

FILLING INSTRUCTION FOR CUSTOMERS

FATCA/CRS SELF-CERTIFICATION (LEGAL ENTITY – Corporation / Partnership / Institution)

FATCA and CRS are international procedures for exchanging information on financial accounts.

The aim is to promote tax honesty and create tax transparency at a global level.

The abbreviation FATCA stands for Foreign Account Tax Compliance Act. The associated regulations lead to the fact that Germany – along with a number of other countries – is exchanging information on financial accounts with the USA.

CRS, the Common Reporting Standard, enables Germany and approx. 100 other countries (CRS partner countries) - with the exception of the USA - to exchange financial account information with each other.

For Germany, the relevant legal bases for FATCA are the Act on the FATCA Agreement and the FATCA-USA Implementation Ordinance (FATCA-USA-UmsV) and for CRS the Act on the Automatic Exchange of Information on Financial Accounts in Tax Matters (FKAustG).

1. For Non-Financial Entities

NFE stands for Non-Financial Entity, which is a non-financial institution. This classification also includes the classification NFE (Non-Financial Foreign Entity) according to FATCA.

NFE stands for Non-Financial Foreign Entity. »Foreign« means not resident in the USA.

An **active NFE** means any NFE that

meets any of the following criteria:

- a) Less than 50 percent of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 percent 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) The 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 traded on an established securities market;
- c) The NFE is organized in a U.S. Territory and all of the owners of the payee are bona fide residents of that U.S. Territory;
- d) The NFE is a non-U.S. government, 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) 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 NFE shall not qualify for this status if the NFE 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;
- f) 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 shall not qualify for this exception after the date that is 24 months after the date of the initial organization of the NFE;
- g) The NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;

- h) 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
- i) The NFE meets all of the following requirements:
 - aa) It is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes;
 - bb) It is exempt from income tax in its country of residence;
 - cc) It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
 - dd) 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 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
 - ee) 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 organization, or escheat to the government of the Entity's country of residence or any political subdivision thereof.

A legal entity is a **passive NFE** if it is not an active NFE.

Controlling Person (Individual) corresponds to the »beneficial owner« within the meaning of the »GWG«. In the case of passive NF(F)E, which are held wholly or partly by financial institutions, the identification of controlling persons for FATCA and CRS purposes with regard to those shareholders must continue to be carried out even if a financial institution of a CRS partner country or the USA is identified in the chain of ownership. The process is to be continued with regard to other shareholders and a corresponding chain of shareholdings.

If the legal entity has more than four controlling persons, these controlling persons must also be named. Please submit this additional information on a separate sheet with the FATCA/CRS self-certification.

If one of the controlling persons has more than three tax residencies, please also submit this additional information on a separate sheet with the FATCA/CRS self-certification.

2. Financial Institutions

Financial Institutions for FATCA and CRS purposes are as follows:

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 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 percent of the entity's gross income during the shorter of: (i) the three-year period that ends on December 31 (or the final day of a noncalendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the entity has been in existence.

Depository Institution

The term »Depository Institution« means any entity that accepts deposits in the ordinary course of a banking or similar business.

Specified Insurance Company

The term »Specified Insurance Company« means 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.

Investment Entity

The term »Investment Entity« means any entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:

1. 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;
2. individual and collective portfolio management; or
3. otherwise investing, administering, or managing funds or money on behalf of other persons.

All entities, which do not fall under at least one of these financial institution definitions, are considered as non-financial entities for FATCA and CRS purposes.

Partner FFI (Foreign Financial Institution – »Foreign« means not resident in the USA)

is tax resident in a FATCA partner country and is FATCA compliant.

Non-Partner FFI (Foreign Financial Institutions – »Foreign« means not resident in the USA)

is not tax resident in a FATCA partner country.

U.S. Financial Institution

Financial institution resident in the U.S. for tax purposes (excluding its foreign locations outside the U.S.) and any U.S. foreign branch of a financial institution that is not tax resident in the U.S.

FATCA partner country

any country that entered into an IGA with the U.S. for FATCA purposes. You can check whether the country in which the FI is resident for tax purposes is a FATCA partner country on the following website: <https://home.treasury.gov/policy-issues/tax-policy/foreign-account-tax-compliance-act>

CRS partner country

any country that has joined the CRS regime. You can check whether the country in which the FI is resident for tax purposes is a CRS partner country on the following website: <https://web-archiver.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/crs-by-jurisdiction/index.htm>