

Glossary of FATCA Terms

The following glossary is based on the FATCA and CRS regulations as implemented in the UK.

As a financial institution, Brooks Macdonald are not permitted to provide tax advice. If you have any questions about your tax residency or entity classification, please contact your tax adviser.

Active Non-Financial (Foreign) Entity (ANFFE/ANFE)

- a. 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;
- b. 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;
- c. NFE is a Governmental entity, an International Organisation, a Central Bank or an entity wholly owned by one or more of the foregoing;
- d. 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;
- e. 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;
- f. 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;
- g. 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
- h. the NFE meets all of the following requirements:
 - i. it is established and operated in its Member State or other jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic or educational purposes; or it is established and operated in its Member State or other 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;
 - ii. it is exempt from income tax in its Member State or other jurisdiction 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 NFE's Member State or other 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
 - v. the applicable laws of the NFE's Member State or other jurisdiction of residence or
 - vi. 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 Member State or other jurisdiction of residence or any political subdivision thereof.

Controlling Persons

Any natural person who has control over an entity, or who is able to use their influence and authority to make decisions on behalf of an entity. The term must be interpreted in a manner consistent with the Financial Action Task Force Recommendations.

- For companies, this term refers to shareholders with at least a 25% ownership in the company. Where no natural person(s) exercises control through ownership interests, the Controlling Person(s) will be the natural persons who exercise control through other means. Where no natural persons can be identified as exercising control over the entity, the Controlling Persons will be the Senior Managing Officials (e.g. directors, CEO).
- For trusts, this term refers to the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust.
- In the case of a legal arrangement other than a trust, this term means persons in equivalent or similar positions.

Custodial Institution

A Custodial Institution is an entity that holds, as a substantial portion of its business, financial assets for the account of others.

Deemed Compliant FFI [FATCA only]

Under FATCA, this is a FFI that does not have to perform FATCA due diligence on the Financial Accounts it maintains. There are two types of Deemed Compliant FFI:

a. *Registered Deemed-Compliant*

The categories include non-reporting members of participating FFI groups, qualified collective investment vehicles, restricted funds, US qualified credit card issuers and sponsored investment entities. A UK Financial Institution that falls within one of these categories must register with the IRS for a GIIN.

b. *Certified Deemed-Compliant*

The categories include non-registering local banks, FFIs with only low-value accounts, sponsored closely held investment vehicles, owner-documented FFIs, limited life debt investment entities, excepted inter-

affiliate FFIs and investment advisers and managers.

Direct Reporting NFFE [FATCA only]

Under FATCA, this is an NFFE that elects to directly report information about its substantial US owners to the IRS. A direct reporting NFFE must register on the IRS portal to obtain a GIIN.

Exempt Beneficial Owner [FATCA only]

In the UK, the following are treated as exempt beneficial owners:

- UK Governmental Organisations (as listed in Annex II to the IGA);
- A Central Bank;
- International Organisations (as listed in Annex II to the IGA); and
- Any pension scheme or other retirement arrangement established in the UK and described in Article 3 (General Definitions) of the Convention, including pension funds or pension schemes covered by IRS Announcement 2005-30, 2005-1 C.B. 988 on the Mutual Agreement on UK Pension Agreements.

Financial Asset

Includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract or Annuity Contract. The term "Financial Asset" does not include a non-debt, direct interest in real property.

Financial Assets Test

An entity meets the Financial Assets Test if its gross income is primarily attributable to investing, reinvesting or trading in Financial Assets (as defined above). This test is met if at least 50% of its income is attributable to investing, reinvesting or trading in Financial Assets in the shorter of:

- a. 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
- b. The period in which the entity has been in existence.

(Foreign) Financial Institution (FI/FFI)

A Custodial Institution, a Depository Institution, an Investment entity or a Specified Insurance Company.

Global Intermediary Identification Number (GIIN)

A GIIN is a number assigned by the IRS via the FATCA Registration System to Financial Institutions and Direct Reporting NFFEs. The Annex contains a link to the IRS website for further information.

Investment Entity (CRS)

- a. That primarily 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), 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 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, Custodial Institution, Specified Insurance Company or an Investment entity.

An entity is treated as primarily conducting as a business one or more of the following activities or an entity's gross income is primarily attributable to investing, reinvesting or trading in Financial Assets, if the Financial Assets Test is satisfied.

This paragraph should be interpreted in a manager consistent with similar language set forth in the definition of "financial institution" in the Financial Action Task Force Recommendations.

Investment Entity (FATCA)

The term 'Investment Entity' means any entity that 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), foreign exchange, interest rate and index instruments, transferable securities or commodity futures trading; or
- b. Individual and collective portfolio management; or

- c. Otherwise investing, administering or managing Financial Assets or money on behalf of other persons

This paragraph should be interpreted in a manager consistent with similar language set forth in the definition of "financial institution" in the Financial Action Task Force Recommendations.

Managed Investment Entity

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. An entity is managed by a Financial Institution if that Financial Institution performs, either directly or through another service provider, activities described in section (a) to (c) above (CRS definition) on behalf of the entity.

An entity will be considered to be "managed by a Financial Institution" where either:

- A Financial Institution is acting as a Controlling Person of the entity (e.g. a Corporate Trustee has been appointed to a Trust)
- A Financial Institution has been appointed to carry out the day-to-day functions on behalf of the entity (e.g. the entity is administered by a 3rd party service provider that is an FI), or
- A Financial Institution (such as Brooks Macdonald) has been engaged to manage the financial assets of the entity (in whole or in part) on a discretionary basis.

An entity may be managed by a mix of other Entities and individuals. If one of the Entities so involved in the management of the entity is a Financial Institution then the entity meets the requirements for being managed by a Financial Institution.

Managed Investment Entities include Investment Trusts, Venture Capital Trusts and ETFs.

Non-Financial Foreign Entity (NFE/NFFE)

An entity that is not a Financial Institution.

Non-Participating Financial Institution (NPFFI)

A NPFFI is a Financial Institution which is not FATCA compliant.

Non-Participating Jurisdiction [CRS only]

Any jurisdiction that is not a Participating Jurisdiction for CRS purposes.

Non-Reporting FI [CRS only]

Any FI that is:

- a. a Government entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution or Depository Instruction;
- b. a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; a Pension Fund of a Governmental entity, International Organisation or Central Bank or a Qualified Credit Card Issuer;
- c. any other entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described in (1) and (2), and is defined in domestic law as a Non-Reporting FI, providing that the status of such entity has a Non-Reporting FI does not frustrate the purpose of the CRs;
- d. an Exempt Collective Investment Vehicle; or
- e. a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported for CRS purposes with respect to all reportable accounts of the trust.

Non-Reporting FI [FATCA only]

Any Partner Jurisdiction Financial Institution or other entity resident in a Partner Jurisdiction that is identified in Annex II as a Non-Reporting FI or that otherwise qualifies as a deemed-compliant FFI, an exempt beneficial owner or an excepted FFI under the relevant US Treasury Regulations.

Participating Jurisdiction

Participating Jurisdictions have made a “commitment to exchange” i.e. provide account information to other jurisdictions under the CRS. A link to the list of the participating jurisdictions can be found in the annex to this glossary.

Passive NFE/NFFE

Any NFE/NFFE that is not an Active NFE/NFFE.

Related entity

An entity is regarded as being related to another entity if one entity controls the other or the two entities are under common control - the “Related entity Group”. For this purpose control is taken as including the direct or

indirect ownership of more than 50 per cent of the vote and value in an entity.

Reporting F(F)I

Means any Financial Institution that is not a Non-Reporting F(F)I.

Specified Insurance Company

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.

Specified US Person [FATCA only]

A US Person, other than:

- a. a corporation the stock of which is regularly traded on one or more established securities markets;
- b. 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);
- c. the US or any wholly owned agency or instrumentality thereof;
- d. any State of the US, 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;
- e. 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;
- f. any bank as defined in section 581 of the US Internal Revenue Code;
- g. any real estate investment trust as defined in section 856 of the US Internal Revenue Code;
- h. 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);
- i. any common trust fund as defined in section 584(a) of the US Internal Revenue Code;
- j. 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;
- k. 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 US or any State; or

- l. a broker as defined in section 6045(c) of the US Internal Revenue Code

Sponsored Direct Reporting NFFE [FATCA only]

Under FATCA this is an NFFE engaging another qualifying entity to act as its sponsoring entity; the sponsoring entity registers the NFFE with the IRS and reports information about the NFFE's substantial US owners to the IRS. It is considered a type of excepted NFFE.

Sponsored Investment entity [FATCA only]

A type of Deemed Compliant FI under FATCA. To qualify for this classification, the entity must be an Investment entity and must have agreed with another entity for the other entity to act as a sponsor and that such sponsoring entity will perform all required FATCA tasks on behalf of this Investment entity.

Sponsored Investment Vehicle [FATCA only]

A type of Deemed Compliant FI under FATCA. To qualify for this classification, the entity must be an investment vehicle and must have agreed with another entity for such other entity to act as a sponsor for this investment vehicle. Further, the investment vehicle must have 20 or fewer individuals owning all of the debt and equity interests.

Sponsoring FI [FATCA only]

An FI that performs all required FATCA tasks on behalf of another FI.

Taxpayer Identification Number (TIN)

A TIN is a unique combination of letters and numbers assigned by a jurisdiction to an individual or an entity and used to identify the individual or entity for purposes of administering the tax laws of such jurisdiction.

Trustee Documented Trust (TDT) [FATCA only]

To qualify for this classification, the entity must be a Trust with a Trustee that is a Financial Institution (i.e. a Corporate Trustee) and where the Corporate Trustee will perform all required FATCA compliance on behalf of the trust.

US Person

A US citizen or resident individual, a partnership or corporation organized in the US or under the laws of the US or any State thereof, a trust if (i) a court within the US 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 US 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 US.

Useful AEOI Website Links

HMRC Guidance and UK Legislation

EU DAC	http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0107&from=EN
International Tax Compliance Regulations 2015 (CRS regulations)	http://www.legislation.gov.uk/ukxi/2015/878/pdfs/ukxi_20150878_en.pdf
International Exchange of Information Manual	https://www.gov.uk/hmrc-internal-manuals/international-exchange-of-information
Register for Automatic Exchange of Information	https://www.gov.uk/guidance/register-for-automatic-exchange-of-information

IRS Guidance

Foreign Tax Compliance Act	https://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-FATCA
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OECD Guidance

Automatic Exchange Portal	http://www.oecd.org/tax/automatic-exchange
AEOI Status of Commitments	http://www.oecd.org/tax/transparency/AEOI-commitments.pdf
Tax Identification Numbers (TINs)	https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/