

# Glossary to the FATCA/CRS Entity Self-Certification Form

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A selection of definitions is included in this glossary for your convenience.

This list is not exhaustive; the information provided is for informational purposes only; the included definitions are not legally binding. Please note that certain definitions can vary from country to country as a consequence of a difference in implementation of the relevant regulations. The terms marked bold indicate that such terms are further defined. Please find the definitions in alphabetical order.

This glossary does not contain full legal definitions nor legal advice. You may want to seek independent professional advice if you are not sure whether a definition is applicable for you.

### Active Non-Financial Entity (Active NFE) – CRS definition

A non-financial entity is any entity other than a **Financial Institution**. Entities that do not qualify as a Financial Institution can be classified either as an Active NFE or a Passive NFE. The NFEs described below are considered to be Active NFEs.

1. The entity is an active entity if the entity during the last year:
  - Less than 50% of the entity's gross income consisted of **Passive Income**; and
  - Less than 50% of the assets held by the entity are assets that produce or are held for the production of **Passive Income**.
2. The stock of the entity is regularly traded on an established securities market or the entity is a **Related Entity** of an entity the stock of which is **regularly traded on an established securities market**.
3. The entity is a **Governmental Entity**, an **international organization**, a **Central Bank** or an entity wholly owned by one or more of the foregoing.
4. The entity is a holding or financing company of a non-financial group if 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.
5. The entity is a start-up company if the entity:
  - a. Is established less than 24 months ago and the entity is currently not operating a business and has previously not operated a business; and
  - b. The entity is not planning to operate the business of a Financial Institution.
6. The entity is a treasury center if 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.
7. The entity is in liquidation or reorganization if the entity:
  - a. Was not a Financial Institution in the past five years and is currently in liquidation, bankruptcy or reorganizing to continue or recommence operations;
  - b. In case of a reorganization, the entity is planning to operate a business other than the business of a Financial Institution.
8. The entity is a **Non-Profit Organisation**.

If the NFE does not fulfil any of the above requirements, the NFE is considered a Passive NFE.

Please seek independent professional advice if you are not sure whether the entity is an Active NFE.

## Active Non-Financial Foreign Entity (Active NFFE) – FATCA definition

The definition of an Active NFFE is similar to the definition of an **Active NFE**. Certain U.S. (organized) entities are however excluded from the definition of an Active NFFE. Please refer to the applicable provisions for the differences.

For FATCA: If an NFFE does not fulfil any of the Active NFFE requirements, the NFFE is considered a Passive NFFE.

Please seek independent professional advice if you are not sure whether the entity is an Active NFFE.

## Central Bank

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

## Controlling Person

The controlling persons are in general the same individuals that have been identified as Ultimate Beneficial Owners ("UBO"). The UBOs are generally being determined based on the 25% ownership/voting threshold (see more details below). If there are no such UBOs then the UBO is (or are) the person(s) that is (or are) regarded Senior Managing Official(s) (Pseudo-UBO).

"Controlling Persons" means the natural person(s) who exercises control over the entity. "Control" over an entity is generally exercised by the natural person(s) who ultimately has a controlling ownership interest in the entity. A "control ownership interest" depends on the ownership structure of the legal person and is usually identified on the basis of a threshold applying a risk-based approach (e.g. any person(s) owning more than a certain percentage of the legal person, for example 25%). Please note that the threshold is country specific and can therefore deviate per country.

Where no natural person(s) exercise(s) control through ownership interests, the Controlling Person(s) of the entity will be the natural person(s) who exercise(s) control of the entity through other means. Where no natural person(s) is identified as exercising control of the entity, the Controlling Person(s) of the entity will be the natural person(s) who hold(s) the position of senior managing official(s). In the case of a trust, 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. The settlor(s), the trustee(s), the protector(s) (if any), and the beneficiary(ies) or class(es) of beneficiaries, must always be treated as Controlling Persons of a trust, regardless of whether or not any of them exercises control over the trust.

## Entity

An entity is a legal person or a legal arrangement such as a corporation, partnership, trust or foundation.

## Financial Institution

There are 4 types of Financial Institutions.

1. Custodial institution: an 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:

- Three years prior to the current year; or
- The period since the establishment of the entity.

2. Depository institution: an entity that deposits in the ordinary course of a banking or similar business.

3. Investment entity

There are two types of Investment entities.

a. An entity that (primarily) conducts as a business one or more of the following activities or operations 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 funds, money, or financial assets on behalf of other persons.

b. Investment entity: an entity the gross income of which is primarily attributable to investing, reinvesting, or trading in financial assets, if the entity is managed by another Financial Institution that is described under 1, 2, 3a, or 4. In certain

jurisdictions an investment entity includes an entity that 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.

4. Specified insurance company: an 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.

Please seek independent professional advice if you are not sure whether the entity is a Financial Institution.

### Global Intermediary Identification Number (GIIN)

The term GIIN refers to the identification number that is assigned to certain foreign Financial Institutions by the U.S. Internal Revenue Service. If you are in the process of application for GIIN please type in the respective field "Applied for". List of all registered Foreign Financial Institutions and their GIINs can be found at

<https://apps.irs.gov/app/fatcaFfilist/flu.jsf>

### Governmental Entity

The government of a country, any political subdivision of a county (which includes a state, province, county, or municipality) or any wholly owned agency or instrumentality of a county or of any one or more of the foregoing (including integral parts and political subdivisions).

Next to government owned agencies and instrumentalities also controlled entities can be considered governmental entities if they fulfil certain criteria:

- The entity should be wholly owned by a government; and
- No portion of the income of the entity should inure to private persons;
- To be considered a Governmental Entity, the entity should not conduct a business that provides commercial financial services to private persons (e.g. banking businesses which are government owned).

Please seek independent professional advice if you are not sure whether the entity is a Governmental Entity.

### International Organisation

Any International Organisation or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organisation (including a supranational organisation):

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

**Privately owned companies do not qualify as an International Organisation.**

Please seek independent professional advice if you are not sure whether the entity is an International Organisation.

### NFE or NFFE

Means "Non-Financial Entity" under CRS or "Non-Financial Foreign Entity" under FATCA and corresponds to any entity that is not a Financial Institution (and for FATCA is not a US person).

### Non-Profit Organisation

Any entity is considered a Non-Profit Organisation if 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; Additionally the entity must fulfil the following conditions:

- the entity is exempt from income tax in its country of residence;
- the entity has no shareholders or members who have a proprietary or beneficial interest in the income or assets of the entity;

- 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. An exception is made for income or assets used:
  - pursuant to the conduct of the entity's charitable activities,
  - as payment of reasonable compensation for services rendered, or
  - as payment representing the fair market value of property which the entity has purchased.
- 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.

Please seek independent professional advice if you are not sure whether the entity is a Non-Profit Organisation.

### Participating country

A country that has adopted the Common Reporting Standard and that has concluded a competent authority agreement with the country in which the entity holds the account mentioned in part 1 of this form. For further information we refer to OECD CRS Information Portal.

### Passive Income

Passive Income generally includes a portion of gross income that consists of:

- a. dividends and dividend substitute payments (income equivalent to dividend);
- b. interest and income equivalent to interest;
- c. 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 NF(F)E;
- d. annuities;
- e. the excess of gains over losses from the sale or exchange of Financial Assets that gives rise to the Passive Income as described previously;
- f. the excess of gains over losses from transactions (including futures, forwards, options, and similar transactions) in any Financial Assets;
- g. the excess of foreign currency gains over foreign currency losses
- h. net income from swap-contracts;
- i. amounts received under Cash Value Insurance Contracts;

Notwithstanding the foregoing, Passive Income will not include, in the case of a NFE/ NFFE 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.

The list above is not exhaustive. A complete overview of Passive Income (and eventual exceptions) can be found in the relevant (local) regulations.

Please seek independent professional advice if you are not sure whether a specific type of income is considered Passive Income.

### Passive Non-Financial Entity (Passive NFE) – CRS definition

A Passive NFE is in principle any entity that does not classify as:

- (i) A Financial Institution; nor
- (ii) An Active NFE; nor
- (iii) A Professionally managed investment entity resident in a non-participating CRS country.

Please seek independent professional advice if you are not sure whether the entity qualifies as a Passive NFE for CRS purposes.

### Passive Non-Financial Foreign Entity (Passive NFFE) – FATCA definition

A Passive NFFE is in principle any entity that does not classify as:

- (i) A Financial Institution; nor
- (ii) An Active NFFE; nor
- (iii) A US Person.
- (iv) A withholding foreign partnership or a withholding foreign trust pursuant to relevant U.S. Treasury Regulations

This definition can slightly differ from jurisdiction to jurisdiction.

Please seek independent professional advice if you are not sure whether the entity qualifies a Passive NFFE under FATCA.

### **Professionally managed investment entity resident in a non-participating CRS Jurisdiction (CRS)**

This term refers to an Investment entity that is not a CRS participating jurisdiction Financial Institution, whose gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets. The Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or another Investment Entity.

Please seek independent professional advice if you are not sure whether your entity qualifies as a Professionally managed investment entity under CRS.

### **Publicly Traded Corporation / Publicly Listed Company**

The NFE/NFFE is considered a Publicly Traded Corporation or Publicly Listed Company if its stock is regularly traded on an established securities market or if the NFE/ NFFE is a Related Entity of an entity the stock of which is regularly traded on an established securities market.

Regularly traded

Securities are considered “regularly traded” if there is a meaningful volume of trading with respect to the stock on an on-going basis.

Established securities market

A securities market/ exchange that is officially recognised and supervised by a governmental authority in which the market is located and that has a meaningful annual value of shares traded on the exchange.

Please seek independent professional advice if you are not sure whether the entity qualifies as a publicly traded/listed NF(F)E.

### **Related Entity**

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

### **Reportable Person**

For CRS: any person with a CRS reportable status that is a tax resident outside the country where the Financial Account is held. For FATCA: any Specified US person. Controlling Persons can also be Reportable Persons under certain circumstances.

### **Reporting Financial Institution**

Under FATCA, this term refers to an institution that has registered with the US Internal Revenue Service (IRS). Every reporting foreign Financial Institution obtains a Global Intermediary Identification Number (“GIIN”).

Under CRS, it corresponds to a Financial Institution that does not qualify as a non-reporting Financial Institution.

### **Non-reporting Financial Institution**

Under FATCA, it means a Financial Institution resident in a jurisdiction having signed an Inter-Governmental Agreement (IGA) with the US which is described in the Annex II of the IGA as a non-reporting Financial Institution or referred to as deemed-compliant FFI (foreign Financial Institution) under the US Treasury Regulations.

Under CRS, the term “non-reporting Financial Institution” means any Financial Institution which is:

- a broad participation retirement fund; a narrow participation retirement fund; a pension fund of a public entity, International Organisation or Central Bank; or a qualified credit card issuer;
- any other entity that presents a low risk of being used to evade tax, included in the list of non-reporting Financial Institutions published in the Official Journal of the European Union (OJ);

- an exempt collective investment vehicle which generally refers to an investment entity that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle are held by or through individuals or entities that are not Reportable Persons, except a passive NFE/NFFE with reportable Controlling Persons; or
- a trust to the extent that the trustee of the trust is a reporting Financial Institution and reports all information required to be reported with respect to all reportable accounts of the trust.

The list above is not exhaustive. A complete overview of reporting and non-reporting Financial Institutions can be found in the relevant (local) regulations.

Please seek independent professional advice if you are not sure whether the entity qualifies as a reporting or a non-reporting Financial Institution.

## Tax Resident

The concept of tax residency may differ from jurisdiction to jurisdiction. Common international criteria that jurisdictions may take into account when determining tax residency could include:

With respect to entities:

- Domicile in a jurisdiction;
- Place of effective management or incorporation/ organisation of an entity;

With respect to individuals Where an individual lives (i.e. where the individual has his/ her personal and economic activities or interests). Only very few jurisdictions (e.g. U.S.) establish tax residency for their citizens irrespective of their physical residence..

It should be noted that a temporary stay in a jurisdiction can contribute to tax residency. Further it is possible that an individual or entity is considered a tax resident in more than one jurisdiction. Government officials, diplomats and military personnel are generally tax resident in their home jurisdiction. The actual determination of tax residency takes place under the local tax regime(s).

For more guidance please refer to the following website:

<http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-residency>

Legal arrangements and tax residency:

An entity such as a partnership, limited liability partnership, or similar legal arrangement that has no residence for tax purposes, is tax resident for CRS purposes in the jurisdiction in which it has its place of effective management. If there is no place of effective management, the address of its principal office can serve as a proxy for determining residence. Please note therefore, that the residence for CRS purposes may differ from the residence for other purposes.

Please seek independent professional advice if you are not certain about your tax residence. **ING is not allowed to provide tax advice on determining a client's tax residence.**

## TIN

The 'Taxpayer Identification Number' (TIN) is the taxpayer identification number for tax administration purposes.

Each jurisdiction has its own version of the TIN, e.g. RSIN (NL), UTR (UK), Steuernummer (DE), SIREN (FR), NIP (PL) or NIF (ES). VAT number is usually not accepted as a TIN. If you want to know the right TIN for your tax residence, please visit

<http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/>

If the country of tax residence does not issue a TIN, please indicate a Functional Equivalent.

### Functional equivalent

While many jurisdictions utilize a TIN for taxation purposes, some jurisdictions do not issue a TIN. However, these jurisdictions often utilize some other high-integrity number with an equivalent level of identification (a "functional equivalent").

Examples of that type of number include, for entities, a business/ company registration code/ number.

### Reason no TIN provided

Some tax subjects do not have a TIN or the Functional Equivalent as the rules in their tax jurisdiction does not require them to have (resp. collect) one. An overview of rules on when a TIN is mandatory and when it is not, shown per jurisdiction, can be found on the OECD page <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/>. In case

the entity does not have a TIN (and does not need to have one as per its tax residence rules) then please keep th TIN field empty and select the applicable reason “A”, “B” or “C”. For reasons “B” or “C” it is also required to fill in a short explanation.

The table below provides examples on above mentioned rules for selected tax jurisdictions.

Tax Jurisdiction	Reason no TIN provided	Reason for not having TIN (example)
British Virgin Islands	Reason “A”	British Virgin Islands do not issue TIN.
Cayman Islands	Reason “A”	Cayman Islands do not issue TIN.
Marshall Islands (only non-resident domestic entities)	Reason “B”	The company is a non-resident domestic entity and does not have an EIN/TIN.

### Treasury Center

An entity is considered a treasury center if 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.

### U.S. Person

Under FATCA, the term US person means:

- a. a citizen or resident of the United States;
- b. a partnership or corporation created or organised in the United States;
- c. any estate (other than a non U.S. estate);
- d. any Trust if:
  - i. a court within the United States is able to exercise primary supervision over the administration of the trust, and
  - ii. one or more United States persons have the authority to control all substantial decisions of the trust;
- e. the United States Government (including an agency or instrumentality thereof);
- f. a US State (including an agency or instrumentality thereof);
- g. the District of Columbia (including an agency or instrumentality thereof).

Please seek independent professional advice if you are not sure whether you are a U.S. Person.