



FATCA and CRS Entity Classification Guides

Self-certification is required under the US Foreign Account Tax Compliance Act (FATCA) and the OECD* Common Reporting Standard (CRS). While the questions and definitions are similar, there are differences which impact some Entities that need to be carefully considered. As a consequence, definitions require careful attention and self-certification under FATCA and CRS needs to be completed independently.

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*Organisation for Economic Cooperation and Development

Section A - FATCA

FATCA is a legal framework which requires AIB to report details of financial accounts held by US citizens and persons tax resident in the US to the Irish Revenue on an annual basis who will then exchange this information with the US tax authorities.

Detailed Entity Descriptions

Section A - FATCA US Person

A US Person means a US citizen or US resident individual, a partnership or corporation organised in the United States or under the laws of the United States or any State thereof, a trust if (i) a court within the United States would have authority under applicable law to render orders or judgements concerning substantially all issues concerning administration of the trust, and (ii) one or more US persons have the authority to control all substantial decisions of the trust, or an estate of decedent that is a citizen or resident of the United States. This shall be interpreted in accordance with the US Internal Revenue Code.

Specified US Person

The term specified US Person means a US person **other than**:

- i. a corporation, the stock of which is regularly traded on one or more established securities markets;
- ii. any corporation that is a member of the same expanded affiliated group, as defined in Section 1471(e)(2) of the US Internal Revenue Code, as a corporation described in clause (i);
- iii. the United States or any wholly owned agency or instrumentality thereof;

- iv. any State of the United States, 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;
- v. any organization exempt from taxation under section 501(a) or an individual retirement plan as defined in section 7701(a)(37) of the US Internal Revenue Code;
- vi. any bank as defined in section 581 of the US Internal Revenue Code;
- vii. any real estate investment trust as defined in section 856 of the US Internal Revenue Code;
- viii. any regulated investment company as defined in section 851 of the US Internal Revenue Code or any entity registered with the Securities Exchange Commission under the Investment Company Act of 1940 (15 USC. 80a-64);
- ix. any common trust fund as defined in section 584(a) of the US Internal Revenue Code;

- x. any trust that is exempt from tax under section 664(c) of the US Internal Revenue Code or that is described in section 4947(a)(1) of the US Internal Revenue Code;
- xi. a dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State; or
- xii. a broker as defined in section 6045(c) of the US Internal Revenue Code.

Other US Person

The term Other US Person should be taken to mean a US Person who meets the criteria set out in points (i) to (xii) above.

Section A - FATCA Non-Financial Foreign Entity (NFFE)

Non-Financial Foreign Entity (NFFE): Entities which are non-US Entities, and are not Financial Institutions will be regarded as being an NFFE. Each NFFE must be classified as either an Active NFFE or a Passive NFFE.

An Active NFFE

An NFFE will be regarded as an Active NFFE if it meets any one of the following:

- a. Less than 50 per cent of the NFFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 per cent 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;
- b. 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 traded on an established securities market;
- c. The NFFE is organised in a US Territory and all of the owners of the payee are bona fide residents of that US Territory;
- d. The NFFE is a non-US government, 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;
- e. Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, and 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;
- f. 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 organisation of the NFFE;
- g. The NFFE was not a Financial Institution 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 a Financial Institution;
- h. 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;
- i. The NFFE meets all of the following requirements:
 - i. It is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes;
 - ii. It is exempt from income tax in its country of residence;
 - iii. It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- iv. The applicable laws of the Entity's country of residence or the Entity's formation documents do not permit any income or assets of the Entity 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 Entity's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the Entity has purchased; and
- v. The applicable laws of the Entity's country of residence or the Entity's formation documents require that, upon the Entity's liquidation or dissolution, all of its assets be distributed to a governmental Entity or other non-profit organization, or escheat to the government of the Entity's country of residence or any political subdivision thereof.
- j. Any NFFE within the definition of an Excepted NFFE in US Treasury Regulations.

A Passive NFFE

A Passive NFFE is any NFFE that is not: (i) an Active NFFE or (ii) a Withholding Foreign Partnership, Withholding Foreign Trust, or a Qualified Intermediary pursuant to relevant US Treasury Regulations.

Section A - FATCA Financial Institutions

The term “Financial Institution” means a Custodial Institution, a Depository Institution, an Investment Entity or a Specified Insurance Company.

Deemed Compliant Financial Institution

An entity will be deemed compliant if it is listed in Part II of Annex II to the Irish – US Inter-Governmental Agreement (IGA) or is within the definition of a Deemed Compliant FFI set out in the US Regulations. There are two categories of deemed compliant institutions – self-certified or registered.

Certified Deemed Compliant Institutions

- i) Certified Deemed Compliant Financial Institutions listed in the Agreement
 - Non Profit Organisations (Charitable organisations that qualify for exemption from tax in accordance with section 848A and Schedule 26A of the Taxes Consolidation Act 1997, or bodies established for the promotion of athletic or amateur games or sports that have been granted exemption from tax in accordance with section 235 of the Taxes Consolidation Act 1997 by the Revenue Commissioners).
 - Financial Institutions with a local client base which meets all of the conditions set out in Annex II of the IGA , and
 - Certain Collective Investment Vehicles.
- ii) Certified Deemed Compliant Financial Institutions listed in the US Regulations
 - Non registering local banks,
 - Financial Institutions with only low value accounts,
 - Sponsored closely held investment vehicles,
 - Limited Life debt investment entities,
 - Owner documented Financial Institutions,
- iii) Certain Investment advisors and Investment Managers.

Registered Deemed Compliant Financial Institutions

The Financial Institutions falling within this category are not included as Deemed Compliant Financial Institutions under the IGA. However the institutions are regarded as Registered Deemed Compliant Financial Institutions under the US Regulations. As such paragraph 1(q) of Article 1 of the Agreement enables Irish Financial Institutions that comply with the various conditions to qualify for the exemption. Institutions falling within this category are:

- Non-reporting members of a group of related Participating Financial Institutions,
- Restricted funds,
- Qualified credit card issuers,
- Sponsored investment entities, or
- Controlled foreign corporations.

Partner Jurisdiction Financial Institution

The term “Partner Jurisdiction Financial Institution” means (i) any Financial Institution resident in a Partner Jurisdiction (including Ireland and the UK), but excluding any branches of such Financial Institution that are located outside the Partner Jurisdiction, and (ii) any branch of a Financial Institution not resident in the Partner Jurisdiction, if such branch is located in the Partner Jurisdiction.

Partner Jurisdiction

The term “Partner Jurisdiction” means a jurisdiction that has in effect an agreement with the United States to facilitate the implementation of FATCA.

Participating Financial Institution

A Participating Foreign Financial Institution is a Financial Institution which has entered into an FFI agreement with the Internal Revenue Service (IRS) under section 1471(b) of the Internal Revenue Code and § 1.1471-4 of the Treasury Regulations 1 (the FFI agreement) to be treated as a participating FFI.

Exempt Beneficial Owner

The term “Exempt Beneficial Owner” means:

- i. a Governmental Entity;
- ii. an International Organisation (examples of which include The International Monetary Fund, The World Bank, The International Bank for Reconstruction and Development and The European Community – for a full list please see the relevant guidance issued by Irish Revenue, or the IRS);
- iii. a Central Bank;
- iv. a Pension trust or other organisations, as referred to in Article 4(1) (c) of the 1997 Double Taxation Treaty between Ireland and the United States of America, established in Ireland and maintained exclusively to administer or provide retirement or employee benefits; or
- v. any other entity defined as an Exempt Beneficial Owner in US Treasury Regulations.

Non-participating Financial Institution

The term “Non-participating Financial Institution” means a non-participating FFI, as that term is defined in relevant US Treasury Regulations, but does not include an Irish Financial Institution or other Partner Jurisdiction Financial Institution other than a Financial Institution identified as a Non-participating Financial Institution pursuant to paragraph 2 of Article 5 of the Irish – US Inter Governmental Agreement.

Section B - CRS

CRS is a legal framework which requires AIB to report details of financial accounts held by reportable persons (i.e. customers who are not tax resident in the Republic of Ireland or the US) to the Irish Revenue on an annual basis who will then exchange this information with tax authorities in relevant jurisdictions.

Section B - CRS Non Financial Entity

An Active NFE

The term **Active NFE** means any of the following:

- Active NFEs by reason of income and assets:
 - For the preceding calendar year or other appropriate reporting period, less than 50% of its gross income is passive income (including dividends, interest, annuities and rent) AND less than 50% of its assets are held for the production of passive income. It is expected that the majority of organisations will fall into the Active NFE category.
- Certain Wholly Owned Entities:
 - An Entity wholly owned by one or more of the following: Governmental Entity, International Organisation, Central Bank.
- Holding NFEs that are members of a nonfinancial group:
 - 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, 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.
- Start-up NFEs:
 - 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 Financial Institution, 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.
- NFEs that are liquidating or emerging from bankruptcy:
 - The NFE was not a Financial Institution 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 a Financial Institution.

- Treasury centres that are members of a nonfinancial group:
 - The NFE 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.
- Non-profit NFEs:
 - The NFE meets all of the following requirements:
 - 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 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 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 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 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 jurisdiction of residence or any political subdivision thereof.

The term **Governmental Entity** means the government of a jurisdiction, any political subdivision of a jurisdiction (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a jurisdiction or of any one or more of the foregoing (each, a 'Governmental Entity'). This category is comprised of the integral parts, controlled entities, and political subdivisions of a jurisdiction.

- An 'integral part' of a jurisdiction means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a jurisdiction. The net earnings of the governing authority must be credited to its own account or to other accounts of the jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.
- A controlled entity means an Entity that is separate in form from the jurisdiction or that otherwise constitutes a separate juridical entity, provided that:
 - the Entity is wholly owned and controlled by one or more Governmental Entities directly or through one or more controlled entities;
 - the Entity's net earnings are credited to its own account or to the accounts of one or more Governmental Entities, with no portion of its income inuring to the benefit of any private person; and
 - the Entity's assets vest in one or more Governmental Entities upon dissolution.
- Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental programme, and the

Section B - CRS Non Financial Entity continued

programme activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a governmental entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.

The term **International Organisation** means any international organisation or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organisation (including a supranational organisation);

- that is comprised primarily of governments;
- that has in effect a headquarters or substantially similar agreement with the jurisdiction; and
- the income of which does not inure to the benefit of private persons.

The term **Central Bank** means an institution that is by law or government sanction the principal authority, other than the government of the jurisdiction itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of the jurisdiction, whether or not owned in whole or in part by the jurisdiction.

The term **Corporation, the stock of which is regularly traded on an established securities market or a Corporation** that is the Related Entity of such a Corporation means an entity which is excluded from the definition of a "Reportable Person" which is either:

- A corporation the stock of which is regularly traded on one or more established securities markets; or
- Any corporation that is a Related Entity of a corporation, the stock of which is regularly traded on one or more established securities markets.

A Passive NFE

The term **Passive NFE** means any NFE that is:

- Not an Active NFE.

Section B - CRS Financial Institution

The term **Financial Institution** means a Depository Institution, a Custodial Institution, an Investment Entity, or a Specified Insurance Company.

The term **Depository Institution** means any Entity that accepts deposits in the ordinary course of a banking or similar business.

The term **Custodial Institution** means 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:

- the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or
- the period during which the Entity has been in existence.

The term **Specified Insurance Company** means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

The term **Investment Entity** as listed in Section B 2(a) means any Entity

that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:

- 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;
- individual and collective portfolio management; or
- otherwise investing, administering, or managing Financial Assets or money on behalf of other persons;

or

An entity will be an investment entity if it is investing on its own account, is managed by a financial institution AND meets the Financial Assets test as described below

An entity meets the Financial Assets test if its gross income is primarily attributable to investing, reinvesting or trading in Financial Assets. This test requires that at least 50% of the entity's income is attributable to investing, reinvesting or trading in Financial Assets in the shorter of:

- The three year period ending on 31 December in the year preceding that in which its status as an investment entity is to be determined; or
- The period in which the entity has been in existence

The term **Investment Entity** as listed in Section B 2(b) means an Entity which meets the following conditions

- is not resident in a Participating Jurisdiction or does not have a branch located in a Participating Jurisdiction; and
- its gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets; and
- is managed by a Financial Institution as described in 1(a).

The term **Participating Jurisdiction** means:

- any EU Member State;
- any other jurisdiction (i) with which Ireland has a competent authority agreement in place with, and (ii) which is identified in a list published by Irish Revenue and notified to the European Commission; and
- any other jurisdiction (i) with which the European Union has a competent authority agreement with, and (ii) which is identified in a list published by the European Commission.

The term **Competent Authority Agreement** means the agreement which provides for the automatic exchange of information between 2 jurisdictions in accordance with CRS.

For further information on CRS please contact your tax advisor or log on to <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard> <http://www.Revenue.ie>