

Income Tax (Guernsey) Law, 1975, as amended (“the Law”)
Supplementary FAQs 1.0
Compliance Information Notice
Issued 10 March 2022

The purpose of the Compliance Information Notice is to provide pragmatic guidance and support to reporting financial institutions.

This Compliance Information Notice is issued under the provisions of Regulation 10 of The Income Tax (Approved International Agreements) (Implementation) (United Kingdom and United States of America) Regulations, 2014 and the provisions of Regulation 12 of The Income Tax (Approved International Agreements) (Implementation) (Common Reporting Standard) Regulations, 2015.

To assist further with the implementation requirements of section 171F of the Law a series of frequently asked questions are presented within this Compliance Information Notice.

Following the publication of Bulletin 2021/6 on 17 December 2021 titled “Additional Compliance Measures in relation to FATCA and the CRS – Directions, Appointment of Inspectors and Freezing Orders”, the Revenue Service received requests for an extension to the reporting deadline in order to be able to implement the requirements of section 171F of the Law (which requires the notification of all accounts where it has not been possible to obtain the required (or authorised) self-certification).

Bulletin 2022/2 was issued on the 27 January 2022 which extended the first reporting date for the purposes of filing a report under section 171F of the Law (a “Self-Certification Report”) to 31 March 2022 for both new and pre-existing accounts.

Whilst Bulletin 2021/6 included several FAQs it is recognised that further practical guidance was required, therefore, this Compliance Information Notice now consolidates FAQs that are relevant to the practical administration of the provisions contained in section 171F of the Law.

Glossary

The Law	The Income Tax (Guernsey) Law, 1975, as amended
FATCA Regulations	The Income Tax (Approved International Agreements) (Implementation) (United Kingdom and United States of America) Regulations, 2014
CRS Regulations	The Income Tax (Approved International Agreements) (Implementation) (Common Reporting Standard) Regulations, 2015, 2020 and 2021
The Standard	Standard for Automatic Exchange of Financial Account Information in Tax Matters, Second Edition
The Handbook	Standard for Automatic Exchange of Financial Account Information in Tax Matters: Implementation Handbook, Second Edition
GFSC Handbook	Guernsey Financial Services Commission Handbook on Countering Financial Crime and Terrorist Financing, 5 November 2021

Additional sources of information, useful links and a copy of the specific text of Section 171F of the Law are included at the end of this Compliance Information Notice.

FAQ 1

Please clarify when a **Self-Certification Report is required to be submitted to the Revenue Service?**

For an invalid or absent self-certification for new accounts, the first report was due to be submitted on or before 31 January 2022 pursuant to the relevant reporting deadline in Bulletin 2021/6. In view of the concerns raised to this reporting requirement, it has been decided to extend the **first reporting date** for Self-Certification Reports to 31 March 2022 for both new and pre-existing accounts.

This extension to the first reporting date is outlined in Bulletin 2022/2 published on 27 January 2022.

Accordingly, the Revenue Service is satisfied that a Reporting Financial Institution will have met its reporting obligations under section 171F of the Law by submitting the appropriate report on or before 31 March 2022 for both new and pre-existing accounts.

Figure 1 Implementation Timeline (see below) Report Required – Submission via IGOR column, summarises the new and pre-existing accounts first and subsequent reporting submission due by dates for a **Self-Certification Report**.

As you will see from the Implementation Timeline, the Revenue Service has modified the practical application of section 171F of the Law so that it is now an annual reporting requirement, with all required reports being required to be submitted, via IGOR, on or before 31 March.

It would be expected that Reporting Financial Institutions will maintain the relevant records to complete the **Self-Certification Report** (and to monitor the remediation of such accounts) throughout the year, therefore, the Revenue Service may, as part of ongoing monitoring of compliance with the reporting requirements, request to inspect the relevant records during an engagement visit or a periodic desk based review.

FAQ 2

Please clarify the “Reportable due date” column within the excel Self-Certification Report. What date is required to be populated in that excel column?

The “Reportable due date” required within the excel **Self-Certification Report** for both new and pre-existing accounts is detailed and explained in **Figure 1 Implementation Timeline** (see below).

FAQ 3

Is the expectation that the excel Self-Certification Report is to be submitted via the IGOR “Messages” functionality.

That is correct.

FAQ 4

When a Self-Certification Report is submitted to the Revenue Service via the IGOR Messages functionality is there a specific title that should be used in the subject line of the IGOR message?

Please entitle the *IGOR message* as “**Self-Certification Report**”.

If you are an outsource service provider (i.e. reporting on behalf of another RFI) please ensure you submit separate reports and detail in the IGOR message which RFI the report relates to.

However, this does not apply where you are reporting in your capacity as an RFI for a trustee-documented trust of which you as a RFI are the trustee. In these circumstances **one report** should be populated and submitted.

FAQ 5

The Self-Certification Report has already been submitted via IGOR but not in accordance with the naming conventions as detailed in FAQ 4, do I need to resubmit the report?

For Self-Certification Report’s already submitted via IGOR there is no requirement to resubmit. However, from the date this Compliance Information Notice is published Self-Certification Report’s not conforming to the naming convention detailed in **FAQ 4** may be returned for amendment or an explanation sought.

FAQ 6

If a Reporting Financial Institution has no information to report is there a requirement to report a nil return and submit a blank version of the Self-Certification Report Template? Or would a simple email confirmation stating "nothing to report" be sufficient?

There is no requirement to submit a "nil" Self-Certification Report nor a "nil" email confirmation message via IGOR.

FAQ 7

The Self-Certification Report excel template doesn't appear to capture data that distinguishes account holders between FATCA and CRS reporting?

The Self-Certification Report does not require CRS and FATCA to be distinguished other than the timing of a New Account opened – see **FAQ 8**.

FAQ 8

The Self-Certification Report excel template contains a column entitled Pre-existing Account (Yes/No). Is this just for CRS reporting?

The pre-existing account column applies to both CRS and FATCA timelines:

For the purposes of FATCA a New Account is an account opened on or after 1 July 2014.

For the purposes of the CRS a New Account is an account opened on or after 1 January 2016.

FAQ 9

Are both individuals and entity account holders in scope for reporting an invalid or absent self-certification within the excel Self-Certification Report?

Yes, individuals and entities are in scope for reporting.

FAQ 10

Is the intention that the excel Self-Certification Report be a cumulative year on year report?

Yes. The reportable due date to be inserted within the **Self-Certification Report** can be found within Figure 1 Implementation Timeline. The report is to be submitted on a cumulative basis. For remediated accounts (i.e. previously non-compliant account holders/controllers) these are only to be reported for the reportable due date following the year remediated (by specifying in that report that the account has been remediated). Thereafter those remediated account holders can be removed from future **Self-Certification Reports**.

For example for those account holders remediated in June 2022 these would be reported in the report due 31 March 2023 as remediated, but not included within the report due 31 March 2024.

The term "remediated" is to be interpreted as obtaining a valid self-certificate / no longer non-compliant.

FAQ 11

When should a Self-Certification Report be submitted if the report required date falls on a weekend or bank holiday?

Please see below Figure 1 Implementation Timeline regarding the Report Required – Submission via IGOR dates. If the **“due by”** date falls on a weekend or bank holiday, filing on the next business day will be accepted.

FAQ 12

Is there any guidance or template regarding the content and format of a “self-certification” form?

The two examples provided within Commentary on Section IV (page 129 and paragraph 9), explain and illustrate the form and manner of a self-certification.

The OECD have issued guidance for Financial Institutions requesting a self-certification form.

Hyper-links are provided below to assist:

[SIMILAR AGREED UPON FORM - INDIVIDUALS \(oecd.org\)](https://www.oecd.org/tax/automatic-exchange/crs/implementation-2018/similar-agreed-upon-form-individuals/)

[CRS ENTITIES Self-Cert Form.pdf \(oecd.org\)](https://www.oecd.org/tax/automatic-exchange/crs/implementation-2018/crs-entities-self-cert-form/)

FAQ 13

Are there any FAQs from the OECD regarding a Tax Identification Number?

The Implementation Handbook Annex 1 CRS-related Frequently Asked Questions

Sections II – VII, Due Diligence Requirements: FAQ 8, The Validation of TINs (extract below)

“A Reporting Financial Institution will have reason to know that a self-certification is unreliable or incorrect if the self- certification does not contain a TIN and the information included on the Automatic Exchange Portal indicates that Reportable Jurisdiction issues TINs to all tax residents”.

Further, The Implementation Handbook (Second Edition) Annex 1 CRS-related Frequently Asked Questions includes the following related FAQs to provide assistance:

Section 1, General Reporting Requirements:

FAQ 5 Requirement to collect TINs and FAQ.

FAQ 9 Collection of TINs from a Controlling Person that is not a Reportable Jurisdiction Person

Sections II – VII, Due Diligence Requirements:

FAQ 8, The Validation of TINs

FAQ 9, Self-Certification – meaning of “positively affirmed”.

FAQ 19, Requirement to obtain a TIN in the framework of the curing procedure

FAQ 22 Timing of self-certifications

FAQ 25 Confirming the validity of self-certifications

Additionally, Section I: General Reporting Requirements, of Schedule 2 of the CRS Regulations 2015 (page 15), states:

D. Notwithstanding subparagraph A(1), the TIN is not required to be reported if-

(i) a TIN is not issued by the relevant Reportable Jurisdiction, or

(ii) the domestic law of the relevant Reportable Jurisdiction does not require the collection of the TIN issued by it.

FAQ 14

What is the expectation from the Guernsey Revenue Service regarding the reporting financial institution's responsibilities for the validation of TINs?

Reference to the structure and formatting of TINs is contained within the OECD website. This is considered as preliminary guidance only and is subject to change.

[Tax identification numbers \(TINs\) - Organisation for Economic Co-operation and Development \(oecd.org\)](https://www.oecd.org/tax/tin/tin-identification-numbers-tins-organisation-for-economic-co-operation-and-development-oecd-org/)

A review of self-certifications to ensure TINs are provided, and cross-referencing the structure of the TIN to the OECD website is considered a best practice as part of the "reasonableness test" of a self-certification.

The validation of TINs is addressed in Annex 1 of the Handbook, Sections II-VII: Due diligence requirements, FAQ 8. The Validation of TINs (page 151).

FAQ 15

It is our interpretation that this new reporting on the absence of self-certification does not apply to customers when the CRS de-minimis is applied. For example, entity customers under USD 250,000 are not reportable under CRS and therefore subsequently these new reporting requirements don't apply to them?

The CRS Regulations, Section V Due Diligence for Pre-existing Entity Accounts, (page 24), describes the permitted procedure for **entity accounts**:

*A. **Entity Accounts** Not Required to Be Reviewed, Identified or Reported. If the RFI so elects, in respect of any calendar year, and notifies the Director of the election in advance of the reporting date for that calendar year, then either with respect to all Pre-existing Entity Accounts or, separately, with respect to any clearly identified group of such accounts, a Pre-existing Entity Account with an aggregate account balance or value that does not exceed USD 250,000 as of 31st December 2017, is not required to be reviewed, identified, or reported as a Reportable Account until the aggregate account balance or value exceeds USD 250,000 as of the last day of any subsequent calendar year.*

Pragmatically, as previously explained in the relevant Guidance, where an election under FATCA and CRS is made by the Reporting Financial Institution the election should be documented and maintained. (Such records may be requested by the Revenue Service as part of a compliance monitoring exercise).

Please note the above de-minimis relates to entities for CRS purposes. FATCA has similar de-minimis rules regarding individuals.

FAQ 16

Is the expectation that for discretionary beneficiaries who have not yet benefited, and no self-certification is yet obtained, these accounts are reportable to the Revenue Service as non-compliant?

This is not the expectation of the Revenue Service, provided the circumstances set out below apply.

The Handbook paragraph 242 states:

"A discretionary beneficiary does not have an enforceable right to a certain amount of property at any set time...For the purposes of the Standard, a contingent beneficiary is treated like a discretionary beneficiary. A contingent beneficiary does not have an enforceable right to trust property until a certain event or set of circumstances occurs.

Furthermore, paragraph 134 of the Commentary on section VIII of the Standard allows Reporting Financial Institutions to align the scope of the beneficiaries of a trust treated as Controlling Persons with those treated as Reportable Persons of a trust that is a financial institution. Under this approach, a beneficiary will only be treated as a Controlling Person in a year if they receive or become entitled to receive a distribution from the trust. For a Reporting Financial Institution that has made the choice mentioned in paragraph 134, a discretionary beneficiary would only need to be identified as a Controlling Person if and when the beneficiary has received or become entitled to receive a distribution. At that point there is a change in circumstance and this will trigger the relevant procedures, including the obligation to obtain a valid self-certification from the beneficiary.

Furthermore, **The Handbook** paragraph 268 states:

However, when implementing the CRS, a jurisdiction may allow Reporting Financial Institutions to align the scope of the beneficiaries of a trust reported as Controlling Persons of the trust with the scope of the beneficiaries of a trust treated as Reportable Persons of a trust that is a Financial Institution. In such a case the Reporting Financial Institution would only need to report discretionary beneficiaries in the year they receive distributions from the trust. Jurisdictions allowing their Financial Institutions to make use of this option must ensure that such Financial Institutions have appropriate procedures in place to identify when a distribution is made to a discretionary beneficiary of the trust in a given year that enables the trust to report such beneficiary as a Controlling Person. For instance, the Reporting Financial Institution requires a notification from the trust or trustee that a distribution has been made to that discretionary beneficiary.

FAQ 17

Should the list of non-compliant account holders include non-reportable account holders, as well as reportable? Or is it only reportable account holders who are required to be declared within the Self-Certification Report?

If the requirement (or authorisation) to obtain a self-certification is required within the CRS & FATCA Regulations and that self-certification is absent or invalid, then those non-compliant account holders are to be included within the report.

Section II: General Due Diligence Requirements Schedule 2 of the CRS Regulations, states (page 15):

AA. In order to comply with the due diligence requirements an RFI must identify the jurisdiction in which all Account Holders and Controlling Persons are resident for tax purposes, regardless of whether the jurisdiction in question is a Participating Jurisdiction.

The above is the wider approach to CRS due diligence that Guernsey has adopted.

Section 171F (1) of the Law states:

Where a relevant institution is authorised or required under the FATCA or CRS regulations to rely on a valid self-certification of an account holder or other description of person but

*(a) has been unable to obtain a self-certification, or
(b) having obtained a self-certification from the account holder or other relevant description of person and reviewed it for validity, correctness and reliability in accordance with the due diligence procedures set out under the said regulations, knows or has reasonable grounds to suspect that the self-certification is or has subsequently become incorrect or unreliable,*

the relevant institution must immediately notify the Director that the circumstances set out in paragraph (a) or (b) are made out.

(2) Notification under subsection (1) must be made in such form and manner and by such means, and must be accompanied by such information and documents, as the Director may by notice require.

For circumstances in which an entity account is not required to be “Reviewed, Identified or Reported” please see FAQ 16.

FAQ 18

For a pre-existing account in which indicia was relied upon and is still relied upon, does this determine an invalid or absent self-certification and require reporting?

No. If the circumstances have not changed and the indicia relied upon is in accordance with the Law, no reporting is required regarding an invalid or absent self-certification.

FAQ 19

For a pre-existing account in which indicia was relied upon, and in which the Reporting Financial Institution subsequently elects to obtain a self-certification and has yet to receive that self-certification, does this determine an invalid or absent self-certification and require reporting?

No. If the circumstances have not changed and the indicia relied upon is in accordance with the Law, no reporting is required regarding an invalid or absent self-certification.

FAQ 20

Does reporting only arise where a Reporting Financial Institution has requested a self-certification but been unable to obtain it? (i.e. if the Reporting Financial Institution has not requested a self-certification, for instance change in circumstances in certain cases, should this be reportable in accordance with s171F of the Law)

If the requirement (or authorisation) to obtain a self-certification is required within the CRS & FATCA Regulations and that self-certification is absent or invalid, then those non-compliant account holders are to be included within the report, irrespective of whether or not the Reporting Financial Institution has requested that self-certification.

FAQ 21

For administration purposes we have applied the due diligence procedures for new accounts as per the CRS Standard to pre-existing accounts. For these accounts do the rules per the Standard applicable to pre-existing accounts continue to be applied and relevant reporting in accordance with s171 of the Law?

Where an election has been made to apply the due diligence for new accounts to pre-existing accounts and the RFI is unable to obtain a validated self-certification, the provisions of section 171F of the Law continue apply to those accounts. These account holders should still be reported as pre-existing within the Self-Certification Report.

FAQ 22

Is there a requirement to report those account holders in which the account is an “undocumented account”?

Yes. Please mark as undocumented within the Self-Certification Report – see below.

The **Self-Certification Report** – the column entitled “Reason why this account is being reported” please select “Other” from the drop down box, and populate “**undocumented**” in the column entitled “If Other reason selected please specify.

Further guidance below regarding undocumented classification and reporting is provided in page 77 of the Handbook as follows:

Was the only indicia found during the indicia search a “hold mail” or “in-care-of” address?

*Where the indicia search is completed (see below) and the only indicia found is a “hold mail” or “in-care-of” address in a reportable jurisdiction and no other address is found, then special procedures apply **(the undocumented account procedures)**. In the order most appropriate, the Reporting Financial Institution must: complete a paper record search; or obtain Documentary Evidence or a self-certification from the Account Holder. If neither of these procedures successfully establishes the Account Holder’s residence for tax purposes then the Reporting Financial Institution must report the account to its tax authority as an undocumented account.*

Please also see **Bulletin 2019/3 Undocumented accounts & TIN clarification**.

FAQ 23

Do closed accounts have to be included in the reporting of a failure to obtain a self-certification and the requirement to inform the Revenue Service of a reasonableness test failure?

Yes, the above example of closed accounts within a calendar year are to be reported in accordance with the Implementation Timeline in Figure 1.

The **Self-Certification Report** – the column entitled “Reason why this account is being reported” please select “Other” from the drop down box, and populate “**closed**” in the column entitled “If Other reason selected please specify”. The appropriate date of closure to be populated in the column entitled “If remediated please state that date”.

For example for those closed accounts in June 2022 these would be reported in the report due 31 March 2023 as closed but not included within the report due 31 March 2024.

FAQ 24

Will the Self-Certification Report excel template be available on the Guernsey Revenue Service website?

The Self-Certification Report excel template will be forwarded periodically to all Organisations registered via IGOR. The current expectation is this will occur at least once per year and at the start of each calendar year. If there are any updates or modifications to the Self-Certification Report excel template this will be fully explained when forwarded via IGOR.

This is to ensure that new and current organisations are aware and reminded of the reporting requirements under section 171F of the Law.

Figure 1. Implementation Timeline.¹

New Accounts	Self-Certification Report “Reportable due date”	Report Required – Submission via IGOR
First reporting date for New Accounts that have an invalid or absent self-certification (unless the reporting deadline (day 91) falls after 31 January 2022 – in which case see below)	Within the excel Self-Certification Report the Reportable due date to be inserted will be 31 March 2022	Report submission by 31 March 2022
Subsequent reporting date for any absent or invalid self-certification or due to a change in circumstances / trigger event	Within the excel Self-Certification Report the Reportable due date to be inserted will be the following year - the 31 March (starting with March 2023)	Report submission by the following year -31 March (starting with 31 March 2023)
Pre-existing Accounts	Self-Certification Report “Reportable due date”	Report Required – Submission via IGOR
First reporting date pre-existing accounts where the trigger event occurred prior to 1 January 2022 and the self-certification remains unresolved.	Within the excel Self-Certification Report the Reportable due date to be inserted will be 31 March 2022	Report submission by 31 March 2022
Pre-existing accounts where the trigger event occurred on or after 1 January 2022 and the self-certification remains unresolved either the later of the end of the calendar year or 90-days from the date of discovery.	Within the excel Self-Certification Report the Reportable due date to be inserted will be the following year - the 31 March (starting with March 2023)	Report submission by the following year -31 March (starting with 31 March 2023)

Note:

The Reportable Due Date is relevant for populating the excel Self-Certification Report.

The Report Required Date – is the date that a report submission via IGOR is required.

¹ Please note that this Implementation Timeline supersedes deadlines previously set in Bulletin 2021/6.

Information

Standard for Automatic Exchange of Financial Account Information in Tax Matters, Second Edition

[Common Reporting Standard \(CRS\) - Organisation for Economic Co-operation and Development \(oecd.org\)](#)

The Standard for Automatic Exchange of Financial Information in Tax Matters, Implementation Handbook

[Standard for Automatic Exchange of Financial Account Information in Tax Matters: Implementation Handbook - OECD](#)

OECD - Tax Identification Numbers

[Tax identification numbers \(TINs\) - Organisation for Economic Co-operation and Development \(oecd.org\)](#)

The OECD have issued guidance for Financial Institutions requesting a self-certification form.

[SIMILAR AGREED UPON FORM - INDIVIDUALS \(oecd.org\)](#)

[CRS ENTITIES Self-Cert Form.pdf \(oecd.org\)](#)

GFSC Handbook

[20211105 Handbook.pdf \(gfsc.gg\)](#)

The Income Tax (Guernsey) Law, 1975

Failure to obtain self-certification and freezing orders, etc.

171F. (1) *Where a relevant institution is authorised or required under the FATCA or CRS regulations to rely on a valid self-certification of an account holder or other description of person but*

(a) has been unable to obtain a self-certification, or

(b) having obtained a self-certification from the account holder or other relevant description of person and reviewed it for validity, correctness and reliability in accordance with the due diligence procedures set out under the said regulations, knows or has reasonable grounds to suspect that the self-certification is or has subsequently become incorrect or unreliable,

the relevant institution must immediately notify the Director that the circumstances set out in paragraph (a) or (b) are made out.

(2) Notification under subsection (1) must be made in such form

and manner and by such means, and must be accompanied by such information and documents, as the Director may by notice require.

(3) On receipt of notification under subsection (1) and at any time thereafter the Director

(a) may require the relevant institution to provide any further information and documents or to make any further review or inquiry, and

*(b) may make an order (a "**freezing order**") prohibiting the relevant institution from –*

(i) making any transfer, withdrawal or payment from, or

(ii) effecting any transfer, assignment or other dealing or arrangement in respect of,

the account holder's financial account except under the authority of and in accordance with the conditions of a prior express written permission of the Director.

(4) A freezing order under subsection (3)(b) made against a relevant institution in respect of a financial account has effect, and must be acted on by the institution, notwithstanding

(a) any duty, obligation or commitment otherwise binding on the institution under any agreement, contract or other engagement, or

(b) any right, interest or power otherwise exercisable

(i) by or on behalf of the account holder, or

(ii) in respect of the financial account or the funds or other assets comprised in it,

under any agreement, contract or other engagement.

(5) Any interest or increment accruing to the frozen account in respect of the funds or other assets comprised in it shall also be frozen and is to be added to the funds or assets on their release.

(6) A relevant institution which

(a) fails to give notification under subsection (1), or

(b) contravenes or causes or permits the contravention of a freezing order under subsection (3)(b),

is guilty of an offence and liable

(i) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding twice level 5 on the uniform scale, or to both,

(ii) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.

(7) The powers conferred by this section are in addition to and not in derogation from the powers conferred by section 171D (directions to non-compliant institutions).

NOTE

Section 171F was inserted into the Law by the Income Tax (Guernsey) (Amendment) Ordinance, 2021, section 20, with effect from 15th July, 2021 (or such later date as may be specified by regulations of the Policy and Resources Committee).

Ends.