

# Automatic Exchange of Information

## Client Information

As a result of the drive of the G20 nations, the OECD (Organization for Economic Co-operation and Development), together with the G20 countries and in close cooperation with the EU and other stakeholders, has developed a global Standard for the Automatic Exchange of Financial Information (AEOI) or Common Reporting Standard (CRS).

This standard is about improving transparency in the fight against tax evasion since tax authorities of participating countries will exchange tax-related client and financial data on a yearly basis.

### What is the Bank's position towards the AEOI?

The AEOI is a binding regulation that all financial institutions in participating countries must implement. Van Lanschot Kempen (Schweiz) AG supports this effort and fully complies with its AEOI obligations.

### Which countries will participate?

The first reporting took place in 2018 where data for calendar year 2017 was exchanged. For the first reporting, the Bank was obliged to report its clients which, during 2017, had tax residence(s) in a country with which Switzerland has agreed to exchange data (reportable Jurisdiction).

Clients which, during 2017, had tax residency in a country with which Switzerland has agreed to exchange data (Reportable Jurisdiction). A list of the current Reportable Jurisdictions of Switzerland can be found under [www.sif.admin.ch](http://www.sif.admin.ch) > Topics > Taxation > Automatic exchange of information on financial accounts.

### Which clients are in scope of the AEOI?

As a general rule, a client who maintains a financial account at a bank in a country outside their tax residence jurisdiction could fall in scope of the due diligence and reporting requirements as set out in the CRS and require closer scrutiny. The due diligence and reporting (i.e. disclosure) requirements apply to accounts held by both individuals and legal entities. A client (individual or legal entity) will be impacted by AEOI

- if the client's tax residence is not the country in which the client maintains a financial account (e.g. a Dutch resident client maintaining an account with Van Lanschot Kempen (Schweiz) AG; and
- if these countries have agreed to exchange data under the CRS (e.g. Switzerland and the EU (including the Netherlands) have implemented an intergovernmental agreement); and
- if, in the case of a legal entity/ corporate client, the entity is not exempt from AEOI reporting.

### What are the documentation requirements for affected clients?

If an agreement exists, the bank holding the account has to assess whether such a client is subject for reporting under the AEOI, by verifying different criteria. Such criteria differ depending on if the financial account is held by an individual or a legal entity client. For new accounts, the bank will collect the necessary information such as client's tax residence jurisdiction on forms (e.g. self-certifications) which will be part of the account-opening process. For pre-existing clients, the bank will

request information in case the existing documentation is not sufficient to determine the tax residence jurisdiction and/or the legal entity classification of the client unambiguously.

### What information will be exchanged?

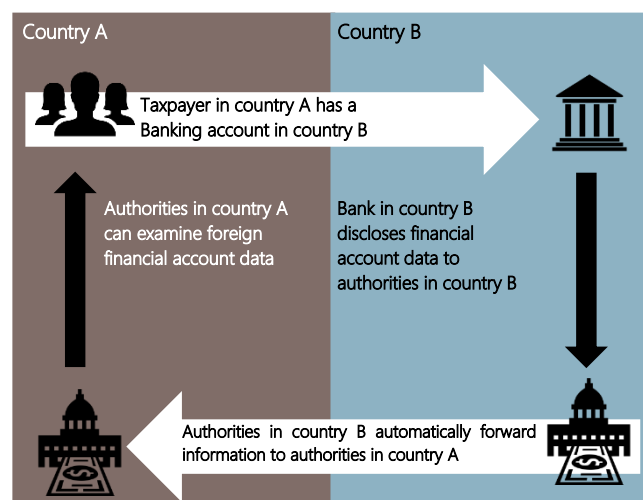
The following will be reported to the local tax authority for both individual and legal entity account holder(s):

- personal information on the Reportable Person, i.e. name, address, Tax Identification Number (TIN), date of birth (for individual account holder[s] and controlling person[s]); and
- financial account information, i.e. account number, balance, interest, dividends, other income and gross proceeds.

### Who is a Reportable Person for AEOI purposes?

A Reportable Person, for the purposes of AEOI, is a person who is resident in a country which has committed to the AEOI (Participating Jurisdiction) and holds a financial account with a financial institution in a Participating Jurisdiction outside his/her country of tax residence. Information will only be shared if the two countries have agreed to exchange information. Therefore, the first general rule is the existence of an AEOI agreement between the client's tax residence country and the country where the financial account is maintained.

The AEOI generally requires the Bank to request additional documentation for all entity relationships, regardless of whether AEOI reporting to foreign tax authorities ultimately takes place.



### What are the requirements for individual clients?

For individual accounts, the account holder of a custody or deposit account could qualify as a Reportable Person for AEOI. Account holders with individual accounts become Reportable Persons by virtue of their tax residence jurisdiction and/or by certain criteria relevant to a Reportable Jurisdiction. Generally, client information suggesting possible residence in a given jurisdiction includes:

- a) current mailing or residence address (including a post office box);
- b) one or more telephone numbers (and no telephone number in the jurisdiction of the Reporting Financial Institution);

- c) standing instructions (other than with respect to a depository account) to transfer funds to an account maintained in a Reportable Jurisdiction.
- d) currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction; or
- e) a 'hold mail' instruction or 'in-care-of' address in a Reportable Jurisdiction if the bank does not have any other address on file for the account holder.

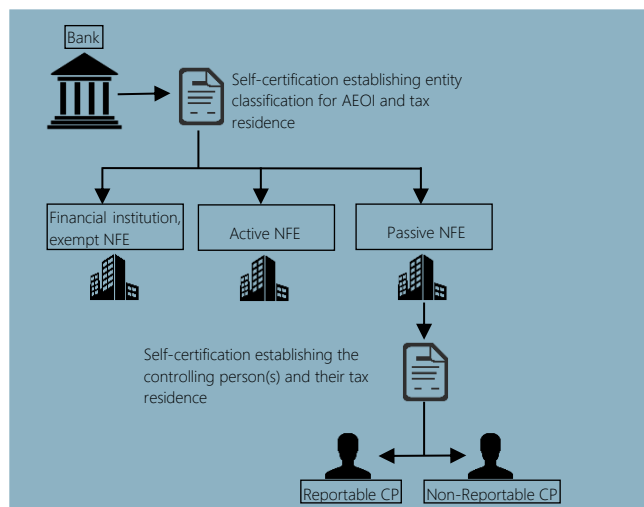
Should any of these indicate a link to a Reportable Jurisdiction, the account holder will be asked to provide further documentation to confirm his/her residence for the purposes of AEOI.

In joint account structures the whole account (including all financial information without splitting) will be disclosed and reported for each Reportable Person.

#### What are the requirements for (legal) entities?

Legal entity clients become Reportable Persons depending firstly on their entity classification under AEOI and secondly on their tax residence jurisdiction. For certain entity types, the individual controlling person (CP) behind such an entity must be identified as well.

Information will have to be indicated by the legal entity account holder.



Certain legal entities can be classified as Non-Reportable Accounts irrespective of their tax residence jurisdiction, such as financial institutions (custodial and depository institutions, investment entities, specified insurance companies) or exempted Non-Financial Entities (NFE). For example, trusts with a gross income which is primarily attributable to investing, reinvesting, or trading in financial assets, which are professionally managed by a corporate trustee or have a discretionary mandate at a bank, and which are resident in a jurisdiction committed to the AEOI (Participating Jurisdiction), are classified as a financial institution for CRS.

NFEs are qualified as exempted if they are a corporation the stock of which is regularly traded on one or more established securities markets or any entity that is a Related Entity of a

corporation the stock of which is regularly traded on an established securities market; a Governmental Entity; an International Organization; or a Central Bank or an entity wholly owned by one or more of the foregoing.

Accounts held by entities classified as active Non-Financial Entities (active NFEs) are Reportable Accounts by virtue of the entity's tax residence.

Entities which classify as active NFEs are:

- active NFEs by reason of income and assets:
  - less than 50% of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income (e.g. interest, dividend, rents, royalties, etc.) and less than 50% 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;
- holding NFEs that are members of a non-financial group.
- start-up NFEs.
- NFEs in liquidation or emerging from bankruptcy.
- treasury centres that are members of a nonfinancial group; or
- non-profit NFEs.

Accounts held by entities classified as passive Non-Financial Entities (passive NFEs) are Reportable Accounts by virtue of the entity's tax residence and/or by virtue of the tax residence of the controlling person(s).

A passive NFE is an NFE that is not an active NFE, e.g. it is an entity whose gross income is primarily ( $\geq 50\%$ ) passive income or whose assets are primarily ( $\geq 50\%$ ) held to produce or produce passive income.

This can include trust, foundation, partnerships and companies. Also, entities that fulfil the criteria of an investment entity can classify as passive NFEs, in case the tax residence is not in a Participating Jurisdiction.

#### Example

##### Background

XYZ Limited is a non-financial domiciliary company incorporated in the British Virgin Islands (BVI). The beneficial owner of ABC Limited has her tax residence in the Netherlands. ABC Limited maintains a relationship in Switzerland.

Switzerland and the EU (including the Netherlands) have signed an agreement with each other while the BVI have neither signed with Switzerland nor with the EU or the Netherlands.

##### How do the AEOI requirements impact ABC Limited?

##### Documentation

Upon the Bank's request, ABC Limited as the account holder will provide the classification of the entity and tax-relevant information of the entity itself and its beneficial owner.

##### Reporting

The beneficial owner is considered a Controlling Person under the AEOI. According to the agreement between Switzerland and the EU, Switzerland is required to report to the Dutch tax authorities.

# Foreign Account Tax Compliance Act (FATCA)

Information for Non-US Entity Clients

As a result of the Foreign Account Tax Compliance Act (FATCA) the documentation requirements for Non-US Entity clients have been enhanced since 1 January 2015. A Non-US Entity<sup>1</sup> is an entity incorporated outside the United States (US).

This client information is intended to assist you in understanding the FATCA documentation requirements. You may need to analyze the impact of FATCA on your business and, if necessary, seek independent professional advice. The Bank does not provide legal, or tax advice and this client information does not constitute such advice.

## What is the purpose of FATCA?

FATCA was enacted by the United States to prevent and detect tax evasion by US taxpayers who are holding financial accounts outside the US with so-called "Foreign Financial Institutions – FFIs", which includes non-US banks such as Van Lanschot Kempen (Schweiz) AG. Like many other jurisdictions, the Swiss Government entered into an Intergovernmental Agreement on FATCA with the US. Through this Intergovernmental Agreement, and the subsequent Swiss legislation on FATCA, all Foreign Financial Institutions in Switzerland are required to become compliant with the FATCA requirements by performing due diligence, reporting and withholding<sup>2</sup>.

## What is the impact of FATCA on Non-US Entity clients?

Like any other FATCA compliant bank, Van Lanschot Kempen (Schweiz) AG has due diligence and obligation to document the FATCA status of all clients. The FATCA status determines for which clients FATCA reports and withholding applies. The FATCA status of a Non-US Entity is mainly driven by the business activities of the entity. Additionally, US taxpayers who hold financial assets with certain Non-US Entities have to be reported as well to the US tax authority (directly or via local tax authority).

## Who is treated as "U.S. Person" for FATCA purposes?

For FATCA purposes, the term "U.S. Person" means:

- A U.S. citizen or resident individual;
- A partnership or corporation organized in the United States or under the laws of the United States or any State thereof;
- A trust if:
  - (i) a court within the United States has the authority under applicable law to issue orders or judgments concerning substantially all issues regarding the administration of the trust, and
  - (ii) one or more U.S. persons have the authority to control all substantial decisions of the trust; or
- An estate of a decedent who was a citizen or resident of the United States.

## What is a self-certification of the FATCA status?

A key element to determining the FATCA status is self-certification of the client. The Bank uses the official IRS W-8 Forms for this purpose. By signing the form, you certify that you meet the requirements and conditions for the applicable FATCA status.

## What are the different Non-US Entity types and the related self-certification requirements?

The status for Non-US Entities can be clustered into the following three main categories:

### 1) Operating a financial business

Typical examples of operating financial businesses are banks, life insurance companies, financial intermediaries, funds and pension plans. These entities have to certify their FATCA compliance by either providing the FATCA registration number (GIIN) or confirming that their business fulfills the requirements for a FATCA status without registration (e.g. "certified deemed-compliant FFI or non-reporting FFI").

### 2) Non-operating financial business

Under FATCA, all beneficial owners of a non-operating entity like a private investment company, trust or foundation have to be identified and documented. Any US beneficial owner has to be reported to the US tax authority.

Unless the entity chooses to register with the IRS, there are two ways to fulfil this requirement: (i) if the client has a FATCA Sponsor (e.g. the trust company), the FATCA Sponsor ensures FATCA compliance; (ii) otherwise, the client has to provide the Bank with comprehensive documentation on the beneficial owners of the non-operating entity.

### 3) Non-financial business

Any entity outside the financial business must provide a certification that it operates as an active non-financial commercial or manufacturing business or that it is a nonprofit organization, governmental entity or international organization. FATCA imposes no additional obligations on these entities.

<sup>1</sup> The term "entity" under FATCA encompasses all legal structures and legal entities, including general/limited partnerships and trusts. A sole proprietorship is treated as individual/natural person and not as an entity.

<sup>2</sup> FATCA Agreement between Switzerland and the United States of America, signed on 14 February 2013 (SR0.672.933.63)

The table below provides an overview of typical non-U.S. entity client examples. Please note that this table does not constitute tax or legal advice. For the determination of your FATCA and CRS status, you should consult a professional tax or legal advisor:

Activity	Type of entity	Overview of the Plausible FATCA/CRS Statuses
Operating financial business	<ul style="list-style-type: none"> <li>Bank, custodian, broker</li> <li>Life insurance company</li> </ul>	<p><b>FATCA:</b> You certify that as a (Foreign Financial Institution (FFI) you comply with FATCA and, if applicable, obtained a FATCA registration number with the IRS (Global Intermediary Identification Number – GIIN).</p> <p><b>CRS:</b> For CRS purposes you certify generally as Financial Institution (FI).</p>
	<ul style="list-style-type: none"> <li>Financial intermediary (FIM), asset manager, family office</li> <li>Pension fund/plan</li> </ul>	
Non-Operating financial business	<ul style="list-style-type: none"> <li>Trust / Foundation</li> <li>Underlying company of a Trust / Foundation</li> </ul>	<p><b>FATCA:</b> You certify that as a Foreign Financial Institution (FFI) you</p> <p>(1) Comply with FATCA and, if applicable, obtained a FATCA registration number with the IRS (Global Intermediary Identification Number – GIIN);</p> <p>OR</p> <p>(2) Certify that you have a FATCA sponsor or trustee who is authorized and has agreed to fulfil all FATCA requirements. You will be required to provide either your own GIIN or the GIIN of the trustee or sponsor.</p> <p><b>CRS:</b> For CRS purposes you certify generally as Financial Institution (FI).</p>
	<ul style="list-style-type: none"> <li>Personal Investment Company (PIC) E.g. BVI / Panama company</li> <li>Personal Holding Company (PHC)</li> <li>Client fund</li> </ul>	<p><b>FATCA:</b> If you are an FFI, the same principles as for trusts, foundations and underlying companies apply. If you are a Passive NFFE, you certify that you will disclose all U.S. Controlling Persons as defined under FATCA. If any reporting obligation arises as a result, the Bank agrees to fulfil that obligation on your behalf.</p> <p><b>CRS:</b> If you are an FI, the same principles as for trusts, foundations and underlying companies apply. If you are a Passive NFE, you certify that you will disclose all U.S. Controlling Persons as defined under FATCA. If any reporting obligation arises as a result, the Bank agrees to fulfil that obligation on your behalf.</p>
Non-financial business	<ul style="list-style-type: none"> <li>Operative commercial or manufacturing business (e.g. bakery, airline, construction company)</li> </ul>	<p><b>FATCA/CRS:</b> If you operate an “active” business, which means your income is mainly generated by selling goods / services and not “passive income” (e.g. dividends, interests, rents and royalties or annuities), you will be most possibly treated as NF(F)E.</p>
	<ul style="list-style-type: none"> <li>Nonprofit organization</li> </ul>	<p><b>FATCA/CRS:</b> You certify that you are an Active NF(F)E as a nonprofit organization, which is exempt from income tax in its country of residence. The nonprofit organization is for example maintained for religious, charitable, scientific, artistic, cultural or educational purposes.</p>
	<ul style="list-style-type: none"> <li>Governmental entity (e.g. Swiss Federal Government, cantons and communes)</li> <li>International organization (e.g. United Nations, Red Cross, OECD)</li> </ul>	<p><b>FATCA/CRS:</b> You certify that you are an Active NF(F)E as a non-US governmental entity or an international organization which is recognized as an intergovernmental or supranational organization.</p>

**What is the consequence of not providing a FATCA self-certification?**

Absent a valid self-certification, any Non-US Entity is generally classified as a Nonparticipating Foreign Financial Institution. The Bank must notify the IRS of the total number of Nonparticipating Foreign Financial Institutions which did not consent to the transmission of their information, without disclosing the identity of the institutions. Based on this information and in accordance with the FATCA Agreement, the IRS may submit a group request for administrative assistance to the Swiss competent authority in order to receive account information, including the identity of the institutions.

If a Nonparticipating Foreign Financial Institution holds US Securities, a 30 % withholding tax has to be applied on the US source income (e.g. dividend and interest payments).

**Where can you find further information on FATCA?**

For further information on FATCA, please visit the internet sites of the US Internal Revenue Service ([www.irs.gov/fatca](http://www.irs.gov/fatca)) or the Swiss State Secretariat for International Financial Matters ([www.sif.admin.ch/fatca](http://www.sif.admin.ch/fatca)).

**About this document**

Van Lanschot Kempfen (Schweiz) AG (hereinafter “the Bank”) does not provide legal or tax advice and this publication does not constitute such advice. The Bank strongly recommends all persons considering the information described in this publication obtain appropriate independent legal, tax and other professional advice.

## Glossary

Please note: These definitions rely on the most common standards and definitions for the general application for FATCA and AEOI. However, local rules may differ. Please consult the applicable local laws and any accompanying guidance in order to ensure that you apply the proper version of any of these terms.

### **Active NFE - Other / Active NFFE – Other**

The terms Active NFE – Other (under AEOI) and Active NFFE – Other (under FATCA) mean an NFE / NFFE that meets any of the following criteria:

- Less than 50% of the NFE's / NFFE'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 NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of Passive Income;
- Substantially all of the activities of the NFE / 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, except that an Entity does not qualify for this status if the Entity 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;
- The NFE / 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 NFE / NFFE does not qualify for this exception after the date that is 24 months after the date of the initial organization of the NFE / NFFE;
- The NFE / NFFE 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 recommend operations in a business other than that of a Financial Institution;
- The NFE / NFFE 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 NFE / NFFE is a Non-Profit Organization; or
- The NFFE is an Excepted NFFE as described in relevant US Treasury Regulations (under FATCA only).

### **Publicly traded Non-Financial Corporation and Related Corporation / Publicly traded NFFE or NFFE Affiliate of a Publicly Traded Corporation**

The terms Publicly traded Non-Financial Corporation and Related Corporation (under AEOI) and Publicly traded NFFE or NFFE Affiliate of a Publicly Traded Corporation (under FATCA) mean an NFE / NFFE:

- The stock of which is regularly traded on an established securities market; or
- That is a Related Entity of an Entity, the stock of which is regularly traded on an established securities market (under AEOI: the Related Entity must also be a corporation).

An "established securities market" means an exchange that is officially recognized and supervised by a governmental authority in which the market is located and that has an annual value of shares traded on the exchange (or a predecessor exchange) exceeding USD 1 000 000 000 during each of the three calendar years immediately preceding the calendar year in which the determination is being made.

### **Government Entity / Foreign Government**

The terms Government Entity (under AEOI) and Foreign Government (under FATCA) mean the government of a jurisdiction (under FATCA: non-US jurisdiction), any political subdivision of a jurisdiction (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a

jurisdiction or of any one or more of the foregoing. This category is comprised of the integral parts, controlled entities, and political subdivisions of a jurisdiction.

### **Active Non-Financial Entity (Active NFE) / Active Non-Financial Foreign Entity (Active NFFE)**

The terms Active NFE (under AEOI) or Active NFFE (under FATCA) mean an NFE / NFFE that meets the requirements to be classified as:

- Publicly traded Non-Financial Corporation and Related Corporation (under AEOI) / Publicly Traded NFFE or NFFE Affiliate of a Publicly Traded Corporation (under FATCA);
- Government Entity (under AEOI) / Foreign Government (under FATCA);
- Central Bank (under AEOI) / Foreign Central Bank (under FATCA);
- International Organization (under AEOI and FATCA); or
- Active NFE – Other (under AEOI) / Active NFFE – Other (under FATCA).

### **AEOI Classification**

The term AEOI Classification means the categorization of an Entity for AEOI purposes (e.g. as a Financial Institution, an Active NFE or a Passive NFE).

### **Automatic Exchange of Information (AEOI)**

The AEOI regime based on the OECD Common Reporting Standard requires Reporting Financial Institutions (RFIs) to report annually to their domestic tax authority's certain information regarding all accounts they maintain that have been identified as Reportable Accounts as a result of the application of the relevant due diligence procedures. The domestic tax authorities will then pass on the information to the tax authorities of the jurisdiction in which the Reportable Person is resident for tax purposes.

### **Beneficial Owner (according to Local KYC/AML Regulations)**

The Beneficial Owner is typically the natural person/operating company who, from an economic point of view, ultimately owns the assets deposited with the Financial Institution. The full scope of the term in any jurisdiction, however, depends on the specifications in the applicable local KYC / AML regulations.

### **Branch**

The term Branch (under AEOI and FATCA) means a unit, business, or office of an Entity that is treated as a branch under the regulatory regime of a jurisdiction or that is otherwise regulated under the laws of a jurisdiction as separate from other offices, units, or branches of the Entity.

### **Central Bank / Foreign Central Bank**

The terms Central Bank (under AEOI) or Foreign Central Bank (under FATCA) mean an institution that is by law or government sanction the principal authority, other than the government of the jurisdiction (under FATCA: non-US jurisdiction only) itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of the jurisdiction, whether or not owned as a whole or in part by the jurisdiction.

### **Certified Deemed-Compliant FFI (FATCA-relevant only)**

The term Certified Deemed-Compliant FFI (under FATCA) means an FFI that qualifies for such status based on relevant US Treasury Regulations or an applicable Model 2 IGA, or that is a Nonreporting FFI under a Model 1 IGA.

### **Collective Investment Vehicle (Model 1 IGA only) (FATCA- only)**

The term Collective Investment Vehicle (under FATCA) means an Investment Entity that:

- Is established in an IGA jurisdiction;



- Is regulated as a collective investment vehicle; and
- All of the interests in which (including debt interests in excess of \$50,000) are held by or through one or more Exempt Beneficial Owners, Active NFFEs, US Persons that are not Specified US Persons, or Financial Institutions that are not Non-Participating Financial Institutions.

#### **Controlling Person**

The term Controlling Persons (under AEOI and FATCA) means the natural persons who exercise control over an entity. For an Entity that is a legal person, control over an Entity is generally exercised by the natural person(s) who ultimately has a controlling ownership interest in the Entity. A controlling ownership interest depends on the ownership structure of the legal person and may be identified on the basis of a threshold, e.g. including only persons owning more than a certain percentage of 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. In the case of a trust, the term Controlling Persons means the settler(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust. The settler(s), the trustee(s), the protector(s) (if any), and the beneficiary(ies) or class(es) of beneficiaries, must always be treated as Controlling Persons of a trust, regardless of whether or not any of them exercises control over the trust. In the case of a legal arrangement other than a trust, Controlling Person(s) means persons in equivalent or similar positions.

#### **Controlling US Person (FATCA-relevant only)**

With respect to an account maintained in an IGA jurisdiction, the term Controlling US Person (referred to as a "Substantial US Owner" under the Treasury Regulations) means a Controlling Person that is a Specified US Person.

#### **Entity**

The term Entity (under AEOI and FATCA) means a legal person or a legal arrangement, such as a corporation, organization, partnership, trust or foundation. However, it does not include individual or sole proprietorship.

#### **Exempt Retirement Plan (FATCA-relevant only)**

The term Exempt Retirement Plan (under FATCA) means an Entity that meets the requirements for any of the following sub-categories as those are defined in an applicable IGA or relevant US Treasury Regulations:

- Treaty-Qualified Retirement Fund;
- Broad Participation Retirement Fund;
- Narrow Participation Retirement Fund;
- Pension Fund of an Exempt Beneficial Owner; or
- Investment Entity Wholly Owned by Exempt Beneficial Owners.

#### **FATCA Beneficial Owners**

A Beneficial Owner according to FATCA is any person:

- a) Owning stock of a corporation or profit/capital interests in a partnership; and/or
- b) Owning debt interests (e.g. bonds or loans) of a corporation or partnership (except debt interests owned by FATCA compliant Financial Institutions).

In the case of indirect ownership, the persons who ultimately own an entity (e.g. through a chain of ownership) are considered the Beneficial Owners. Generally, this means the persons who are entitled to the income for tax purposes and have the benefit thereof, taking into account the economic, legal, factual and other relevant circumstances under which the income is received; it does not mean a person who receives income as an agent, nominee or mere conduct for another person.

#### **FATCA Classification**

The term FATCA Classification means the categorization of an Entity for FATCA purposes (e.g. as Participating FFI, Reporting IGA FFI, Deemed-

Compliant FFI, Nonreporting IGA FFI, Exempt Beneficial Owner, Active NFFE or Passive NFFE).

#### **FATCA Sponsor**

The term FATCA Sponsor (under FATCA) means an Entity that:

- Is authorized to act on behalf of Sponsored Investment Entity or Sponsored, Closely Held Investment Vehicle (e.g. a fund manager, trustee, corporate director, or managing partner); and
- Agreed to perform all FATCA due diligence, withholding, reporting and other obligations with respect to the Financial Account held by the Sponsored Investment Entity or Sponsored, Closely Held Investment Vehicle.

With respect to a Sponsored, Closely Held Investment Vehicle, a FATCA Sponsor must have a FATCA classification as a Reporting US Financial Institution, Participating FFI, Reporting Model 1 FFI, or Reporting Model 2 FFI.

#### **Foreign Account Tax Compliance Act (FATCA)**

The term FATCA stands for Foreign Account Tax Compliance Act. The FATCA provisions were enacted into US law as part of the Hiring Incentives to Restore Employment (HIRE) Act on 18 March 2010. Based on FATCA, Foreign Financial Institutions are required to identify US Accounts and report them, directly or indirectly through their domestic tax authorities, to the US Internal Revenue Service (IRS). Foreign Financial Institutions and their clients that do not comply with the FATCA requirements are subject to a 30 percent withholding tax on payments from US Securities.

#### **Financial Institution / Foreign Financial Institution**

The terms Financial Institution (under AEOI) or Foreign Financial Institution (under FATCA) mean an Entity (under FATCA: a non-US Entity) that is a:

- Depository Institution;
- Custodial Institution;
- Investment Entity;
- Holding Company or Treasury Center (only relevant for entities located outside an IGA jurisdiction); or
- Specified Insurance Company.

Please see the relevant domestic guidance and the CRS for further classification definitions that apply to Financial Institutions. Typical examples of Foreign Financial Institutions are banks, funds, broker-dealers, custodians, trust companies, and life insurance companies.

#### **Global Intermediary Identification Number (GIIN) (FATCA-relevant only)**

The term GIIN means the identification number that is assigned by the IRS inter alia to Entities with the following FATCA statuses upon registration with the IRS for FATCA purposes:

- Participating FFI;
- Reporting Model 1 FFI & Reporting Model 2 FFI;
- Registered Deemed Compliant FFI;
- Sponsored Investment Entity and Controlled Foreign Corporation [starting as of 1 January 2017 and requirements may vary depending on location of entity];
- FATCA Sponsor; and
- Trustee of a Trustee-documented Trust.

#### **Intergovernmental Agreement (IGA) (FATCA-relevant only)**

The term IGA means an agreement or arrangement between the US and a non-US government governing the implementation of FATCA in such a non-US jurisdiction. An IGA modifies the provisions of FATCA in order to eliminate potential conflict of law issues and to reduce the administrative burden.

#### **Intermediary**

An Intermediary means a person that acts as an agent, custodian, broker, nominee, signatory, investment advisor, or in a similar capacity for the benefit or account of another person.

### International Organization

The term International Organization (under AEOI and FATCA) means any international organization or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organization (including a supranational organization) (1) that is comprised primarily of governments (under FATCA: Non-US Governments); (2) that has in effect a headquarters or substantially similar agreement with the jurisdiction; and (3) the income of which does not inure to the benefit of private persons.

### Investment Advisor and Investment Manager

The term Investment Advisor and Investment Manager (under FATCA) means an FFI that:

- Qualifies as FFI solely because it conducts as a business one or more of the following activities or operations for or on behalf of a customer: (i) trading in financial instruments; (ii) individual or collective portfolio management; or (iii) otherwise investing, administering, or managing funds, money, or Financial Assets on behalf of other persons; and
- Does not maintain Financial Accounts.

### Mailing Address

The term Mailing Address means any physical delivery address for client communication, e.g. letters or account statements.

### Non-Financial Entity (NFE) / Non-Financial Foreign Entity (NFFE)

The terms NFE (under AEOI) or NFFE (under FATCA) mean an Entity (under FATCA: a non-US Entity) that is not a Financial Institution / Foreign Financial Institution.

### Nonfinancial Group Entity

The term Nonfinancial Group Entity means any NFE (under AEOI) or NFFE (under FATCA), substantially all of the activities of which 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 and which does not function (or hold 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.

### Non-Participating Foreign Financial Institution (FATCA-relevant only)

The term Non-Participating Foreign Financial Institution (under FATCA) means any Foreign Financial Institution other than a:

- Participating FFI;
- Reporting Model 1 FFI;
- Reporting Model 2 FFI;
- Deemed-Compliant FFI;
- Nonreporting IGA FFI; or
- Exempt Beneficial Owner.

### Non-Participating Jurisdiction (AEOI-relevant only)

From the perspective of a jurisdiction that has implemented AEOI, the term Non-Participating Jurisdiction (under AEOI) means another jurisdiction that is not a Participating Jurisdiction.

### Non-Profit Organization

The term Non-Profit Organization (under AEOI and FATCA) means an NFE / NFFE that 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 organization, business league, chamber of commerce, labor organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare;
- It is exempt from income tax in its jurisdiction of residence;
- It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- The applicable laws of the NFE's / NFFE's jurisdiction of residence or the NFE's / NFFE's formation documents do not permit any income

or assets of the NFE / NFFE 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 NFE's / NFFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE / NFFE has purchased; and

- The applicable laws of the NFE's / NFFE's jurisdiction of residence or the NFE's / NFFE's formation documents require that, upon the NFE's / NFFE's liquidation or dissolution, all of its assets be distributed to a Government Entity or other Non-Profit Organization, or escheat to the government of the NFE's / NFFE's jurisdiction of residence or any political subdivision thereof.

### Nonreporting accounts (AEOI-relevant only)

The term "nonreporting accounts" refers to accounts that fall outside the scope of the AEOI due to their classification as retirement accounts or because they generally present a low risk of being used for tax evasion. The following accounts are considered as non-reporting:

- Occupational pension accounts;
- Tied pension insurance policies and pension agreements;
- Lawyer and notary client accounts;
- Capital contribution accounts;
- Accounts held by associations and foundations;
- Dormant accounts; or
- Accounts of deceased persons

### Nonreporting IGA FFI (FATCA-relevant only)

The term Nonreporting IGA FFI (under FATCA) means any Entity in an IGA jurisdiction that:

- Is described in Annex II of the IGA between such jurisdiction and the US as a Nonreporting IGA FFI; or
- Otherwise qualifies as a Deemed-Compliant FFI or an Exempt Beneficial Owner under relevant US Treasury Regulations.

### OECD Common Reporting Standard (CRS)

The CRS contains the reporting and due diligence standard that underpins the OECD Standard for the Automatic Exchange of Financial Account Information (AEOI). In order to ensure a level playing field, each jurisdiction that participates in AEOI must translate the CRS requirements into domestic law.

### Owner-documented Foreign Financial Institution (OdFFI) (FATCA-relevant only)

The term OdFFI (under FATCA) means a Foreign Financial Institution that:

- Is a Foreign Financial Institution solely because it is an Investment Entity;
- is not owned by or in an Expanded Affiliated Group with any FFI that is a Depository Institution, Custodial Institution, or Specified Insurance Company;
- Does not maintain a Financial Account for any Non-Participating Foreign Financial Institution;
- Provides the designated withholding agent (e.g. Van Lanschot Kempen (Schweiz) AG) with documentation identifying itself as an OdFFI, an Owner Reporting Statement and valid documentation for each person identified on the Owner Reporting Statement;
- Has a designated withholding agent (e.g. Van Lanschot Kempen (Schweiz) AG) which agreed to report, directly or indirectly through its domestic tax authorities, to the IRS all relevant information with respect to each Specified US Person listed on the Owner Reporting Statement (subject to certain exception for indirect owners).

### Participating Jurisdiction (AEOI-relevant only)

The term Participating Jurisdiction means another jurisdiction with which Switzerland has an AEOI agreement in place (or one deemed to be in place).

### Passive Income

Subject to certain limitations based on commercial operations (e.g. for specified dealers), Passive Income would generally be considered to include the portion of gross income that consists of:

- Dividends (including substitute dividends);
- Interest (including income equivalent to interest);



- Rents and royalties.
- Annuities;
- The excess of gains over losses from the sale or exchange of Financial Assets that gives rise to the passive income described above;
- The excess of gains over losses from transactions (including futures, forwards, options, and similar transactions) in any Financial Assets;
- The excess of foreign currency gains over foreign currency losses;
- Net income from swaps or notional principal contracts; or
- Amounts received under Cash Value Insurance Contracts.

#### **Passive Non-Financial Entity (Passive NFE) / Passive Non-Financial Foreign Entity (Passive NFFE)**

The terms Passive NFE (under AEOI) and Passive NFFE (under FATCA) mean an NFE / NFFE that is not an Active NFE / Active NFFE.

#### **Professionally Managed**

An Entity is considered to be Professionally Managed if another Financial Institution performs, either directly or through another service provider, any of the following activities or operations on behalf of the managed Entity:

- trading in financial instruments;
- individual or collective portfolio management; or
- otherwise investing, administering, or managing funds, money, or Financial Assets.

However, an Entity is not Professionally Managed if the managing Financial Institution does not have discretionary authority to manage the Entity's assets (in whole or part). Where an Entity is managed by a mix of Financial Institutions and other persons, the Entity is considered to be Professionally Managed.

#### **Professionally Managed Investment Entity**

The term Professionally Managed Investment Entity (under AEOI and FATCA) means an Entity (under FATCA: a non-US Entity) that:

- Is Professionally Managed; and
- The Entity's gross income attributable to investing, reinvesting, or trading in Financial Assets equals or exceeds 50% of the Entity's gross income during the shorter of
  - (i) the three 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 Entity has been in existence.

Although meeting the above requirements, Entities might be exempted from the Professionally Managed Investment Entity definition based on a specific exemption under the laws of their jurisdiction of residence.

#### **Reportable Account (AEOI-relevant only)**

The term Reportable Account (under AEOI) means an account held by:

- One or more Reportable Persons; or
- A Passive NFE or a Professionally Managed Investment Entity with one or more Controlling Persons that is a Reportable Person.

#### **Reportable Jurisdiction (AEOI-relevant only)**

The term Reportable Jurisdiction means another jurisdiction with which Switzerland has an AEOI agreement in place pursuant to which there is an obligation to provide Financial Account information on an automatic basis.

#### **Reportable Person (AEOI-relevant only)**

The term Reportable Person (under AEOI) means an individual or Entity that is resident for AEOI purposes in a Reportable Jurisdiction, other than an Entity with one of the following AEOI statuses:

- Publicly traded Non-Financial Corporation and Related Corporation;
- Government Entity;
- Central Bank;
- International Organization;
- Occupational Pension Funds; or
- Financial Institution.

#### **Reporting Financial Institution (AEOI-relevant only)**

The term Reporting Financial Institution (under AEOI) means a Financial Institution that is resident in a jurisdiction that has implemented AEOI under local law and is subject to applicable due diligence and reporting obligations.

#### **AEOI Residence Address**

The term Residence Address means the address of a person's permanent residence or domicile. In general, an in-care-of address or a post office box is not a residence address, unless:

- It is a post office box that forms part of an address together with, e.g. a street, an apartment or suite number, or a rural route, and thus clearly identifies the actual residence of the person; or
- Other special circumstances apply such as those of military personnel.

#### **Self-certification**

The term Self-certification means a certification by the Account Holder or Controlling Person that provides his / her / its status under AEOI and FATCA and any other information that may be reasonably requested by the Financial Institution to fulfil its AEOI and FATCA obligations, such as whether the Account Holder is resident for tax purposes in a Reportable Jurisdiction (under AEOI) or the US (under FATCA) and, in the case of an Entity, its AEOI or FATCA classification.

#### **Specified US Person (FATCA-relevant only)**

The term Specified US Person (under FATCA) means any US Person (US Entity and US Individuals), except for certain Entities excluded from the definition according to an applicable IGA or relevant US Treasury Regulations. A natural person is considered a US Person, if he/she:

- Is a US citizen (including dual or multiple citizen);
- Is in possession of a US Green Card (irrespective of expiry date);
- Meets the Substantial Presence Test (i.e. physical presence in the United States on at least 31 days during the current calendar year and 183 days during the three year period that includes the current calendar year and the two calendar years immediately before; to satisfy the 183 days requirement, count (i) all of the days of presence in the current year, (ii) one-third of the days of presence in the first year before the current year, and (iii) one-sixth of the days of presence in the second year before the current year); or
- Is a US resident because of any other reason (e.g. being a non-US spouse filing jointly a US tax return with a US spouse or relinquishing US citizenship or long-term permanent residency in the US)

**Sponsored Investment Entity (FATCA-relevant only)** The term Sponsored Investment Entity (under FATCA) means a Foreign Financial Institution that:

- Is an Investment Entity;
- Is not a Qualified Intermediary, Withholding Foreign Partnership, or Withholding Foreign Trust pursuant to relevant US Treasury Regulations; and
- Has a FATCA Sponsor that is authorized to act on behalf of the Investment Entity (e.g. a fund manager, trustee, corporate director, or managing partner) and agreed to perform all FATCA due diligence, withholding, reporting and other obligations with respect to the Financial Account held by the Investment Entity.

#### **Sponsored, Closely Held Investment Vehicle (FATCA-relevant only)**

The term Sponsored; Closely Held Investment Vehicle (under FATCA) means a Foreign Financial Institution that:

- Is a Foreign Financial Institution solely because it is an Investment Entity;
- Is not a Qualified Intermediary, Withholding Foreign Partnership, or Withholding Foreign Trust pursuant to relevant US Treasury Regulations;
- Has twenty or fewer individuals owning all of the debt interests and Equity Interests in the Investment Entity (disregarding debt interests owned by certain FFIs and Equity Interests owned by another Sponsored, Closely Held Investment Vehicle that owns 100 percent of the Equity Interests in the Investment Entity);
- Does not hold itself out as an investment vehicle for unrelated parties (criterion not applicable in all jurisdictions);
- Has a FATCA Sponsor with the FATCA classification as a Reporting US Financial Institution, Participating FFI, Reporting Model 1 FFI, or Reporting Model 2 FFI, that is authorized to act on behalf of the Investment Entity (e.g. a fund manager, trustee, corporate director, or managing partner) and agreed to perform all FATCA due diligence, withholding, reporting and other obligations with respect to the Financial Account held by the Investment Entity.

**Taxpayer Identification Number (TIN)**

A Taxpayer Identification Number (or TIN) is a unique combination of letters or numbers, however defined, assigned by a jurisdiction to its tax residents and used to identify them for purposes of administering the tax laws of such jurisdiction (or the functional equivalent of such a number).

**Tax Residence**

The determination of a person's tax residence is based on the tax laws of any relevant jurisdiction. The domestic tax laws of any relevant jurisdiction define the conditions under which an Entity has to be treated as fiscally resident and consequently is subject to full tax liability. In general, an Entity should be treated as tax resident in any jurisdiction in which he/she is subject to tax by reason of its domicile, residence, place of management or incorporation, or any other criterion of a similar nature, and not only from sources in that jurisdiction. Dual resident Entities may rely on the tiebreaker rules contained in tax conventions (if applicable) to solve cases of double residence for determining their residence for tax purposes.

Under AEOI, special rules apply to:

- Fiscally transparent Entities (i.e. partnerships, limited liability partnerships or similar legal arrangements that have no residence for tax purposes), which are resident for AEOI purposes in the jurisdiction in which their place of effective management or control is situated;
- Trusts that are Financial Institutions, which are resident for AEOI purposes in the residence of their trustee(s), unless they are tax resident under the laws of any jurisdiction that has implemented AEOI and report all the information required to be reported pursuant to the CRS with respect to the Reportable Account they maintain to the tax authorities of such jurisdiction;
- Trusts that are NFEs, which do not have a residence for AEOI purposes, unless they are tax resident under the laws of any jurisdiction; and
- Branches, which are resident for AEOI purposes in the jurisdiction of Tax Residence of the headquarter Entity of which they are a branch.

If you have questions about how to complete this form or about how to determine your tax residence(s), please contact your tax adviser or the relevant tax authorities. You can also find more information on the OECD Automatic Exchange of Information portal ([www.oecd.org](http://www.oecd.org)).

**Trustee-documented Trust**

The term Trustee-documented Trust (under FATCA) means a trust that:

- Is a Foreign Financial Institution;
- Is established under the laws of an IGA jurisdiction (provided such status is foreseen in the Annex II of such jurisdiction's IGA); and
- Has a trustee that is a Reporting US Financial Institution, Participating FFI, Reporting Model 1 FFI, or Reporting Model 2 FFI and reports all information required to be reported pursuant to the IGA with respect to all US Reportable Accounts of the trust.

**US Entities**

The term US Entities (under FATCA) means US corporations, US partnerships and US trusts. A corporation or partnership is generally considered a US corporation or US partnership if it is created or organized in the United States or under the law of the United States or of any State. A trust is considered to be a US trust if (i) a court within the United States is able to exercise primary supervision over the administration of the trust, and (ii) one or more US Persons have the authority to control all substantial decisions of the trust.

**US Securities**

In general, the term US Securities (under FATCA) means equity interests in US companies, bonds and investment funds from US issuers. A non-US investment fund (e. g. Luxembourg SICAV) generally is not considered a US Security under FATCA.