

Investec Specialist Bank

Tax compliance – International Exchange of Information Agreement  
Entity Self-Certification Form  
Explanatory Notes



*Out of the Ordinary®*

 **Investec**  
Specialist Bank

## Tax Compliance – International Exchange of Information Agreement Entity Self – Certification Form

### Explanatory notes

These Explanatory Notes are intended to assist you in completing the Investec Bank plc Self Certification form and should not be construed as legal or tax advice. The definitions used in the explanation of terms are specific to UK entities. For entities that are not based in the UK for tax purposes, please refer to your local jurisdiction's legislation.

The information contained within this document is correct as at the time of printing (December 2015) and subject to change in the event of subsequent amendments or updates to the tax regulations or guidance notes.

### A. Introduction

For the purposes of the Investec Bank plc Self Certification form, the **Tax Regulations** refer to UK regulations to enable automatic exchange of information and include:

- (i) UK-US Agreement to Improve International Tax Compliance and to Implement FATCA ("Foreign Account Tax Compliance Act")
- (ii) Council Directive 2011/16/EU(c), including the amendment: Council Directive 2014/107/EU ("DAC")
- (iii) the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information ("CRS")

Further guidance and information for UK resident organisations can be found on HMRC's website under [www.hmrc.gov.uk/fatca](http://www.hmrc.gov.uk/fatca) and include the following documents:

- (i) HMRC's guidance notes on the Implementation of the International Tax Compliance (United States of America) Regulations 2014 ("FATCA Guidance")
- (ii) HMRC's guidance notes on the Automatic Exchange of Financial Account Information
- (iii) The Intergovernmental Agreement between the UK and the United States

If your organisation is not resident in the UK, please refer to your local jurisdiction's legislation.

Alternatively, you may want to seek the advice of a professional tax advisor when completing the Self Certification form.

## Section 1: Information about your organisation

Please provide all the information requested, even if you provided it as part of your recent application.

## Section 2: Your Organisation's Tax Residency

Please list all the countries where your organisation is resident for tax purposes. This typically means the country/countries where your organisation has an obligation to pay taxes or file tax returns.

If you have been given a Tax Identification Number (TIN) by the local tax authority, please provide this. Otherwise please provide some other official registration number which will assist us in identifying you.

## Section 3: Your Organisation's Tax Status

Under the FATCA rules, your organisation may be a "U.S. Person", but not a "Specified U. S. Person". To determine which is the case, you should seek advice from a professional tax advisor. Please find the explanations of these terms below as a guidance.

### Explanation of the terms used in Section 3

#### **U.S. Person**

- (1) A U.S. citizen or resident individual,
- (2) a partnership or corporation organized in the United States or under the laws of the United States or any State thereof,
- (3) a trust if:
  - a) a court within the United States would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust, and
  - b) one or more U.S. persons have the authority to control all substantial decisions of the trust, or
- (4) an estate of a decedent that is a citizen or resident of the United States.

#### **Specified U.S. Person**

Any U.S. person other than:

- (1) a corporation the stock of which is regularly traded on one or more established securities markets;
- (2) any corporation that is a member of the same expanded affiliated group, as defined in section 1471(e)(2) of the U.S. Internal Revenue Code, as a corporation described in clause (1);
- (3) the United States or any wholly owned agency or instrumentality thereof;
- (4) any State of the United States, any U.S. Territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing;
- (5) any organisation exempt from taxation under section 501(a) or an individual retirement plan as defined in section 7701(a)(37) of the U.S. Internal Revenue Code;
- (6) any bank as defined in section 581 of the U.S. Internal Revenue Code;
- (7) any real estate investment trust as defined in section 856 of the U.S. Internal Revenue Code;
- (8) any regulated investment company as defined in section 851 of the U.S. Internal Revenue Code or any entity registered with the Securities Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-64);
- (9) any common trust fund as defined in section 584(a) of the U.S. Internal Revenue Code;
- (10) any trust that is exempt from tax under section 664(c) of the U.S. Internal Revenue Code or that is described in section 4947(a)(1) of the U.S. Internal Revenue Code;
- (11) a dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State; or
- (12) a broker as defined in section 6045(c) of the U.S. Internal Revenue Code.

#### **Specified Jersey, Guernsey, Isle of Man or Gibraltar Person, respectively**

A person or Entity who is resident in Jersey (Guernsey, Isle of Man or Gibraltar as appropriate) for tax purposes, and includes a person or Entity who is resident in both Jersey (Guernsey, Isle of Man or Gibraltar as appropriate) and the United Kingdom under the respective domestic law of each Party, other than:

- (1) a corporation the stock of which is regularly traded on one or more established securities markets;
- (2) a corporation that is a member of the same affiliated group, as defined in Section 1471(e)(2) of the U.S. Internal Revenue Code, as a corporation described in (i) above;
- (3) a Depository Institution;
- (4) a broker or dealer in securities, commodities, or derivative financial instruments (including notional principle contracts, futures, forwards, and options) that is registered as such under the laws of Jersey; or
- (5) an Exempt Beneficial Owner as defined under Section 4.

## Section 4: Your Organisation's Tax Classification

Your organisation's details may be different under different regulations. The form allows you to provide information according to the FATCA agreements in Sections 4a and information according to the CRS/DAC in Section 4b.

If your organisation is a registered Financial Institution, it will have a Global Intermediary Identification Number (GIIN).

If your organisation is a Sponsored Investment Entity, it usually will have its own GIIN. If it has not been registered by your sponsor, please provide your sponsor's name and GIIN instead.

If your organisation is a Sponsored Closely Held Investment Vehicle, please provide your sponsor's name and GIIN.

If your organisation is a trust and is Trustee Documented, please provide the name and GIIN of the Financial Institution acting as a trustee.

If your Financial Institution does not have a GIIN, please tick one of the reasons at the end of this section. If you tick 'Other', please write the reason in the space provided.

### Financial Institution

The term "Financial Institution" means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company. In certain sources, where Foreign Financial Institution is used, it means "foreign" from the perspective of the US and therefore includes UK Financial Institutions.

### Non Financial Foreign Entity (NFFE)

An "NFFE" means any Non-U.S. Entity that is not a Financial Institution as defined above, and also includes any Non-U.S. entity that is resident in the United Kingdom or other Partner Jurisdiction and that is not a Financial Institution.

Explanation of the terms used in Section 4a – Financial Institution classification under FATCA

### Reporting Financial Institution

A Financial Institution that does not qualify as an Exempt Beneficial Owner, a Deemed Compliant Financial Institution or an otherwise excepted Financial Institution, is required to report its U.S. Reportable Accounts to the IRS.

### Registered Deemed Compliant Financial Institution:

- (1) Financial Institutions with a Local Client Base  
\*see HMRC's FATCA Guidance or the US Internal Revenue Code (IRC) Title 26: 1.1471-5 (f) (1) (i) (A)
- (2) Non-reporting member of a Participating FFI group  
\*see HMRC's FATCA Guidance or the US IRC Title 26: 1.1471-5 (f) (1) (i) (B)
- (3) Qualified Collective Investment Vehicle  
\*see HMRC's FATCA Guidance or the US IRC Title 26: 1.1471-5 (f) (1) (i) (C)
- (4) Restricted Funds  
\*see HMRC's FATCA Guidance or the US IRC Title 26: 1.1471-5 (f) (1) (i) (D)
- (5) Qualified credit card issuers  
\*see HMRC's FATCA Guidance or the US IRC Title 26: 1.1471-5 (f) (1) (i) (E)
- (6) Sponsored Investment Entity  
\*see HMRC's FATCA Guidance or the US IRC Title 26: 1.1471-5 (f) (1) (i) (F)

### Sponsored, Closely held Investment Vehicle

An FFI is a Sponsored, Closely held Investment Vehicle if it meets the requirements described in paragraphs (1), (2) and (3) and the sponsoring entity meets the requirements of paragraph (4) of the below section:

- (1) The FFI is an FFI solely because it is an investment entity and is not a Qualified Intermediary, Withholding Foreign Partnership, or Withholding Foreign Trust.
- (2) A participating FFI, reporting Model 1 FFI, or U.S. financial institution agrees to fulfil all due diligence, withholding, and reporting responsibilities that the FFI would have assumed if it were a participating FFI.
- (3) Twenty or fewer individuals own all of the debt and equity interests in the FFI (disregarding debt interests owned by U.S. financial institutions, participating FFIs, registered deemed-compliant FFIs, and certified deemed-compliant FFIs and equity interests owned by an entity if that entity owns 100 percent of the equity interests in the FFI and is itself a sponsored FFI under this paragraph).
- (4) The sponsoring entity complies with the following requirements:
  - (i) The sponsoring entity has registered with the IRS as a sponsoring entity;
  - (ii) The sponsoring entity agrees to perform, on behalf of the FFI, all due diligence, withholding, reporting, and other requirements that the FFI would have been required to perform if it were a participating FFI and retains documentation collected with respect to the FFI for a period of six years;
  - (iii) The sponsoring entity identifies the FFI in all reporting completed on the FFI's behalf to the extent required under §§ 1.1471-4(d)(2)(ii)(C) and 1.1474-1 of the US Internal Revenue Code;
  - (iv) Performs the verification procedures required under § 1.1471-4(f) on behalf of the FFI, including the certification required under § 1.1471-4(f)(3) of the US Internal Revenue Code;
  - (v) Performs the verification procedures required under paragraphs 1.1471-5 (j) and 1.1471-5 (k) of the US Internal Revenue Code; and
  - (vi) The sponsoring entity has not had its status as a sponsor revoked.

### **The Trust is Trustee documented (UK Trusts Only)**

For UK resident Trusts that are Investment Entities where the Trustee of the Trust is a Reporting Model 1 Foreign Financial Institution, Participating Foreign Financial Institution or Reporting US Financial Institution, and the Trustee reports all information required with respect to all U.S. Reportable Accounts of the Trust, the Trust itself will be treated as a Non-Reporting UK Financial Institution and will not be required to register with the IRS.

### **Exempt Beneficial Owner**

For definitions please see section 1.1471-6 of the US Internal Revenue Code.

These entities include:

- (1) Any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing
- (2) Any international organisation or any wholly owned agency or instrumentality thereof.

This term includes any office of:

- (i) The International Monetary Fund
- (ii) The World Bank
- (iii) The International Bank for Reconstruction and Development
- (iv) The International Finance Corporation
- (v) The International Finance Corporation Order, 1955 (SI 1955 No.1954)
- (vi) The International Development Association
- (vii) The Asian Development Bank
- (viii) The African Development Bank
- (ix) The European Community
- (x) The European Coal and Steel Community
- (xi) The European Atomic Energy Community
- (xii) The European Investment Bank
- (xiii) The European Bank for Reconstruction and Development
- (xiv) The OECD Support Fund
- (xv) The Inter-American Development Bank

- (3) Foreign central bank of issue

This term also includes the Bank for International Settlements

- (4) Governments of U.S. territories
- (5) Certain retirement funds

This term includes:

- (i) Treaty-qualified retirement fund
  - (ii) Broad participation retirement fund
  - (iii) Narrow participation retirement funds
  - (iv) Fund formed pursuant to a plan similar to a section 401(a) plan
- (6) Entities wholly owned by exempt beneficial owners

### **Certified Deemed Compliant Financial Institution (excluding Sponsored, closely held Investment Vehicles)**

This category includes:

- (1) Non-Registering local bank  
\*see HMRC's FATCA Guidance or the US Internal Revenue Code (IRC) Title 26: 1.1471-5 (f) (2) (i)
- (2) Financial Institutions with only Low Value Accounts  
\*see HMRC's FATCA Guidance or the US IRC Title 26: 1.1471-5 (f) (2) (ii)
- (3) Limited Life debt Investment Entities  
\*see HMRC's FATCA Guidance or the US IRC Title 26: 1.1471-5 (f) (2) (iv)
- (4) Investment Advisers and Investment Managers  
\*see HMRC's FATCA Guidance or the US IRC Title 26: 1.1471-5 (f) (2) (v)
- (5) Owner Documented Foreign Financial Institutions  
\*see HMRC's FATCA Guidance or the US IRC Title 26: 1.1471-5 (f) (3)
- (6) Excepted inter-affiliate FFI  
\*see HMRC's FATCA Guidance or the US IRC Title 26: 1.1471-5 (e) (5) (iv)

### **Non-Participating Financial Institution (NPFI)**

A Financial Institution that is **not** FATCA compliant. This non-compliance arises either where:

- (1) the Financial Institution is located in a jurisdiction that does not have an Intergovernmental Agreement with the US and the Financial Institution has not entered into a FATCA Agreement with the IRS, or,
- (2) the Financial Institution is classified by the IRS as being a NPFI following the conclusion of the procedures for significant non-compliance being undertaken. In this case a UK Financial Institution will only be classed as an NPFI where there is significant non-compliance with the UK legislation and, after a period of enquiry, that non-compliance has not been addressed to HMRC's satisfaction. In such circumstances the UK Financial Institution's details may be published electronically by the IRS and the Financial Institution will cease to be covered by the Agreement.

### **Investment Entity**

The term "Investment Entity" means any Entity:

- (1) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:
  - (i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
  - (ii) individual and collective portfolio management; or
  - (iii) otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; or
- (2) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph (1).

An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph (1), or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for purposes of subparagraph (2), if the Entity's gross income attributable to the relevant activities equals or exceeds 50 per cent of the Entity's gross income during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or (ii) the period during which the Entity has been in existence. The term "Investment Entity" does not include an Entity that is an Active NFE because it meets any of the criteria in subparagraphs under Section 5 below.

### **Non-Participating Jurisdiction**

A jurisdiction that is not a party to, or a territory covered by the CRS at the time of the completion of the Self-certification form.

### **Depository Institution**

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

### **Custodial Institution**

The term "Custodial Institution" means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity's gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20 per cent of the Entity's gross income during the shorter of: (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the Entity has been in existence.

### **Specified Insurance Company**

The term "Specified Insurance Company" means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

Your organisation's details may be different under different regulations. The form allows you to capture information according to the FATCA agreements in Sections 4c and information according to the CRS/DAC in Section 4d

There are four types of NFFE under the FATCA regulation. These are explained under Section 4c below.

There are two main types of NFE under the CRS/DAC regulation. These are explained under Section 4d below.

If you determine that your organisation is a Passive NFFE under Section 4c or a Passive NFE under Section 4d, you must also complete Section 5.

### **Active NFFE**

An "Active NFFE" means any NFFE that meets any of the following criteria:

- (1) Less than 50 percent of the NFFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 percent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
- (2) The stock of the NFFE is regularly traded on an established securities market or the NFFE is a Related Entity of an Entity the stock of which is traded on an established securities market;
- (3) The NFFE is organized in a U.S. Territory and all of the owners of the payee are bona fide residents of that U.S. Territory;
- (4) The NFFE is a non-U.S. government, a government of a U.S. Territory, an international organisation, a non-U.S. central bank of issue, or an Entity wholly owned by one or more of the foregoing;
- (5) Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, and providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an NFFE shall not qualify for this status if the NFFE 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;
- (6) The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution; provided, that the NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFFE;
- (7) The NFFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;

- (8) The NFFE primarily engages in financing and hedging transactions with or for Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; or
- (9) The NFFE meets all of the following requirements:
  - (i) It is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes;
  - (ii) It is exempt from income tax in its country of residence;
  - (iii) It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
  - (iv) The applicable laws of the Entity's country of residence or the Entity's formation documents do not permit any income or assets of the Entity to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the Entity's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the Entity has purchased; and
  - (v) The applicable laws of the Entity's country of residence or the Entity's formation documents require that, upon the Entity's liquidation or dissolution, all of its assets be distributed to a governmental Entity or other non-profit organisation, or escheat to the government of the Entity's country of residence or any political subdivision thereof.

#### **Direct Reporting NFFE**

An NFFE that is required to elect to, and report directly to the IRS certain information about its direct or indirect substantial U.S. owners. The NFFE will also be required to register with the IRS to obtain its Global Intermediary Identification Number (GIIN).

#### **Sponsored Direct Reporting NFFE**

A NFFE is a Sponsored Direct Reporting NFFE if the NFFE is a Direct Reporting NFFE and if another entity, other than a Non-participating Financial Institution, has agreed with the NFFE to act as its sponsoring entity.

#### **Passive NFFE**

All other NFFEs not falling under any of the NFFE categories listed above

Explanation of the terms used in Section 4d – Non-Financial Entity (NFE) classification under the CRS/DAC

#### **NFE**

The term "NFE" means any Entity that is not a Financial Institution.

#### **Active NFE**

The term "Active NFE" means any NFE that meets any of the following criteria:

- (1) Less than 50 per cent of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 per cent of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
- (2) 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;
- (3) The NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
- (4) 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 NFE does not qualify for this status if the NFE functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- (5) The NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;
- (6) The NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- (7) 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
- (8) The NFE meets all of the following requirements:
  - (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
  - (ii) 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;
  - (iii) It is exempt from income tax in its jurisdiction of residence;
  - (iv) It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
  - (v) 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
  - (vi) 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 thereof.

## Government Entity

The term "Government Entity" means the government of a jurisdiction, any political subdivision of a jurisdiction (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a jurisdiction or of any one or more of the foregoing (each, a "Government Entity"). This category is comprised of the integral parts, controlled entities, and political subdivisions of a jurisdiction.

- (1) An "integral part" of a jurisdiction means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a jurisdiction. The net earnings of the governing authority must be credited to its own account or to other accounts of the jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.
- (2) A controlled entity means an Entity that is separate in form from the jurisdiction or that otherwise constitutes a separate juridical entity, provided that:
  - (i) The Entity is wholly owned and controlled by one or more Government Entities directly or through one or more controlled entities;
  - (ii) The Entity's net earnings are credited to its own account or to the accounts of one or more Government Entities, with no portion of its income inuring to the benefit of any private person; and
  - (iii) The Entity's assets vest in one or more Government Entities upon dissolution.
- (3) Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a government program, and the program activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a government entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.

## International Organisation

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

## Passive NFE

An NFE that is not an Active NFE as defined above.

## 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 per cent of the vote and value in an Entity.

Explanation of the terms used in Section 4e - Non-Financial Foreign Entity (NFFE) classification under the UK-Crown Dependencies IGAs and the UK-Gibraltar IGA ("UK - CD&G IGAs")

## Active NFFE

An "Active NFFE" means any NFFE that meets any of the following criteria:

- (1) Less than 50 percent of the NFFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 percent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
- (2) The stock of the NFFE is regularly traded on an established securities market or the NFFE is a Related Entity of an Entity the stock of which is traded on an established securities market;
- (3) The NFFE is a government, a political subdivision of such government or a public body performing a function of such government or a political subdivision thereof, or an Entity wholly owned by one or more of the foregoing;
- (4) Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an NFFE shall not qualify for this status if the NFFE 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;
- (5) The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution; provided, that the NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFFE;
- (6) The NFFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution; or
- (7) The NFFE primarily engages in financing and hedging transactions with or for Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution.

## Passive NFFE

An NFFE that is not an Active NFFE as defined above.



## Section 5: Controlling Persons' details

### Explanation of terms used in Section 5

#### **Controlling Persons**

The natural persons who exercise control over an entity.

In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions

Please complete all the information we ask for in this Section concerning those individuals in your organisation who are owners and controllers. To assist you, we set out below who these people are likely to be, based on the different types of organisations we usually deal with.

If your organisation is a **limited company** (including a charitable company), we need information about:

- (1) anyone who owns 25% or more of the company, or who has 25% or more of the voting rights in the company
- (2) where the company is owned by another organisation, any individuals who are the ultimate beneficial owners of the company
- (3) anyone who controls the business decisions of the company, e.g. directors

If your organisation is a **trust** (including a pension scheme or charitable trust), we need information about:

- (1) the trustee(s)
- (2) the settlor(s) of the trust
- (3) any protector(s) (i.e. people who are able to appoint or remove a trustee)
- (4) any beneficiaries who are entitled to at least 25% of the value of the trust's assets

If your organisation is a **limited liability partnership (LLP)**, we need information about:

- (1) anyone who owns 25% or more of the LLP or who has 25% or more of the voting rights of the LLP
- (2) where the LLP is owned by another organisation, any individuals who are the ultimate beneficial owners of the LLP
- (3) anyone who controls the business decisions of the LLP, e.g. designated members

If your organisation is a **partnership**, we need information about:

- (1) anyone who owns 25% or more of the partnership
- (2) where the partnership is owned by another organisation, any individuals who are the ultimate beneficial owners of the partnership
- (3) the partners who are responsible for the management of the partnership under the terms of the partnership agreement

If your organisation is a **limited partnership**, we need information about:

- (1) anyone who owns 25% or more of the partnership
- (2) where the partnership is owned by another organisation, any individuals who are the ultimate beneficial owners of the partnership
- (3) the general partners

If your organisation is a **corporate body**, we need information about:

- (1) anyone who owns 25% or more of the organisation
- (2) where your organisation is owned by another organisation, any individuals who are the ultimate beneficial owners of your organisation
- (3) anyone who controls the business decisions of your organisation, e.g. directors

If your organisation is an **association**, we need information about:

- (1) anyone who owns 25% or more the association's assets
- (2) where the association's assets are owned by another organisation, any individuals who are the ultimate beneficial owners of the association's assets
- (3) anyone who controls the business decisions of the association. e.g. committee members

If you complete Section 6, please make sure that you have permission from the individuals named in the form to share their information with us. Please also ensure that they have agreed that we can disclose their information to HM Revenue & Customs as part of our obligations under tax regulations, and that we can use their information for the purposes set out in our Data Protection Statement ([www.investec.co.uk/legal/uk/data-protection.html](http://www.investec.co.uk/legal/uk/data-protection.html)).

## Section 6: Signature and Confirmation

Before signing, dating and returning the form, please make sure you have completed all the necessary information, that you have understood the questions asked and that you are happy with the answers you have given.

In particular, you should make sure that you have given us the tax classification of your organisation under the FATCA agreements and also under the CRS/DAC. Please check that you have given us this information in Sections 3 & 4.