



# Definitions for the purposes of identification of U.S. residency (relation to the U.S.) or FATCA status

(The list below is not exhaustive and provides general explanation of the basic terms. EXT LTD is not authorized to provide any tax, legal or other advice. Therefore, in case of any doubts about the residency/relation/status, the respondent is strongly recommended to seek a professional tax advice and/or contact the U.S. Internal Revenue Service ([www.irs.gov](http://www.irs.gov)))

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## **Active Non-Financial Entity**

means an Entity, that is not a U.S. person and that is not a Financial Institution and that meets any of the following criteria:

- a.** less than 50 % of the Entity'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 Entity 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 Entity is regularly traded on an established securities market or the Entity is a related entity of an entity the stock of which is regularly traded on an established securities market;
- c.** the Entity is organized in a U.S. Territory and all of the owners of the payee are bona fide residents of that U.S. Territory;
- d.** the Entity is a government (other than the U.S. government), a political subdivision of such government (which, for the avoidance of doubt, includes 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 U.S. Territory, an international organization, a non-U.S. central bank of issue, or an entity wholly owned by one or more of the foregoing;
- e.** substantially all of the activities of the Entity 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 shall 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;
- f.** the Entity 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 Entity shall not qualify for this exception after the date that is 24 months after the date of the initial organization of the Entity;
  - g.** the Entity 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;
  - h.** the Entity 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 Entity is an “excepted NFFE” (excepted nonfinancial foreign entity) as described in [§1.14711\(b\)\(4I\) of Title 26 of the U.S. Code of Federal Regulations](#); or
  - j.** the Entity 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 professional organization, business league, chamber of commerce, labor organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare;
    - 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 Entity’s jurisdiction 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 jurisdiction 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 organization, or escheat to the government of the Entity's jurisdiction of residence or any political subdivision thereof.

For the purpose of this definition an entity is a "related entity" of another entity if either an 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 or value in an entity.

"Passive income" means the part of gross income that consists of:

- dividends, including substitute dividends;
- interest;
- income equivalent to interest, including substitute interest;
- rents and royalties, other than rents and royalties derived in the active conduct of a trade or business conducted, at least in part, by employees of the corporation or partnership;
- annuities;
- the excess of gains over losses from the sale or exchange of property described in [§1.6038D-6\(b\)\(3\)\(i\)\(F\) of Title 26 of the U.S. Code of Federal Regulations](#) and that gives rise to the types of passive income listed above;
- the excess of gains over losses from transactions (including futures, forwards, and similar transactions) in any commodity, but not including:
  - any commodity hedging transaction described in [section 954\(c\)\(5\)\(A\) of the U.S. Internal Revenue Code](#), or
  - active business gains or losses from the sale of commodities, but only if substantially all the corporation's or partnership's commodities are property described in [paragraph \(1\), \(2\), or \(8\) of section 1221\(a\) of the U.S. Internal Revenue Code](#);
- the excess of foreign currency gains over foreign currency losses (as defined in [section 988\(b\) of the U.S. Internal Revenue Code](#)) attributable



- to any [section 988 of the U.S. Internal Revenue Code](#) transaction; and
- net income from notional principal contracts.

More details please see publication of the U.S. Internal Revenue Services at <https://www.irs.gov/instructions/i8938#idm139674973261808>.

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## **FATCA**

means Foreign Account Tax Compliance Act of the U.S., which was introduced on 18 March 2010 by the U.S. government to oppose, with the collaboration of foreign financial intermediaries, tax evasion by U.S. residents operating abroad.

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## **FATCA Status**

means classification of the Client pursuant to the FATCA in order to determine whether Client's accounts to be reported to the U.S. authorities pursuant to the Applicable Regulations.

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## **Financial Institution**

means an Entity, that is not a U.S. person and that is:

- a Custodial Institution - 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% of the entity's gross income during the shorter of:
  - I. the 3 year period that ends on December 31 (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; or
- a Depository Institution - any entity that accepts deposits in the ordinary course of a banking or similar business; or
- an Investment Entity - 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:
  - 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;
2. individual and collective portfolio management; or
  3. otherwise investing, administering, or managing funds or money on behalf of other persons; or
- Specified Insurance Company - 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 (that has a Cash Value greater than \$50,000, but other than an indemnity reinsurance contract between two insurance companies) or an Annuity Contract (a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals).

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**GIIN**

means Global Intermediary Identification Number issued by the U.S. Internal Revenue Service - the identification number that is assigned to a non-U.S. entity, that has registered with the U.S. Internal Revenue Service for the purposes of participating in the FATCA (e.g. a participating or registered deemed-compliant Financial Institution, direct reporting Non-Financial Entity, sponsoring entity of a direct reporting Non-Financial Entity).

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**Non-Participating  
Financial Institution**

means an Entity, that is not a U.S. person, but is a Financial Institution that has not undertaken an obligation to comply with the requirements of the FATCA or the U.S. Internal Revenue Service designated the entity as non-compliant, and, in general, is not a participating Financial Institution, a deemed-compliant Financial Institution, or an exempt beneficial owner.

“Participating Financial Institution” means an Financial Institution described in [§1.1471-1\(b\)\(91\) of Title 26 of the U.S. Code of Federal Regulations](#).

“Deemed-compliant Financial Institution” means an Financial Institution that is treated, pursuant to section [1471\(b\)\(2\) of the U.S. Internal Revenue Code](#) and [§1.1471-5\(f\) of Title 26 of the U.S. Code of Federal Regulations](#), as meeting the requirements of [section 1471\(b\) if the U.S. Internal Revenue Code](#).



“Exempt beneficial owner” means a person described in [§1.1471-1\(b\)\(42\) of the U.S. Code of Federal Regulations](#) and includes any person that is treated as an exempt beneficial owner under an applicable Model 1 or Model 2 Intergovernmental Agreement between the U.S. and the country of the person.

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**Passive Non-Financial Entity**

means any Entity, that is not a U.S. person and that is not a Financial Institution and that is other than:

- I. an Active Non-Financial Entity, or
- II. a withholding non-U.S. partnership (a partnership, described in [§1.1441-5\(c\)\(2\) of Title 26 of the Code of Federal Regulations](#), that has entered into a respective withholding agreement with the U.S. Internal Revenue Service) or withholding non-U.S. trust (a trust, described in [§1.1441-5\(e\)\(5\)\(v\) of Title 26 of the Code of Federal Regulations](#), that has entered into a respective withholding agreement with the U.S. Internal Revenue).

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**Person**

means:

- an individual,
- a trust,
- an estate,
- a partnership (e.g. syndicate, group, pool, joint venture, other unincorporated organization),
- an association,
- a company,
- a corporation (e.g. associations, joint-stock companies).

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**U.S. person**

means a U.S. Person, other than any of the below entities:

- a corporation, the stock of which is regularly traded on one or more established securities markets as described in [section 1472-1\(c\)\(1\)\(i\) of the U.S. Internal Revenue Code](#);
- a corporation that is a member of the same expanded affiliated group as a corporation described in [section 1471\(e\)\(2\) of the U.S. Internal Revenue Code](#);



- an organization exempt from tax under section [501\(a\) of the U.S. Internal Revenue Code](#) or an individual retirement plan as defined in [section 7701\(a\)\(37\) of the U.S. Internal Revenue Code](#);
- a bank as defined in section [581 of the U.S. Internal Revenue Code](#);
- a real estate investment trust as defined in [section 856 of the U.S. Internal Revenue Code](#);
- a regulated investment company as defined in [section 851 of the U.S. Internal Revenue Code](#) or any entity registered at all times during the tax year under [the Investment Company Act of 1940](#);
- a common trust fund as defined in [section 584\(a\) of the U.S. Internal Revenue Code](#);
- a 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](#);
- 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 U.S. State;
- a broker as defined in [section 6045\(c\) of the U.S. Internal Revenue Code](#);
- a tax-exempt trust under a plan that is described in [section 403\(b\) of the U.S. Internal Revenue Code](#) or [section 457\(b\) of the U.S. Internal Revenue Code](#);
- the U.S. or any of its wholly owned agencies or instrumentalities thereof;
- a U.S. State, a U.S. Territory or Possession, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality thereof.

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**Specified U.S. person  
U.S.**

means the United States of America, including the States thereof, and, when used in a geographical sense, means the land territory of the United States of America, including inland waters, and the air space, the territorial sea thereof and any maritime area beyond the territorial sea within which the United States of America may exercise sovereign rights or jurisdiction in accordance with international law.

The term, however, does not include the U.S. Territories.

Any reference to a “State” of the United States includes the District of Columbia.



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**Specified U.S. person**

means:

- a U.S. citizen/national or a U.S. resident,
- a partnership or a corporation organized in the U.S. or under the laws of the U.S. or any State thereof,
- a trust if (i) a court within the U.S. would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust, and (ii) one or more U.S. persons have the authority to control all substantial decisions of the trust,
- an estate of a decedent that is a U.S. citizen or U.S. resident;
- the U.S. Government (including an agency or instrumentality thereof);
- a U.S. State (including an agency or instrumentality thereof);
- the District of Columbia (including an agency or instrumentality thereof).
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Please note that under the U.S. tax laws an individual may be treated as a U.S. citizen/national, if he/she is:

- a holder of a US passport/ID;
- an individual born in:
  - the United States,
  - the Commonwealth of Puerto Rico,
  - Guam,
  - the US Virgin Islands, and
  - the Commonwealth of the Northern Mariana Islands after November 3, 1986;
- an individual, one or both parents of whom is/are US citizen(-s)/national(s);
- a former foreign national who has become a U.S. citizen through naturalization.

Additionally, an individual may be treated as a U.S. resident, if he/she:

- is physically present in the U.S. substantial period of time (i.e. meets the [substantial presence test](#));
- holds valid lawful permanent resident status (Green Card holder).

The term “U.S. person” should be interpreted in accordance with the U.S. tax laws ([including the U.S. Internal Revenue Code and relevant regulations](#)).





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**U.S. Territory  
or Possession**

means:

- American Samoa,
- the Commonwealth of the Northern Mariana Islands,
- Guam,
- the Commonwealth of Puerto Rico,
- the U.S. Virgin Islands.