

# FATCA and CRS Self-Certification

Guidance Notes & Glossary of  
Terms for Business /  
Non-Personal Customers



**Bank of  
Ireland**

Classification: Public

- The FATCA and CRS Self-Certification Form for Business Customers / Non-Personal Customers should only be completed where the account holder is other than a natural person, that is, organisations such as corporations, partnerships, trusts and other entities.
- The Self-Certification Form should be completed by, or on the behalf of, the account holder(s).
- It is the responsibility of the party completing the Self-Certification Form to ensure that the information provided is complete and valid and, additionally, to provide the recipient with any additional documentation, information or replacement forms when requested or required.
- If you are unsure how to complete this form or do not understand the consequences of not providing information, you should seek independent legal or tax advice. Nothing in these instructions should be construed as legal or tax advice.

## Selecting your Entity Classification

You are required to identify the entity type applicable to your Entity/Organisation. The following questions are designed to assist you with this process. All Sections must be completed as follows:

- Non-Financial Entities – Complete Sections 1, 2, 3 and 6
- Financial Institutions – Complete Sections 1, 2, 4, 5 and 6

## Section 1: Entity/Organisation Details (mandatory)

This must be the same as the information provided in the account opening mandate.

## Section 2: Tax Residency for FATCA and CRS (mandatory)

- If your Entity/Organisation is resident in the U.S. for tax purposes, please indicate this in Section 2(a) of the Self-Certification Form and proceed to complete Section 2(b).
- Is your Entity/Organisation a Specified U.S Person (a Specified U.S. Person includes organisations)?
  - **If Yes:** Please indicate this on the Self-Certification Form and provide your U.S. TIN
  - **If No:** Please indicate this on the Self-Certification Form.
  - **If Don't Know:** Please review the definitions in the **Glossary** section below.
- Is your Entity/Organisation resident for tax purposes in any country other than the U.S. and the Republic of Ireland?
  - **If Yes:** Please indicate this on the Self-Certification Form and list all countries where your Entity/Organisation is resident for tax purposes (continuing on a separate sheet if necessary).
    - For each country please provide the relevant Taxpayer Identification Number ("TIN") or its functional equivalent: this is a unique number or code which will enable the tax authority in that country to identify the organisation.
  - **If No:** Please proceed to **Section 3** of the Self-Certification Form.

## Section 3: Non-Financial Entities

(See the Glossary Section for specific definitions)

If your Entity/Organisation is **not** a Financial Institution, please complete Section 3.

Complete the classifications for **both** FATCA and CRS.

- If your organisation is an **Active NFE** or an **Active NFFE**, please tick the corresponding field on the Self-Certification Form and proceed to **Section 6**.
- If your organisation is a **Passive NFE** or a **Passive NFFE**, please tick the corresponding field on the Self-Certification Form and proceed to complete **Section 6**. You must also complete the Controlling Person Self-Certification Form with respect to each Controlling Person.
- If your organisation is an **Excepted NFFE**, please tick the corresponding field on the Self-Certification Form and proceed to **Section 6**.
- **If Don't Know:** Please review the definitions in the **Glossary** section below.

## Section 4: Financial Institutions required for FATCA

(See the Glossary Section for specific definitions)

If your organisation is a Financial Institution please complete Section 4 to confirm your classification for FATCA.

- If your organisation is a Financial Institution under FATCA, please indicate this on the Self-Certification Form by selecting the appropriate option **(i-iii)**.
- If your organisation is a Financial Institution but does not have a GIIN, please indicate this on the Self-Certification Form by selecting the appropriate option **(a-e)**.
- **If Don't Know:** Please review the definitions in the **Glossary** section below.

## Section 5: Financial Institutions required for CRS

(See the Glossary Section for specific definitions)

If your organisation is a Financial Institution please complete Section 5 to confirm your classification for CRS.

- If your organisation is an **Investment Entity in a Non-Participating Jurisdiction**, please tick the corresponding field on the application form and proceed to complete **Section 6**. You must also complete the Controlling Person Self-Certification Form with respect to each Controlling Person.
- If your organisation is a Financial Institution under CRS, please indicate this on the Self-Certification Form.
- **If Don't Know:** Please review the definitions in the **Glossary** section below.

## Section 6: Declaration and Signature (mandatory)

You must duly sign the Self-Certification declaration and certify that the information provided is correct and accurate.

## Glossary

### FATCA SPECIFIC DEFINITIONS

#### Active Non-Financial Foreign Entity (Active NFFE)

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

- 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;
- 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;
- The NFFE is organised in a US Territory and all of the owners of the payee are bona fide residents of that US Territory;
- The NFFE is a non-US government, a government of a US Territory, an international organisation, a non-US central bank of issue, or an Entity wholly owned by one or more of the foregoing;
- 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;
- 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;
- 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;

- viii.) 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; or
- ix.) The NFFE meets all of the following requirements:
  - a.) It is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes;
  - b.) It is exempt from income tax in its country 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 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 noncharitable 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
  - e.) 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 organisation, or escheat to the government of the Entity's country of residence or any political subdivision thereof.

### Agreement

This means the agreement between the Government of Ireland and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA.

### Certified Deemed Compliant Foreign Financial Institution

A foreign financial institution which meets certain criteria is referred to as a deemed compliant foreign financial institution.

Categories of certified deemed compliant financial institution, as listed in the Agreement, include:

- i.) Non-Profit Organisations
- ii.) Local Client Base Financial Institution.
- iii.) Certain Collective Investment Vehicles; i.e.
  - Where all of the interests in a collective investment vehicle (including debt interests in excess of \$50,000) are held by or through one or more Financial Institutions that are not Non-Participating Financial Institutions, the reporting obligations of any Investment Entity (other than a Financial Institution through which interests in the collective investment vehicle are held) will be deemed fulfilled with respect to interests in the collective investment vehicle.

Categories of certified deemed compliant financial institution, as listed in the U.S regulations, include:

- i.) Non registering local banks,
- ii.) Financial Institutions with only low value accounts,
- iii.) Sponsored closely held investment vehicles,
- iv.) Limited Life debt investment entities,
- v.) Owner Documented Financial Institutions,
- vi.) Certain Investment Advisors and
- vii.) Investment Managers who do not maintain Financial Accounts.

### Excepted Foreign Financial Institution (Excepted FFI)

The term Excepted FFI refers to the following types of entities which are excluded from the FFI definition;

- i.) Holding companies engaged in non-financial business
- ii.) Start-up companies for non-financial business
- iii.) Liquidating or reorganizing non-financial entities
- iv.) Group hedge/financial company which is non-financial and restricted to affiliates
- v.) Organised in U.S. Territory

### Excepted Non-Financial Foreign Entity (Excepted NFFE)

The term Excepted NFFE refers to;

- i.) Any corporation the stock of which is regularly traded on one or more established securities market (and certain affiliates thereof);
- ii.) Any territory entity organized under the laws of a U.S. possession and is directly or indirectly, wholly owned by 1 or more bona fide residents of the possession;
- iii.) Any entity that is an active NFFE; or
- iv.) Other entities that are excepted NFFEs; i.e. (i) certain nonfinancial holding companies (ii) certain start-up companies
- (v.) non-financial entities that are liquidating or emerging from reorganisation or bankruptcy (iv) IRC Section 501(c) entities (other than certain insurance companies) (v) non-profit organisations

### Exempt Beneficial Owner

The term "Exempt Beneficial Owner" means

- i.) The Irish Government, any political subdivision of the Irish Government or any wholly owned agency or instrumentality of any one or more of the foregoing including: The National Treasury Management Agency, The National Pensions Reserve Fund and the National Pensions Reserve Fund Commission, and, The National Asset Management Agency;

- ii.) The office in Ireland of any institution of the European Union, of the European Investment Bank, the European Bank for Reconstruction and Development, or of any organisation to which the Diplomatic Relations and Immunities Acts 1967 – 2006 apply;
- iii.) a Central Bank; or
- iv.) A pension trust and any other organisation, as referred to in Article 4(1)(c) (Residence) of the Convention, established in Ireland and maintained exclusively to administer or provide retirement or employee benefits.

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

A FFI refers to an foreign entity that;

- i.) Accepts deposits in the ordinary course of a banking or similar business (banks, credit unions),
- ii.) Holds financial assets for the account of others as a substantial portion of its business (brokerages, custodians), or
- iii.) Is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, or any interest (including a futures or forward contract or option) in such securities, partnership interests, or commodities (mutual funds, private equity funds, hedge funds).
- iv.) Is a Specified Insurance Company.

### **Global Intermediary Identification Number (GIIN)**

The term GIIN refers to an identification number that is assigned to certain financial institutions by the U.S. Internal Revenue Service.

### **Investment Entity**

The term investment entity means 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:

- i.) Trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign currency; foreign exchange, interest rate, and index instruments; transferable securities; or commodity futures trading;
- ii.) Individual and collective portfolio management; or
- iii.) Otherwise investing, administering, or managing funds or money on behalf of other persons.

### **Local Client Base Financial Institution**

This category applies to financial institutions that meet the following criteria (a) licensed and regulated under the laws of the Republic of Ireland (b) have no fixed place of business outside of the Republic of Ireland (c) do not solicit account holders outside of Ireland. For the full list of criteria please refer to Section II, Paragraph B of Annex II of the Agreement.

### **Non-Financial Foreign Entity (NFFE)**

An “NFFE” means any Non-U.S. Entity that is not a foreign financial institution as defined in relevant U.S. Treasury Regulations, and also includes any Non-U.S. Entity that is resident in Ireland or other partner jurisdiction and that is not a Financial Institution.

### **Non-Participating Foreign Financial Institution**

The term “Non-Participating Foreign Financial Institution” means a Financial Institution that is not participating in FATCA.

### **Non-Profit Organisation**

The term “Non-Profit Organisation” refers to;

- i.) Charitable organisations approved in accordance with section 848A and Schedule 26A of the Taxes Consolidation Act 1997
- ii.) A body established for the promotion of athletic or amateur games or sports that has been granted exemption from tax in accordance with section 235 of the Taxes Consolidation Act 1997 by the Revenue Commissioners.

### **Participating Foreign Financial Institution**

Some countries have not entered into an agreement for automatic exchange of information with the US. A Participating Foreign Financial Institution is a financial institution resident in such a country which has directly entered into an agreement with the Internal Revenue Service (IRS) in the U.S. to identify U.S. account holders and report on their accounts.

### **Partner Jurisdiction Financial Institution (including Irish Financial Institution)**

The term “Partner Jurisdiction Financial Institution” means (i) any Financial Institution that is resident in a jurisdiction that has in effect an agreement with the United States to facilitate the implementation of FATCA, but excludes any branch of that Financial Institution that is located outside such jurisdiction.

### **Passive Non-Financial Foreign Entity (Passive NFFE)**

A “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 U.S. Treasury Regulations.

### **Registered Deemed Compliant Foreign Financial Institutions**

The Financial Institutions falling within this category are not included as Deemed Compliant Foreign Financial Institutions under the Agreement. However the institutions are regarded as Registered Deemed Compliant Foreign Financial Institutions under the U.S. Regulations. Categories include:

- i.) Non-reporting members of a group of related Participating Foreign Financial Institutions,
- ii.) Restricted funds,
- iii.) Qualified credit card issuers,
- iv.) Sponsored investment entities, or
- v.) Controlled foreign corporations.

## Specified U.S. Person

The term "Specified U.S. Person" means a U.S. 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 U.S. 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 U.S. 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 organisation exempt from taxation under section 501(a) or an individual retirement plan as defined in section 7701(a)(37) of the U.S. Internal Revenue Code; (vi) any bank as defined in section 581 of the U.S. Internal Revenue Code; (vii) any real estate investment trust as defined in section 856 of the U.S. Internal Revenue Code; (viii) any regulated investment company as defined in section 851 of the U.S. Internal Revenue Code or any entity registered with the Securities Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-64); (ix) any common trust fund as defined in section 584(a) of the U.S. Internal Revenue Code; (x) any trust that is exempt from tax under section 664(c) of the U.S. Internal Revenue Code or that is described in section 4947(a)(1) of the U.S. 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 U.S. Internal Revenue Code.

## U.S. Person

The term "U.S. Person" means a U.S. citizen or resident individual, a partnership or corporation organized 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 judgments concerning substantially all issues regarding administration of the trust, and (ii) one or more U.S. persons have the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the United States. These terms should be interpreted in accordance with the U.S. Internal Revenue Code.

## U.S. Territory

The term "U.S. Territory" means American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands.

## FATCA SPECIFIC DEFINITIONS

### Active Non-Financial Entity (Active NFE)

The term "Active NFE" means any NFE that meets any of the following criteria:

- i.) 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;

- ii.) 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;
- iii.) the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
- iv.) 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;
- v.) 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;
- vi.) 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;
- vii.) 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; or
- viii.) the NFE 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 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;
  - 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 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

- e.) 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.

### **Investment Entity**

The term "Investment Entity" means any entity:

- i) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:
  - a.) 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;
- ii.) individual and collective portfolio management; or otherwise investing, administering, or managing financial assets or money on behalf of other persons; or
- b.) the gross income of which is primarily attributable to investing, reinvesting, or trading in financial assets, if the entity is managed by another entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in (a) above.

An entity is treated as primarily conducting as a business one or more of the activities described in (a), or an entity's gross income is primarily attributable to investing, reinvesting, or trading in financial assets for purposes of (b), if the entity's gross income attributable to the relevant activities equals or exceeds 50 per cent of the entity's gross income during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or (ii) the period during which the entity has been in existence. The term "Investment Entity" does not include an entity that is an Active Non-Financial Entity because it meets any of the criteria in (iv) to (vii) in the definition of Active Non-Financial Entity.

An Investment Entity that is not tax resident in a CRS participating jurisdiction will be considered to be a Passive NFE.

### **Non-Financial Entity**

A Non-Financial Entity is any entity that is not a Financial Institution or an entity that is not a Partner Jurisdiction financial Institution.

### **Passive Non-Financial Entity (Passive NFE)**

A Passive Non-Financial Entity is any Non-Financial Entity that is not an Active Non-Financial Entity.

### **Participating Jurisdiction**

A country that has adopted the Common Reporting Standard and that may have concluded a (multiple) Competent Authority Agreement with the country in which the entity holds the account. For further information please consult: <http://www.oecd.org/ctp/exchange-of-tax-information/MCAASignatories.pdf>

### **GENERAL TERMS**

#### **Controlling Persons**

The term "Controlling Persons" means the natural persons who exercise control over an Entity. In the case of a trust, such term 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, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term "Controlling Persons" must be interpreted in a manner consistent with the Financial Action Task Force Recommendations.

#### **CRS**

The OECD Common Reporting Standard (commonly known as 'CRS') refers to the standard for the Automatic Exchange of Financial Account Information in Tax Matters given legislative effect by the Republic of Ireland under Section 891F of the Taxes Consolidation Act 1997.

#### **Custodial Institution**

The term "Custodial Institution" means any entity that holds, as a substantial portion of its business, financial assets for the accounts of others. A substantial portion is where 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 31 December (or the final day of a non-calendar year the account period) prior to the year in which the determination is being made, and
- ii.) The period during which the entity has been in existence

#### **Depository Institution**

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

#### **FATCA**

The Foreign Account Tax Compliance Act (commonly known as 'FATCA') contained in the US Hire Act 2010 and given legislative effect by the Republic of Ireland under Section 891E of the Taxes Consolidation Act 1997 and subsequent regulations.

#### **Financial Institution**

The term "Financial Institution" means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company as defined in the tax regulations.

## **Passive Income**

The term "Passive Income" refers generally to the portion of gross income that consists of: dividends (including substitute dividend payments); interest; income equivalent to interest; rents and royalties (other than those derived in the active conduct of a trade or business conducted, at least in part, by employees); annuities; net gains from the sale of property that gives rise to passive income; net gains from certain transaction in commodities; net foreign currency gains; net income from notional principal contracts; amounts received under cash value insurance contracts; and amounts received by an insurance company in connection with its reserves for insurance and annuity contracts.

## **Related Entity**

An entity is a Related Entity of another entity if either entity controls the other entity, or 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.

## **Specified Insurance Company**

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.

## **Tax Regulations**

The term 'Tax Regulations' refers to regulations created to enable automatic exchange of information and include the Foreign Account Tax Compliance Act (FATCA) and the OECD Common Reporting Standard (CRS), as given legislative effect in the Republic of Ireland by inclusion in Section 891E and Section 891F of the Taxes Consolidation Act 1997.

## **TIN**

The term TIN" means the entity or individual's Tax Identification Number.