

## Guidance notes for CRS and FATCA: Application for business accounts

These guidance notes explain some of the terms used in the Application for business account(s) form, particularly section 7 – Tax status. For the avoidance of doubt, these guidance notes are for reference purposes only and do not constitute tax advice. If you require assistance in determining the most relevant classification for your organisation then you should seek professional assistance or contact HMRC.

### **CRS (Common Reporting Standard)**

Organisations are required to provide the classification that they would claim under relevant regulations implementing the Common Reporting Standards (CRS), pursuant to the bilateral and multilateral agreements in place for each jurisdiction. In these notes organisation and entity have the same meaning.

### **FATCA (Foreign Account Tax Compliance Act)**

Organisations are required to provide the classification that they would claim under relevant regulations implementing the Foreign Account Tax Compliance Act provisions (commonly known as FATCA) based on UK-USA agreement and agreement between the UK and British Crown Dependencies and Overseas Territories.

### **Beneficial Owner, Controlling Person or Substantial Owner**

'Beneficial Owner' refers to the natural person(s) who ultimately own(s) the organisation. The terms 'Controlling Person' and 'Substantial Owner' have the same meaning as 'beneficial owner'. Where no natural person(s) exercises control through ownership interests, the Controlling Person(s) of the organisation will be the natural person(s) who exercises control of the organisation through other means. Where no natural person(s) is/are identified as exercising control of the organisation through ownership interests, then under the CRS the Reportable Person is deemed to be the natural person who holds the position of senior managing official.

For trusts the term "Controlling Person" are the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, or any other natural person(s) exercising ultimate effective control over the trust (including through a chain of control or ownership). Under the CRS the settlor(s), the trustee(s), the protector(s) (if any), and the beneficiary(ies) or class(es) of beneficiaries, are always treated as Controlling Persons of a trust, regardless of whether or not any of them exercises control over the activities of the trust.

Where the settlor(s) of a trust is an organisation then the CRS requires banks to also identify the Controlling Persons of the settlor(s) and when required report them as Controlling Persons of the trust.

In the case of a legal arrangement other than a trust, "Controlling Person(s) means persons in equivalent or similar positions.

### **Tax Residency**

'Tax residency' is determined by the laws of the relevant local jurisdiction and may depend on factors such as the place of incorporation, organisation, management and control, or other factors. If you are unsure as to which jurisdiction your organisation is resident in for tax purposes, please contact your tax adviser/accountant. Enter the jurisdiction where the entity is resident for the purposes of that jurisdiction's income taxation. If the entity is tax resident in more than one jurisdiction, please list each one separately.

*Tie-breaker clause:* An organisation may be dual resident in the UK and in another country with which HMRC may have a Double Taxation Agreement. These treaties may contain a tie-breaker clause which awards residence to one country only for the purposes of the agreement. If you require assistance in determining the most relevant classification for your organisation then you should seek professional advice or contact HMRC.

*TIN:* This is the Tax Identification Number or functional equivalent in the absence of a TIN. A TIN is a unique combination of letters or numbers assigned by a jurisdiction to an individual or an organisation and used to identify the individual or organisation for the purposes of administering the tax laws of such jurisdiction.

### **Jurisdiction**

"Jurisdiction" means the power or right of a legal or political agency to exercise its authority over a person, subject matter, or territory.

### **Participating Jurisdiction**

A "Participating Jurisdiction" means a jurisdiction with which an agreement is in place pursuant to which it will provide the information set out in the CRS.

### **Participating Jurisdiction Financial Institution**

The term "Participating Jurisdiction Financial Institution means" (i) any Financial Institution that is tax resident in a Participating Jurisdiction, but excludes any branch of that Financial Institution that is located outside of that jurisdiction, and (ii) any branch of a Financial Institution that is not tax resident in a Participating Jurisdiction, if that branch is located in such Participating Jurisdiction.

## Reportable Account

The term "Reportable Account" means an account held by one or more Reportable Persons or by a Passive NFE (see below) with one or more Controlling Persons that is a Reportable Person.

## Reportable Jurisdiction

A Reportable Jurisdiction is a jurisdiction with which an obligation to provide financial account information is in place.

## Reportable Jurisdiction Person

A Reportable Jurisdiction Person is an organisation that is tax resident in a Reportable Jurisdiction(s) under the tax laws of such jurisdiction(s) - by reference to local laws in the jurisdiction where the organisation is established, incorporated or managed. An organisation such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated. As such if an organisation certifies that it has no residence for tax purposes it should state the address of its principal office on the Business Account Application form. Dual resident organisations may rely on the tie-breaker rules contained in tax conventions (if applicable) to determine their residence for tax purposes.

## Reportable Person under CRS

A "Reportable Person" is defined as a "Reportable Jurisdiction Person", other than:

- a. any corporation that is a Related Entity of a corporation described in clause (i)
- b. a Governmental Entity
- c. an internal Organisation
- d. a Central bank
- e. a Financial Institution (except for an Investment Entity described in Sub Paragraph A(6) b) of the CRS that are not Participating Jurisdiction Financial institutions. instead, such Investment Entities are treated as Passive NFE's)
- f. a corporation the stock of which is regularly traded on one or more established securities markets
- g. not tax resident in a Reportable Jurisdiction as per HMRC guidance

## Related Entity

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

## Specified Person under FATCA

For an organisation that is tax resident in the USA it will be a "Specified Person", unless it confirms it is not a Specified Person and specifies one of the reason codes below:

- 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 (f) above
- c. the United States or any wholly owned agency or instrumentality thereof
- d. 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
- e. any organisation exempt from taxation under section 501(a) or any individual retirement plans 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 (15USC. 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 United States or any State
- l. a broker as defined in section 6045(c) of the US Internal Revenue Code.

## Non-Financial Entity (NFE)

A Non-Financial Entity is an entity that is not a Financial Institution and that meets any of the following criteria. In summary, those criteria refer to:

- active NFEs by reason of income and assets;
- publicly traded NFEs
- Governmental Entities, International Organisations, Central Banks, or their wholly owned Entities
- holding NFEs that are members of a non-financial group;
- start-up NFEs
- NFEs that are liquidating or emerging from bankruptcy
- treasury centres that are members of a nonfinancial group or
- non-profit NFEs.

The terms "Active NFE" or "Excepted NFE" means any Non-Financial Entity that meets any of the following criteria:

- less than 50 per cent of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income (see below) and less than 50 per cent 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 (see below)

- the stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity to an Entity the stock of which is traded on an established securities market
- the NFE is organised in a US Territory and all of the owners of the payee are bona fide residents of that US Territory
- the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing
- the NFE 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 NFE 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 Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes
- the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a 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
- the NFE 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
- 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.

*Passive income* includes:

- Rents other than:
  1. rents earned by an active business conducted at least in part by its employees
  2. rents from related parties which are themselves Active Non-Financial Entities
- Interest and dividend income
- Gains from the sale of investment properties
- Certain other incomes including royalties, annuities, foreign currency gains and income from derivatives.

Note: Certain entities (such as U.S. Territory Non-Financial Foreign Entities (NFFEs)) may qualify for Active NFFE status under FATCA but not Active NFE status under the CRS.

### **Passive Non-Financial Entity**

Broadly any organisation that is not a Financial Institution and is not an Active/Excepted Non-Financial Entity (see above), and an Investment Entity located in a Non-Participating Jurisdiction and managed by another Financial Institution.

### **Non-Profit Organisation**

An entity that meets ALL of the following criteria:

- 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 country 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 entity's jurisdiction 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
- the applicable laws of the entity's jurisdiction 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 jurisdiction of residence or any political subdivision thereof.

### **Non-Reporting Financial Institution (and Exempt Beneficial Owner)**

In general, the definition of an 'Exempt Beneficial Owners' includes any organisation that meets the definition of (and could include certain Exempt Beneficial Owners for FATCA):

- Governmental Entity – A foreign government, any political subdivision of a foreign government or any wholly owned agency or instrumentality of any one or more of the foregoing
- Central Bank – 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
- International Organisation – Any international organisation or wholly owned agency or instrumentality thereof
- Exempt Retirement Funds – A fund that meets certain regulatory criteria and is operated principally to administer or provide pension or retirement benefits
- 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
- an Exempt Collective Investment Vehicle
- a Trustee-Documented Trust - A trust where 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
- any other defined in a countries domestic law as a Non-Reporting Financial Institution.

## **Financial Institution (of any type)**

In general, the definition of a 'Financial Institution' includes any organisation that meets the definition of:

- A Depository Institution – An organisation that accepts deposits in the ordinary course of a banking or similar business
- A Custodial Institution – An organisation that holds, as a substantial portion of its business, financial assets for the account of others. This is where the organisation's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20% of the organisation'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 accounting period) prior to the year in which the determination is being made; or (ii) the period during which the organisation has been in existence
- An Investment Entity – An organisation that conducts as a business trading in certain financial instruments on behalf of a customer or an organisation that is investing, administering or managing funds or money on behalf of other persons. This would also include an organisation which is primarily investing, reinvesting or trading in financial assets and is managed by another Financial Institution
- A Specified Insurance Company – An organisation that issues, or is obligated to make payments with respect to, any cash value insurance contract, annuity contract or other financial account.

If the organisation is based outside the UK, the terms may be defined differently under applicable local legislation. Please see the relevant domestic guidance and the CRS for further classification definitions that apply to Financial Institutions. If you are unsure about the relevant classification for these purposes please contact your tax advisor.

## **Direct Reporting Non-Financial Entity**

A Non-Financial Entity that has elected to report directly to the US Internal Revenue Service certain information about its direct or indirect substantial US owners, in lieu of providing such information to withholding agents or Financial Institutions participating in FATCA with which the Non-Financial Entity holds a financial account.

## **US Person**

A US Person for the purposes of the Foreign Account Tax Compliance provisions (commonly known as FATCA) includes US citizens (even if residing outside the USA) or resident individuals. A resident individual could include, but is not limited to, Green Card holders and individuals that meet relevant Substantial Presence Tests. If you require guidance on the Substantial Presence Test please visit the HMRC website or seek professional assistance. We may contact you, now or in the future, for additional information if you are a US person.