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## CCH Entities Trusts: FACTA

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This guide will help you to understand FACTA how CCH Entities can report FACTA information and reporting.

### FATCA in a nutshell

Foreign Account Tax Compliance (FATCA) has been part of New Zealand's regulatory framework since July 2014.

Despite that, many advisers still struggle to come to terms with its complexities and nuances and are uncertain as to how FATCA affects their practice and their clients.

### FATCA's impact on New Zealand trusts

Trust advisers need to take special care: every New Zealand trust is affected by the FATCA legalisation, regardless of whether the trust is connected with US citizens. Therefore, every New Zealand trust must ascertain its FATCA status. This essentially requires the trust to determine whether it is a "financial institution".

### When will a trust be a financial institution?

The red flags signaling a trust might be a financial institution are:

- if the trust's assets includes money or securities (typically shares) that are managed by an investment advisor, fund manager, share broker, wealth manager or other financial institution; or
- if the trust has a corporate trustee that charges for its services, and those services include actively managing securities or money

A family trust that owns a family home, and nothing more, remains outside the FATCA net.

Conversely, a family trust that owns a share portfolio as well as a family home may be caught by the FATCA requirements.

### Example:

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 outsources the management of the share portfolio to Fund Manager (which is an "in business" investment entity, and therefore a category of "financial institution"). Fund Manager has a written mandate to acquire and sell shares subject to the terms of the mandate, which it regularly does.

**Is the trust a financial institution?**

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. It is immaterial that Fund Manager does not manage all of the trust’s assets; it is sufficient that it manages the trust’s share portfolio. The involvement of the Fund Manager in these circumstances makes the trust a “deemed” investment entity and, therefore, a financial institution.

*(Adapted from Example 2 of “Foreign Account Tax Compliance Act (FATCA) – Trusts Guidance Notes”, Inland Revenue, March 2016).*

If a trust is a deemed investment entity (and therefore a financial institution) it must register on the United States’ Internal Revenue Service (IRS) website and carry out FATCA due diligence on their financial accounts. Exemptions may apply. Further information about the obligations of financial institutions can be found at <https://www.irs.gov>.

If a trust is not a financial institution under FATCA, it is – by default – a “non-financial foreign entity” or NFFE. NFFEs do not have any FATCA registration, due diligence or reporting obligations. However, if a trust is a passive NFFE (ie. has at least 50% passive income such as dividends and interest) then it will fall under the FATCA radar if any of the trusts “controlling persons” (trustees, settlors, protectors, appointers and potentially beneficiaries) are US citizens. Passive NFFEs have to disclose information to financial institutions with whom they hold an account if requested to do so.

In summary, trust advisers need to carry out a comprehensive appraisal of all trusts under their care and administration. Each trust needs to be individually reviewed to determine whether it falls within the ambit of the FATCA requirements.

In CCH Entities you can record your FATCA information under the financial tab:

Trust Financial Kamir Trust Family CCH Demonstration Limited - Suzy.hardy@cch.co.nz

General

Relationships

Responsibilities

Legal

**Financial**

AML/CDD

Notes

Other

Assets

Gifting/Loan

Distributions

Revenue

Documents

Workflows

Tasks

Reports

IRD Number

Controlled Bank Account

Accounting Balance Date

Bank Name	Branch Name	Account Number	Signatories
<input type="text"/>	<input type="text"/>	<input type="text"/>	Duncan Cooper and John A <input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Qualifying Company

Look Through Company

FATCA  FATCA Registered

GIIN Number

Classification

Reporting

Last Report Date

Notes