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# Notes on Tax

# Notes

## 1 Tax Regulations

The term “tax regulations” refers to regulations created to enable automatic exchange of information and include FATCA (see 3), various Agreements to Improve International Tax Compliance entered into between the UK and its Crown Dependencies and its Overseas Territories and the OECD Common Reporting Standard for Automatic Exchange of Financial Account Information.

## 2 Specified Person

The term “Specified Person” is defined by reference to local laws in the country where an entity is established. In the UK, a “Specified United Kingdom Person” means a person or entity who is resident in the United Kingdom for tax purposes, other than:

- (i) a corporation the stock of which is regularly traded on one or more established securities markets;
- (ii) any corporation that is a Related Entity (see 14) of a corporation described in clause (i);
- (iii) a Depository Institution;
- (iv) a broker or dealer in securities, commodities, or derivative financial instruments (including notional principle contracts, futures, forwards, and options) that is registered as such under the laws of the United Kingdom;
- (v) a Governmental Entity;
- (vi) an International Organisation (examples of which include The International Monetary Fund, The World Bank, The International Bank for Reconstruction and Development and The European Community – for a full list please see the relevant guidance issued by HMRC, or the IRS);
- (vii) a Central Bank; or
- (viii) a pension scheme or other arrangement registered with HMRC under Part 4 of the Finance Act 2004.

Similar definitions apply to entities in the US (defined in the FATCA Regulations) and Crown Dependencies and Overseas Territories (as defined in the relevant Agreement to Improve International Tax Compliance with the UK). Entities in other jurisdictions should instead apply the similar definition of “Reportable Person” under the OECD Common Reporting Standard for Automatic Exchange of Financial Account Information.

## 3 FATCA

The Foreign Account Tax Compliance provisions (commonly known as FATCA) contained in the US Hire Act 2010.

## 4 Exempt Beneficial Owner

The term “Exempt Beneficial Owner” means

- (i) a Governmental Entity;
- (ii) an International Organisation (examples of which include The International Monetary Fund, The World Bank, The International Bank for Reconstruction and Development and The European Community – for a full list please see the relevant guidance issued by HMRC, or the IRS);
- (iii) a Central Bank; or
- (iv) a UK registered pension scheme, or non-UK pension scheme falling within the definition of Exempt Beneficial Owner for the purpose of FATCA.

## 5 Financial Institution

The term “Financial Institution” means a Custodial Institution, a Depository Institution, an Investment Entity (see 13), or a Specified Insurance Company as defined for the purposes of FATCA. The same definitions apply to the UK’s Agreements to Improve International Tax Compliance. Please see the relevant Tax Regulations for the classification definitions that apply to Financial Institutions.

## 6 Active Non-Financial Foreign Entity (NFFE) (US definition)

A NFFE is a foreign entity that is not a Financial Institution.

For the purpose of **section 2 only**, an Active NFFE is any NFFE that meets one of the following criteria:

- (i) Less than 50 per cent of the NFFEs gross income for the preceding calendar year or other appropriate reporting period is passive income (such as dividends, interest, royalties, annuities and rent) and less than 50 per cent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
- (ii) The stock of the NFFE is regularly traded on an established securities market or the NFFE is a Related Entity (see 14) of an entity, the stock of which is traded on an established securities market;
- (iii) The NFFE is a government, a political subdivision of such government, or a public body performing a function of such government or a political subdivision thereof, or an entity wholly owned by one or more of the foregoing;
- (iv) Substantially all of the activities of the NFFE 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. However the entity will not qualify as an Active NFFE if it functions (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. In these circumstances the entity will be a passive NFFE;
- (v) The NFFE 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 NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFFE;
- (vi) The NFFE 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;
- (vii) The NFFE primarily engages in financing and hedging transactions with, or for Related Entities (see 14) 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;
- (viii) The NFFE is organised in a U.S Territory and all the owners of the payee are bona fide residents of that U.S. Territory; or
- (ix) The entity is a Non-Profit Organisation (see 12).

## 7 Passive Non-Financial Foreign Entity (NFFE) (US definition)

For the purpose of **section 2 only**, a Passive NFFE is any NFFE that is not an Active NFFE (see 6).

## 8 Excepted Non-Financial Foreign Entity (NFFE)

The term “Excepted Non-Financial Foreign Entity” has the same meaning as Active Non-Financial Foreign Entity (see 6) and applies to entities in countries that have not signed an intergovernmental agreement with the US to implement FATCA.

## 9 Controlling Persons

The term “Controlling Persons” means the natural persons who exercise control over an Entity. In the case of a trust, such term means 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, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term “Controlling Persons” must be interpreted in a manner consistent with the Financial Action Task Force Recommendations.

## 10 Active Non-Financial Foreign Entity (NFFE) (UK and Crown Dependency definitions)

An entity will be an Active NFFE (UK and Crown Dependency definitions) for the purpose of **section 3 only** if they meet one of the criteria in **(i) to (vii) in the definition of Active NFFE (US definition) (see 6) above**.

## 11 Passive Non-Financial Foreign Entity (NFFE) (UK and Crown Dependency definitions)

For the purpose of **section 3 only** a Passive NFFE (UK and Crown Dependency definitions) is any NFFE that is not an Active NFFE (UK definition) (see 9).

## 12 Non-Profit Organisation

The term “Non-Profit Organisation” means an entity that meets ALL of the following criteria:

- (i) 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;
- (ii) It is exempt from income tax in its country 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 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
- (v) 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 organisation, or escheat to the government of the entity’s country of residence or any political subdivision thereof.

## 13 Investment Entity

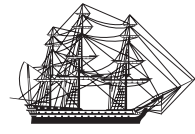
The term “Investment Entity” means any entity:

- (a) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:
  - (i) 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;
  - (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, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in (a) above.

An entity is treated as primarily conducting as a business one or more of the activities described in (a), or an entity’s gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for purposes of (b), if the entity’s gross income attributable to the relevant activities equals or exceeds 50 percent 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 NFFE because it meets any of the criteria in **(iv) to (vii) in the definition of Active NFFE (US definition) (see 6)** above.

## 14 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.



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