



Association of the Luxembourg Fund Industry  
Association Luxembourgeoise des Fonds d'Investissement

# Automatic Exchange of Information (CRS and DAC2) Recommendations

Luxembourg, 28 December 2015

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## **Important**

These Recommendations and the three templates of self-certification forms for individuals, entities and controlling persons have been prepared by ALFI's implementation working groups for the Automatic Exchange of Information (Common Reporting System and EU Directive 2014/107/EU amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation or 'DAC2'). The working groups comprise representatives of asset managers, management companies, securities service providers, audit firms, law firms and document and information management firms. ALFI hopes that this document will serve its members as a reference document when implementing the AEOI. It represents the view of a group of market participants and is not binding for the Luxembourg Tax Authorities or the national regulator. The text of these Recommendations has been submitted to and discussed with them, but it has not been validated by anyone. The document does not diminish the responsibility of management companies or investment companies to comply with national law or regulation. It must not be relied upon as advice and is provided without any warranty of any kind and neither ALFI nor its members who contributed to this document accept any liability whatsoever for any action taken in reliance upon it. The answers are not necessarily definitive and they might not be suitable for every circumstance. The document may be amended without prior notice to incorporate new material and to amend previously published material where the working group considers it appropriate. ALFI will publish amended copies of this document to its members, showing marked-up changes from the immediately preceding copy. ALFI's members are welcome to submit a question to the working group, who will review it and consider whether to respond to it in a future copy of this document. Please send your questions to [info@alfi.lu](mailto:info@alfi.lu). We will acknowledge receipt of each question but we regret that we may be unable to reply individually to each one.

Readers of these Recommendations are further advised to supplement this document with the legal texts (law, decrees, FAQs and / or circulars) once published.

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## 1) Introductory note

Automatic exchange of information has been extensively discussed at both European Union (“EU”) and international level (“OECD”) in the past three years.

Automatic exchange of information involves the systematic and periodic transmission of “bulk” taxpayer information by the source country to the residence country concerning various categories of income (e.g. dividends, interest, etc.).

On 23 February 2014, the G20 Finance Ministers endorsed the Common Reporting Standard (CRS) which provides for a conceptual framework for automatic exchange of tax information.

On 21 July 2014, the OECD released the full version of the Standard for Automatic Exchange of Financial Account Information in Tax Matters. The Standard calls on governments to obtain detailed account information from their financial institutions and exchange that information automatically with other jurisdictions on an annual basis. The Standard was approved by the OECD Council on 15 July 2014.

On 29 October 2014, 51 jurisdictions including Luxembourg signed in Berlin the multilateral competent authority agreement (MCAA), which is a multilateral framework agreement to automatically exchange information, with the subsequent bilateral exchanges coming into effect between those signatories that file the subsequent notifications. Those jurisdictions, the so-called “early adopters”, have been re-joined by other jurisdictions since then.

On 9 December 2014, EU Member States adopted Directive 2014/107/EU amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation ('DAC2') which provides for mandatory automatic exchange of financial information as foreseen in the OECD global standard. DAC2 amends the previous Directive on administrative cooperation in the field of taxation, Directive 2011/16/EU ('DAC1').

In August 2015, the OECD released its first edition of the CRS Implementation Handbook, providing practical guidance to assist government officials in the implementation of the Standard. It sets out the necessary steps to implement the Standard and helps to increase efficiency for financial institutions and governments implementing the Standard by promoting the consistent use of optional provisions, identifying areas for alignment with FATCA and addressing the operational and transitional challenges resulting from the staggered implementation of the Standard. It also contains answers to frequently asked questions (FAQs) received from business and governments, with a view to furthering the consistent implementation of the Standard. The Handbook is intended to be a living document and will be updated on a regular basis.

**2) Options permitted under CRS and followed by Luxembourg**

<b>Section 1 - Optional Provisions Listed in the CRS Implementation Handbook</b>		
1	Alternative approach to calculating account balances	No
2	Use of reporting period other than calendar year	Yes
3	Phasing in the requirements to report gross proceeds	No
4	Requirement to file nil returns	Yes
5	Allowing third party service providers to fulfil obligations for FIs on behalf of the financial institutions	Yes
6	Allowing due diligence procedures for New Accounts to be used for Pre-existing Accounts	Yes
7	Allowing the due diligence procedures for High-Value Accounts to be used for Low-Value Accounts	Yes
8	Residence address test for Lower Value Accounts	Yes
9	Optional Exclusion from due Diligence for Pre-existing Entity Accounts of less than \$250,000	Yes
10	Alternative documentation procedure for certain employer-sponsored group insurance contracts or annuity contracts	Yes
11	Allowing financial institutions to make greater use of existing standardised industry coding systems for the due diligence process	Yes
12	Single currency translation rule permitted	Yes
13	Expanded definition of Pre-existing Account	Yes
14	Expanded definition of Related Entity	Yes
15	Grandfathering rule for bearer shares issued by Exempt Collective Investment Vehicle	Yes

<b>Section 2 - Additional Luxembourg Specific Provisions</b>		
16	Wider approach	Yes

<b>Section 3 - Additional Considerations</b>		
17	Account opening without prior receipt of self-certification from individual account holders	No
18	Account opening without prior receipt of self-certification from entities in exceptional circumstances	Yes
19	Industry self-certification templates allowed and proposed by ALFI	Yes
20	Direct classification possible for non-reportable entity accounts	Yes

### 3) Questions and Recommendations

- Fiscal residence notion

#### 1. *Definition*

Under the Common reporting standard (“CRS”), a Reportable Person is an individual or Entity resident in a Reportable Jurisdiction under the laws of such jurisdiction.

An individual will generally be considered tax resident in a jurisdiction “if, under the laws of that jurisdiction (including tax conventions), he pays or should be paying tax in this jurisdiction **by reason of his domicile, residence or any other similar criterion**, and not only from sources in that jurisdiction”<sup>1</sup>. Other criteria usually available would be a permanent home in one State, or the State in which the Person has his/her personal and economic relations (centre of vital interests). Similar considerations should be taken into account to assess the tax residence of controlling persons in a passive NFE.

Similarly, an entity “will be resident for tax purposes in a jurisdiction if, under the laws of that jurisdiction (including tax conventions), it pays or should be paying tax therein **by reason of his domicile, residence, place of management or incorporation, or any other criterion of a similar nature**, and not only from sources in that jurisdiction”. Entities resident in a jurisdiction, their branches located in the same jurisdiction and branches of foreign entities located in that jurisdiction would report in this jurisdiction in case of Financial Institution status.

These definitions could however slightly differ from country to country since the tax residence should be appreciated based on the laws of the residence jurisdiction.

Please also refer to the CRS Implementation handbook published by the OECD, pages 37 (Part II, Chapter 1 step 2 to determine whether the entity is resident in a partner jurisdiction), and 60 (on due diligence procedures for pre-existing entity accounts).

#### 2. *Issue*

##### 2.1. *Summary*

The Financial Institution may be faced with cases of dual residency or change of tax residence.

##### 2.2. *How does it work for FATCA?*

The applicable criteria (tax residence) is not similarly applicable under FATCA. FATCA indeed focuses on identifying a broad notion of “US persons”, including US residents, but also US nationals living abroad. The principles applied under FATCA can therefore not give any specific guidance under CRS.

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<sup>1</sup> OECD, Standard for Automatic Exchange of Financial Account Information in Tax Matters

### 3. *Analysis under CRS*

#### 3.1. *Basic Rules*

A Financial Institution should identify any person who is a resident for tax purposes in a Reportable jurisdiction, as defined above.

An exceptional process may be applied in the case of low value accounts (in case of pre-existing clients due diligence), where a Reporting Financial Institution can rely on a current residence address for individual Account Holders if this current residence address is evidenced by Documentary Evidence.

It has to be noted that a person does not become resident in a jurisdiction simply because he collects some income sourced within a jurisdiction (where he is taxed on such income) or because he owns capital in this jurisdiction. For example, a commuter living in a jurisdiction does not become tax resident in the other jurisdiction simply because he is taxed on his / her salary sourced within this other jurisdiction.

#### 3.2. *Exceptional circumstances*

Although an individual will generally have one sole jurisdiction of tax residence, there could be cases where an individual is resident for tax purposes in one or more jurisdictions. Entities also sometimes have a dual tax residency.

In case of such double residence examples, the double tax conventions usually contain special rules which give the attachment to one jurisdiction a preference over the attachment to the other jurisdiction for purposes of those conventions.

The following comments however do not detail tie-breaker rules in accordance with double tax treaties, nor specific cases of tax residence for transparent entities.

#### 3.3. *Recommendation*

Tax residence information will usually need to be collected from the Account Holders through self-certifications (with some exceptions, as noted above).

The Reporting Financial Institution is required to perform reasonableness tests on the proposed tax residency of the Account Holders. Reporting Financial Institution will notably need to confirm the reasonableness of such self-certification forms based on the information obtained in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.

In case of any doubt, and given the definitions above, the Reporting Financial Institution should advise Account Holders to receive guidance from their own tax advisors.

Please also refer to CRS-related FAQs (November 2015), Sections II-VII: Due Diligence Requirements, question 5 "Obligations of a Financial Institution to establish tax residency".

- **Data protection**

1. *Issue: how to ensure compliance with data protection requirements?*

DAC2 contains data protection related provisions which expressly remind each financial institution subject to its provisions (the "Reporting financial institutions") of their duties to comply with European data protection requirements regarding personal data of individuals and therefore to inform each individual reportable person whose personal data will be collected, processed and transferred to comply with CRS of their rights in due time and in such a way, that these individuals can exercise their data protection rights.

The Reporting financial institutions will qualify as data controllers within the meaning of the European data protection directive (directive 95/46/EC) as implemented in local laws, together with the relevant tax authorities of each EU Member State concerned. A data controller is defined in Luxembourg data protection law of 2 August 2002 as "the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of processing are determined by national or Community laws or regulations, the controller or the specific criteria for his nomination may be designated by national or Community law" whereas a "processor" is "a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller".

As a reminder, this information must be provided to each individual whose personal data are collected, processed and transferred prior to such processing. Legal persons fall outside the scope of Luxembourg data protection law.

The bill of law which will transpose this directive into Luxembourg law currently replicates these provisions in relation thereto (please refer to article 5 of the bill) and also refers to the specific duties imposed on the data controllers by the Luxembourg data protection law of 2 August 2002, as amended.

As a result of the above and pending further clarifications that may be contained in the advice to be given by the CNPD to the Luxembourg Parliament, Luxembourg reporting financial institutions will be deemed to be the data controllers (together with the Luxembourg tax authority) within the meaning of Luxembourg data protection law of 2 August 2002 and they will therefore have to ensure compliance with the relevant provisions of this law and especially article 26 thereof. Considering the fact that a breach of the provisions of this article of Luxembourg data protection law is sanctioned either by a fine, an imprisonment or both of them and the lack of clear guidelines/case law as of today in relation to the expected level of disclosure to ensure compliance with legal requirements, a prudent approach would be advisable.

2. *Analysis of the Issue*

To ensure compliance with their duties as data controllers or data processors when ensuring the collection of the individuals' personal data and their processing and transfer, Luxembourg Reporting financial institutions should consider the following steps:

- a) Review of their legal and contractual documentation in respect of data protection disclosure:

- reviewing current information communicated to individual Account Holders whose personal data are collected in order to inform them of the personal data collected, the purposes for which they can be collected, the recipients of such data, the compulsory nature of the answer/data to be communicated and the consequences of a lack of answer to determine it meets the requirements of the bill of law

and, if needs be, providing existing Account Holders with the missing information in due time before collecting, processing and/or transferring personal data as required under the bill of law ;

- ensuring that a general right of access or rectification is provided under existing provisions or otherwise ensure it will be the case before collecting personal data within the meaning of Luxembourg data protection law.
- b) If existing disclosure is not sufficient, to update existing documentation to ensure collection, processing and transfer of the necessary personal data of individuals in accordance with the above mentioned legal requirements.

Considering the timing for the implementation of CRS and the starting point of the collection of personal data of individual investors for CRS specific purposes, the review of the current disclosure, if any and its compliance with data protection requirements and, if possible and required, its update should be done before the year end.

- c) For existing Account Holders and if prior disclosure was not sufficient, adequate prior information notice:

While not expressly provided for in the bill of law, it may be advisable at least to send a notice to individuals within the meaning of Luxembourg data protection law whose personal data will be collected for the purposes provided in CRS and the starting point of this collection.

This could take first the form of a notice to shareholders who qualify as individuals, in the absence of further details in relation thereto in the Luxembourg data protection law and in the absence of a position taken by the CNPD as of today as to the appropriate means to be used to inform existing investors.

- d) Review of current notification to the CNPD to ensure it adequately foresees the additional processing for tax purposes.
- e) Financial intermediaries and Nominees:

When such personal data are collected through financial intermediaries and nominees Account Holder, which appear as Account Holders and therefore do not need to communicate personal data of the end investors, the Luxembourg Reporting Financial Institution will normally have no direct relationship with the end investors and controlling persons qualifying as individuals as per Luxembourg data protection law as those financial intermediaries and nominees will appear as the Account Holders.

The legal obligations of the Reporting financial institutions to otherwise ensure the proper collection, processing and record keeping of these data should, for the rest, be similar to the ones they must already comply with, when they do collect personal data from individual persons and are therefore subject to Luxembourg data protection law and Luxembourg requirements in terms of record keeping.

- **ETFs**

1. *Definition of ETFs*

There is no legal definition of what constitutes an “ETF”, an acronym standing for Exchange-Traded Fund. However, according to the ESMA Guidelines on EFTs and other UCITS matters (ESMA/2014/937 of 01/08/2014), a UCITS ETF is defined as "*a UCITS ETF is a UCITS at least one unit or share class of which is traded throughout the day on at least one regulated market or Multilateral Trading Facility with at least one market maker which takes action to ensure that the stock exchange value of its units or shares does not significantly vary from its net asset value and where applicable its Indicative Net Asset Value*". More generally, an ETF is a collective investment vehicle whose shares or units are traded like a common stock on one or more official stock exchanges. As a result, the price of ETF units experiences price changes throughout the day as they are bought and sold. ETFs tend to have higher daily liquidity and lower fees than mutual fund shares, making them an attractive alternative for individual investors<sup>2</sup>.

ETFs shares/units can be either subscribed on the primary market, (subscription or redemption directly handled by the ETF's central administration) or on the secondary market (no direct relationship between the investor(s) and the ETF as orders are processed on an official stock exchange and through entities authorized to operate on this stock exchange).

Before they can be traded on the secondary market, ETFs shares/units are issued by the ETF and orders can only be placed by investors/shareholders authorized to do so on the primary market.

Primary market participants generally include:

- ETF through its agent(s);
- Authorized Participants (AP) which are institutions authorized to subscribe and redeem ETF shares/units directly from the ETF on the primary market and have entered into a specific agreement with the ETF (or its representative) to this effect;
- Market makers which provide liquidity and may also qualify as Authorised Participants (APs). Market makers provide liquidity by facilitating trades and displaying ETFs shares/units quotation on in the secondary market.

Investors who subscribe or redeem ETFs shares/units on the secondary market will not qualify as shareholders/unitholders of the ETFs and will hold their ETFs shares/units through financial institutions (such as, but not limited to, banks, brokers...) which would pass orders ultimately through the market makers or APs.

2. *Issue*

- 2.1. *Summary*

CRS does not include the notion of “**regularly traded on an established securities market**” exemption. This brings interests in ETFs that are within the scope of CRS due diligence and reporting, despite the practical difficulties:

- Underlying investors who invest on the secondary market have no direct contractual relationship with the ETFs and are not recorded as shareholders/unitholders in the shareholders'/unitholders' register of the ETFs.

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<sup>2</sup> Source: Investopedia.

- Publicly traded holdings which may be continually traded are inherently impractical to document completely.

The CRS in Section VIII C(1)(a) creates a material departure from FATCA in that holdings in publicly traded funds are **never excluded from the definition of Financial Accounts** and are therefore clearly reportable under the CRS.

### *2.2. How does it work for FATCA*

The Final FATCA Regulations **exclude from the definition of a Financial Account**, debt or equity interests in an investment entity that is regularly traded because such interests are typically held by or through other financial institutions.

### *3. Conclusion in the context of CRS*

For CRS purposes, an ETF is regarded as a Financial Institution and ETF shares are regarded as a Financial Account.

Primary market participants - ETF sponsors, authorised participants and market makers normally qualify as Financial Institutions and are the unitholders/shareholders.

ETF shares are held in the name of the authorised participants, brokers and/or market makers. The Investor documentation is held through the financial institution(s) or intermediary(ies) they use to place their orders and ultimately the authorised participants or market makers recorded as shareholder of the ETF.

Authorised participants, financial [intermediary/institution] and/or market makers qualify as Financial institutions. The ETF will then perform the due diligence on such Account Holders.

- **90 days delay period - Account opening and provision of self-certification**

1. *Definitions*

Please refer to the ALFI FATCA Q&A (May 2014) section 3 (Due diligence) page 60 as well as to the Luxembourg draft bill 6858, section IV page 21 and section VI page 25.

2. *Issue*

2.1. *Summary*

For New accounts<sup>3</sup> (entity and individuals), is a Financial Institution<sup>4</sup> authorized to open an account in the absence of self-certification?

The following section only focuses on instances where no direct classification is possible.

2.2. *How does it work for FATCA*

- For **new individual accounts**, upon account opening the Reporting Luxembourg Financial Institution must obtain a self-certification, which may be part of the account opening documentation that allows the Reporting Luxembourg Financial Institution to determine whether the Account Holder is resident in the United States for tax purposes.
- For **new entity accounts**, if the Reporting Luxembourg Financial Institution was not able to reasonably determine the Account Holder's status based on the GIIN number or the information publicly available or in its possession, it must obtain a self-certification from the Account Holder to establish the Account Holder's status.

For individuals, the FATCA process is the same as for CRS (i.e., the self-certification has to be obtained upon account opening).

3. *Analysis of alternatives for CRS*

3.1. *Basic Rules*

The Luxembourg draft bill requires the Financial Institution to obtain a self-certification upon opening<sup>5</sup> of any new account.

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<sup>3</sup> «New accounts»: refers to a Financial account opened on or after 1st January 2016 without prejudice to the allowance to treat certain New accounts of a pre-existing customer as a Pre-existing Account (Luxembourg draft bill 6858, section VIII paragraph 9) b) .

<sup>4</sup> «Financial Institution»: means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.

<sup>5</sup> « Pour les Nouveaux comptes d'entités »..... « obtenir une auto-certification, qui peut faire partie des documents remis lors de l'ouverture de compte » (draft bill, section VI page 25).

« S'agissant des Nouveaux comptes de personnes physiques, l'Institution financière déclarante doit obtenir lors de l'ouverture du compte une auto-certification (qui peut faire partie des documents remis lors de l'ouverture de compte) (draft bill, section IV page 21)».

### 3.2. *Exceptional circumstances*

The self-certification cannot be provided upon account opening to justify the tax residence of the entity Account Holder. The draft bill does not refer to any exceptional circumstances where an account could be opened in the absence of provision of a self-certification.

However, from an operational perspective, it may happen that the self-certification cannot be provided by the entity Account Holder upon account opening.

Example of exceptional circumstances: open an account in the name of a company in formation before the passing of the deed of incorporation.

It has to be noted that such exceptional circumstances will only apply to entity Account Holders. For individual Account Holders, a self-certification is mandatory upon account opening.

### 3.3. *What are the different options*

#### 3.3.1. *Option 1 – Open the account and apply the 90 days rule to obtain the self-certification with passive NFE status*

Based on the draft bill<sup>6</sup>, the 90-day period to obtain a self-certification is only allowed in the case where there is a change in circumstances; the 90 day rule does not apply upon account opening.

#### i. Pros

- The 90 days period allows the Account Holder sufficient time to respond to the request.
- In case of Passive NFE, it will provide a period of time to collect the necessary details and self-certification on the controlling person(s).

#### ii. Cons

- The Financial Institution has to monitor the 90 days period;
- The Financial Institution has to make reasonable efforts to get the relevant document (chase the Account Holder to get the self-certification during the 90 days period, make follow-up mails once the 90 days has elapsed);
- Meet certain requirements of specific “exceptional circumstances”<sup>7</sup>.
- Consequences for the Financial Institution in case a self-certification is not received in the agreed period (obligation to report on the reportable persons).

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<sup>6</sup> « L'institution financière déclarante doit, au plus tard le dernier jour de l'année civile considérée ou de toute autre période de référence adéquate, ou dans un délai de 90 jours civils après avoir été informée ou avoir découvert ce changement de circonstances, obtenir une auto-certification et une nouvelle Pièce justificative pour établir la ou les résidences fiscales du Titulaire du compte. » (Annexe 2, paragraphe 1, page 55).

<sup>7</sup> Circumstances qualifying as exceptional: cases where it is materially impossible for the Account Holder to produce the self-certification e.g., open an account in the name of a company in formation before the passing of the deed of incorporation.

### 3.3.2. *Option 2* – Do not open the account without self-certification

#### i. Pros

- Straightforward process for the Financial Institution (i.e., no need to monitor the 90 days delay period or track the reception of self-certification);
- Less workload for the Transfer Agent in charge of the AM/KYC delegated by the Financial Institution;
- Reduce risk of penalties for breach of due diligence procedures.

#### ii. Cons

- Commercial issues with customers.

### 3.4. *Recommendations*

Option 2 recommended. However in case of exceptional circumstances, option 1 might be applied.

Please refer to question 20 “Timing of self-certifications” (section II-VII: Due Diligence Requirements) of CRS-related FAQs published by the OECD (November 2015) for additional clarification on the timing of receipt and validation of the self-certification obtained.

## • **Wider approach**

### 1. *Definition*

The Luxembourg law extends due diligence procedures in order to cover all non-residents. This global approach is called “Wider Approach”<sup>8</sup>.

A financial institution is always required to obtain a self-certification in relation to new individual accounts in order to determine the tax residence of the Account Holder.

In addition and in the situation where the Account Holder is resident for tax purposes in a non-reportable jurisdiction, the Luxembourg law gives the financial institution the option to request information on Tax Identification Number, the date and place of birth for all new accounts.

If a new jurisdiction joins the system, then the financial institution would be able to rely on the results of the indicia previously received in order to report on the relevant accounts for this new reportable jurisdiction.

### 2. *Analysis*

#### Advantages/Pros

- a) The Wider Approach is designed to reduce the costs of the reporting financial institutions as they do not have to change their internal process each time a new jurisdiction joins a new automatic exchange relationship.
- b) The Wider Approach allows to be more reactive and exhaustive: the collected information is therefore ready to be reported when applicable.

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<sup>8</sup> Draft bill 6858, Section IV Section B.

- c) The Wider Approach helps to enhance the quality and accuracy of the information collected by the financial institutions. It allows performing consistency checks.

#### Points of attention

- a) This approach requires the financial institution to sort out the information before sending it the tax administration, in order to report only the relevant information for the participating jurisdictions;
- b) This approach requires the financial institution to collect and potentially keep information that do not need to be reported;
- c) Some customers belonging to non-participating jurisdictions may not provide the required documents/information.

#### Recommendation

The Wider Approach is a facility offered to the fund industry to anticipate the forthcoming inclusion of new jurisdictions.

#### References

Appendix 5 page 284, Common Reporting Standard page 45, Commentary Page 84.

- **Self-certification - Account opening and provision of self-certification**

##### *1. Definitions*

Refer to the FATCA Q&A (May 2014), Luxembourg draft bill 6858 and the CRS Handbook.

##### *2. Issue*

#### Summary

When will a self-certification be required and also what is the template of such self-certification?

#### How does it work for FATCA?

As per the Luxembourg Tax Authority Circular No.2 a "Self-certification can be a standalone document or part of a document which is used by the financial institution to open an account".

However, Financial Institutions should independently assess what is the format they intend to choose, including whether to utilize the IRS W8 forms as an alternative.

#### **a. New Account Opening**

##### For new individual accounts

A self-certification must be obtained by including new declaration fields within the account opening form to provide additional confirmations on non-residence in the U.S. for tax purposes, non-U.S. citizenship, non-U.S. place of birth, etc.

#### For New Entity Accounts

IRS Form or other similar agreed forms.

#### **b. Pre-existing Accounts**

##### For Pre-existing individual accounts

Self-certification is an integral part of the process of identification of the U.S. status of the individual Account Holder.

When performing a review of pre-existing individual Account Holders, self-certification can cure certain U.S. indicia found, provided it is supported by official documentary evidence of the Account Holder's foreign status.

##### For Pre-existing Entity Accounts

Self-certification is required in certain cases in order to verify the U.S status of pre-existing entity accounts or of controlling persons of entities, and can be used in conjunction with other information avoidable to the FI in other cases.

In particular, it is used to:

- a) Verify the "Specified U.S person" status or "non-specified U.S. person" of the entity Account Holder, when indicia have been identified during the review exercise of pre-existing accounts;
- b) Verify if the Account Holder is a Financial Institution;
- c) If the Account Holder is a Financial Institution in a non-IGA country, the GIIN should be verified;
- d) If the entity is an NFFE, self-certification may be used to determine whether the NFFI is passive and if so, self-certification is required to determine whether there is a U.S. controlling person.

### 3. *Recommendation for CRS*

#### **New Account Opening**

A reporting Financial Institution must obtain a self-certification (which can be part of the documents submitted when opening the account) for each Account Holder.

A standard template, a draft of which is enclosed in the relevant Appendices, could be used by Financial Institutions for the purposes of undertaking the Due Diligence on new Account Holders.

The template has been drafted in an effort to meet the requirements imposed upon Financial Institutions from both a FATCA as well as CRS perspective and cover the most standard cases that Financial Institutions are likely to encounter. Financial Institutions wishing to use these templates should nevertheless ensure that those templates fit their own requirements.

## **Pre-existing Accounts**

There is no obligation for the FI to obtain a self-certification. However, there is an exception in the case where the pre-existing Account Holder qualifies as a NFE. In order to determine whether the NFE is passive or not, the FI must obtain a self-certification from the Account Holder (unless the FI can determine based on information collected or publicly available that the Account Holder is a non-reportable person). In addition, it is recommended (but not mandatory) to obtain a self-certification either from the NFE or from each Controlling persons so as to ascertain each Controlling Person's residency.

## **Points of Attention**

The Financial Institution should consider whether it would be more prudent to embed the requisite sections of the template self-certificate into the application form or to use as a stand-alone document. Both are equally valid and the choice would remain with each Financial Institution. It is worth noting, that there may be certain circumstances where a stand-alone self-certification would be preferred to the approach of embedding the template

- **Direct classification versus Self-certification**

### **Classification of pre-existing Entity accounts**

#### *1. Issue*

#### Summary

Entities which own Pre-existing accounts need to be classified by Reporting Financial Institutions (i.e. Reporting Financial Institutions must classify entities which already own a TA account when CRS enters into force).

From a practical point of view, a Financial Institution may wonder how to apply a correct classification to each Account Holder: does it systematically request a self-certification to be filled in by the Account Holder, or can the Account Holder be classified without any self-certification?

NB: that question only applies to pre-existing Entity accounts.

NB2: a self-certification can have two objectives: classify an entity and determine its tax residence(s). Following paragraphs will describe some cases where a classification can be performed without a self-certification. However, even if an entity is already classified, asking for a self-certification can be useful to determine the tax residence(s) of an entity.

How does it work for FATCA?

Pre-existing Entity accounts could be classified either:

- Based on information publicly available or,
- Based on the KYC information on-file or,
- Thanks to a self-certification.

FATCA introduced a new piece of public information that enables to classify a lot of pre-existing Entity accounts: the GIIN. A list of GIIN is available on the IRS website; if an Entity has a GIIN, it can be classified as a Financial Institution under FATCA.

## **Analysis of alternatives for CRS**

### Basic rules

CRS introduces the same rule than FATCA:

Please refer to the CRS Handbook, Section V paragraph D. 2. a) page 39:

*“For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must obtain a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in subparagraph A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution”.*

Pre-existing Entity accounts could so be classified either:

- Based on information publicly available or,
- Based on the AML/ KYC information on file or,
- Based on a self-certification.

Based on such information the Fund can classify an entity as Reportable Account or as Not-Reportable Account.

A Not-Reportable Account is:

1. an entity incorporated in a Not-Participating Jurisdiction;
2. a Participating Jurisdiction Financial Institution (other than an Investment Entity the income of which comes from trading in financial assets and is managed by a Depository, Custodian, Special Insurance Company or Investment Entity that is not a Participating Jurisdiction Financial Institution);
3. a Non-Reporting Financial Institution;
4. an Active NFE that is not a Reportable Person (such as e.g.: a corporation the stock of which is regularly traded on one or more established securities markets);
5. a Passive NFE that is not a Reportable Person and that has no Controlling Persons or has Controlling Persons who are Not-Reportable Persons;
6. An entity holding an Excluded Account.

A Reportable Account is:

1. an Active NFE that is a Reportable Person (such as e.g. a not listed Active NFE with less than 50% gross income from passive income);
2. a Passive NFE that is a Reportable Person and that has no Controlling Persons or has Controlling Persons who are Not-Reportable Persons;
3. a Passive NFE that is a Reportable Person and that has Controlling Persons who are Reportable Persons;
4. a Passive NFE that is not a Reportable Person and that has Controlling Persons who are Reportable Persons.

## 2. What are the different options?

### 2.1. Option 1 – Classification based on publicly available information

Pros:

- For commercial reasons, some Financial Institutions may prefer this option which limits investors chasing.
- It represents less workload for the Financial institution (no self-certification to be received from the investors, no response to be analysed...).

Cons:

- Only a limited scope of entities has enough information publicly available (via Internet...), in order for them to be classified automatically.
- Depending on the source of information, classification can be more or less accurate and up-to-date.

### 2.2. Option 2 – Classification based on the AML/ KYC information on file

Pros:

- For commercial reasons, some Financial Institutions may prefer this option which limits investors chasing.

Cons:

- It gives much more responsibility to the Financial Institution, since the classification is performed without any confirmation from the investor. The risk of error is not negligible, especially for some statuses (e.g. it can be challenging for a Financial Institution to classify an Entity as “Active NFE, by reason of income and assets” since it would require a detailed analysis of the Entity balance sheet).

### 2.3. Option 3 – Classification based on a self-certification

Pros:

The investor is responsible for its classification. The Financial Institution however still needs to challenge investor classification if it has reasons to know that the self-certification is incorrect or unreliable.

Please refer to the CRS Handbook, Commentaries on Section IV paragraph 23 page 133:

*“A Reporting Financial Institution is considered to have confirmed the “reasonableness” of a self-certification if, in the course of account opening procedures and upon review of the information obtained in connection with the opening of the account (including any documentation collected pursuant to AML/KYC Procedures), it does not know or have reason to know that the self-certification is incorrect or unreliable”*

Cons:

The Financial Institution will have to deal with investors who do not send back any self-certification duly completed (please refer to recommendations below).

### 3. Recommendations

#### **3.1. First step: use publicly available information to classify a first scope of pre-existing entities (cf. Option 1)**

If an Entity can produce a proof that is regulated / under the supervision of a banking regulator / financial supervisory authority as a Bank or as a Fund in a CRS participating country, it could be classified as a “Reporting Financial Institution”.

If an Entity is regularly traded on an established securities market (or is a related entity of another entity the stock of which is regularly traded on an established securities market), it could be classified as “Active NFE” as further detailed in the diagram on the following page.

Such entities and associated accounts are considered as “Not Reportable” under CRS. As a consequence, Tax Residence(s) of these entities do not need to be monitored. That point is an argument also not to request a self-certification (a self-certification can be used to classify the entity and to determine its tax residence).

#### **3.2. Second step: ask for other pre-existing Entities to fill in a self-certification (cf. Option 3)**

Self-certifications duly completed will provide entities classifications and tax residences. The reasonableness of the self-certification provided needs to be confirmed by the Financial Institution (based on either AML/ KYC information on file and/ or Relationship Managers knowledge of the entities).

#### **3.3. Third step: deal with remaining entities which do not send back any self-certification duly completed**

Such Entities accounts are presumed to be “Passive NFE” accounts.

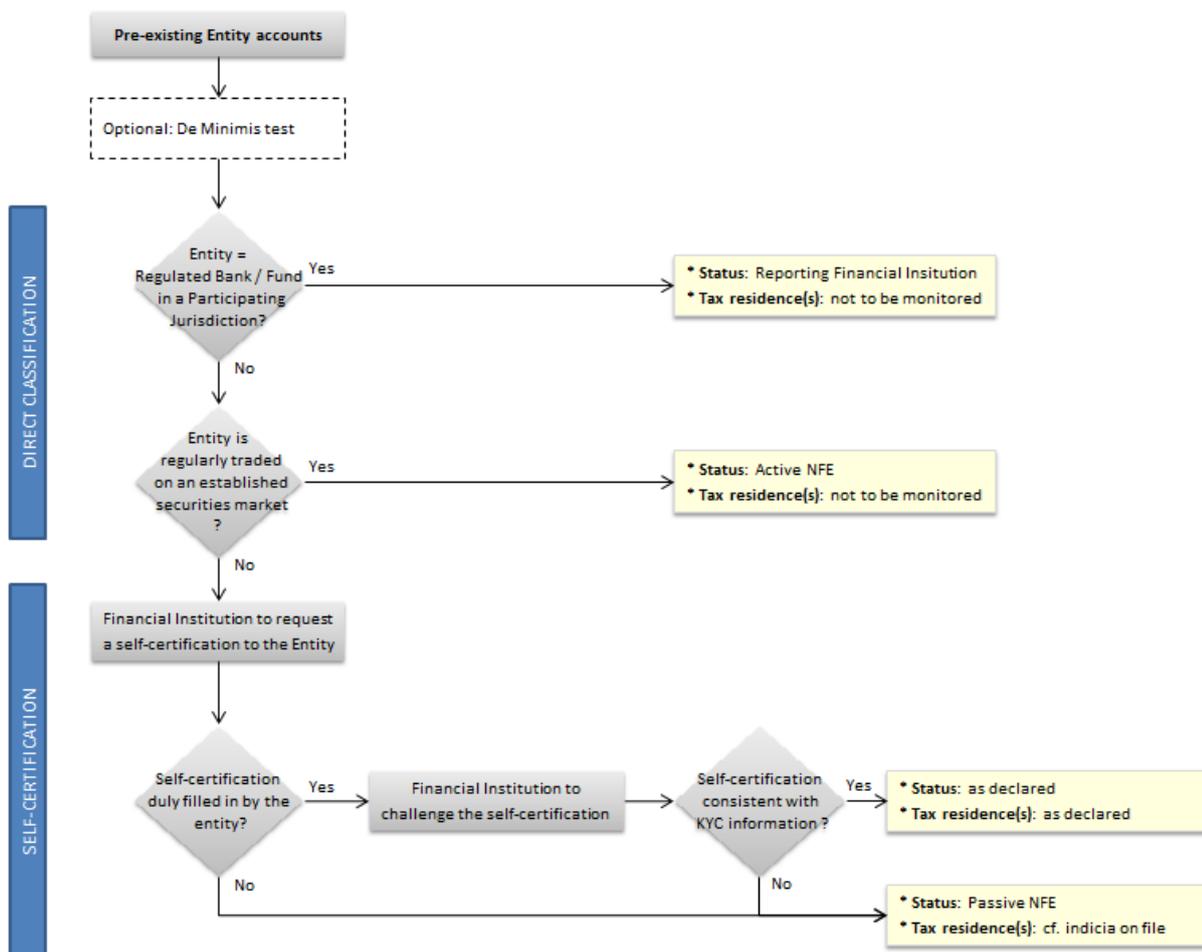
Please refer to the CRS Handbook, Commentaries on Section V, paragraph D 20, page 140:

*“A Reporting Financial Institution that cannot determine the status of the Account Holder as an Active NFE or a Financial Institution other than non-participating professionally managed investment entity must presume that it is a Passive NFE.”*

The Financial Institution should continue to chase the Investor in order to be provided a self-certification. In the meantime:

- Tax residence(s) of the Entity should be determined based on indicia on file.
- Tax residence(s) of the Controlling Persons(s) should be determined based on indicia on file.

**Recommendation - Decision tree applicable for pre-existing entity accounts:**



## Classification of pre-existing Individual accounts

### 1. Issue

#### Summary

Similarly to pre-existing Entities accounts, Reporting Financial Institutions may wonder how to classify pre-existing Individual accounts: does it systematically request a self-certification to be filled in by the Account Holder, or can the Account Holder be classified without any self-certification?

NB: in any case and even in the situation where a direct classification was made, for pre-existing accounts, the Reporting Financial Institution should make reasonable efforts to obtain a TIN at the latest 2 years after the end of the remediation period.

How does it work for FATCA?

FATCA distinguishes two statuses applicable to individuals (Specified US Person / Non-US Person). Searching for US indicia can be used to determine that an individual is a "Specified US Person".

NB: under FATCA, an individual can be classified as a "Specified US Person", even if its Tax Residence is not the United States of America.

### **Analysis of alternatives for CRS**

#### Basic rules

Contrary to Entities, there is no "status" to be applied to pre-existing Individual accounts. Only the tax residence(s) need to be determined by the Financial Institutions. The tax residence(s) of an individual account holder can be identified based on an available residence address, an indicia search or a self-certification. Should the tax residence of the individual be in a CRS Participating Jurisdiction then the Fund has to classify the account as Reportable Account for that Jurisdiction. Should the tax residence of the individual not be in a CRS Participating Jurisdiction then the Fund has to classify the account as Not-Reportable Account.

### 2. What are the different options?

#### **2.1. Option 1 – Tax residence(s) considered to be equal to current residence address**

Pros:

Simple identification procedure; can be easily automated.

Cons:

Procedure only applicable to lower value accounts, and if the current residence address was based on documentary evidence (identity card, driving license, voting card, certificate of residence...).

Please refer to the CRS Handbook, Section III, paragraph B. 1 page 32:

*"If the Reporting Financial Institution has in its records a current residence address for the individual Account Holder based on Documentary Evidence, the Reporting Financial Institution may treat the individual Account Holder as being a resident for tax purposes of the jurisdiction in which the address is located for purposes of determining whether such individual Account Holder is a Reportable Person."*

## **2.2. Option 2 – Tax residence(s) based on indicia search**

Pros:

Simple identification procedure;

Cons:

Searching for indicia can lead to multiple potential tax residence(s).

Please refer to the CRS Handbook, Section III, paragraph B. 4 page 33:

*“If any of the indicia [...] are discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the Account Holder as a resident for tax purposes of each Reportable Jurisdiction for which an indicium is identified, unless it elects to apply subparagraph B(6) and one of the exceptions in such subparagraph applies with respect to that account.”*

## **2.3. Option 3 – Tax residence(s) based on self-certification (+ indicia search)**

Pros:

Each investor is made responsible for giving its tax residence(s).

Cons:

Indicia still need to be analysed by the Financial Institution. If the tax residence(s) declared is not consistent with indicia found, the Financial Institution must obtain documentary evidence establishing that indicia discovered are irrelevant.

Please refer to the CRS Handbook, Section III, paragraph B. 6 page 33:

*Notwithstanding a finding of indicia [...], a Reporting Financial Institution is not required to treat an Account Holder as a resident of a Reportable Jurisdiction if [...] the Reporting Financial Institution obtains, or has previously reviewed and maintains a record of:*

- i) a self-certification from the Account Holder of the jurisdiction(s) of residence of such Account Holder that does not include such Reportable Jurisdiction; and*
- ii) Documentary Evidence establishing the Account Holder’s non-reportable status.*

3. Recommendations

**3.1. First step: determine whether the pre-existing Individual account is a “Lower Value Account” or a “High Value Account”**

**3.2. Second Step**

**For a Lower Value Account:** refer to Option 1

If current residence address was determined based on documentary evidence (identity card, driving license, voting card, certificate of residence...) then tax residence can be considered to be identical to current residence address.

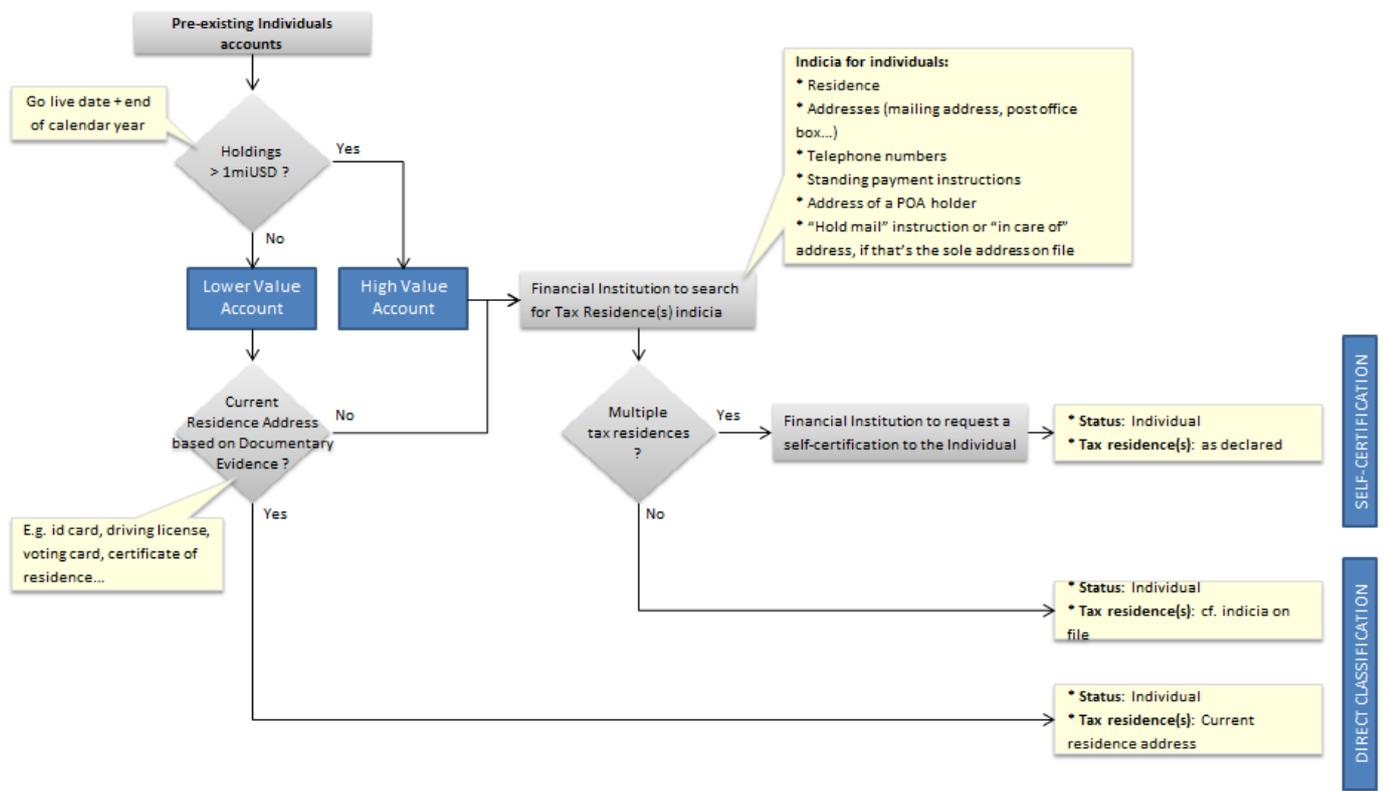
**For High Value Account:** refer to Option 2

Search for indicia. The Account Holder can be considered to be resident for tax purposes in each Reportable Jurisdiction for which an indicium is identified.

**3.3. Third step (optional): refer to Option 3**

If the Financial Institution has a sound commercial relationship with an individual investor, it can request to the investor a self-certification + documentary evidences, in order to prove its tax residence.

**Recommendation - Decision tree applicable for pre-existing individual accounts:**



- **Sponsoring versus Expanded definition of Related Entity**

The CRS does not provide for the concept of Sponsored Investment Entities, known under FATCA.

Related Entities are generally defined as one entity that controls another entity or two or more entities that are under common control. Control is defined to include direct or indirect ownership of more than 50 percent of the vote and value in an Entity. As provided in the Commentary, most funds will likely not qualify as a Related Entity of another fund, and thus will not be able to apply the rules described above for treating certain New Accounts as Pre-existing Accounts or apply the account aggregation rules to Financial Accounts maintained by Related Entities. The Luxembourg law (based on the DAC2 Directive) has modified the definition of Related Entity so that a fund will qualify as a Related Entity of another fund by providing that control includes, with respect to Investment Entities described in subparagraph (A)(6)(b), two entities under common management, and such management fulfils the due diligence obligations of such Investment Entities.

This allows to achieve one of the benefits of the Sponsoring Regime under FATCA.

## Appendix 1 Relevant documents

ALFI Members implementing the new standards should refer to the following documents:

Automatic Exchange of Financial Account Information Background Information Brief (OECD)	4 June 2015	<a href="http://www.oecd.org/tax/exchange-of-tax-information/automatic-Exchange-Financial-Account-Information.pdf">http://www.oecd.org/tax/exchange-of-tax-information/automatic-Exchange-Financial-Account-Information.pdf</a>
Standard for Automatic Exchange of Financial Account Information (OECD)	13 February 2014	<a href="http://www.oecd.org/ctp/exchange-of-tax-information/automatic-exchange-financial-account-information-common-reporting-standard.pdf">http://www.oecd.org/ctp/exchange-of-tax-information/automatic-exchange-financial-account-information-common-reporting-standard.pdf</a>
Standard for Automatic Exchange of Financial Information in Tax Matters (OECD)	15 July 2014 (published on 21 July 2014)	<a href="http://www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-information-in-tax-matters.htm">http://www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-information-in-tax-matters.htm</a>
CRS Implementation Handbook (OECD)	7 August 2015	<a href="http://www.oecd.org/ctp/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-information-in-tax-matters.pdf">http://www.oecd.org/ctp/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-information-in-tax-matters.pdf</a>
CRS FAQ Version 2 (OECD)	November 2015	<a href="http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/CRS-related-FAQs.pdf">http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/CRS-related-FAQs.pdf</a>
OECD announces new portal on AEOI	October 2015	<a href="http://www.oecd.org/tax/automatic-exchange/">http://www.oecd.org/tax/automatic-exchange/</a>
Council Directive 2014/107/EU of 9 December 2014 (EU)	9 December 2014	<a href="http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0107&amp;from=EN">http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0107&amp;from=EN</a>
Luxembourg draft law transposing Council Directive 2014/107/EU	First draft no 6858 on 5 August 2015 – Voted in Parliament on 9 December 2015	<a href="http://www.chd.lu/wps/PA_RoleEtenduEuro/FTSByteSe rvingServletImpl/?path=/export/exped/sexpdata/Mag/179/466/147685.pdf">http://www.chd.lu/wps/PA_RoleEtenduEuro/FTSByteSe rvingServletImpl/?path=/export/exped/sexpdata/Mag/179/466/147685.pdf</a>
List of accounts that are to be treated as Excluded Accounts for the purposes of subparagraph C.17(g) of Section VIII of Annex I of Council Directive 2011/16/EU (2015/C 362/07)	Official Journal of the European Union on 31 October 2015 C362/7	<a href="http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C .2015.362.01.0007.01.ENG">http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C .2015.362.01.0007.01.ENG</a>
List of entities that are to be treated as Non-Reporting Financial Institutions for the purposes of subparagraph B.1(c) of Section VIII of Annex I of Council Directive 2011/16/EU (2015/C 362/08)	Official Journal of the European Union on 31 October 2015 C362/13	<a href="http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C .2015.362.01.0013.01.ENG">http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C .2015.362.01.0013.01.ENG</a>

## Entity Self-Certification Form for FATCA and CRS

### Instructions for completion

We are obliged under local laws and regulations to collect and report to the Luxembourg tax authorities and the relevant foreign tax authorities certain information about financial accounts held by some of our Account Holders.

For joint or multiple Account Holders, please complete a separate Self-Certification Form for each Account Holder.

If you are completing the Self-Certification Form on behalf of the Account Holder's, then you should indicate the capacity in which you have signed in Section VI. For example you may be the custodian or nominee of an account on behalf of the account holder, or you may be completing the Self-Certification Form under a signatory authority or power of attorney

If you have any questions about this Self-Certification Form or defining your FATCA or CRS status, please speak to your tax adviser or local tax authority.

For further information on CRS please refer to the OECD automatic exchange of information portal:

<http://www.oecd.org/tax/automatic-exchange/>

(Mandatory fields are marked with an \*)

**Account Holders that are individuals should not complete this Self-Certification Form but should complete the Self-Certification Form entitled "Individual Self-Certification Form for FATCA and CRS".**

---

### Section 1: Account Holder Identification (please refer to the glossary)

**Name\*:** \_\_\_\_\_ (the "Entity")

**Country of Incorporation or Organisation:** \_\_\_\_\_

**Registered Address\*:**

Number: \_\_\_\_\_ Street: \_\_\_\_\_

City, Town, State, Province or County: \_\_\_\_\_

Postal/ZIP Code: \_\_\_\_\_ Country: \_\_\_\_\_

**Mailing address (if different from above):**

Number: \_\_\_\_\_ Street: \_\_\_\_\_

City, Town, State, Province or County: \_\_\_\_\_

Postal/ZIP Code: \_\_\_\_\_ Country: \_\_\_\_\_

### Section 2: FATCA Declaration Specified U.S. Person:

Please tick either (a) or (b) below and complete as appropriate.

a) The Entity **is** a *Specified U.S. Person* and the Entity's U.S. Federal Taxpayer Identifying Number (U.S. TIN) is as follows:

**U.S. TIN:** \_\_\_\_\_

b) The Entity is **not** a *Specified U.S. Person* (please also complete Sections 3, 4 and 5)

**Section 3: Entity's FATCA Classification\* (the information provided in this section is for FATCA purposes, please note your classification may differ from your CRS classification in Section 5):**

**3.1 Financial Institutions under FATCA:**

If the Entity is a *Financial Institution*, please tick one of the below categories and provide the Entity's GIIN at 3.1.2

I.	<i>Luxembourg Financial Institution or a Partner Jurisdiction Financial Institution</i>	
II.	<i>Registered Deemed Compliant Foreign Financial Institution</i>	
III.	<i>Participating Foreign Financial Institution</i>	

**3.1.2** Please provide the Entity's *Global Intermediary Identification Number (GIIN)* \_\_\_\_\_

**3.1.3** If the Entity is a *Financial Institution* but unable to provide a *GIIN*, please tick one of the below reasons:

I.	<i>Partner Jurisdiction Financial Institution</i> and has not yet obtained a <i>GIIN</i>	
II.	<i>The Entity has not yet obtained a GIIN but is sponsored by another entity which does have a GIIN</i> Please provide the sponsor's name and sponsor's <i>GIIN</i> : Sponsor's Name: _____ Sponsor's <i>GIIN</i> : _____	
III.	<i>Exempt Beneficial Owner</i>	
IV.	<i>Certified Deemed Compliant Foreign Financial Institution (including a deemed compliant Financial Institution under Annex II of the Agreement)</i>	
V.	<i>Non-Participating Foreign Financial Institution</i>	
VI.	<i>Excepted Foreign Financial Institution</i>	
VII.	<i>U.S. Person but not a Specified U.S. Person</i>	

**3.2 Non-Financial Institutions under FATCA:**

If the Entity is not a *Financial Institution*, please tick one of the below categories

a.	<i>Active Non-Financial Foreign Entity</i>	
b.	<i>Passive Non-Financial Foreign Entity</i> <i>(If this box is ticked, please include Controlling Person Self-Certification forms for each of your Controlling Persons that is a Specified U.S. Person)</i>	
c.	<i>Excepted Non-Financial Foreign Entity</i>	
d.	<i>The Entity is a U.S. Person but not a Specified U.S. Person</i>	

**Section 4: CRS Declaration of Tax Residency\* (please refer to the glossary)**

Please indicate the Entity’s place of Tax Residence for CRS purposes, (if resident in more than one country please detail all countries of Tax Residence and associated Tax Identification Numbers).

Country of Tax Residency	Tax ID Number(1)

**(1) Provision of a Tax ID number (TIN) is required unless you are tax resident in a Jurisdiction that does not issue a TIN.**

**If applicable, please specify the reason for non-availability of a Tax ID Number:**

\_\_\_\_\_

**Section 5: Entity’s CRS Classification\* (the information provided in this section is for CRS, please note your CRS classification may differ from your FATCA classification in Section 3) (please refer to the glossary):**

a.	<i>Custodial Institution, Depository Institution, Specified Insurance Company or Investment Entity other than an Investment Entity under A(6)(b) of Section VIII of the CRS resident in a Non-Participating Jurisdiction</i>	
b.	<i>An Investment Entity under A(6)(b) of Section VIII of the CRS resident in a Non-Participating Jurisdiction (If this box is ticked, please include Controlling Person Self-Certification Forms for each of your Controlling Persons)</i>	
c.	<i>Active Non-Financial Entity –</i> (i) a corporation, the stock of which is regularly traded on an established securities market. If you fall under this definition, please provide the name of the established securities market on which the corporation is regularly traded:  _____ (ii) a corporation which is a related entity of such a corporation If you fall under this definition, please provide the name of the regularly traded corporation that the entity identified in section I of this form is a Related Entity of:  _____	
d.	<i>Active Non-Financial Entity – a Government Entity or Central Bank</i>	
e.	<i>Active Non-Financial Entity – an International Organisation</i>	
f.	<i>Active Non-Financial Entity – other than (c)-(e) (for example a start-up NFE or a non-profit NFE)</i>	
g.	<i>Passive Non-Financial Entity (If this box is ticked, please include Controlling Person Self-Certification Forms for each of your Controlling Persons)</i>	

**Section 6: Declarations and Undertakings**

I/We declare (as an authorised signatory of the Entity) that the information provided in this Self-Certification Form is, to the best of my/our knowledge and belief, accurate and complete.

I/We undertake to advise the recipient within 30 days and provide an updated Self-Certification Form where any change in circumstance occurs, which causes any of the information contained in this Self-Certification Form to be incorrect.

**Authorised Signature(s)\*:**

\_\_\_\_\_

**Print Name(s)\*:**

\_\_\_\_\_

**Capacity in which declaration is made\*:** \_\_\_\_\_

\_\_\_\_\_

**Date: (dd/mm/yyyy):\*** \_\_\_\_\_

**GLOSSARY CRS**

**Note:** These are selected definitions provided to assist you with the completion of this Self-Certification Form. Further details can be found in the Directive 2014/107/EU of 9 December 2014 “as regards mandatory automatic exchange of information” and in the OECD Standard for Automatic Exchange of Financial Account Information (“OECD Common Reporting Standard, CRS”).

**“Account Holder”**

The “Account Holder” in [X] is the person listed or identified as the holder of the Debt or Equity Interest in [X]. This is regardless of whether such person is a flow-through Entity.

A person, other than a Financial Institution, holding a Debt or Equity Interest in [X] for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account, and such other person is treated as holding the account.

**“Active NFE”**

An entity will be classified as Active NFE if it meets any of the following criteria:

- a) less than 50% of the NFE’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;
- 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 regularly traded on an established securities market;
- c) the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
- d) 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, 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;
- e) the NFE is not yet operating a business and has no prior operating history, (a “start-up NFE”) but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;
- f) 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;
- g) 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**
- h) the NFE meets all of the following requirements (a “non-profit NFE”) :
  - 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 jurisdiction 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 NFE’s jurisdiction of residence or the NFE’s formation documents do not permit any income or assets of the NFE 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 charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and
- v. the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE'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 NFE's jurisdiction of residence or any political subdivision.

### **"Control"**

"Control" over an Entity is generally exercised by the natural person(s) who ultimately has a controlling ownership interest (typically on the basis of a certain percentage (e.g. 25%)) in 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/are identified as exercising control of the Entity through ownership interests, then under the CRS the Reportable Person is deemed to be the natural person who hold the position of senior managing official.

### **"Controlling Person(s)"**

"Controlling Persons" are the natural person(s) who exercise control over an entity. Where that entity is treated as a Passive Non-Financial Entity ("Passive NFE") then a Financial Institution is required to determine whether or not these Controlling Persons are Reportable Persons. This definition corresponds to the term "beneficial owner" described in Recommendation 10 of the Financial Action Task Force Recommendations (as adopted in February 2012).

In the case of a trust, the Controlling Person(s) are the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, or any other natural person(s) exercising ultimate effective control over the trust (including through a chain of control or ownership). Under the CRS the settlor(s), the trustee(s), the protector(s) (if any), and the beneficiary(ies) or class(es) of beneficiaries, are always treated as Controlling Persons of a trust, regardless of whether or not any of them exercises control over the activities of the trust.

Where the settlor(s) of a trust is an Entity then the CRS requires Financial Institutions to also identify the Controlling Persons of the settlor(s) and when required report them as Controlling Persons of the trust.

In the case of a legal arrangement other than a trust, "Controlling Person(s) means persons in equivalent or similar positions.

### **"Financial Institution"**

The term "Financial Institution" means a "Custodial Institution", a "Depository Institution", an "Investment Entity", or a "Specified Insurance Company". Please see the relevant domestic guidance and the CRS for further classification definitions that apply to Financial Institutions.

### **"Investment Entity"**

The term "Investment Entity" includes two types of Entities:

- (i) an Entity that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:
- 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;
  - Individual and collective portfolio management; or
  - Otherwise 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" ("Investment Entity managed by another Financial Institution" – as defined under §A(6)(b) of Section VIII of the CRS) is any Entity the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets 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.

**“Investment Entity managed by another Financial Institution”**

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 clause (i) above in the definition of ‘Investment Entity’.

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

**“NFE”**

An “NFE” is any Entity that is not a Financial Institution.

**“Non-Participating Jurisdiction”**

A “Non-Participating Jurisdiction” means a jurisdiction with which no agreement is in place pursuant to which it will provide the information set out in the CRS.

**“Participating Jurisdiction Financial Institution”**

The term “Participating Jurisdiction Financial Institution” means (i) any Financial Institution that is tax resident in a Participating Jurisdiction, but excludes any branch of that Financial Institution that is located outside of that jurisdiction, and (ii) any branch of a Financial Institution that is not tax resident in a Participating Jurisdiction, if that branch is located in such Participating Jurisdiction.

**“Passive NFE”**

Under the CRS a “Passive NFE” means any: (i) NFE that is not an Active NFE; and (ii) Investment Entity as defined under §A(6)(b) of Section VIII of the CRS resident in a Non-Participating Jurisdiction.

**“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 this purpose control includes direct or indirect ownership of more than 50% of the vote and value in an Entity.

**“Resident for tax purposes”**

Generally, an Entity will be resident for tax purposes in a jurisdiction if, under the laws of that jurisdiction (including tax conventions), it pays or should be paying tax therein by reason of his 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. An Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated. A trust is treated as resident where one or more of its trustees is resident.

**“TIN” (including “functional equivalent”)**

The term “TIN” means Taxpayer Identification Number or a functional equivalent in the absence of a TIN. A TIN is a unique combination of letters or numbers assigned by a jurisdiction to an individual or an Entity and used to identify the individual or Entity for the purposes of administering the tax laws of such jurisdiction. Some jurisdictions do not issue a TIN. However, these jurisdictions often utilise some other high integrity number with an equivalent level of identification (a “functional equivalent”). Examples of that type of number include, for Entities, a Business/company registration code/number.

## **Individual Self-Certification Form for FATCA and CRS**

### **Instructions for completion**

*We are obliged under local laws and regulations to collect and report to the Luxembourg tax authorities and the relevant foreign tax authorities certain information about financial accounts held by some of our Account Holders.*

*For joint or multiple Account Holders, please complete a separate Self-Certification Form for each Account Holder.*

*If you are completing the Self-Certification Form on behalf of the Account Holder's, then you should indicate the capacity in which you have signed in Section 4. For example you may be the custodian or nominee of an account on behalf of the account holder, or you may be completing the Self-Certification Form under a signatory authority or power of attorney.*

*If you have any questions about this Self-Certification Form or defining your FATCA or CRS status, please speak to your tax adviser or local tax authority.*

*For further information on CRS please refer to the OECD automatic exchange of information portal:  
<http://www.oecd.org/tax/automatic-exchange/>*

*(Mandatory fields are marked with an \*)*

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### **Section 1: Account Holder Identification (please refer to glossary)**

**Name\*:** \_\_\_\_\_

**Residential Address\*:**

Number: \_\_\_\_\_ Street: \_\_\_\_\_

City, Town, State, Province or County: \_\_\_\_\_

Postal/ZIP Code: \_\_\_\_\_ Country: \_\_\_\_\_

**Mailing address (if different from above):**

Number: \_\_\_\_\_ Street: \_\_\_\_\_

City, Town, State, Province or County: \_\_\_\_\_

Postal/ZIP Code: \_\_\_\_\_ Country: \_\_\_\_\_

**Place of Birth\***

**Town or City of Birth\*:** \_\_\_\_\_ **Country of Birth\*:** \_\_\_\_\_

**Date of Birth\*:** \_\_\_\_\_

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**Section 2: FATCA Declaration of U.S. Citizenship or U.S. Residence for Tax purposes\*:**

Please tick either (a) or (b) and complete as appropriate.

- (a)  I confirm that **I am** a U.S. citizen and/or resident in the U.S. for tax purposes and my U.S. federal Taxpayer Identifying Number

(U.S. TIN) is as follows: \_\_\_\_\_

**OR**

- (b)  I confirm that **I am not** a U.S. citizen or resident in the U.S. for tax purposes.

**Section 3: CRS Declaration of Tax Residence (please note you may choose more than one country)\***

Please indicate your country of Tax Residence (if resident in more than one country please detail all countries of Tax Residence and associated Tax Identification Numbers).

Country of Tax Residence	Tax ID Number (1)

**(1) Provision of a Tax ID number (TIN) is required unless you are tax resident in a Jurisdiction that does not issue a (TIN).**

**If applicable, please specify the reason for non-availability of a Tax ID Number:**

\_\_\_\_\_

**Section 4: Declaration and Undertakings:**

I declare that the information provided in this Self-Certification Form is, to the best of my knowledge and belief, accurate and complete.

I undertake to advise the recipient within 30 days and provide an updated Self-Certification Form, where any change in circumstances occurs, which causes any of the information contained in this Self-Certification Form to be incorrect.

I acknowledge that the information data disclosed in this Self-Certification Form may be disclosed to the Luxembourg tax authorities or any other authorised delegates under Luxembourg law for tax purposes.

Authorised Signature\*: \_\_\_\_\_

Print Name\*: \_\_\_\_\_

Date: (dd/mm/yyyy)\*: \_\_\_\_\_

Capacity\*: \_\_\_\_\_

**GLOSSARY CRS**

**Note:** These are selected definitions provided to assist you with the completion of this Self-Certification Form. Further details can be found in the Directive 2014/107/EU of 9 December 2014 “as regards mandatory automatic exchange of information” and in the OECD Standard for Automatic Exchange of Financial Account Information (“OECD Common Reporting Standard, CRS”).

**“Account Holder”**

The “Account Holder” in [X] is the person listed or identified as the holder of the Debt or Equity Interest in [X]. This is regardless of whether such person is a flow-through Entity.

A person, other than a Financial Institution, holding a Debt or Equity Interest in [X] for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account, and such other person is treated as holding the account.

**“Financial Institution”**

The term “Financial Institution” means a “Custodial Institution”, a “Depository Institution”, an “Investment Entity”, or a “Specified Insurance Company”. Please see the relevant domestic guidance and the CRS for further classification definitions that apply to Financial Institutions.

**“Resident for tax purposes”**

Generally, a Person will be resident for tax purposes in a jurisdiction if, under the laws of that jurisdiction (including tax conventions), it pays or should be paying tax therein by reason of his domicile, residence, place of management or incorporation, or any other criterion of a similar nature, and not only from sources in that jurisdiction.

**“TIN” (including “functional equivalent”)**

The term “TIN” means Taxpayer Identification Number or a functional equivalent in the absence of a TIN. A TIN is a unique combination of letters or numbers assigned by a jurisdiction to an individual or an Entity and used to identify the individual or Entity for the purposes of administering the tax laws of such jurisdiction. Some jurisdictions do not issue a TIN. However, these jurisdictions often utilise some other high integrity number with an equivalent level of identification (a “functional equivalent”). Examples of that type of number include, for individuals, the social security number.

**Controlling Person Self-Certification Form for FATCA and CRS**

**Instructions for completion**

*We are obliged under local laws and regulations to collect and report to the Luxembourg tax authorities and the relevant foreign tax authorities certain information about financial accounts held by some of the Controlling Persons of Account Holders that are Passive Non-Financial Entities (NFEs).*

*For joint or multiple Controlling Persons, please complete a separate Self-Certification Form for each Controlling Person.*

*If you are completing the Self-Certification Form on the Controlling Person's behalf, then you should indicate the capacity in which you have signed in Section V. For example you may be the custodian or nominee of an account on behalf of the Controlling Person, or you may be completing the form under a signatory authority or power of attorney.*

*If you have any questions about this Self-Certification Form or defining your FATCA or CRS status, please speak to your tax adviser or local tax authority.*

*For further information on CRS please refer to the OECD automatic exchange of information portal:  
<http://www.oecd.org/tax/automatic-exchange/>*

*(Mandatory fields are marked with an \*)*

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**Section 1: Controlling Person Identification (please refer to the glossary)**

**Name\*:** \_\_\_\_\_

**Residential Address\*:**

**Number:** \_\_\_\_\_ **Street:** \_\_\_\_\_

**City, Town, State, Province or County:**  
\_\_\_\_\_

**Postal/ZIP Code:** \_\_\_\_\_ **Country:** \_\_\_\_\_

**Mailing address (if different from above):**

**Number:** \_\_\_\_\_ **Street:** \_\_\_\_\_

**City, Town, State, Province or County:**  
\_\_\_\_\_

**Postal/ZIP Code:** \_\_\_\_\_ **Country:** \_\_\_\_\_

**Place of Birth\***

**Town or City of Birth\*:** \_\_\_\_\_ **Country of Birth\*:** \_\_\_\_\_

**Date of Birth\*:** \_\_\_\_\_

**Legal name of the relevant Passive NFE(s) of which you are a Controlling Person\***

**Legal name of Entity 1** \_\_\_\_\_

**Legal name of Entity 2** \_\_\_\_\_

**Legal name of Entity 3** \_\_\_\_\_

**Section 2: FATCA Declaration of U.S. Citizenship or U.S. Residence for Tax purposes\*:**

Please tick either (a) or (b) and complete as appropriate.

(a)  I confirm that I **am** a U.S. citizen and/or resident in the U.S. for tax purposes and my U.S. federal Taxpayer Identifying Number

(U.S. TIN) is as follows: \_\_\_\_\_

**OR**

(b)  I confirm that I **am not** a U.S. citizen or resident in the U.S. for tax purposes.

**Section 3: CRS Declaration of Tax Residence (please note you may choose more than one country)\***

Please indicate your country of Tax Residence (if resident in more than one country, please detail all countries of Tax Residence and associated Tax Identification Numbers).

Country of Tax Residence	Tax ID Number (1)

**(2) Provision of a Tax ID number (TIN) is required unless you are tax resident in a Jurisdiction that does not issue a (TIN).**

**If applicable, please specify the reason for non-availability of a Tax ID Number:**

\_\_\_\_\_

**Section 4 – Type of Controlling Person (to be completed by any individual who is a Controlling Person of an Entity)**

For Joint or multiple Controlling Person's please use a separate Self-Certification Form for each Controlling Person (please refer to the glossary).

<b><i>Please provide the Controlling Person's Status by ticking the appropriate box.</i></b>	<b>Please tick</b>	<b>Entity Name</b>
<b>a.</b> Controlling Person of a legal person – control by ownership		
<b>b.</b> Controlling Person of a legal person – control by other means		
<b>c.</b> Controlling Person of a legal person – senior managing official		
<b>d.</b> Controlling Person of a trust - settlor		
<b>e.</b> Controlling Person of a trust – trustee		
<b>f.</b> Controlling Person of a trust – protector		
<b>g.</b> Controlling Person of a trust – beneficiary		
<b>h.</b> Controlling Person of a trust – other		
<b>i.</b> Controlling Person of a legal arrangement (non-trust) – settlor-equivalent		
<b>j.</b> Controlling Person of a legal arrangement (non-trust) – trustee-equivalent		
<b>k.</b> Controlling Person of a legal arrangement (non-trust) – protector-equivalent		
<b>l.</b> Controlling Person of a legal arrangement (non-trust) – beneficiary-equivalent		
<b>m.</b> Controlling Person of a legal arrangement (non-trust) – other-equivalent		

## Section 5: Declaration and Undertakings:

I declare that the information provided in this Self-Certification Form is, to the best of my knowledge and belief, accurate and complete.

I undertake to advise the recipient within 30 days and provide an updated Self-Certification Form, where any change in circumstances occurs, which causes any of the information contained in this Self-Certification Form to be incorrect.

I acknowledge that the information, data disclosed in this Self-Certification Form may be disclosed to the Luxembourg tax authorities or any other authorised delegates under Luxembourg law for tax purposes.

Authorised Signature\*: \_\_\_\_\_

Print Name\*: \_\_\_\_\_

Date: (dd/mm/yyyy)\*: \_\_\_\_\_

Capacity\*: \_\_\_\_\_

## GLOSSARY CRS

**Note:** These are selected definitions provided to assist you with the completion of this Self-Certification Form. Further details can be found in the Directive 2014/107/EU of 9 December 2014 “as regards mandatory automatic exchange of information” and in the OECD Standard for Automatic Exchange of Financial Account Information (“OECD Common Reporting Standard, CRS”).

### “Account Holder”

The “Account Holder” in  is the person listed or identified as the holder of the Debt or Equity Interest in . This is regardless of whether such person is a flow-through Entity.

A person, other than a Financial Institution, holding a Debt or Equity Interest in  for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account, and such other person is treated as holding the account.

### “Active NFE”

An entity will be classified as Active NFE if it meets any of the following criteria:

- i) less than 50% of the NFE’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;
- j) 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 regularly traded on an established securities market;
- k) the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
- l) 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, 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;
- m) the NFE is not yet operating a business and has no prior operating history, (a “ start-up NFE”) but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;
  - n) 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;
  - o) 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**
  - p) the NFE meets all of the following requirements (a “non-profit NFE”) :
    - vi. 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;
    - vii. it is exempt from income tax in its jurisdiction of residence;
    - viii. it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
    - ix. the applicable laws of the NFE’s jurisdiction of residence or the NFE’s formation documents do not permit any income or assets of the NFE 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 charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and
    - x. the applicable laws of the NFE’s jurisdiction of residence or the NFE’s formation documents require that, upon the NFE’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 NFE’s jurisdiction of residence or any political subdivision.

### **“Control”**

“Control” over an Entity is generally exercised by the natural person(s) who ultimately has a controlling ownership interest (typically on the basis of a certain percentage (e.g. 25%)) in 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/are identified as exercising control of the Entity through ownership interests, then under the CRS the Reportable Person is deemed to be the natural person who hold the position of senior managing official.

### **“Controlling Person(s)”**

“Controlling Persons” are the natural person(s) who exercise control over an entity. Where that entity is treated as a Passive Non-Financial Entity (“Passive NFE”) then a Financial Institution is required to determine whether or not these Controlling Persons are Reportable Persons. This definition corresponds to the term “beneficial owner” described in Recommendation 10 of the Financial Action Task Force Recommendations (as adopted in February 2012).

In the case of a trust, the Controlling Person(s) are the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, or any other natural person(s) exercising ultimate effective control over the trust (including through a chain of control or ownership). Under the CRS the settlor(s), the trustee(s), the protector(s) (if any), and the beneficiary(ies) or class(es) of beneficiaries, are always treated as Controlling Persons of a trust, regardless of whether or not any of them exercises control over the activities of the trust.

Where the settlor(s) of a trust is an Entity then the CRS requires Financial Institutions to also identify the Controlling Persons of the settlor(s) and when required report them as Controlling Persons of the trust.

In the case of a legal arrangement other than a trust, “Controlling Person(s) means persons in equivalent or similar positions.

### **“Financial Institution”**

The term “Financial Institution” means a “Custodial Institution”, a “Depository Institution”, an “Investment Entity”, or a “Specified Insurance Company”. Please see the relevant domestic guidance and the CRS for further classification definitions that apply to Financial Institutions.

### **“Investment Entity”**

The term “Investment Entity” includes two types of Entities:

- (ii) an Entity that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:
- 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;
  - Individual and collective portfolio management; or
  - Otherwise 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” (“Investment Entity managed by another Financial Institution” – as defined under §A(6)(b) of Section VIII of the CRS) is any Entity the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets 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.

### **“Investment Entity managed by another Financial Institution”**

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 clause (i) above in the definition of ‘Investment Entity’.

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

### **“NFE”**

An “NFE” is any Entity that is not a Financial Institution.

### **“Non-Participating Jurisdiction”**

A “Non-Participating Jurisdiction” means a jurisdiction with which no agreement is in place pursuant to which it will provide the information set out in the CRS.

### **“Participating Jurisdiction Financial Institution”**

The term “Participating Jurisdiction Financial Institution” means (i) any Financial Institution that is tax resident in a Participating Jurisdiction, but excludes any branch of that Financial Institution that is located outside of that jurisdiction, and (ii) any branch of a Financial Institution that is not tax resident in a Participating Jurisdiction, if that branch is located in such Participating Jurisdiction.

### **“Passive NFE”**

Under the CRS a “Passive NFE” means any: (i) NFE that is not an Active NFE; and (ii) Investment Entity as defined under §A(6)(b) of Section VIII of the CRS resident in a Non-Participating Jurisdiction.

### **“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 this purpose control includes direct or indirect ownership of more than 50% of the vote and value in an Entity.

**“Resident for tax purposes”**

Generally, an Entity will be resident for tax purposes in a jurisdiction if, under the laws of that jurisdiction (including tax conventions), it pays or should be paying tax therein by reason of his 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. An Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated. A trust is treated as resident where one or more of its trustees is resident.

**“TIN” (including “functional equivalent”)**

The term “TIN” means Taxpayer Identification Number or a functional equivalent in the absence of a TIN. A TIN is a unique combination of letters or numbers assigned by a jurisdiction to an individual or an Entity and used to identify the individual or Entity for the purposes of administering the tax laws of such jurisdiction. Some jurisdictions do not issue a TIN. However, these jurisdictions often utilise some other high integrity number with an equivalent level of identification (a “functional equivalent”). Examples of that type of number include, for individuals, the social security number.