

Is a trust and its subsidiary an expanded Affiliate Group (EAG) in FATCA

Under **FATCA** (the **Foreign Account Tax Compliance Act**), whether a **trust** owning a subsidiary company constitutes an **Expanded Affiliated Group (EAG)** depends on the specific ownership and control structure, as well as how the trust and subsidiary are classified under FATCA rules. Let's break this down:

Key Considerations for Trusts and EAGs under FATCA:

1. **Ownership Threshold for EAGs**:

- For FATCA purposes, an EAG is formed when one entity owns **at least 50%** (by vote or value) of another entity, directly or indirectly.
- However, **trusts** are not typically considered "entities" in the same way as corporations or partnerships for FATCA purposes. Instead, trusts are often treated as **financial institutions** (if they meet certain criteria) or as **non-financial foreign entities (NFFEs)**.

2. **Trust as a Financial Institution**:

- If the trust is classified as a **Foreign Financial Institution (FFI)** under FATCA (e.g., because it is a professionally managed investment vehicle), it may have its own FATCA obligations (e.g., reporting on U.S. account holders). However, the trust itself would not typically be considered part of an EAG unless it owns at least 50% of another entity.

3. **Trust as an NFFE**:

- If the trust is classified as an **NFFE**, it may need to disclose its **substantial U.S. owners** (if any) or certify that it has none. However, the trust's ownership of a subsidiary would not automatically create an EAG unless the trust is treated as owning the subsidiary for FATCA purposes.

4. **Trust Ownership of a Subsidiary**:

- If the trust owns **at least 50%** of the subsidiary (by vote or value), the subsidiary could be considered part of an EAG with other entities owned by the trust or its beneficiaries, depending on the structure.
- However, trusts often do not "own" entities in the same way that corporations or individuals do. Instead, the ownership may be attributed to the **trust's beneficiaries** or **settlers**, depending on the trust's terms and applicable tax rules.

5. **Look-Through Rules**:

- Under FATCA, ownership may be attributed to the **beneficiaries** or **settlers** of the trust if they are considered to have control or ownership over the trust's assets. If the beneficiaries or settlers own at least 50% of the subsidiary (directly or indirectly), this could create an EAG.

Is a trust and its subsidiary an expanded Affiliate Group (EAG) in FATCA

Example Scenario:

- A **trust** owns **60%** of a **subsidiary company**.
- If the trust is treated as owning the subsidiary for FATCA purposes, the subsidiary could be part of an EAG with other entities owned by the trust or its beneficiaries.
- If the trust is not treated as owning the subsidiary (e.g., because ownership is attributed to the beneficiaries), the EAG determination would depend on the beneficiaries' ownership of other entities.

Practical Implications:

- **FATCA Classification**: Determine whether the trust is an FFI or an NFFE, as this affects its FATCA obligations and whether it is part of an EAG.
- **Ownership Attribution**: Analyze whether the trust's ownership of the subsidiary is attributed to the trust itself or to its beneficiaries/settlors.
- **Reporting Requirements**: If the subsidiary is part of an EAG, it may need to comply with FATCA reporting or certification requirements, depending on its classification.

Conclusion:

A trust owning a subsidiary company **could** be part of an **Expanded Affiliated Group (EAG)** under FATCA if the trust is treated as owning at least 50% of the subsidiary (directly or indirectly). However, this depends on the specific structure of the trust, how ownership is attributed, and the FATCA classification of the trust and subsidiary. It is advisable to consult a tax professional or legal advisor to analyze the specific facts and ensure compliance with FATCA rules.