



Association of British Insurers



KNOW YOUR CUSTOMERS' TAX RESIDENCY A GUIDE FOR INSURERS AND FINANCIAL ADVISERS

This document is intended to provide a “Guide for Good Practice” for life insurance companies and financial advisers in ascertaining the tax residence status of policyholders, as now required under UK law. This Guide establishes standards that the ABI and APFA believe all life insurance companies and financial advisers should aspire to and work towards but is not intended to comprise legal advice or to be a substitute for firms conducting their own assessment of the requirements of UK law in this regard.

Background

In September 2012 the UK and the US signed a treaty to implement the Foreign Account Tax Compliance Act (commonly known as FATCA), a US law aimed at reducing tax evasion by US citizens in the UK. Under this Agreement and the enacting legislation, UK financial institutions are required to report information on accounts held by US customers to HMRC.

The UK Government has since entered into similar automatic exchange of information (AEOI) agreements with the Crown Dependencies and a number of other participating jurisdictions.

Further agreements to exchange information with participating countries have followed under an OECD initiative called the Common Reporting Standard (CRS). The UK enacting legislation for these agreements requires Financial Institutions to put in place arrangements to establish more generally the tax residency status of their customers and, as necessary, to report related information to HMRC. This guidance focuses on information required under these agreements and may be subject to amendment as the OECD model develops.

Who is affected by this new legislation?

Life insurers who sell certain life insurance products are legally obliged to comply with this new legislation. The types of life insurance products include:

- Life insurance policies that have a cash/surrender value.
- Purchased life annuities, and
- Deferred annuities

Associated products may also be within scope, such as uninvested cash accounts (whether or not they earn interest).

Financial advisers introducing the business and undertaking the relevant Know Your Customer/Anti Money Laundering (KYC/AML) checks for the insurance company also need to be aware of the new rules, which may generate additional requirements and reporting obligations for financial advisers introducing life insurance business.

Purpose of this guidance

Given the close working and AML/KYC reliance relationship between the insurance industry and the financial adviser community, the ABI and APFA have co-operated to assist compliance with this legislation, with this guide for good practice which aims to:

- Minimise the impact on customers
- Build on the existing AML/KYC reliance model
- Minimise the cost of compliance to insurance companies and
- Safeguard the role of financial insurance market.

What this guidance does

This document sets out the ABI and APFA's view on:

- The roles and responsibilities of both the insurer and the financial adviser could be divided.
- Collecting tax residency information for new policies,
- Filling out the suggested confirmation of verification of identity (CVI) forms, and
- Assessing the tax residency of existing policyholders

No insurance company or financial adviser is bound by this guidance and it is suggested that the terms on which an insurer places reliance upon a financial adviser to undertake customer due diligence is set down in a formal agreement or contract.

As noted above, this guidance and the suggested self- certification wording has been developed based on the UK legislation as it stands on the date of publication.

WHAT THIS MEANS FOR INSURERS AND FINANCIAL ADVISERS

The effect of this new legislation means that life insurers now need to know where their customers (both individuals and entities) acquiring certain life policies and purchased life annuities are tax resident. This will include both purchases and assignments of products.

There are a number of ways to do this under UK law. However, in order to streamline the process and minimise the cost to all parties involved, we recommend that a self-certification of tax residency is required for all new customers via the application form or the equivalent process. This should:

- Ensure the information is collected at the same time as all other information needed to acquire a life policy,
- Minimise the level of Insurance company enquiries needing to be made of the customer, and
- Limit the impact on financial advisers and direct sellers in deciding for what insurance products tax residency information should be obtained.

Consideration also needs to be given by the Insurance Company to contractual requirements on new customers to provide tax residency information when requested as well as what steps are appropriate to take where such requested information is either not forthcoming or appears contradictory (see "Reasonableness Checks for New Accounts" below).

1. Self-certification: Process for new accounts

The ABI and APFA have developed the following suggested wording that can be incorporated into application forms.



Self Certification -
Individuals.docx



Self Certification-
Entities.docx

Insurance Companies may wish to tailor the forms to their specific circumstances. While these may vary from insurer to insurer, there are benefits to investors of consistency and uniformity.

Filling out the self-certification

Individual account self-certification

Under this suggested approach, individual policyholders or investors would need to self-certify if they are resident for tax purposes in the UK only. This is phrased as a question – “Are you resident for tax purposes anywhere other than the UK?”

If the answer to this question is “No”, so confirming that they are tax resident in the UK only, then no further details are required, and the investor will be out of scope for FATCA and any other automatic exchange of information (AEOI) agreement.

If the answer to this question however is “Yes”, then every country where they are tax resident should also be recorded. For each additional country, the relevant tax reference or taxpayer identification number should also be recorded. In considering an individual’s response to this question, insurers and financial advisers should be aware that cases will exist where individuals are tax resident in more than one country.

It is expected that an individual should know where they are tax resident, including cases where that individual is tax resident in more than one country.

Tax residency rules will vary from country to country, so it is not possible to state how this will be determined other than on a case by case basis. It is worth noting that for US tax purposes individuals with a US passport or Green Card, or otherwise holding US citizenship (for instance, by descent) will also be deemed to be tax resident in the US

It is important to note that while it would generally be the individual’s responsibility to provide the details which enable a self-certification to be made, there is a duty to check whether there might be any discrepancies or inconsistencies between the assertion made in the self-certification and any other information collected about the individual at account opening – this is detailed further below under the heading ‘Reasonableness checks’.

Where policies belong to more than one individual – joint policies, for instance, then the self-certification process should be completed separately for each individual concerned.

Entity account self-certification

If a product is being arranged for a customer that is an entity (for example, a company, charity, partnership or trust) certain information about the type of entity and in some circumstances its tax residence should be collected. Controlling persons (established in accordance with AML/ KYC procedures) within those entities will also need to declare all countries in which they are tax resident, in certain cases.

In an insurance context we expect that the majority of entities that products will be arranged for will be one of the following:

- Individuals putting a policy into trust,
- Charities, or
- Small partnerships.

For this reason, the approach we have taken to designing the self-certification wording uses a more consumer friendly approach rather than using the complicated AEOI classifications. Because of this, there will be some onus placed on the insurance company and financial advisers to ascertain which AEOI classification each entity fits into.

Question 1

This question asks what type of entity the customer is.

- Financial Institution – this includes a bank, a custodial institution, an investment entity, any other life insurance company and any professionally managed trusts. If the entity is a participating financial institution they need to provide their Global Intermediary Identification Number (GIIN), issued by the US Treasury for FATCA purposes. This number should be recorded on the form. All UK financial institutions will be participating financial institutions under FATCA and should have a GIIN.
- UK Registered Pension Scheme or similar arrangement – these are outside the scope of automatic exchange of information, so no further information needs to be collected.
- Court Deputy accounts and other escrow accounts are specifically out of scope.
- UK Registered Charities/Not for Profit Organisations - these will be outside the scope of automatic exchange of information if the trustees of the charity are tax resident only in the UK or in the US. If so, no further information needs to be collected. However if it is a foreign charity, or one or more of the trustees of the charity is tax resident elsewhere, then the rest of the form needs to be filled out.
- Actively trading non-financial institutions - These would be active non-financial entities (NFFEs). In most cases this would include all listed companies including general insurance companies (to the extent that these are not also financial institutions). For private companies and partnerships, it is likely to be clear from their individual circumstances whether they are actively trading.
- Non-trading investment body –These would be passive NFFEs. It would include individuals who put policies into trust. It would also include private companies, partnerships and other legal arrangements that are not actively trading, for example where they only exist to hold investments or receive income. Extra scrutiny of these passive investment bodies is required under the AEOI rules, since it is necessary to determine the controlling persons behind these bodies and ascertain their own AEOI status.

- Other – Although the categories above should embrace the majority of insurance company clients, there is a chance that other types of entities could seek to acquire a policy and thus give rise to FATCA and AEOI considerations. Examples of other entities could include government agencies or bodies of an international character. Reference to the detailed specific guidance issued by HMRC may be required when dealing with such entities.

Questions 2 & 3

These questions seek to collect information as to the territories other than the UK where the entity policyholders are tax resident. (This should be collected for all entities with relevant products, except for financial institutions, UK registered pension funds and UK registered charities where the trustees are tax resident only in the UK or the US). The information required also includes tax reference or taxpayer identification numbers for the territories concerned.

Questions 4 & 5

These questions seek information from all non-trading investment bodies (passive NFFEs) as to whether any of their controlling persons are tax resident in any territory other than the UK and to collect those individuals' tax reference numbers for those territories.

A controlling person is anyone who has control over the entity. For companies this includes directors, partners, or anyone who holds or controls 25% or more of the shares or voting rights in the entity. For trusts this includes the settlor, trustees and beneficiaries when known.

Identification of controlling persons, and collection of their details, is only required under AEOI where this already takes place under current UK KYC/AML requirements. There is no requirement to identify any parties where

Identification is not already required for KYC/AML purposes.

If the self-certification declaration is not completed, it is unlikely that the insurer will process the business.

Reasonableness checks for new accounts

A key part of the self-certification process is the requirement to confirm that information provided in support of the application, e.g., for AML/KYC Due Diligence, is consistent with the declaration which the customer makes.

In the situation where an Insurer places reliance on financial advisers in respect of AML/KYC due diligence, the financial adviser will be in the best position to let the insurer know whether there is any concern with the self-certification. We therefore have provided some suggested wording for an updated Confirmation of Verification of Identity Certificate (CVI) that includes fields for the financial adviser to confirm that the verification evidence seen, supports the customer's 'residence for tax purposes' declaration.



CVI - Individual.docx



CVI - Non Individual.docx

By completing this section the financial adviser will assist the Insurer in validation of the declaration and thus likely avoid the need for the Insurer to contact the customer directly.

There is also a field where the financial adviser can indicate to the Insurer that further follow up may be required. This field should be used where an adviser feels that there could be some doubt or ambiguity as to the customer's tax residency status.

6 Things to look out for

Any non-UK indicia – a customer states that they are only resident in the UK for tax purposes but:

- Produces a non-UK passport as proof of identity.
- Produces a passport that states a US place of birth.
- Gives non-UK Bank Account details.
- Provides a non-UK address or phone number on the application form.
- Mentions to you in passing that they are a US citizen or live outside the UK.
- Any other foreign address associated with the account

The HMRC guidance has further examples on confirming reasonableness.

Some customers may have more than one county of residence for tax purposes or may be unsure of their exact status. It is not expected that the adviser or insurer would, or should, be asked to verify tax residence status where this is unclear. Therefore, the additional field on the CVI will serve to bring any such cases to the Insurer's attention.

Follow up – checking if self-certification is correct

Where there is any ambiguity as to the customer's country/ countries of residence for tax purposes, it is probable that the Insurer would need to contact the customer to clarify tax residency status. This could necessitate the customer providing further evidence of tax residency, or seeking further advice prior to the contract being concluded.

The adviser will not be expected to facilitate the above processes (aside from ticking the appropriate field on the CVI) unless the adviser wishes to. The Insurer would normally deal directly with the customer or the customer's nominated tax adviser.

2. Self-certification: changes of circumstances

Where there are changes to the policy or the customer's details, e.g., a change of address to outside the UK, assignment of the policy etc., these should be reviewed to determine whether they may generate any requirement for re-certification of the customer's tax residency.

The insurance company may need to contact the customer, or other parties to the contract, in order to obtain certification as to the tax residency status following the change to the policy or role holder details.

Where the insurance company is aware of there being an active financial adviser linked to the policy, we suggest that the insurance company advises the financial adviser where there is a need to contact the customer for self-certification in respect of the change or changes made.

It should be noted that, should the customer fail to respond to such communications within a reasonable time period, then the product provider will be obliged to report financial account information for the customer to HMRC. It is therefore important that the customer does respond to such communications promptly.

Where payment or assignment of benefits is to be made to someone other than the original customer, the product provider will need to verify the tax residency status of that person or entity. Accordingly a self-certification form will need to be completed prior to benefits being assigned. As above, where the provider is aware that there is a financial adviser actively involved, then the provider will likely advise the financial adviser of such situations.

3. Assessing tax residency for existing accounts

If, after completing the indicia search of existing policies (outlined in the UK enacting legislation), an insurance company has reason to believe the customer is not tax resident in the UK, it would be prudent to check this with the customer before reporting. This can be done by asking the customer to complete a self-certification declaration of tax residency.

Contacts



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