

International Tax Compliance Regulation: Notes and definitions

1. Tax Regulations

The term "Tax Regulations" refers to regulations created to enable automatic exchange of information and include FATCA3, various Agreements to Improve International Tax Compliance entered into between the UK and its Crown Dependencies and its Overseas Territories.

2. Individual

Means a natural person

3. Entity

Means a non-natural person and includes a corporate or unincorporated body (whether or not having separate legal personality). For example: a company, charity or partnership.

4. 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 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 principal 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 OECD Common Reporting Standard for Automatic Exchange of Financial Account Information.

5. Financial Institution

The term "Financial Institution" means a Custodial Institution, a Depository Institution, an Investment Entity, 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. FATCA

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

7. 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.

8. Active Non-Financial Entity (NFE)

A NFE is any entity that is not a Financial Institution.

An Active NFE is any NFE that meets one of the following criteria:

- i. Less than 50 per cent of the NFE's 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 NFE 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 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;
- iii. The NFE 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 NFE 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 NFE 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 NFE;
- v. 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 organisation of the NFE;
- vi. The NFE 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 NFE primarily engages in financing and hedging transactions with, or for Related Entities¹¹ 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
- viii. The entity is a Non-Profit Organisation.

9. Passive Non-Financial Entity (NFE)

A Passive NFE is any NFE that is not an Active NFE.

10. 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.