



# CRS and FATCA Certification Form Glossary





# Glossary

## 1. Active non-financial entity (NFE)

Any non-financial entity can be an 'active non-financial entity', if it meets any of the criteria listed below.

In summary, those criteria refer to:

- active non-financial entities by reason of income and assets;
- publicly traded non-financial entities;
- governmental entities, international organisations, central banks or their wholly owned entities;
- holding non-financial entities that are members of a non-financial group;
- start-up non-financial entities;
- Active non-financial entities (NFE);
- non-financial entities that are liquidating or emerging from bankruptcy;
- treasury centres that are members of a non-financial group; or
- non-profit non-financial entities.

An entity will be classified as an 'active non-financial entity' if it meets any of the following criteria:

- Less than 50% of the non-financial entity'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 non-financial entity 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 non-financial entity is regularly traded on an established securities market or the non-financial entity is a related entity<sup>24</sup> of an entity of which the stock is regularly traded on an established securities market.
- The non-financial entity is a governmental entity, an international organisation, a central bank or an entity that is wholly owned by one or more of the foregoing.
- Substantially all of the activities of the non-financial entity 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 as (or holds itself out to be) 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 non-financial entity 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 non-financial entity does not qualify for this exception after a date that is 24 months after a date of the initial organisation of the non-financial entity.
- The non-financial entity 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.
- The non-financial entity 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.
- The non-financial entity meets all of the following requirements:



- 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; and
- it is exempt from income tax in its jurisdiction of residence; and
- it has no shareholders or members who have a proprietary or beneficial interest in its income or assets; and
- the applicable laws of the non-financial entity jurisdiction of residence or the non-financial entity's formation documents do not permit any income or assets of the non-financial entity to be distributed to-, or applied for the benefit of-, a private person or non-charitable entity other than in accordance with the conduct of the non-financial entity's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of the property the non-financial entity has purchased; and
- the applicable laws of the non-financial entity's jurisdiction of residence or the non-financial entity's formation documents require that, on the non-financial entity's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organisation, or revert to the government of the non-financial entity's jurisdiction of residence or any political subdivision thereof.

## 2. Control

'Control' over an entity is generally exercised by the natural person(s) who ultimately has/have a controlling ownership interest in the entity.

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 over the entity through other means.

Where no natural person(s) is/are identified as exercising control of the entity through ownership interests, the reportable person will be deemed to be the natural person holding the position of senior managing official.

## 3. Controlling person(s)

The following are deemed to be controlling persons:

1. For a company:
  - each natural person who directly owns 25% or more of the company's shares
  - where the company's shares are owned directly by a juristic person(s), each natural person who is the ultimate beneficial holder and indirectly owns 25% or more of the company's shares
  - each natural person who exercises control (the ability to influence materially the outcome of a vote at a general meeting or appoint or veto the appointment of the directors of the entity) through other means such as personal connections or contractual relationships.

If, despite reasonable effort, the information described in the bullet points above cannot be determined, then the controlling person(s) will be each natural person who holds a senior management position and exercises executive control over the daily or regular affairs of the



company, filling the positions of chief executive officer, chairman of the board, chief financial officer, or similar positions.

2. For a trust:
  - settlor
  - founder
  - donor
  - trustee
  - beneficiary/beneficiaries
3. For a partnership of juristic persons:
  - each natural person who is the ultimate beneficial holder of 25% or more of the partnership's interests
  - each natural person who exercises control through other means such as personal connections or contractual relationships
  - each natural person who controls the business decisions of the partnership, in terms of the partnership agreement.
4. For a partnership of natural persons:
  - all partners of the partnership.
5. For a social club, stokvel or association:
  - all natural persons authorised to manage the affairs of the social club, stokvel or association in terms of the founding document/constitution.
6. for a cooperative:
  - the managing/executive director or person(s) in a similar capacity.
7. For a close corporation:
  - all members of the close corporation.

#### **4. Custodial institution**

The term 'custodial institution' means any entity that holds, as a substantial portion of its business, financial assets for the account of others.

An entity will be regarded as holding financial assets for the account of others as a substantial portion of its business if its 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:

- the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) before the year in which the determination is being made; or
- the period during which the entity has been in existence.

#### **5. Depository institution**

The term 'depository institution' refers to any entity that accepts deposits in the ordinary course of a banking or similar business.



## 6. Entity

The term 'entity', for the purposes of CRS and FATCA, means any juristic person other than a natural person. Included in the definition of 'entity' in the intergovernmental agreement is any legal person or legal arrangement such as a trust, partnership or association.

'Entity' includes but is not limited to:

- a) a private company [(Pty) Ltd company]
- b) a public company (Ltd company – listed or unlisted)
- c) a state-owned company (SOC)
- d) an external or foreign company
- e) a personal liability company (Inc.)
- f) a non-profit company (NPC)
- g) a close corporation (CC)
- h) a partnership
- i) a trust
- j) an association
- k) a stokvel

## 7. Financial institution (FI)

The term 'financial institution' means a custodial institution, a depository institution, an investment entity or a specified insurance company.

## 8. Global Intermediary Identification Number (GIIN)

The Global Intermediary Identification Number is issued by the US Internal Revenue Service (IRS) via the IRS registration portal.

All participating foreign financial institutions need to register with the IRS to obtain a GIIN.

It applies to financial institutions that have adopted FATCA either through an intergovernmental agreement or as a choice, being a Model 2 foreign financial institution.

Certain deemed-compliant or non-reporting financial institutions must also obtain a GIIN.

The GIIN is a unique reference number that has a specific format and is issued to identify each financial institution. Each part has a particular meaning, for example, whether the financial institution is part of a bigger group or whether the financial institution is a sponsoring entity. It also identifies the financial institution jurisdiction of residence in which it maintains a branch that is not treated as a 'limited' branch.

## 9. Identification types

The following are acceptable ID types:

- a) an official South African green barcoded identity document
- b) an official South African identity card ('Smart Card'\*)
- c) a valid passport issued by the country of which the individual is a citizen

\* Note: Once an individual has been issued with a Smart Card, his/her green barcoded identity document is no longer valid and may not be accepted.



## 10. Incorporation or organisation

'Incorporation' is the process of legally declaring a corporate entity as separate from its owners.

'Organisation' is the coordination, structuring or managing of entities such as partnerships, trusts or associations.

## 11. International organisation

An 'international organisation' is an organisation with an international membership, scope or presence.

There are two main types:

- International non-governmental organisations (INGOs): non-governmental organisations that operate internationally. These include international non-profit organisations and worldwide companies such as the World Organisation of the Scout Movement and the International Committee of the Red Cross.
- Intergovernmental organisations, also known as international governmental organisations (IGOs): the type of organisation most closely associated with the term 'international organisation' that is made up primarily of sovereign states (referred to as member states).

## 12. Investment entity

The term 'investment entity' includes two types of entities:

- (i) An entity that primarily conducts itself as a business, performing one or more of the following activities or operations for or on behalf of a customer:
  - trading in money market instruments such as cheques, bills, certificates of deposit and derivatives, foreign exchange, interest rate and index instruments, transferable securities or commodity futures
  - individual and collective portfolio management
  - investing, administering or managing financial assets or money on behalf of other persons.

Such activities or operations do not include rendering non-binding investment advice to a customer.

- (ii) The second type of investment entity (an investment entity managed by another financial institution) is any entity whose gross income is primarily attributable to investing, reinvesting or trading in financial assets, and where the entity is managed by another entity that is a depository institution, a custodial institution, a specified insurance company or the first type of investment entity mentioned above.

## 13. IRS W-8BEN-E

This form is the Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities) and is used by foreign entities to document their status for purposes of chapter 3 and chapter 4 of the US Internal Revenue Service's Internal Revenue Code as well as other code provisions.

## 14. IRS W-9

This form is to be used:

- a) only if the person is a US person (including a resident alien)
- b) to request a person's Taxpayer Identification Number (TIN)
- c) by a person who is required to file an information return with the US Internal Revenue Service to report, for example, income paid to them, real estate transactions, mortgage interest paid, acquisition or abandonment of secured property or cancellation of debt.



## 15. Managed by

An entity is 'managed by' another entity if the managing entity performs, either directly or through another service provider on behalf of the managed entity, any of the activities or operations described in (i) of the definition of 'investment entity'.

An entity manages another entity only if it has discretionary authority to manage the other entity's assets (either in whole or part).

Where an entity is managed by several financial institutions, non-financial entities or individuals, the entity is considered to be managed by the financial institution, being the entity that is a depository institution, a custodial institution, a specified insurance company or an entity described in (i) of the definition of 'investment entity', as the case may be.

Where the entity is located in a non-participating jurisdiction and managed by another financial institution, it is treated as passive non-financial entity.

## 16. Non-participating foreign financial institution (NPFPI)

'Non-participating foreign financial institution' means a financial institution that has not agreed to comply with the due diligence requirements of FATCA and, as a result, has not registered on the US Internal Revenue Service portal. Under FATCA, a non-participating foreign financial institution will be reported and any US source income that is fixed or determinable (such as dividends or interest) and that is annual or periodical (FDAP), will be subject to 30% withholding.

## 17. Other active non-financial entity (NFE)

Other active non-financial entities are those entities that were not specifically identified in points 7.1 to 7.6 of the [CRS and FATCA certification form for entities](#), such as:

- a holding non-financial entity that is a member of a non-financial group; or
- a start-up non-financial entity; or
- a non-financial entity that is either liquidating or emerging from bankruptcy; or
- a treasury centre that is a member of a non-financial group.

## 18. Other investment entity

'Other investment entity' refers to an investment entity that is resident in a participating jurisdiction, whether managed by another financial institution or not.

## 19. Participating jurisdiction

A 'participating jurisdiction' means a jurisdiction with which an intergovernmental or competent authority agreement is in place in accordance with which it will provide the information required on the automatic exchange of financial account information as set out in the CRS.

## 20. Passive non-financial entity

A 'passive non-financial entity' is a non-financial entity of which 50% of its income is passive and more than 50% of its assets for the last financial year are in the form of passive investments.



A passive non-financial entity is:

- any non-financial entity that is not an active non-financial entity, and
- an investment entity resident in a non-participating jurisdiction and is managed by a financial institution.

However, if this entity is a corporate and is part of a group that is listed and whose shares are frequently traded on a regulated stock exchange, then it will default to an active non-financial entity.

'Passive income' means that portion of gross income consisting of:

- dividends, including substitute dividend amounts
- interest
- income equivalent to interest
- 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 non-financial entity
- annuities
- the excess of gains over losses from the sale or exchange of property that gives rise to passive income as described in this definition
- the excess of gains over losses from transactions (including futures, forwards and similar transactions) but not including:
  - any commodity hedging transaction
  - active business gains or losses from the sale of commodities
  - the excess of foreign currency gains over foreign currency losses
  - net income from notional principal contracts
  - amounts received under a cash value insurance contract
  - amounts received by insurance companies in connection with its reserves for insurance and annuity contract.

## 21. Place of effective management

The 'place of effective management' will ordinarily be the place:

- where the most senior person or group of persons makes its decisions, being the place where the actions to be taken by the entity as a whole are determined; *and*
- where the board of directors formally finalises and/or routinely approves key management, commercial and strategic decisions necessary to conduct the entity's business.

In determining the place where material decisions are made, one should consider the place where advice on recommendations or options relating to the decisions are considered and where the decisions are ultimately taken. An entity may have more than one place of management, but it can have only one place of effective management at any one time.

## 22. Public benefit organisation (PBO)

A public benefit organisation can be a trust, a not-for-profit company in terms of section 10 of the Companies Act, 71 of 2008, or another association registered with the South African Revenue Services (SARS) in terms of section 30(1) of the Income Tax Act, 58 of 1962.





### **23. Related/Related entity**

An entity is a 'related entity' of another entity if either entity controls the other entity, or the two entities are under common control. For the purpose of this definition, control includes direct or indirect ownership of more than 50% of the value in an entity or a holding of more than 50% of the voting shares in an entity.

### **24. Reportable account**

The term 'reportable account' means an account held by one or more reportable person(s) or by a passive non-financial entity where one or more controlling person(s) is/are a reportable person(s), provided it has been identified as such in accordance with the prescribed due diligence procedures.

The term 'reportable person(s)' means all individuals or entities that are defined as specified US persons, individuals or entities that are resident in a reportable jurisdiction under the tax laws of such jurisdiction, or the estate of a deceased individual who was resident of a reportable jurisdiction.

The term 'reportable jurisdiction' means any jurisdiction other than US or South Africa.

### **25. Resident alien**

A resident alien is a foreign person who is a permanent resident of the country in which he or she resides, but does not have citizenship. To fall under this classification in the US, a person needs to have a current Green Card or to have had one in the previous calendar year.

### **26. Specified insurance company**

The term 'specified insurance company' refers to 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.

### **27. Taxpayer Identification Number (TIN) (including functional equivalent)**

A 'Taxpayer Identification Number' is a unique combination of letters or numbers assigned by a jurisdiction to an individual or entity to identify the individual or entity for the purposes of administering the tax laws of such jurisdiction.

In some jurisdictions Taxpayer Identification Numbers are not issued. In such cases, instead of the Taxpayer Identification Number, a functional equivalent can be issued, such as a high integrity number with an equivalent level of identification.

### **28. US**

United States or United States of America, including US territories and abbreviated as US or USA.

US territories are regions that are administered by the US and are not within the limits of any state and that have not been admitted as states.

The US currently has 16 territories, of which the following five are permanently inhabited:

- Puerto Rico
- Guam
- Northern Mariana Islands
- the US Virgin Islands
- American Samoa



## 29. US citizen

The term 'United States citizen' or 'US citizen' means:

- an individual born in the US; or
- an individual whose parent or parents is/are US citizen(s); or
- an individual with either one or both parents born in the US; or
- a former alien who has been naturalised as a US citizen; or
- an individual born in Puerto Rico, Guam, or the US Virgin Islands.

## 30. US national

An individual who owes his sole allegiance to the US, including all US citizens and some individuals who are not US citizens. For tax purposes, the term US national refers to individuals who were born in America Samoa or the Commonwealth of the Northern Mariana Islands who have made the election to be treated as US nationals and not as US citizens. Additional information in this regard can be obtained from the [IRS website](#).

## 31. US person

The term 'United States person' or 'US person' means:

- a US citizen (including dual citizens)
- a US resident
- an individual born in the US, but resident in another country, and who has not given up his or her US citizenship
- a person whose parents have permanent domicile and residence in the US
- a person residing in the US (resident alien)
- a person who holds or who previously held a Green Card
- persons who are physically present in the US for at least 31 days during the current year; 183 days during the three-year period that includes the current year and the two years immediately before that, counting all the days the person was present in the current year, 1/3 of the days they were present in the first year before the current year, and 1/6 of the days they were present in the second year before the current year
- a partnership organised in the US or under the laws of the US or any state thereof
- a corporation organised in the US or under the laws of the US or any state thereof
- any estate where the deceased was a citizen or resident of the US other than a foreign estate
- any trust, where:
  - a court within the US can exercise primary supervision over the administration of the trust
  - one or more US persons have the authority to control all substantial decisions of the trust
- any person who is not a foreign person.