



AUTOMATIC EXCHANGE OF INFORMATION

FATCA / CRS

GLOSSARY

The definitions below are extracted from applicable Luxembourg legislation related to the OECD Standard for the Automatic Exchange of Financial Account Information in Tax Matters (the **OECD Standard**) and the intergovernmental agreement on FATCA signed between Luxembourg and the United States (the **FATCA Agreement**) and, as the case may be, relevant US Treasury Regulations.

This glossary is for general guidance only. In case of doubt, you should refer to the provisions of the aforementioned instruments. Capitalized terms not defined in the definitions set out below have the meaning ascribed to them in the OECD Standard or, where applicable, the FATCA Agreement.

None of the indications below constitute legal or tax advice and no guarantee can be accepted for completeness, editorial and technical mistakes. If you have any questions about these definitions or require further detail, please seek advice from a competent counsel.

Accountholder

For the purpose of FATCA and the OECD Standard, the Accountholder means in the first instance the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. Specific rules apply to accounts held by a person (other than a Financial Institution) for the benefit or account of another person as an agent, custodian, nominee, signatory, investment advisor or intermediary, in which case the said person is, as a rule, not treated as an Accountholder with respect to such accounts. Instead, such other person is treated as holding the account.

Active NFE

Active NFEs for the purpose of the OECD Standard consist of a series of NFEs defined in a limitative manner. For the purpose of general guidance, the different categories of Active NFEs can be summarized as follows:

- a) An NFE that meets the following, cumulative income and asset tests:
 - Under the income test, the entity must have less than 50% of its gross income from the preceding calendar year as passive income; and



- Under the asset test, the entity must have less than 50% of its assets for the preceding calendar year as passive assets (i.e. assets that produce or are held for the production of passive income);
- b) An NFE, the stock of which is regularly traded on an established securities market or a NFE that is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
- c) A NFE that is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
- d) Most holding companies, treasury centers and captive finance companies that are members of a nonfinancial group. This category excludes, however, investment funds that acquire or fund (operational) companies for investment purposes;
- e) Start-up companies investing capital in assets with the intent to operate a business other than that of a Financial Institution within two years as of the date of incorporation of the said company;
- f) Nonfinancial entities that are liquidating or emerging from reorganization or bankruptcy, to the extent that the entity under review was not a Financial Institution in the past five years;
- g) A NFE that primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and that 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;
- h) Most charitable organizations, non-profit organizations and professional organizations.

Active NFFE

Active NFFEs under FATCA consist of a series of NFFEs defined in a limitative manner. For the purpose of general guidance, the different categories of Active NFFEs can be summarized as follows:

- a) An NFFE that meets the following, cumulative income and asset tests:
 - Under the income test, the entity must have less than 50% of its gross income from the preceding calendar year as passive income; and
 - Under the asset test, the entity must have less than 50% of its assets for the preceding calendar year as passive assets (i.e. assets that produce or are held for the production of passive income);



- b) An NFFE, the stock of which is regularly traded on an established securities market or a NFFE that is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
- c) An NFFE organized in a U.S. Territory and wholly-owned by bona fide residents of that U.S. Territory;
- d) A national government (other than the U.S. government), a political subdivision of such government (which, for the avoidance of doubt, includes a state, province, county, or municipality), or a public body performing a function of such government or a political subdivision thereof, a government of a U.S. Territory, an international organization, a non-U.S. central bank of issue, or an Entity wholly owned by one or more of the foregoing;
- e) Most holding companies, treasury centers and captive finance companies that are members of a nonfinancial group. This category excludes, however, investment funds that acquire or fund (operational) companies for investment purposes;
- f) Start-up companies investing capital in assets with the intent to operate a business other than that of a Financial Institution within two years as of the date of incorporation of the said company;
- g) Nonfinancial entities that are liquidating or emerging from reorganization or bankruptcy, to the extent that the entity under review was not a Financial Institution in the past five years;
- h) An NFFE that primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and that does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution;
- i) Entities otherwise qualifying as “**Excepted NFFE**” under the relevant US Treasury Regulations. This category includes essentially certain retirement funds;
- j) Most charitable organizations, non-profit organizations and professional organizations.

Control

Control over an Entity is generally exercised by the natural person(s) who ultimately has a controlling ownership interest in the Entity. Where no natural person(s) exercises control through ownership interests, the Controlling Person(s) of the Entity will be the natural person(s) who exercises 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 holds the position of senior managing official.



Controlling Person(s)

The term “Controlling Person” means, for corporate entities, the natural person who exercise control over such Entity. For trusts and other similar legal arrangements, it will include the settlor, the trustee(s), the protector (if any), the beneficiaries, and any other natural person exercising ultimate effective control over the trust. The term “Controlling Persons” shall be interpreted in a manner consistent with the Financial Action Task Force Recommendations.

The question to determine whether a natural person exercises control over an Entity must be assessed on the basis of the applicable Luxembourg AML regulations¹. This includes, but is not limited to, any natural person owning more than 25% of the shares or voting rights in a corporate entity or, in the case of trusts and other similar legal arrangements, any natural person who is the beneficiary of 25% or more of the underlying property. Where no natural person(s) is/are 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.

Disregarded Entity

For US tax purposes, a business entity that has a single owner and is not a corporation under the Internal Revenue Code is disregarded as an entity separate from its owner.

Entity

The term “Entity” means a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation.

Exempt Beneficial Owner

For FATCA purposes, the term “Exempt Beneficial Owner” means,

- a) any entity that is described under section I or II of Annex II to the Luxembourg IGA;
- b) any entity described under the relevant Treasury Regulations as
 - Exempt Beneficial Owners other than Funds
 - Governmental Entity
 - International Organization
 - Central Bank
 - Funds that Qualify as Exempt Beneficial Owners

¹ Law of 12 November 2004 (as amended) on the fight against money laundering and terrorist financing.



- Treaty-Qualified Retirement Fund
- Broad Participation Retirement Fund
- Narrow Participation Retirement Fund
- Pension Fund of an Exempt Beneficial Owner

Financial Institution (FI)

The term “Financial Institution” means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company. Additional details on these definitions can be found in the FATCA Agreement and, where applicable, the OECD Standard, as translated into Luxembourg law.

GIIN (Global Intermediary Identification Number)

The term “GIIN” or “Global Intermediary Identification Number” means the identification number that is assigned by the IRS to a Financial Institution upon registration for purposes of identifying such entity to withholding agents.

Investment Entity

For the purpose of the OECD Standard, the term “Investment Entity” means any Entity:

- a) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:
 - trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
 - individual and collective portfolio management; or
 - otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; or
- 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 under subparagraph (a) above.

An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph (a) above, or an Entity’s gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for purposes of subparagraph (b) above, 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 NFE because it meets any of the criteria in subparagraphs (d) through (g) in the definition of Active NFE set out above.

The definition of Investment Entity shall be interpreted in a manner consistent with similar language set forth in the definition of “financial institution” in the Financial Action Task Force Recommendations.

Luxembourg Financial Institution (Lux FI)

The term “Luxembourg Financial Institution” means, for the purpose of FATCA, (a) any Financial Institution resident in Luxembourg, but excluding any branch of such Financial Institution that is located outside Luxembourg, and (b) any branch of a Financial Institution not resident in Luxembourg, if such branch is located in Luxembourg.

NFE

For the purpose of the OECD Standard, a NFE or “Non-financial Entity” means an Entity that is not a Financial Institution.

NFFE

For the purpose of FATCA, an NFFE or “Non-financial foreign entity” means any Non-U.S. Entity that is not an FFI as defined in relevant U.S. Treasury Regulations or is an Entity in subparagraph B(4)(j) of Annex I to the FATCA Agreement, and also includes any Non-U.S. Entity that is established in Luxembourg or another Partner Jurisdiction and that is not a Financial Institution.

Non-Participating Jurisdiction

The term “Non-Participating Jurisdiction” means a jurisdiction that is not recognized by Luxembourg as a Participating Jurisdiction for the purpose of the OECD Standard.

Non-U.S. Entity

The term “Non-U.S. Entity” means an Entity that is not a U.S. Person for the purpose of FATCA.

Participating Jurisdiction

For the purpose of the OECD Standard, a Reportable Jurisdiction means a jurisdiction that is recognized as such by Luxembourg. A Reportable Jurisdiction notably includes any Member State of the European Union, including Luxembourg. The list of Participating Jurisdictions may be updated from time to time by the Luxembourg authorities.



Partner Jurisdiction

For FATCA purposes, the term “Partner Jurisdiction” means a jurisdiction that has in effect an IGA with the United States. The U.S. Treasury is publishing a list identifying all Partner Jurisdictions, which is updated on a regular basis.

Passive Income

In determining what is meant by “Passive Income”, reference must be made to each jurisdiction’s particular rules.

According to the Commentaries to the OECD Standard published by the OECD, Passive income would generally be considered to include the 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 business conducted, at least in part, by employees of the NFE/NFFE;
- d) annuities;
- e) the excess of gains over losses from the sale or exchange of Financial Assets that gives rise to the passive income 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 swaps; or
- i) amounts received under Cash Value Insurance Contracts.

Notwithstanding the foregoing, passive income will not include, in the case of a NFE 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.

Passive NFE

For the purpose of the OECD Standard, a “Passive NFE” means any: (i) NFE that is not an Active NFE; or (ii) any Investment Entity as defined under subparagraph (b) of the aforementioned definition of Investment Entity that is resident in a Non-Participating Jurisdiction.

**Passive NFFE**

A “Passive NFFE” for FATCA purposes means any NFFE that is not (a) an Active NFFE, or (b) a withholding foreign partnership or withholding foreign trust pursuant to relevant U.S. Treasury Regulations.

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.

Reportable Jurisdiction

For the purpose of the OECD Standard, a Reportable Jurisdiction means a jurisdiction that is recognized as such by Luxembourg. [A Reportable Jurisdiction notably includes any Member State of the European Union, except Luxembourg.] [The list of Reportable Jurisdictions may be updated from time to time by the Luxembourg authorities.]

Specified US person

The term “Specified U.S. Person” means a U.S. 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 a corporation described in clause (i) above;
- c) the United States or any wholly owned agency or instrumentality thereof;
- d) 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;
- e) any organization exempt from taxation under section 501(a) of the U.S. Internal Revenue Code or an individual retirement plan as defined in section 7701(a)(37) of the U.S. Internal Revenue Code;
- f) any bank as defined in section 581 of the U.S. Internal Revenue Code;
- g) any real estate investment trust as defined in section 856 of the U.S. Internal Revenue Code;
- h) any regulated investment company as defined in section 851 of the U.S. Internal Revenue Code or any entity registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C 80a-64);
- i) any common trust fund as defined in section 584(a) of the U.S. Internal Revenue Code;

- j) 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;
- 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 U.S. Internal Revenue Code; or
- m) any tax-exempt trust under a plan that is described in section 403(b) or section 457(g) of the U.S. Internal Revenue Code.

Tax Resident

A person is always Tax Resident in at least one country.

An entity is a Tax Resident in a jurisdiction when it is considered a resident under a tax law of that jurisdiction and there is a full liability to tax. The concept of tax residency may differ from jurisdiction to jurisdiction. Common international criteria that may be factored into tax residency include:

- a) domicile in a jurisdiction; or
- b) place of effective management or incorporation/organisation; or
- c) nationality.

It should be noted that a temporary stay in a jurisdiction can contribute to tax residency. Further it is possible to be 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).

The domestic laws of the other countries lay down the conditions under which an entity is to be treated as tax resident. You can check the conditions with the local government or by visiting the OECD's portal on the automatic exchange of information.

Legal arrangements and tax residency:

An entity such as a legal arrangement, that has no residence for tax purposes (transparent entities) is tax resident for the purpose of the OECD Standard in the jurisdiction in which its place of effective management is located. 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 the purpose of the OECD Standard may differ from the residence for other purposes.



TIN (including “functional equivalent”)

The term “TIN” means Taxpayer Identification Number or a 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 Entity and used to identify the individual or Entity for the purposes of administering the tax laws of such jurisdiction.

Some jurisdictions do not issue a TIN. However, these jurisdictions often utilise some other high integrity number with an equivalent level of identification (a “functional equivalent”). Examples of that type of number include, for individuals, the social security number.

US Person

The term “U.S. Person” means a U.S. citizen or resident individual, a partnership or a corporation organized in the United States or under the laws of the United States or any States thereof, a trust if (a) a court within the United States would have authority under applicable law to render orders or judgements concerning substantially all issues regarding administration of the trust, and (b) 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 United States. This definition shall be interpreted in accordance with the US Internal Revenue Code.

(US) Treasury

“(US) Treasury” means the United States Department of the Treasury.