

## **FATCA GLOSSARY**

**FATCA** stands for the Foreign Account Tax Compliance Act. It adds a new chapter in the Internal Revenue Code (IRS) which aims at increased transparency with respect to US persons that may invest in accounts outside the US and certain non-US entities with US owners.

For more information please visit [www.irs.gov](http://www.irs.gov)

### **Financial Institution**

Financial Institution means any of the following:

- **A Custodial Institution;**  
Any Entity that holds, as a substantial portion of its business, financial assets for the account of others. An Entity holds financial assets for the account of others as a substantial portion of its business if the entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20% of the entity's gross income during the shorter of: (i) the three-year period that ends on December 31 (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made or (ii) the period during which the entity has been in existence.
- **A Depository Institution:**  
Any entity that accepts deposits in the ordinary course of a banking or similar business.
- **An Investment Entity:**  
Any entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:
  1. Trading in money market instruments (cheques, bills, certificates of deposit, derivatives etc); Foreign exchange; Exchange, interest rate and index instruments; Transferable securities; Or commodity futures trading.
  2. Individual and collective portfolio management.
  3. Otherwise investing, administering, or managing funds or money on behalf of other persons

This term shall be interpreted in a manner consistent with similar language set forth in the definition of "Financial Institution" in the Financial Action Task Force recommendations.

### **Foreign Financial Institution (FFI)**

FFI is the abbreviation for foreign financial institution. It refers to a non-US financial institution. The FATCA legislation contains an extensive definition of FFI and includes entities such as banks, custodian institutions, investment funds and certain types of insurance companies.

### **IRS Forms**

Withholding certificates, also referred to as W forms, are US Internal Revenue Service (IRS) tax forms. The W-9 form is a 'request for taxpayer identification number and certification'. This US tax form is provided by an account holder to confirm and certify their US status. The W-8 series forms are currently used by foreign persons (including corporations) to certify their non-US status. The forms establish that one is a non-resident alien or foreign corporation, to avoid or reduce tax withholding from US source income. These forms will permit a non-US customer to self-certify their status under FATCA.

## **Intergovernmental Agreement**

An IGA is an agreement between the US and specific countries and territories to build FATCA compliance into their legal framework so that the country or territory can implement FATCA. An IGA will require financial institutions to provide the information on US accounts which they hold either:

- directly to the IRS
- or to the local tax authority of the resident country or territory.

## **Internal Revenue Service (IRS)**

The IRS is the United States government agency responsible for tax collection and tax law enforcement

## **US Person**

The term 'US person' means:

- a citizen or resident of the United States
- a partnership created or organised in the United States or under the law of the United States or of any state, or the District of Columbia
- a corporation created or organised in the United States or under the law of the United States or of any state, or the District of Columbia
- any estate or trust other than a foreign estate or foreign trust (see Internal Revenue Code section 7701(a)(31) for the definition of a foreign estate and a foreign trust)
- a person that meets the substantial presence test
- any other person that is not a foreign person

## **US Citizen**

- The term 'US citizen' means:
- an individual born in the United States
- an individual who has a parent who is a US citizen
- a former alien who has been naturalised as a US citizen
- an individual born in Puerto Rico
- an individual born in Guam
- an individual born in the US Virgin Islands.

## **Specified US Person**

The term 'specified US person' means any US person other than:

- a. a corporation the stock of which is regularly traded on one or more established securities markets for a calendar year;
- b. any corporation which is a member of the same expanded affiliated group as a corporation the stock of which is regularly traded on one or more established securities markets for the calendar year;
- c. any organisation exempt from taxation under US federal tax law or an individual retirement plan;
- d. the United States or any wholly owned agency or instrumentality thereof;
- e. any state, the District of Columbia, any US territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing;
- f. any bank incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia) or of any state thereof;
- g. any real estate investment trust;
- h. any regulated investment company, or any entity registered with the Securities Exchange Commission under the Investment Company Act of 1940;
- i. any common trust fund;
- j. any trust that is exempt from tax or is deemed a charitable trust;

- k. a dealer in securities, commodities, or derivative financial instruments that is registered as such under the laws of the United States or any state;
- l. a broker;
- m. any tax exempt trust under a tax exempt or public school annuity plan or governmental plan.

## **Controlling Persons**

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For an Entity that is a legal person, the term Controlling Person means the natural person(s) who exercises a controlling interest ('control') over the Entity.

Determining control will depend on the legal structure of the Entity. Control over an Entity may be exercised through direct or indirect ownership or if no such person(s) exists, then by any natural person(s) that otherwise exercises control over the management of the Entity (for example, the senior managing official of the company).

For companies, Controlling Persons include any natural person that holds directly or indirectly more than 25 percent of the shares or voting rights of an Entity as a beneficial owner. In some countries/jurisdictions this percentage may be a lower figure.

In the case of a partnership and similar arrangements, Controlling Person means, consistent with "beneficial owner" in anti-Money Laundering regulations, any natural person who exercises control through direct or indirect ownership of the capital or profits of the partnership, voting rights in the partnership, or who otherwise exercises control over the management of the partnership or similar arrangement.

In the case of a trust (and Entities equivalent to trusts), the term Controlling Persons means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust.

## **Non-financial foreign entity (NFFE):**

An NFFE (non-financial foreign entity) is a non-US incorporated/established entity that does not meet the definition of an FFI (foreign financial institution) and includes:

- listed or privately held operating or trading businesses
- professional service firms
- certain entities with a passive trade (ie, not an operating or trading business)
- charitable organisations

## **Active NFFE**

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Active NFFE means any NFFE that meets any of the following criteria:

1. Less than 50 percent of the NFFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 percent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income

2. The stock of the NFFE is regularly traded on an established securities market or the NFFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market
3. The NFFE is organized in a US Territory and all of the owners of the payee are bona fide residents of that US Territory
4. The NFFE is a government (other than the US government), a political subdivision of such government (which, for the avoidance of doubt, includes a state, province, county, or municipality), or a public body performing a function of such government or a political subdivision thereof, a government of a US Territory, an international organization, a non-US central bank of issue, or an Entity wholly owned by one or more of the foregoing
5. Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an NFFE shall not qualify for this status if the NFFE functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes
6. The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial organization of the NFFE
7. The NFFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution
8. The NFFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution
9. The NFFE is an excepted NFFE as described in relevant US Treasury Regulations or
10. The NFFE meets all of the following requirements:
  - a. It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organization, business league, chamber of commerce, labor organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare
  - b. It is exempt from income tax in its jurisdiction of residence
  - c. It has no shareholders or members who have a proprietary or beneficial interest in its income or assets
  - d. The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents do not permit any income or assets of the NFFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFFE has purchased and
  - e. The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents require that, upon the NFFE's liquidation or dissolution, all of its assets be distributed to a government entity or other non-profit organization, or escheat to the government of the NFFE's jurisdiction of residence or any political subdivision thereof.

## Passive NFFE

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Passive NFFE means any NFFE that is not (i) an Active NFFE, or (ii) a withholding foreign partnership or withholding foreign trust pursuant to relevant US treasury Regulations.

## Passive Income

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Passive income means the portion of gross income that consists of:

1. Dividends, including substitute dividend amounts
2. Interest
3. Income equivalent to interest, including substitute interest and amounts received from or with respect to a pool of insurance contracts if the amounts received depend in whole or part upon the performance of the pool
4. Rents and royalties, other than rents and royalties derived in the active conduct of a trade or business conducted, at least in part, by employees of the NFFE
5. Annuities
6. The excess of gains over losses from the sale or exchange of property that gives rise to passive income described in items 1 to 5
7. The Excess of gains over losses from transactions (including futures, forwards, and similar transactions) in any commodities, but not including
  - a. Any commodity hedging transaction described in section 954(c)(5)(A) of the US Revenue Code, determined by treating the entity as a controlled foreign corporation; or
  - b. Active business gains or losses from the sale of commodities, but only if substantially all the foreign entity's commodities are property described in paragraph (1), (2) or (8) of section 1221(a) of the US Revenue Code
8. The excess of foreign currency gains over foreign currency losses
9. Net income from "notional principle contracts". These are financial instruments that provide for the payment of amounts by one party to another at specified intervals calculated by reference to a specified index upon a notional principal amount in exchange for specified consideration or a promise to pay similar amounts (i.e a swap)
10. Amounts received under cash value insurance contracts or
11. Amounts earned by an insurance company in connection with its reserves for insurance and annuity contracts

However, the following amounts are excluded from any calculation of Passive Income.

1. Any income from interest, dividends, rents, or royalties that is received or accrued from a related person to the extent such amount is property allocable to income of such related person that is not passive income. For purposes of this section, a person is a related person with respect to the NFFE if
  - a. (a) Such person is an individual, corporation, partnership, trust, or estate which controls, or is controlled by, the NFFE, or
  - b. (b) Such person is a corporation, partnership, trust, or estate which is controlled by the same person or persons which control the NFFE
2. In the case of an NFFE that regularly acts as a dealer in property described in item 6 above of this section (referring to the sale or exchange of property that gives rise to passive income), forward contracts, option contracts, or similar financial instruments (including notional principal contracts and all instruments referenced to commodities)
  - a. Any item of income or gain (other than any dividends or interest) from any transaction (including hedging transactions and transactions involving physical settlement) entered into in the ordinary course of such dealer's trade or business as such a dealer; and
  - b. If such dealer is a dealer in securities, any income from any transaction entered into in the ordinary course of such trade or business as a dealer in securities

## **Direct Reporting NFFE**

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Direct Reporting NFFE means an NFFE that elects to report on Form 8966 directly to the IRS certain information about its direct or indirect substantial US owners, in lieu of providing such information to withholding agents or participating FFIs with which the NFFE holds a financial account

## **TIN**

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TIN is the Tax Identification Number. A US IRS specific term: tax identification number.

For an individual this would be their US social security number, for an entity their employer identification number.

## **Withholding Tax**

A 30% withholding tax applies under FATCA on 'withholdable payments' in respect of financial institutions that do not comply with the FATCA requirements and/or customers who do not provide the requisite FATCA documentation.

The term 'withholdable payment' means:

- fixed or determinable, annual or periodical (FDAP) income, if such payment is from sources within the US – this will include any payment of interest and dividends (this will apply from 1 July 2014)
- any gross proceeds from the sale or other disposition of any property of a type which can produce interest or dividends from sources within the US (this will apply from 1 January 2017).

Various exceptions apply, including for income connected with a US business

## **CRS GLOSSARY**

### **Common Reporting Standard description:**

The Common Reporting Standard (CRS) is a worldwide information-gathering and reporting requirement for financial institutions, to help fight against tax evasion and protect the integrity of tax systems.

Under the CRS, we are required to determine where you are “tax resident” (this will usually be where you are liable to pay income or corporate taxes) and give national tax authorities information on those customers that are tax resident/paying taxes outside the country/jurisdiction where they bank. They may then share this information with the tax authority of the country/jurisdiction (or countries/jurisdictions) where you are tax resident.

### **Controlling person (including re trusts) means:**

For an Entity that is a legal person, the term Controlling Person means the natural person(s) who exercises a controlling interest ('control') over the Entity.

Determining control will depend on the legal structure of the Entity. Control over an Entity may be exercised through direct or indirect ownership or if no such person(s) exists, then by any natural person(s) that otherwise exercises control over the management of the Entity (for example, the senior managing official of the company).

For companies, Controlling Persons include any natural person that holds directly or indirectly more than 25 percent of the shares or voting rights of an Entity as a beneficial owner. In some countries/jurisdictions this percentage may be a lower figure.

In the case of a partnership and similar arrangements, Controlling Person means, consistent with “beneficial owner” in anti-Money Laundering regulations, any natural person who exercises control through direct or indirect ownership of the capital or profits of the partnership, voting rights in the partnership, or who otherwise exercises control over the management of the partnership or similar arrangement.

In the case of a trust (and Entities equivalent to trusts), the term Controlling Persons means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust.

**NFE** means Non-Financial Entity

**Active NFE** means an NFE that meets any of the following criteria:

Under the CRS, an Active Entity (typically a business that is a trading entity) is known as an Active Non-Financial Entity (NFE). You must meet any of the following criteria to be an Active NFE:

- less than 50% of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50% of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
- the stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
- the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
- substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution (FI), except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a FI, provided that the NFE

does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;

- the NFE was not an FI in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of an FI;
- the NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not FIs, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of an FI; or
- the NFE meets all of the following requirements:
  - it is established and operated in its country/jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its country/jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
  - it is exempt from income tax in its country/jurisdiction of residence;
  - it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
  - the applicable laws of the NFE's country/jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and
  - the applicable laws of the NFE's country/jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organisation, or escheat to the government of the NFE's country/jurisdiction of residence or any political subdivision thereof.

An Entity is a **Related Entity** of another Entity if either Entity controls the other Entity, or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50 per cent of the vote and value in an Entity.

**Passive NFE** Under the CRS, a Passive NFE means any NFE that is not an Active NFE.

A NFE will be deemed a Passive NFE if more than 50% of the NFE's gross income for the preceding calendar year or appropriate reporting period is passive income or the assets held by the NFE during the same period are assets that produce or are held for the production of passive income.

### **Passive Income**

For the purpose of the CRS, passive income\* would generally be considered to include the portion of gross income that consists of:

- dividends;
- interest;
- income equivalent to interest;
- rents and royalties, other than rents and royalties derived in the active conduct of a business conducted, at least in part, by employees of the NFE;
- annuities;
- the excess of gains over losses from the sale or exchange of Financial Assets that gives rise to passive income described above;
- the excess of gains over losses from transactions (including futures, forwards, options, and similar transactions) in any Financial Assets;



- the excess of foreign currency gains over foreign currency losses;
- net income from swaps;
- amounts received under Cash Value Insurance Contracts.

\* Passive income will not include, in the case of an NFE that regularly acts as a dealer in Financial Assets, any income from any transaction entered into in the ordinary course of such dealer's business as such a dealer.

**TIN** means the Tax Identification Number (or functional equivalent). A Taxpayer Identification Number (TIN) is a unique combination of letters and/or numbers assigned to you/your entity. Some countries/jurisdictions do not issue a TIN, but may rely on other issued numbers such as social security/insurance numbers or company registration numbers for entities. You may need to provide these if requested. The OECD has published a list of the acceptable Taxpayer Identification Number (TIN) formats and their alternatives.

### **Automatic Exchange of Information**

The Automatic Exchange of Information (AEOI) is a response by national governments to combat tax evasion more widely and effectively. It refers to the process of tax authorities in CRS-participating countries/jurisdictions automatically exchanging data on tax residency with other participating countries/jurisdictions.

### **Entity**

This is defined under the CRS as a legal person or a legal arrangement, such as a corporation, organisation, partnership, trust or foundation

### **FATCA**

The Foreign Account Tax Compliance Act (FATCA) is the name of the legislation introduced by the United States government, to help counter US tax evasion by encouraging better reporting of information.

### **OECD**

The Organisation for Economic Co-operation and Development (OECD) is a group of 34 member countries plus the European Commission and Brazil, China, India, Indonesia and South Africa as permanent guests.

### **Self-Certification Forms**

A completed self-certification form may be used to confirm your tax residency status under the CRS

### **Senior Managing Official**

In the absence of a natural person(s) that exercises control of the Entity through ownership interests, the Senior Managing Official can be identified as the Controlling Person(s) of the Entity.

The Senior Managing Official of a company is the person who exercises control over the management of the entity.

### **Sole Trader/Proprietor**

A sole trader - also known as a sole proprietorship or simply proprietorship - is a type of business entity which is owned and run by one individual and where there is no legal distinction between the owner and the business.

### **Tax Residency**

Your tax residency is the country/jurisdiction where you are resident/registered for tax purposes. Each country/jurisdiction has its own rules for defining tax residence. For more information on tax residence, please consult your tax advisor or the OECD AEOI portal.