



# Foreign Account Tax Compliance Act Glossary of terms

## Entities

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# Glossary of terms

## Account Holder

The Individual or Entity who holds BNZ products or accounts. The terms Entity and Individual are defined separately. The Entity tax residency self-certification should be completed on behalf of the Entity Account Holder.

*Note that we may still need Individuals who are not specifically BNZ Account Holders to complete one of the Controlling Person Tax Residency Self-Certification forms if we think you may be a Beneficial Owner/Controlling Person of an Entity Account Holder.*

## Active Non-Financial Foreign Entity (Active NFFE)

A Foreign Account Tax Compliance Act (FATCA) Status for Entities. This is the likely status for entities that derive the majority of their income through the course of an active trade or business e.g. retail or service-based businesses. Accounts held by Active NFFEs are not reportable under FATCA.

A NFFE is an Active NFFE if it meets as least one of the following criteria:

- a) Less than 50% of the NFFE's gross income for the preceding tax year is Passive Income (defined separately) and less than 50% of the assets held by the NFFE during the preceding tax year are assets that produce or are held for the production of Passive Income;
- b) 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 regularly traded on an established securities market;
- c) The NFFE is organised in a US Territory and all of the owners of the payee are bona fide residents of that US Territory;
- d) The NFFE is a government (other than the US Government), a political subdivision of such government (including a state, province, county, or municipality), or a public body performing a function of such government or a political subdivision thereof, a government of a US Territory, an international organisation, a non-US central bank of issue, or an Entity wholly owned by one or more of the foregoing;
- e) 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;
- f) 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;
- g) 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;

- h) 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;
- i) The NFFE is an 'excepted NFFE' as described in the US Treasury Regulations; or
- j) The NFFE can be defined as a Non-Profit Organisation (see separate definition).

## BNZ

Bank of New Zealand.

## Controlling Person

A 'Controlling Person' - means an Individual who:

- Has a controlling ownership interest (generally 25% or greater); or
- Exercises control over the entity through other means; or
- Holds the position of senior managing official of the entity.

## For a company:

- Shareholders;
- Senior Management such as CEO; and
- Directors with effective control.

## For a trust:

- Trustees;
- Settlor;
- Protector (if any); and
- Certain beneficiaries or class of beneficiaries.

## For a partnership or limited partnership:

- General partners; and
- Limited partners.

## For clubs and societies:

- President;
- Secretary;
- Treasurer; and
- Members of the current committee or management team who have effective control.

## Deemed-Compliant (Foreign) Financial Institution

A Deemed-Compliant Financial Institution (or Deemed-Compliant Foreign Financial Institution) is one type of Financial Institution that is excluded from being a Reporting Financial Institution and therefore is not required to comply with FATCA. There are several ways to qualify as one under the definitions in the IGA (Annex II) and the US Treasury Regulations. In summary, under the IGA (Annex II), a Deemed-Compliant Financial Institution includes the following types of Foreign Financial Institutions (which are separately defined in the IGA):

- Financial Institutions with a local client base;
- Certain non-registering local banks;
- Financial Institutions with only low-value accounts;
- Qualified credit card issuers;
- Trustee-documented trusts;

- Sponsored investment entities and controlled non-US corporations;
- Sponsored, closely held investment vehicles;
- Investment advisors and investment managers; and
- Certain collective investment vehicles.

The US Treasury Regulations definition of a Deemed-Compliant Financial Institution is broadly similar to the IGA definition, and also includes the following types of Foreign Financial Institution (which are defined separately in the US Treasury Regulations):

- Non-reporting members of participating Financial Institution groups;
- Restricted funds; and
- Owner-documented Foreign Financial Institutions.

Please refer to the IGA, Treasury Regulations, or Inland Revenue's 'Registration' Guidance Notes for complete descriptions, especially if you intend to classify your Entity as a Deemed-Compliant Financial Institution.

### Entity

Any legal arrangement, whether or not a separate legal entity is created. It includes companies, joint ventures, partnerships, limited partnerships, and trusts (including unit trusts and discretionary trusts).

Refer also to New Zealand Inland Revenue's 'Registration' Guidance Notes.

### Entity Tax Residency Self-Certification

The BNZ form that we need completed with respect to the Entity Account Holder. This form certifies the Entity Account Holder's FATCA Status, which BNZ is required to obtain under FATCA. (Note you may return a completed US IRS tax form (such as a W-9 or W-8BEN-E form) instead of the supplied certificate if you prefer.)

*Note that Individual Account Holders should not complete this form in relation to their personal details. Please complete a Controlling person tax residency self-certification. Please contact the Global Tax Compliance team if you believe you need to complete these forms and have not received them in a separate correspondence.*

### Exempt Beneficial Owner

An Exempt Beneficial Owner is excluded from FATCA obligations and being reported under FATCA. There are several ways to qualify as an Exempt Beneficial Owner under the definitions in the IGA (Annex II) and the US Treasury Regulations. In summary, the IGA (Annex II) identifies the following types of entity as Exempt Beneficial Owners:

- NZ government entities;
- International organisations, or wholly owned agencies or instrumentalities thereof;
- Māori authorities;
- Treaty-qualified retirement funds (note this is expected to include most KiwiSaver funds);
- Broad participation retirement funds;
- Narrow participation retirement funds;
- Pension fund of an Exempt Beneficial Owner; and
- Investment Entities wholly owned by Exempt Beneficial Owners.

The US Treasury Regulations contain a broadly similar definition of Exempt Beneficial Owner. Please refer to the IGA, Treasury Regulations, or New Zealand Inland Revenue's 'Registration' Guidance Notes for complete descriptions.

### Exempt US Entity

US Entities are Exempt US Entities if they do not meet the definition of Specified US Person in the IGA. By way of summary, US Entities that are excluded from the Specified US Person definition in the IGA include (please refer to the IGA or the New Zealand Inland Revenue 'Due Diligence' Guidance Notes for the complete definitions):

- A corporation the stock of which is regularly traded on one or more established securities markets (for the purposes of the IGA, interests are 'regularly traded' if there is a meaningful volume of trading with respect to the interests on an on-going basis, and an 'established securities market' means an exchange that is officially recognised and supervised by a governmental authority in which the market is located and that has a meaningful annual value of shares traded on the exchange);
- Any corporation that is a member of the same expanded affiliated group (as defined in section 1471(e)(2) of the US Internal Revenue Code) as a corporation the stock of which is regularly traded on one or more established securities markets (see above);
- The US or any wholly owned agency or instrumentality thereof;
- Any State of the US, any US Territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing;
- Any regulated investment company as defined in section 851 of the US Internal Revenue Code or any entity registered with the US Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-64);
- 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 US or any State of the US;
- Any one of the following as specifically defined in the US Internal Revenue Code: certain organisations exempt from taxation (including certain trusts that are tax exempt or that are otherwise described in the US Internal Revenue Code), certain individual retirement plans, certain banks, certain real estate investment trusts, any common trust fund, certain brokers.

### FATCA Status

An Entity's classification under FATCA. By completing the Entity tax residency self-certification for an Entity Account Holder, you are certifying to us the FATCA Status for the Entity. We may need Controlling Person Tax Residency Self-Certification forms to confirm a Passive Non-Financial Foreign Entity (NFFE) status.

### (Foreign) Financial Institution

A Financial Institution (or Foreign Financial Institution) under FATCA is defined in the IGA as a non-US Entity that meets one or more of the following four definitions:

- **Custodial Institution**, meaning 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 percent of the entity's gross income during the shorter of:
  - i. The three-year period that ends on 31 March prior to the year in which the determination is being made; or
  - ii. The period during which the entity has been in existence.
- **Depository Institution**, meaning any Entity that accepts deposits in the ordinary course of a banking or similar business.

- **Investment Entity**, meaning any Entity that conducts as a business (or is managed by an entity that 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 funds or money on behalf of other persons.

The definition of Investment Entity shall be interpreted in a manner consistent with similar language set forth in the definition of 'Financial Institution' in the Financial Action Task Force Recommendations.

- **Specified Insurance Company**, meaning 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 (as those terms are defined in the IGA).

*Note that the definition of Financial Institution is further explained in New Zealand Inland Revenue's 'Registration' Guidance Notes. Entities that are **Trusts** may be Investment Entities depending on their type of business and the way they are managed. Please review New Zealand Inland Revenue's 'Trusts' Guidance Notes for more information.*

## Foreign

Not in the US.

## Foreign Account Tax Compliance Act (FATCA)

The US regime that requires Foreign (or non-US) Financial Institutions, such as BNZ, to identify and report accounts that are held or controlled by US Persons. The details of the regime are set out in the US Treasury Regulations.

FATCA has been implemented internationally via inter-governmental agreements. The New Zealand and US Governments entered into an inter-governmental agreement in relation to FATCA in June 2014 (the IGA), which has been incorporated into New Zealand law by amendments to the Income Tax Act 2007 and the Tax Administration Act 1994.

## Global Intermediary Identification Number (GIIN)

The identification number issued by the IRS to each registering Financial Institution.

The GIIN is a 19-character identification number, and can be looked up on the IRS website. For instance, a BNZ GIIN is X3M0TN.00001.ME.554.

We need to collect GIINs from all registering Financial Institutions. If applicable to your Entity, please provide your Entity's GIIN on the Entity tax residency self-certification.

## IGA

The agreement between the US and New Zealand Governments in relation to FATCA formally called the 'Agreement between the Government of New Zealand and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA'. It contains the full definitions of many of the terms used in this document.

A copy can be obtained from Inland Revenue's website [www.ird.govt.nz/international-tax/exchange-of-information/fatca/important-documents](http://www.ird.govt.nz/international-tax/exchange-of-information/fatca/important-documents)

See also the definition of Foreign Account Tax Compliance Act (FATCA).

## Individual

A natural person.

*Note that accounts held by a sole trader are treated as held by the Individual.*

## Inland Revenue

New Zealand's tax authority and the regulator of FATCA in New Zealand.

## (Inland Revenue) Guidance Notes

Guidance issued by Inland Revenue on the implementation and application of FATCA in New Zealand. These materials are a useful aid when determining the FATCA Status of Entities.

Guidance Notes can be obtained from Inland Revenue's website under the 'Important FATCA documents' header [www.ird.govt.nz/international-tax/exchange-of-information/fatca/important-documents](http://www.ird.govt.nz/international-tax/exchange-of-information/fatca/important-documents)

## Internal Revenue Service (IRS)

The US tax department and international FATCA regulator.

## Investment Entity

Please refer to the definition of (Foreign) Financial Institution.

## Non-Financial Foreign Entity (NFFE)

An Entity that is not a US Entity and that also does not meet the definition of Financial Institution.

NFFEs are classified as either 'Active' if they meet the definition of an Active NFFE, or 'Passive' if they don't meet the definition of an Active NFFE. Accounts held by Passive NFFEs are only reportable under FATCA if they have Beneficial Owners/Controlling Persons who are US Persons. Accounts held by Active NFFEs are not reportable under FATCA.

## Non-Profit Organisation

A Non-Profit Organisation is an NFFE that meets all of the following requirements:

- It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional 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;
- It is exempt from income tax in its jurisdiction of residence;
- It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents do not permit any income or assets of the NFFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFFE has purchased; and
- The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents require that, upon the NFFE'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 NFFE's jurisdiction of residence or any political subdivision thereof.

*Note that it is expected that an Entity that is a New Zealand registered charity will meet this definition. (Refer to New Zealand Inland Revenue's Guidance Notes for more information.)*

### Passive Income

Income that is not derived from the active conduct of a trade or business. Examples include:

- Dividends;
- Interest;
- Rents and royalties (other than rents and royalties derived in the active conduct of a trade or business); and
- Annuities.

### Reportable account details

The account details of Entity Account Holders are reportable where the Entity has a FATCA Status of US Entity that is not an Exempt US Entity, NFFE that is not an Active NFFE and that have one or more US Beneficial Owners/Controlling Persons, and in some cases where we've been unable to determine the Entity's FATCA Status. The information we are required to provide to New Zealand Inland Revenue for each reportable Entity Account Holder includes:

- Name (this would also be reported for any US Controlling Person);
- Address (this would also be reported for any US Controlling Person);
- US Taxpayer Identification Number (this would also be reported for any US Controlling Person);
- Total balance or value of accounts as at 31 March or the most recent available balance if closed during the year; and
- Total gross interest and other relevant income generated by accounts during the year ending 31 March.
- If the Entity has investment accounts with us where BNZ acts as custodian, we will need to report total gross dividends, total gross proceeds and the total gross amount of other income generated by the investments during the year ending 31 March.
- If the Entity has a Cash or Term PIE investment account with us, we will need to report total gross payments made with respect to the account during the year ending 31 March.

### Related Entity

An Entity is a Related Entity of another Entity if either Entity controls the other, or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50% of the vote or value in the Entity.

### Reporting (Foreign) Financial Institution

A Reporting Financial Institution (or Reporting Foreign Financial Institution) is a Foreign Financial Institution that is required to comply with FATCA, unless it qualifies as either of the following:

- Deemed-Compliant (Foreign) Financial Institution (defined separately); or
- Exempt Beneficial Owner (defined separately).

This definition includes Entities that are Participating Foreign Financial Institutions, being Foreign Financial Institutions that are not subject to an IGA, but have an individual agreement with the IRS to participate with FATCA.

It is expected that Reporting Financial Institutions will be registered with the IRS for FATCA, and have a GIIN, which we need to collect on the Entity tax residency self-certification.

### Tax year

The New Zealand tax year is 1 April to 31 March.

### Taxpayer Identification Number (TIN)

The US Federal Taxpayer Identification Number. For individuals, this is generally the individual's Social Security Number (SSN) but may be an Individual Taxpayer Identification Number (ITIN) for certain non-resident and resident aliens, their spouses and dependents.

For Entities, this is likely to be the Entity's Employer Identification Number (EIN).

### US/USA

United States of America. This includes the States thereof (including the District of Columbia), but does not include the US Territories (defined separately).

### Us/We/Our

BNZ.

### US Controlling Person

A Controlling Person who is a US Person.

### US Person

For individuals, you are a US Person if you are:

- A US citizen; or
- A US resident.

An entity is a US Person if it is:

Organised or established in the US or under US law;

A trust that is subject to US law in terms of its administration, and is controlled by one or more US Persons or an estate of a US Person.

Refer to the IGA or New Zealand Inland Revenue's 'Due Diligence' Guidance Notes for a more complete definition.

### US Territory

A US Territory means American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico, or the US Virgin Islands.

### US Treasury Regulations

These are the regulations relating to the implementation of FATCA in the US.

Some of the definitions in the IGA refer to, or incorporate, definitions in the US Treasury Regulations. Article 4 (7) of the IGA also allows the use of definitions from the US Treasury Regulations as an alternative to the IGA definitions provided the alternative meaning does not "frustrate the purposes of the Agreement". This document refers to some of the definitions in the US Treasury Regulations that may be relevant.

Refer to the FATCA page on the IRS website ([www.irs.gov](http://www.irs.gov)) to obtain a copy:

[www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA.pdf](http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA.pdf)

### You/Your

The addressee of the accompanying letter, or the Individual who has the authority to act on behalf of the Entity Account Holder.

This glossary is intended as a guide only to key FATCA terms. It does not replace definitions in the IGA or US Treasury Regulations and is not to be relied on as advice. If you require assistance to determine your entity's FATCA status, please consult with a professional tax adviser. Website URLs are correct at the time of publication. If links are outdated, please search the Inland Revenue or IRS websites for 'FATCA' to locate information.