requirement to provide valid US TINs, at the time of writing the most recent being Notice 2024-78.

What are the FATCA Aggregation Rules?

- 5.79 There are also aggregation rules in the IGA for the purposes of determining the balance or value of financial accounts. These rules are important because, as elaborated on below, the application of a number of the provisions in the IGA to a particular account turns on the (aggregate) 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).
- 5.80 **Important:** The FATCA account aggregation rules only apply for due diligence purposes. The balance or value of any U.S. Reportable Account should be reported on an account-by-account basis (i.e. reporting of the balance or value for each specific reportable individual or entity account).

The below guidance also contains various references to account types and thresholds and due diligence procedures. These account types and thresholds are explained in detail further below from [5.107].

Aggregation of Individual Accounts

- 5.81 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.¹⁹

Example 1

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 of 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 (this guidance sets out further below when an account will be a lower value account and the due diligence that needs to be carried out on such accounts). Both Bank X and Bank Y will be required to undertake the due diligence procedures and, if any U.S. indicia (i.e. indicator of being a Specified U.S. Person) is identified and not cured, report separately on the accounts to the Inland Revenue (i.e. as being U.S. Reportable Accounts).

Example 2

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 of 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

¹⁹ Subsidiary banks, without linked systems, are not required to aggregate customers' balances where there are no common customer numbers.

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 (elaborated on below) 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 account²⁰ 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 – elaborated on below).

Example 3

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 of 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 overdrawn) - 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 Account.²¹ This is 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 4

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 of 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 5

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 of 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 – as elaborated on below). Insurance Company is not required to report on Customer A as neither account is a U.S. Reportable Account.

²⁰ This example is based on the assumption that U.S. indicia have been identified and not cured.

²¹ This example is based on the assumption that U.S. indicia have been identified and not cured.

Aggregation of Joint Accounts

- 5.82 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 6

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 of 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's account as a U.S. Reportable Account.²² Customer B's account is not a U.S. Reportable account because it is below the U.S. \$50,000 threshold for depository accounts (elaborated on below). 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 7

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 of 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 (elaborated on below). Therefore, Reporting NZFI will need to report on these accounts.²³ 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

- 5.83 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 TIN, and allow account balances or values to be aggregated.

Example 8

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 of 30 June 2014:

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

²² This example assumes that U.S. indicia have been identified and not cured.

²³ This example assumes that U.S. indicia have been identified and not cured.

- 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. \$250,000 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, both Bank X and Bank Y will need to report separately to the Inland Revenue.

Special Aggregation Rule Applicable to Relationship Managers

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 9

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.²⁴ The balance or value of this account would be U.S. \$700,000,²⁵ which is above the relevant threshold for pre-existing entity accounts (U.S. \$250,000 as of 30 June 2014).

What documentary evidence can be relied on for FATCA due diligence?

5.84 Another key aspect of FATCA due diligence is the use of documentary evidence as part of determining whether an account is a U.S. Reportable Account. For example, an account holder may provide documentary evidence to support their non-U.S. status.³²

5.85 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.

²⁴ For instance, Company A could be a passive NFFE controlled by Person A (a Specified U.S. Person). If so, the Reporting NZFI would need to report Company A's account as well.

²⁵ 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).

³² A Reporting NZFI may not rely on documentary evidence if the Reporting NZFI knows or has reason to know that the documentary evidence is incorrect or unreliable (see Annex I(VI)(A) of the IGA).

(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.

(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 QI 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.

Reliance on Third Parties

- 5.86 New Zealand also permits a Reporting NZFI to engage a third party to undertake its FATCA 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:

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.

- 5.87 This guidance will now – having set out the background and outlined some of the key concepts and definitions relevant to FATCA due diligence - set out **in detail** how the FATCA due diligence requirements apply to the various types of financial accounts that Reporting NZFIs maintain based on the type of account and when it is opened. Reporting NZFIs are required to carry out due diligence on the following types of accounts:

- Pre-existing individual accounts.
- New individual accounts.
- Pre-existing entity accounts.
- New entity accounts.

Pre-Existing Individual Accounts

Introduction

- 5.88 A pre-existing individual account is an individual financial account (i.e. an account held by an individual) that was opened on or before 30 June 2014.
- 5.89 Pre-existing individual accounts will fall into one of three categories depending on the balance or value of the account and type of account.
- 5.90 These categories of accounts are - exempt accounts, lower value accounts, and high value accounts. There are different due diligence procedures that apply to lower value accounts (on the one hand) and high value accounts (on the other hand).

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

- 5.91 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,³³ the following pre-existing individual accounts maintained by Reporting NZFIs 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 2014.
- (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 2014.
- (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.

[However, if a pre-existing individual account was not a high value account as of 30 June 2014, but became 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 TAA), 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.]

- 5.92 A Reporting NZFI that maintains a pre-existing individual account that is not an exempt or excluded account will need to apply the pre-existing individual account due diligence procedures to determine whether the account is a U.S. Reportable account.
- 5.93 There are separate due diligence procedures for those pre-existing individual accounts that are lower value accounts and high value accounts respectively.

Due Diligence Requirements - Lower Value Accounts

- 5.94 A lower value pre-existing individual account (lower value account) is an account with a balance or value that exceeded the threshold of U.S. \$50,000 set out above (or U.S. \$250,000 in the case of cash value insurance contracts and annuity contracts), but did not exceed U.S. \$1,000,000.

³³ Section 185F (7) of the TAA has an excluded choice provision that relates to such elections. The exclusion relates to the **reporting** aspect of the threshold exemptions for the various types of accounts. Therefore, Reporting NZFIs are not able 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.

- 5.95 Reporting NZFIs need to undertake the following due diligence procedures in relation to lower value accounts that they maintain.

Reviewing for U.S. Indicia

- 5.96 For such lower value accounts the Reporting NZFI was required to undertake a review by 30 June 2016 of electronically searchable data for **any** of the following U.S. indicia (U.S. indicia):

- 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).
- Unambiguous indication of a U.S. place of birth (for example, that the account holder was born in New York).
- Current U.S. mailing or residence address (including a U.S. post office box).
- Current U.S. telephone number.
- 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).
- Currently effective power of attorney or signatory authority granted to a person with a U.S. address.
- 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.

If none of these U.S. indicia were identified in the electronic search, then no further action is required in respect of that individual account **until** either 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 and subject to enhanced review procedures (explained below).

- 5.97 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** the U.S. indicia.

Example 1

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 account data for U.S. indicia. 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 2

Person B 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 account data for U.S. indicia. No such indicia are found. However, one month after the review Person B 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.

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

- 5.98 There are several separate exceptions that can apply depending on the type of U.S. indicia that the Reporting NZFI identifies in relation to the account that they maintain. The exceptions apply such that the Reporting NZFI will **not** be required to treat an account as a U.S. Reportable Account (i.e. the indicia will be **cured**).
- 5.99 If the Reporting NZFI makes an election to cure any U.S. indicia discovered as part of the electronic search in relation to the account **and** a relevant exception applies for 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). 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.
- 5.100 Reporting NZFIs will have 90 days to obtain the information required to **cure** the U.S. indicia before they are required to start treating the account as a U.S. Reportable Account.
- 5.101 We have set out below the information that will need to be obtained to cure the different types of U.S. indicia.

Indication of U.S. place of birth

- 5.102 Where the account holder information unambiguously indicates a U.S. place of birth, the indicia will be cured if the Reporting NZFI obtains, or has previously reviewed and maintains a record of **all** the following:

Self-certification	A self-certification that the account holder is neither a U.S. citizen nor a U.S. resident for U.S. tax purposes. This may be on an IRS Form W-8 or other similar agreed form.
A non-U.S. passport or other government issued identification	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.
Certificate of Loss of Nationality of the U.S or reasonable explanation	A copy of the account holder's Certificate of Loss of Nationality of the U.S. Alternatively, 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

- 5.103 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 indicia will be cured if the Reporting NZFI obtains, or has previously reviewed and maintains a record of **both** of the following:

Self-certification	A self-certification that the account holder is neither a U.S. citizen nor a U.S. resident for U.S. tax purposes. This may be on an IRS Form W-8 or other similar agreed form.
Documentary evidence	Documentary evidence as described above, establishing the account holder's non-U.S. status.

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

- 5.104 Where the account holder information contains standing instructions to transfer funds to an account maintained in the U.S, the indicia will be cured if the Reporting NZFI obtains, or has previously reviewed and maintains a record of **both** of the following:

Self-certification	A self-certification that the account holder is neither a U.S. citizen nor a U.S. resident for U.S. tax purposes. This may be on an IRS Form W-8 or other similar agreed form.
Documentary evidence	Documentary evidence as described above, 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

- 5.105 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 indicia will be cured if the Reporting NZFI obtains, or has previously reviewed and maintains a record of **both** of the following:

Self-certification	A self-certification that the account holder is neither a U.S. citizen nor a U.S. resident for U.S. tax purposes. This may be on an IRS Form W-8 or other similar agreed form.
Documentary evidence	Documentary evidence as described above, establishing the account holder's non-U.S. status.

Review and reporting obligations

- 5.106 Reporting NZFIs were required to complete their review of pre-existing individual lower value accounts that they maintain for U.S. indicia by 30 June 2016.
- 5.107 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 1

A Reporting NZFI maintains a custodial account that is held by a Specified U.S. person. The account had a balance of U.S. \$80,000 as of 30 June 2014. As of 31 March 2016, the Reporting NZFI had identified U.S. indicia in relation to the account and these indicia have not been cured. 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 is still required 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. Person.

Example 2

A Reporting NZFI maintains a depository account that is held by a Specified U.S. person. The account had a balance of U.S. \$80,000 as of 30 June 2014. As of 31 March 2016, the Reporting NZFI had identified US indicia in relation to the account and these indicia have not been cured. 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 is no longer required to report the account.

Due Diligence Requirements - High Value Accounts

- 5.108 A high value account (high value account) is an account that a Reporting NZFI maintains with a balance or value that exceeded U.S. \$1,000,000 as of 30 June 2014 or 31 March of any subsequent year.³⁴
- 5.109 Reporting NZFIs will need to undertake the following due diligence procedures in relation to such high value accounts.

Electronic Review

- 5.110 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.
- 5.111 If the Reporting NZFI's electronically searchable databases include fields for, and captures the following information, then no further paper search is required:
- The account holder's nationality or residence status (i.e. citizenship, residency, or tax residency).
 - The account holder's residence address and mailing address currently on file with the Reporting NZFI.
 - The account holder's telephone number(s) currently on file, if any, with the Reporting NZFI.
 - 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).
 - Whether there is a current in-care-of address or hold mail address for the account holder.
 - Whether there is any power of attorney or signatory authority for the account.

Paper Based Review

- 5.112 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:
- The most recent documentary evidence collected with respect to the account.
 - The most recent account opening contract or documentation.
 - 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.
 - Any power of attorney or signature authority forms currently in effect; and
 - Any standing instructions to transfer funds currently in effect.
- 5.113 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.

³⁴ Section 185M of the TAA.

Effect of finding U.S. indicia

- 5.114 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 (i.e. the indicia will be cured).
- 5.115 Reporting NZFIs will have 90 days to obtain the information required to cure the U.S. indicia before they are required to start treating the account as a U.S. Reportable account.

Relationship Manager Inquiry for actual knowledge

- 5.116 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 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.
- 5.117 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.
- 5.118 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. Person 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. A Reporting NZFI must also 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 and the account must be treated as a U.S. Reportable Account unless the indicia is cured.

Example:

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.

Review and Reporting Obligations High Value Accounts

High Value Accounts as of 30 June 2014

- 5.119 If a pre-existing individual account was a high value account as of 30 June 2014, the Reporting NZFI that maintains the account was required to complete the enhanced review procedures referred to above with respect to such account by 30 June 2015.
- 5.120 If based on this review such account was identified as a U.S. Reportable account on or before 31 December 2014, the Reporting NZFI needed to 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**.

- 5.121 Where an account was identified as a U.S. Reportable Account after 31 December 2014 and on or before 30 June 2015, the Reporting NZFI was not required to report information about that account in their first FATCA report (for the period ending 31 March 2015), but was required to 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**.
- 5.122 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.
- 5.123 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.

Accounts that become High Value Accounts

- 5.124 If a pre-existing individual account was not a high value account as of 30 June 2014, but becomes a high value individual account as of 31 March of a subsequent year³⁵, 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).
- 5.125 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 of 31 March of any subsequent year.

³⁵ Section 185M of the TAA.

Example

A Reporting NZFI maintains a depository account that is held by Person A. The account has a balance of U.S. \$40,000 as of 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).

New Individual Accounts

- 5.126 The following rules and procedures apply for the purposes of Reporting NZFIs identifying U.S. Reportable Accounts that they maintain that are held by individuals and opened on or after 1 July 2014 (new individual accounts).³⁶ 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”)

- 5.127 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,³⁷ the following new individual accounts are not required to be reviewed, identified, or reported as U.S. Reportable Accounts:
- A depository account unless the account balance exceeds U.S. \$50,000 as of 31 March of the relevant year.
 - A cash value insurance contract unless the cash value exceeds U.S. \$50,000 as of 31 March of the relevant year.

Example

On 1 August 2024 Person A opens a depository account with Reporting NZFI. The account has an initial balance of U.S. \$70,000. On 1 September 2024, Person A withdraws U.S. \$60,000 from the account. On 31 March 2025 (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 2025.

Other New Individual Accounts

- 5.128 With respect to new individual accounts that are not either exempt/excluded accounts, upon account opening (or within 90 days after the end of 31 March of the relevant year in which the

³⁶ A NZFI may treat a new account opened for a pre-existing account holder as a pre-existing account (and not a new account) provided that 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 U.S. Treasury Regulations.

³⁷ Section 185F (7) of the TAA 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.

account ceases to be exempt), the Reporting NZFI that maintains the account must carry out the following steps:

Step One: Obtain a self-certification	Obtain a self-certification, which may be part of the account opening documentation, which allows it to determine whether the account holder is resident in the U.S. for tax purposes.
Step Two: Validate the self-certification	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 Procedures.

- 5.129 A Reporting NZFI can obtain such a self-certification from an account holder in a number of different ways (for example, by telephone, online or on application forms - discussed below).
- 5.130 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).
- 5.131 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 further³⁸ self-certification that includes the account holder's U.S. TIN. Reporting NZFIs will have 90 days from the opening of a new account (or within 90 days after the end of 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.
- 5.132 A NZFI is only required to report annually 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 the 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 1:

On 1 August 2024 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.

³⁸ This self-certification could be conducted virtually contemporaneously with the original self-certification, although sequentially as a second step.

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. 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

Example 2:

On 1 August 2024 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 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).

- 5.133 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.
- 5.134 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.
- 5.135 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 1

On 1 August 2024 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 2024 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 2

On 1 August 2024 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 2024 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 3

On 1 August 2024 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 2024 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

- 5.136 The following rules and procedures apply for the purposes of Reporting NZFIs identifying and reporting on pre-existing entity financial accounts they maintain that were opened on or before 30 June 2014 that are U.S. Reportable Accounts or accounts held by NPFIs.
- 5.137 A pre-existing entity account will be reportable to Inland Revenue if the account is not excluded from being a financial account, is not exempt from being reported, **and** is identified as being a U.S. Reportable Account.
- 5.138 Pre-existing entity accounts held by a NPFI also needed to be reported to Inland Revenue in the 2015 (period ended 31 March 2016) and 2016 (period ended 31 March 2017) periods (see Article 4(1)(b) of the IGA).

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

- 5.139 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,³⁹ a pre-existing entity account with an account balance or value that did 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.⁴⁰

Entity Accounts Subject to Review and Reporting

- 5.140 A pre-existing entity account that had an account balance or value that exceeded U.S. \$250,000 as of 30 June 2014, and a pre-existing entity account that did 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.
- 5.141 Of these accounts, only those accounts that are identified as a result of these procedures as being 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 Specified U.S. Persons, shall be treated as US Reportable Accounts and will be annually reported. Pre-existing entity accounts held by a NPFI also needed to be reported to Inland Revenue in the 2015 (period ended 31 March 2016) and 2016 (period ended 31 March 2017) periods (see Article 4(1)(b) of the IGA).

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

- 5.142 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 (Specified U.S. Persons), or by NPFIs.

Determine whether the entity is a Specified U.S. Person

- 5.143 The Reporting NZFI is required to 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 - also be examples of information indicating that an entity is a Specified U.S. Person. 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 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.
- 5.144 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

³⁹ Section 185F (7) of the TAA 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.

⁴⁰Section 185M of the TAA.

determines based on information in its possession or that is publicly available, that the account holder is not a Specified U.S. Person.

Important: If the entity account holder is a Specified U.S. Person, the Reporting NZFI must treat the account as a U.S. Reportable Account and therefore is not required to look through to identify the controlling persons.

Determine whether a Non-U.S. Entity is a Financial Institution

- 5.145 The Reporting NZFI is also required to 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. 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 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.
- 5.146 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 FFI list, then the account is not a U.S. Reportable Account. However, the Reporting NZFI still had reporting obligations if the financial institution account holder is a NPFI (see below).⁴¹

Determine Whether a Financial Institution is a Non-participating Financial Institution payments to which are subject to aggregate reporting under subparagraph 1(b) of Article 4 of the IGA

- 5.147 Article 4(1)(b) of the IGA also applies in relation to financial institution account holders that are NPFIs. 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.
- 5.148 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 were required to be reported under Article 4(1)(b).⁴²
- 5.149 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.
- 5.150 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 were reportable under Article 4(1)(b) of the IGA, unless the Reporting NZFI 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.

⁴¹ Accounts held by a NPFI needed to be reported to Inland Revenue in the 2015 (period ended 31 March 2016) and 2016 (period ended 31 March 2017) periods (see Article 4(1)(b) of the IGA).

⁴² Accounts held by a NPFI needed to be reported to Inland Revenue in the 2015 (period ended 31 March 2016) and 2016 (period ended 31 March 2017) periods (see Article 4(1)(b) of the IGA).

Treasury Regulations, or In the case of a participating FFI or registered deemed-compliant FFI, verifies the account holder's GIIN on the published IRS FFI list.

Determine Whether an account held by an NFFE is a U.S. Reportable Account

- 5.151 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 (see above), the Reporting NZFI must identify whether the account holder has controlling persons, whether the account holder is a Passive NFFE, and whether any controlling person of the account holder is a U.S. citizen or U.S. tax resident.
- 5.152 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.
- 5.153 For the 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.
- 5.154 For the 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.
- 5.155 For the 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 the following information:

AML/KYC information	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.
Self-certification	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.

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.

Important: Where the entity account holder is not a Specified U.S. Person and the Reporting NZFI determines that the entity is a Passive NFFE, they must identify the controlling persons to determine if any such person is a Specified U.S. Person (as set out above) and, if so, the account will be a U.S. Reportable Account.

Example 1

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 was still required to report on payments that it makes to Entity A.⁴³

Example 2

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 and the reportable financial information.

Example 3

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.

The FATCA Memorandum of Understanding entered into between New Zealand and the United States (relevantly) that "it is understood that organizations registered under the Charitable Trusts Act 1957 and the Charities Act 2005, and donee organizations as defined in the ITA, would be treated as NFFEs that satisfy subparagraph B(4)(j) of section VI of Annex I."

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

- 5.156 The review of pre-existing entity accounts with an account balance or value that exceeded U.S. \$250,000 as of 30 June 2014 was required to be completed by 30 June 2016.
- 5.157 The review of pre-existing entity accounts with an account balance or value that did 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).
- 5.158 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.

⁴³ Accounts held by a NPFI needed to be reported to Inland Revenue in the 2015 (period ended 31 March 2016) and 2016 (period ended 31 March 2017) periods (see Article 4(1)(b) of the IGA).

Example 1

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 2

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 I of the IGA) in accordance with the procedures set out in section IV D of Annex I of the IGA.

Example 3

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

- 5.159 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).⁴⁴
- 5.160 A new entity account will be annually 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 Account.
- 5.161 New entity accounts held by a NPFI also needed to be reported to Inland Revenue in the 2015 (period ended 31 March 2016) and 2016 (period ended 31 March 2017) periods (see Article 4(1)(b) of the IGA).

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

- 5.162 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,⁴⁵ 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.

Other New Entity Accounts

- 5.163 With respect to new entity accounts not exempted or otherwise excluded, the Reporting NZFI must determine whether the account holder is a Specified U.S. Person, a NZFI or other Partner Jurisdiction Financial Institution, a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner, or an Active NFFE or Passive NFFE (and, for Passive NFFEs, if there are any controlling persons that are Specified U.S. Persons).
- 5.164 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.
- 5.165 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 were required to be reported.⁴⁶
- 5.166 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.⁴⁷

⁴⁴ 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 U.S. Treasury Regulations.

⁴⁵ Section 185F (7) of the TAA 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.

⁴⁶ Accounts held by a NPFI needed to be reported to Inland Revenue in the 2015 (period ended 31 March 2016) and 2016 (period ended 31 March 2017) periods (see Article 4(1)(b) of the IGA).

⁴⁷ If there is a change of circumstances with respect to a new 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 redetermine the status of the account.

If the account holder is a Specified U.S. Person, the Reporting NZFI must treat the account as a U.S. Reportable Account and will be annually reported.

Important: If the entity account holder is a Specified U.S. Person, the Reporting NZFI must treat the account as a U.S. Reportable Account and therefore is not required to look through to identify the controlling persons.

- 5.167 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 and will be annually reported.

Important: Where the entity account holder is not a Specified U.S. Person and the Reporting NZFI determines that the entity is a Passive NFFE, they must identify the controlling persons to determine if any such person is a Specified U.S. Person based on a self-certification and, if so, the account will be a U.S. Reportable Account.

- 5.168 If the account holder is a U.S. Person that is not a Specified U.S. Person, a NZFI or other Partner Jurisdiction Financial Institution that is not treated by the IRS as a NPFI, a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner, an Active NFFE, or 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.
- 5.169 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 were required to be reported.⁴⁸
- 5.170 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.

6 Part 3: FATCA - reporting requirements

- 6.1 This guidance will now - having set out the FATCA registration and due diligence requirements in detail - set out the FATCA reporting requirements.
- 6.2 Article 2 of the IGA requires the NZ Inland Revenue to annually and automatically exchange with the U.S. the information specified in Article 2(2) relating to U.S. Reportable Accounts. Concurrently, a Reporting NZFI will be treated by the U.S. as complying with FATCA, where, amongst other things, in terms of Article 4(1)(a) of the IGA, it identifies U.S. Reportable Accounts that it maintains and reports on them annually to the NZ Inland Revenue, to enable the NZ Inland Revenue to meet its exchange of information obligations under Article 2 of the IGA. **New Zealand is a Model 1 IGA Jurisdiction.**

What is a U.S. Reportable Account?

- 6.3 A "U.S. Reportable Account" is defined in the IGA to mean a financial account:
- maintained by a Reporting NZFI; and
 - held by one or more Specified U.S. persons; or

⁴⁸ Accounts held by a NPFI needed to be reported to Inland Revenue in the 2015 (period ended 31 March 2016) and 2016 (period ended 31 March 2017) periods (see Article 4(1)(b) of the IGA).

- held by a Non-U.S. entity that is a passive NFFE with one or more controlling persons that is a Specified U.S. person.

Important (for entity accounts):

- If an entity account holder is a Specified U.S. Person, the Reporting NZFI must treat the account as a U.S. Reportable Account and therefore is not required to look through to identify the controlling persons.
- If an entity account holder is not a Specified U.S. Person and the Reporting NZFI determines that the entity is a Passive NFFE, the Reporting NZFI must identify the controlling persons to determine if any of these persons are Specified U.S. Persons based on the due diligence procedures set out above and, if so, the account will be a U.S. Reportable Account.

What information does a Reporting NZFI need to obtain and report about a U.S. Reportable Account?

- 6.4 Article 4(1)(a) of the IGA requires that a Reporting NZFI identifies U.S. Reportable Accounts and reports annually to Inland Revenue the prescribed identity and financial information about such financial accounts pursuant to Article (2)(2)(a) of the IGA. The information to be obtained and reported for such U.S. Reportable Accounts is set out in Article 2(2)(a) as follows:⁴⁹
- (1) the name, address, and U.S. TIN of each Specified U.S. Person that is an account holder of such account and, in the case of a Non-U.S. Entity that, after application of the due diligence procedures set forth in Annex I of the IGA, is identified as having one or more controlling persons that is a Specified U.S. Person, the name, address, and U.S. TIN (if any) of such entity and each such Specified U.S. Person;
 - (2) the account number or functional equivalent in the absence of an account number.
 - (3) the name and identifying number of the Reporting NZFI.
 - (4) the account balance or value (including, in the case of a cash value insurance contract or annuity contract, the cash value or surrender value) as of 31 March of the relevant year or, if the account was closed during such reporting period, immediately before closure (as outlined below);
 - (5) in the case of any custodial account:
 - (A) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account or with respect to the account during the period ending 31 March of the relevant year; and
 - (B) the total gross proceeds from the sale or redemption of property paid or credited to the account during the period ending 31 March of the relevant year with respect to which the Reporting NZFI acted as a custodian, broker, nominee, or otherwise as an agent for the account holder;
 - (6) in the case of any depository account, the total gross amount of interest paid or credited to the account during the period ending 31 March of the relevant year; and

⁴⁹ NZFIs were also required in the 2015 (period ended 31 March 2016) and 2016 (period ended 31 March 2017) periods to report to Inland Revenue accounts held by non-participating financial institutions.

(7) in the case of any account not described in sub-paragraphs (1) – (6), the total gross amount paid or credited to the account holder with respect to the account during the period ending 31 March of the relevant year with respect to which the Reporting NZFI is the obligor or debtor, including the aggregate amount of any redemption payments made to the account holder during the period ending 31 March of the relevant year.

Reporting NZFIs will need to obtain and report to Inland Revenue **all** of the information set out in paragraphs Article 2(2)(a)(1)-(7) of the IGA.⁵⁰

Important: There are transitional reporting arrangements for Reporting NZFIs that maintain pre-existing accounts that they have identified as U.S. Reportable Accounts, but where they have not yet obtained the Specified U.S. Person's (i.e. account holder's or controlling person's⁵¹) U.S. TIN, and where the person's date of birth can be reported in lieu of the U.S. TIN. The circumstances where this can occur (i.e. reporting the Specified U.S. Person's date of birth in lieu of their U.S. TIN) are set out below:

- Notice 2024-78 provides an extension to the temporary relief for FFIs (including Reporting NZFIs) that have not been able to obtain U.S. TINs for their pre-existing FATCA reportable account holders and controlling persons. It extends, and adds to, Notice 2023-11 (issued 30 December 2022) which outlines what FFIs must do in order to obtain relief from the U.S. determining they are significantly non-compliant with their FATCA obligations.

The key points from Notice 2024-78 are:

- The relief extends for calendar years 2025, 2026, and 2027.
- It relates to pre-existing accounts only and does not apply to new accounts opened after the IGA came into force.
- FFIs must report a valid date of birth and use the prescribed TIN code where a U.S. TIN has not been obtained.
- The notice further sets out expectations for FFIs regarding their annual efforts to obtain U.S. TINs and documentation of such efforts. An FFI must retain records until 2031⁵² of the policies and procedures it has adopted to meet these requirements and evidence that these actions have been undertaken.

Further information:

- Notice 2024-78: Notice 2024-78, Extension of Temporary Relief for Foreign Financial Institutions to Report U.S. Taxpayer Identification Numbers
- Notice 2023-11: Foreign Financial Institution Temporary U.S. Taxpayer Identification Number Relief.

- 6.5 This guidance now outlines two points set out in Article 2(2)(a) of the IGA – "account closures" and the meaning of "paid or credited" – in more detail. These points are relevant to the type of information that Reporting NZFIs will need to report to Inland Revenue in relation to U.S. Reportable Accounts.

⁵⁰ The information set out in Article 2(2)(a)(1)-(4) of the IGA was required to be reported for the 2014 year (the period ending 31 March 2015). The information set out in Article 2(2)(a)(1)-(7) of the IGA, except for the "gross proceeds" information described above at Article 2(2)(a)(5)(B), was required to be reported for the 2015 year (the period ending 31 March 2016). All of the information set out in Article 2(2)(a)(1)-(7) of the IGA needs to be reported for subsequent periods.

⁵¹ This requirement for "controlling persons" would apply for an account maintained by a Reporting NZFI that is identified as being held by a passive NFFE with a controlling person that is a Specified U.S. Person.

⁵² Reporting NZFIs are also required to comply with their record keeping obligations under s 22 of the TAA.

Account Closures

- 6.6 Article 2(2)(a)(4) of the IGA refers to the information that Reporting NZFIs will need to provide in order to comply with their obligations in terms of Article 4(1)(a) in relation to "account closures" for U.S. Reportable Accounts.
- 6.7 Where a Reporting NZFI maintains a U.S. Reportable Account that is closed during a reporting period, the Reporting NZFI must provide details of the account balance or value immediately before closure.
- 6.8 In recognition of the fact that Reporting NZFIs will have different account closing procedures, a Reporting NZFI will comply with this "account closure" requirement if they provide the following information to Inland Revenue in relation to such accounts. The intention of the different options is to capture the amount withdrawn as part of the account closure process, as opposed to the amount at the point of closure, given that there is an expectation that the balance of an account will be reduced prior to the point of closure. Additionally, a Reporting NZFI has the option to report the balance or value of an account on receipt of account closing instructions as a proxy date for "immediately before closure":

Balance or value at time of account closure instructions	The balance or value of an account when the Reporting NZFI receives instructions from the account holder to close the account.
Most recent available balance or value	The most recent available balance or value that is obtainable following receipt of instructions from an account holder to close the account, where the Reporting NZFI is unable to record the balance or value at the time of receiving instructions to close the account. This may include a balance or value that predates the closure instructions, if that is the balance or value most readily available.
Balance or value on any of the five business days prior to account closure	The balance or value of the account on any of the five business days prior to account closure.

Example

A Reporting NZFI receives instructions from a customer to close a depository account on Monday. The Reporting NZFI is able to determine the account balance at the time of receiving the account closure instructions. However, internal procedures result in the account being closed on the following Wednesday. The balance of the depository account on Monday prior to the actual closure of the account is the reportable balance in terms of Article 2(2)(a)(4) of the IGA (where the Reporting NZFI chooses to record the account closure balance as at the time of receiving the account closure instructions).

Amounts Paid or Credited

- 6.9 Article 2(2)(a)(5)-(7) of the IGA refers to information that Reporting NZFIs will need to provide relating to certain amounts "paid or credited" to U.S. Reportable Accounts that they maintain.
- 6.10 It is common for income from a financial account to be paid to or credited to a different account from which the capital is held. Reporting NZFIs should report on all amounts of gross income or proceeds from the sale or redemption of property, irrespective of which account of the account holder, those amounts are paid or credited into.
- 6.11 The expression "paid" is not defined in the IGA. However, the expression "pay" is defined in section YA 1 of the ITA to include in part, to deal with an amount in a person's "interest or on their behalf". This would include payments of income and gross proceeds to any account of an account holder. Further support in the IGA for this interpretation can be found in Article 2(2)(a)(5)(A) of the IGA, which refers to amounts being "paid or credited to the account (or with respect to the account)."

Appendix 1 – What is a self-certification and when is it required for FATCA due diligence?

A key element of the due diligence procedures in the FATCA IGA is the concept of self-certification. At a high level, this generally involves the Reporting NZFI obtaining a self-certification about whether an account is held (or, in the case of a passive NFFE, controlled) by a Specified U.S. Person.

Generally speaking, self-certification is the process by which an individual financial account holder certifies whether they are a Specified U.S. Person, or an entity financial account holder certifies their status as a particular type of entity for FATCA purposes (and, if it is a passive NFFE, whether any of its controlling persons are Specified U.S. Persons).

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 unless they know or have reason to know that such a self-certification is incorrect or unreliable (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 will be applied based on looking at what the reasonably prudent Reporting NZFI would do in the circumstances.

Self-certification by individuals

A Reporting NZFI that maintains an account that is held by an individual may obtain a self-certification from the account holder in the following circumstances:

Curing indicia	In order to establish that a pre-existing individual account 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 not being a 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.
New Accounts (account opening)	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. TIN. In most cases this will be the individual's U.S. social security number.
Change of circumstances	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. If 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

A Reporting NZFI that maintains an account that is held by an entity may also obtain a self-certification from the account holder as follows:

Information indicating that the account holder is a U.S. Person	For pre-existing entity accounts above the due diligence and reporting threshold, ⁵³ 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.
Rebutting NPFI status	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 compliant or an exempt beneficial owner as defined in the U.S. Treasury Regulations. ⁵⁴
NFFE classification	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 NFFE.
Whether a controlling person is a Specified U.S. Person	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.
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	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 another Partner Jurisdiction FI. 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.

⁵³ A pre-existing entity account that has an account balance or value that exceeded U.S. \$250,000 as of 30 June 2014, or which did not exceed that amount as at that date, but exceeded U.S. \$1,000,000 on 31 March of any subsequent year (s 185M of the TAA).

⁵⁴ 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.

