



**Ian Bowyer**  
Partner  
T +44 (0)20 7242 0631  
E [ibowyer@greenwoodsgrm.co.uk](mailto:ibowyer@greenwoodsgrm.co.uk)



**Kerri Pellington-Woodrow**  
Partner  
T +44 (0)1733 887675  
E [kpellington-woodrow@greenwoodsgrm.co.uk](mailto:kpellington-woodrow@greenwoodsgrm.co.uk)



**Clare Harris**  
Associate  
T +44 (0)1223 785289  
E [ceharris@greenwoodsgrm.co.uk](mailto:ceharris@greenwoodsgrm.co.uk)

**If you are a trustee of a UK tax resident trust, FATCA is relevant to you.**

## What is FATCA?

FATCA (Foreign Account Tax Compliance Act) was introduced by the US authorities to prevent US tax evasion. It requires all foreign entities (of which trusts are one) to determine whether or not they are foreign financial institutions (FFI) or non-financial foreign entity (NFFE). It requires FFI's to pass on information about financial accounts held by US taxpayers or foreign entities in which US taxpayers have an interest. It also covers payments made to US beneficiaries of trusts.

## Is it relevant to me?

Yes. All trustees must consider their status under FATCA. Individuals acting as trustees are not 'entities' even if they are professional trustees. However, the trust itself might be and the trustees may need to register and report on its behalf.

## How do I know if the trust is a FFI or NFFE?

Whether a trust is an FFI or an NFFE is determined by the type of asset in the trust, if the assets are managed and by whom, and the amount and type of trust income, if any.

## What happens if the trust is a FFI?

If it is a FFI, the trustees must register the trust with the Inland Revenue Service (IRS) for FATCA purposes and comply with any relevant reporting and compliance requirements.

## What happens if the trust is an NFFE?

If it is an NFFE, the trust does not have to register or report. The trustees will have to determine whether the trust is an 'active' NFFE (usually one that is carrying out a trading business) or a passive NFFE. The NFFE will have to certify its status to the FFIs, such as a bank, which in turn will undertake the reporting and compliance. It will need to determine if the account is reportable. Therefore the trustees will need to know whether the settlor, trustees or beneficiaries have any US connections. If they do, the trustees must obtain copies of appropriate documentation.

## Registration

If the trust is a FFI it must register with the IRS and obtain a global intermediary identification number (GIIN). Other FFI's will ask for the trust's GIIN when investing funds on behalf of the trust. Failure to register results in a 30% withholding tax being levied on transactions with a US connection.

## Reporting

It is possible to report directly to the IRS but an alternative is for Trustees to make their annual reports to HMRC who will, in turn, report to the IRS. If there is nothing to report, the trustees must still make a 'nil return'.

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## Penalties

Financial penalties will be imposed for failure to comply with FATCA, ranging from £300 to £3,000. These penalties are payable by the trustees personally, not the trust.

## Next Steps

Trusts that need to register must do so **now**.

Some financial institutions, such as banks, building societies and investment managers, have already contacted their clients and set out options for dealing with FATCA. If however, as a trustee you have not received anything or unsure of what to do or how it will affect you, please contact us. We can review your trust and set out options available to you.

## Costs

If you would like us to review your trust, set out the options available to you and if necessary register the trust, our fee will be £350 plus VAT (total £420) per trust. The result of the review will be kept with the trust to show compliance with FATCA. Our fees in respect of annual reporting would be based upon the time spent on the matter.

## How can Greenwoods GRM help?

Contact +44 (0)1733 887665 and ask to speak to a member of our Private Client Team.

Follow us:



@GreenwoodsGRM



Greenwoods GRM LLP

Monkstone House  
City Road  
Peterborough PE1 1JE  
T +44 (0)1733 887700

Compass House  
Vision Park  
Cambridge CB24 9AD  
T +44 (0)1223 785300

1 Bedford Row  
London  
WC1R 4BZ  
T +44 (0)20 7242 0631

E [info@greenwoodsgrm.co.uk](mailto:info@greenwoodsgrm.co.uk)  
W [www.greenwoodsgrm.co.uk](http://www.greenwoodsgrm.co.uk)