

Whether a trust can be considered part of an EAG for FATCA

Could the UK investment entity register for a GIIN regardless of the status of the non participating trust

Yes, the UK investment entity can register for a Global Intermediary Identification Number (GIIN) under FATCA, regardless of the non-participating status of the trust that owns it, provided the investment entity itself meets the criteria for being a Foreign Financial Institution (FFI) and complies with FATCA requirements. Below, I'll explain the key considerations and process for the UK investment entity to register for a GIIN, the implications of the trust's non-participating status, and how this operates within the context of an Expanded Affiliated Group (EAG) and the UK's FATCA Intergovernmental Agreement (IGA).

Can the UK Investment Entity Register for a GIIN?

FATCA Status of the Investment Entity: Under FATCA, an investment entity is classified as an FFI if it primarily conducts activities such as trading, portfolio management, or investing for or on behalf of customers (26 CFR 1.1471-5(e)(1)(iv)). If the UK investment entity meets this definition, it is required to register with the IRS to obtain a GIIN, unless it qualifies as a deemed-compliant FFI under the FATCA regulations or the UK-US IGA. **Independence from Trust's Status:**

The investment entity's ability to register for a GIIN is independent of the trust's status as a non-participating FFI. Each entity within an EAG is evaluated separately for FATCA compliance purposes. The trust's non-participating status does not preclude the investment entity from registering as a Participating FFI or a Registered Deemed-Compliant FFI and obtaining a GIIN. **UK-US IGA Context:** The UK has a Model 1 IGA with the United States (signed in 2012), which means that FFIs in the UK, including investment entities, generally report FATCA-related information to HM Revenue & Customs (HMRC), which then exchanges this information with the IRS. To comply with the IGA, the UK investment entity must register with the IRS to obtain a GIIN, unless it qualifies for an exemption (e.g., as a deemed-compliant FFI under Annex II of the IGA). **2. Implications of the Trust's Non-Participating Status EAG Structure:** As noted in your previous question, if the trust owns more than 50% of the UK investment entity, they form an EAG, with the trust as the common parent.

However, FATCA regulations (26 CFR 1.1471-5(i)) allow each entity within an EAG to have its own FATCA status. The trust's non-participating status does not legally prevent the investment entity from registering and complying with FATCA.

Withholding Risks: As a non-participating FFI, the trust is subject to 30% withholding on certain U.S.-source payments (e.g., dividends, interest) under FATCA (26 U.S.C. § 1471).

If the investment entity does not register for a GIIN and is also classified as a non-participating FFI, it would face the same withholding. By registering for a GIIN and becoming a Participating FFI or Registered Deemed-Compliant FFI, the investment entity can avoid this withholding on its own U.S.-source income. **Reporting Obligations:**

Whether a trust can be considered part of an EAG for FATCA

If the investment entity registers for a GIIN, it must identify and report any U.S. accounts or substantial U.S. owners (e.g., U.S. beneficiaries or settlors of the trust, if applicable) to HMRC under the UK-US IGA. The trust's non-participating status may complicate reporting if the trust holds accounts with the investment entity, as the investment entity may need to treat the trust as a non-participating FFI and report it as such or withhold on payments made to the trust.

3. Registration Process for the UK Investment Entity IRS FATCA Portal: The UK investment entity can register for a GIIN through the IRS FATCA Online Registration System (accessible at irs.gov). The process involves: Creating an account on the FATCA portal. Providing details about the entity, including its FATCA classification (e.g., Participating FFI, Registered Deemed-Compliant FFI, or Sponsored FFI). Identifying whether it is part of an EAG and, if so, providing information about the EAG and the common parent (the trust, in this case). Designating a Responsible Officer to oversee FATCA compliance. Submitting the registration for IRS approval. GIIN Issuance: Once approved, the IRS issues a GIIN, which the investment entity uses to demonstrate FATCA compliance to withholding agents (e.g., banks or custodians) and avoid withholding on U.S.-source payments.

HMRC Reporting: Under the UK-US Model 1 IGA, the investment entity must also comply with HMRC's reporting requirements, which include submitting FATCA reports (e.g., information on U.S. account holders) by May 31 of each year for the previous calendar year.

4. Options for the Investment Entity The UK investment entity has several options under FATCA and the UK-US IGA:

Participating FFI:

Register with the IRS, obtain a GIIN, and comply with FATCA reporting and due diligence requirements. This involves entering into an FFI Agreement with the IRS and reporting to HMRC under the IGA.

Registered Deemed-Compliant FFI: If the investment entity qualifies for a deemed-compliant status (e.g., as a small financial institution with a local client base under Annex II of the IGA), it may still need to register for a GIIN but has reduced compliance obligations.

Sponsored FFI: If the investment entity is part of an EAG or has a relationship with a sponsoring entity (e.g., another FFI within the EAG or a third-party financial institution), the sponsoring entity can assume FATCA compliance obligations. In this case, the investment entity may not need its own GIIN and would use the sponsor's GIIN. However, since the trust is non-participating, it is unlikely to act as a sponsoring entity, so the investment entity would need to identify another sponsor or register independently.

Certified Deemed-Compliant FFI:

Some FFIs qualify as certified deemed-compliant under the IGA or FATCA regulations (e.g., certain trusts or entities with low-value accounts). These FFIs do not need to register for a GIIN but must certify their status to withholding agents (e.g., via Form W-8BEN-E). The investment entity would need to assess whether it qualifies for this status based on its activities and client base.

5. Practical Considerations Compliance Strategy: Registering for a GIIN is generally advisable for the UK investment entity to avoid 30% withholding on U.S.-source payments and to maintain good standing with financial institutions (e.g., banks or custodians) that require a GIIN for compliance. This is especially important if the investment entity receives U.S.-source income or holds accounts with U.S. persons.

Trust's Role in the EAG:

As the common parent, the trust's non-participating status may draw scrutiny from withholding agents or HMRC, **especially if the investment entity identifies the trust as a non-participating FFI in its FATCA reporting**. The investment entity should ensure it accurately reports any accounts or payments involving the trust to avoid compliance issues.

HMRC Guidance: The UK investment entity should consult HMRC's guidance on FATCA compliance (available at gov.uk) to

Whether a trust can be considered part of an EAG for FATCA

ensure it meets local reporting requirements under the IGA. HMRC's International Exchange of Information Manual provides detailed instructions for UK FFIs. Professional Advice:

Given the complexity of FATCA compliance for entities within an EAG, the investment entity should engage tax and legal professionals to confirm its FATCA classification, assess whether it qualifies for deemed-compliant status, and navigate the registration process.

6. Potential Challenges Trust's Non-Compliance: If the trust, as the common parent, remains non-participating, it may face withholding on its own U.S.-source income, and this could indirectly affect the investment entity if the trust receives payments through the investment entity. The investment entity may need to withhold on payments to the trust or report the trust as a non-participating FFI. EAG Reporting: When registering, the investment entity must disclose its EAG membership and identify the trust as the common parent. This could trigger additional scrutiny from the IRS or HMRC, especially if the trust is non-compliant.

Operational Impact:

Financial institutions (e.g., banks or custodians) may be reluctant to deal with the investment entity if it is closely tied to a non-participating FFI (the trust), as this increases their own compliance burden. Registering for a GIIN can help mitigate this risk by demonstrating the investment entity's commitment to FATCA compliance. Conclusion The UK investment entity can register for a GIIN regardless of the non-participating status of the trust, as each entity's FATCA obligations are assessed independently. Registering as a Participating FFI or Registered Deemed-Compliant FFI will allow the investment entity to avoid 30% withholding on U.S.-source payments and comply with the UK-US IGA. The trust's non-participating status does not legally prevent the investment entity from registering, but it may complicate reporting and compliance within the EAG, particularly if the trust holds accounts with the investment entity or receives U.S.-source payments. The investment entity should consult tax professionals to determine the best FATCA classification (e.g., Participating FFI, Sponsored FFI, or Deemed-Compliant FFI) and ensure compliance with both IRS and HMRC requirements.

1

2

¹ Sources U.S. Treasury FATCA Regulations: 26 CFR 1.1471-5 (definitions of FFI, EAG, and compliance statuses).

² UK-US FATCA Intergovernmental Agreement (Model 1 IGA): Available at treasury.gov. HMRC Guidance on FATCA: gov.uk, International Exchange of Information Manual. IRS FATCA Registration Portal: irs.gov. IRS Instructions for Form W-8BEN-E and Form 8966.