

## FATCA Final Regulations: Definitions List

*By Craig Cohen*

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Chapter 4 of the Internal Revenue Code and the Treasury regulations thereunder — commonly known as the Foreign Account Tax Compliance Act, or FATCA — consists of a complex web of withholding and reporting mechanics. These rules and regulations are expressed in a language of defined terms unique to FATCA, populated largely with internal cross-references and nearly incomprehensible to even the most experienced tax practitioner. As such, this concise list of the most commonly used defined terms under the final FATCA Treasury regulations is intended to act as a stand-alone reference for understanding and applying the key terms and concepts under FATCA. Of course, these materials are not intended to be a substitute for a careful reading of the relevant Treasury regulations, and for this reason each entry includes a citation. Defined terms used elsewhere in this definitions list are highlighted in *italics*.

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# FATCA Final Regulation: Definitions List

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**Account holder:** section 1.1471-5(a)(3)(i): the person listed or identified as the holder of a *financial account* with the *FFI* that maintains the *financial account*, regardless of whether such person is a *flow-through entity*. In the case of a financial account held by an entity that is disregarded for U.S. federal tax purposes, the *financial account* shall be treated as held by the person owning such entity.

**Active NFFE:** section 1.1472-1(c)(1)(iv): any entity if less than 50 percent of its gross income for the preceding calendar year is *passive income* and less than 50 percent of the weighted average percentage of assets (tested quarterly) held by it are assets that produce or are held for the production of *passive income*.

**Banking or similar business:** section 1.1471-5(e)(2): an entity is considered to be engaged in a banking or similar business if, in the ordinary course of its business with customers, the entity accepts deposits or other similar investments of funds and regularly engages in one or more of the following activities:

- (A) makes personal, mortgage, industrial, or other loans or provides other extensions of credit;
- (B) purchases, sells, discounts, or negotiates accounts receivable, installment obligations, notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness;
- (C) issues letters of credit and negotiates drafts drawn thereunder;
- (D) provides trust or fiduciary services;
- (E) finances foreign exchange transactions; or
- (F) enters into, purchases, or disposes of finance leases or leased assets.

An entity is not considered to be engaged in a banking or similar business if the entity solely accepts deposits from persons as collateral or security pursuant to a sale or lease

of property or pursuant to a similar financing arrangement between such entity and the person holding the deposit with the entity.

**Branch:** section 1.1471-4(e)(2)(ii): a unit, business, or office of an *FFI* that is treated as a branch under the regulatory regime of a country or is otherwise regulated under the laws of such country as separate from other offices, units, or branches of the *FFI* and that maintains books and records separate from the books and records of other branches of the *FFI*; including units, businesses, and offices of an *FFI* located in the country in which the *FFI* is created or organized. All units, businesses, or offices of a participating *FFI* in a single country shall be treated as a single branch, and a financial account will be treated as maintained by a branch if the rights and obligations of the *account holder* and the participating *FFI* with regard to such account (including any assets held in the *financial account*) are governed by the laws of the country of the branch.

**Broker:** section 1.1471-1(b)(9): any person, U.S. or foreign, that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others; including an obligor that regularly issues and retires its own debt obligations, a corporation that regularly redeems its own stock, and a *clearing organization* that effects sales of securities for its members; excluding an international organization that is an *exempt beneficial owner* and which redeems or retires an obligation of which it is the issuer, a stock transfer agent that records transfers of stock for a corporation if the nature of the activities of the agent is such that the agent ordinarily would not know the gross proceeds from sales, an escrow agent that effects no sales other than transactions incidental to the purpose of the escrow (such as sales to collect on collateral), or a corporation that issues and retires long-term debt on an irregular basis.

**Captive finance company:** section 1.1471-5(e)(5)(i)(E): an entity whose primary activity is to enter into financing (including the extension of credit) or leasing transactions

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with or for suppliers, distributors, dealers, franchisees, or customers of such entity or of any member of such entity's *expanded affiliated group* that is an *active NFFE*.

**Certified deemed-compliant FFI:** section 1.1471-5(f)(2): an *FFI* that is:

- (i) a *nonregistering local bank*;
- (ii) an *FFI with only low-value accounts*;
- (iii) a *sponsored, closely held investment vehicle*; or
- (iv) a *limited life debt investment entity*.

**Chapter 4 status:** section 1.1471-1(b)(17): a person's status as a *U.S. person*, a *specified U.S. person*, an individual that is a foreign person, a *participating FFI*, a *deemed-compliant FFI*, a *restricted distributor*, an *exempt beneficial owner*, a *nonparticipating FFI*, a *territory financial institution*, an *excepted NFFE*, or a *passive NFFE*.

**Clearing organization:** section 1.1471-1(b)(18): an entity that is in the business of holding securities for its member organizations or clearing trades of securities and transferring, or instructing the transfer of, securities by credit or debit to the account of a member without the necessity of physical delivery of the securities.

**Controlled entity:** section 1.1471-6(b)(2): an entity that is separate in form from a foreign sovereign or that otherwise constitutes a separate juridical entity, provided that:

- (i) the entity is wholly owned and controlled by one or more foreign sovereigns directly or indirectly through one or more controlled entities;
- (ii) the entity's net earnings are credited to its own account or to other accounts of one or more foreign sovereigns, 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 foreign sovereigns upon dissolution.

**Custodial account:** section 1.1471-5(b)(3)(ii): an arrangement for holding a financial instrument, contract, or investment (including, but not limited to, a share of stock in a corporation, a note, bond, debenture, or other

evidence of indebtedness, a currency or commodity transaction, a credit default swap, a swap based upon a nonfinancial index, a notional principal contract, an insurance or annuity contract, and any option or other derivative instrument) for the benefit of another person.

**Custodial institution:** section 1.1471-5(e)(3): any entity whose gross income attributable to holding *financial assets* and related financial services for the benefit of one or more other persons (eg, custody, account maintenance, and transfer fees; commissions and fees earned from executing and pricing securities transactions; income earned from extending credit to customers with respect to *financial assets* held in custody or acquired through such extension of credit; income earned on the bid-ask spread of *financial assets*; and fees for providing financial advice and for clearance and settlement services) equals or exceeds 20 percent of the entity's gross income during the shorter of:

- (1) the three-year period ending on December 31 of the year preceding the year in which the determination is made; or
- (2) the period during which the entity has been in existence before the determination is made.

An entity with no operating history as of the date of the determination is considered to be a custodial institution if the entity expects to meet the gross income threshold described above based on its anticipated functions, assets, and employees, with due consideration given to any purpose or functions for which the entity is licensed or regulated (including those of any predecessor).

**Deemed-compliant FFI:** section 1.1471-5(f): an *FFI* that is:

- (1) a *registered deemed-compliant FFI*;
- (2) a *certified deemed-compliant FFI*;
- (3) an *owner-documented FFI*; or
- (4) a *QI branch of a U.S. financial institution* that is a *reporting Model 1 FFI*.

**Depository account:** section 1.1471-5(b)(3)(i):

- (1) A commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, passbook, certificate of indebtedness, or any other instrument for placing money in the custody of an entity engaged in a *banking or similar business* for which such institution is obligated to give credit (regardless of whether such instrument is interest bearing or non-interest bearing); **including**, for example, a credit balance with respect to a credit card account issued by a credit card company that is engaged in a banking or similar business; or
- (2) Any amount held by an insurance company under a guaranteed investment contract or under a similar agreement to pay or credit interest thereon or to return the amount held.

A depository account does not include a negotiable debt instrument that is traded on a regulated market or over-the-counter market and distributed and held through *financial institutions*, or an advance premium or premium deposit.

**Depository institution:** section 1.1471-5(e)(1)(i): any entity that accepts deposits in the ordinary course of a *banking or similar business*.

**Documentation:** section 1.1471-1(b)(29): withholding certificates, written statements, documentary evidence, and other documents that may be relevant in determining a person's status as a *U.S. person*, a *specified U.S. person*, an individual that is a *foreign person*, a *participating FFI*, a *deemed-compliant FFI*, a *restricted distributor*, an *exempt beneficial owner*, a *nonparticipating FFI*, a *territory financial institution*, an *excepted NFFE*, or a *passive NFFE*; **including** any document containing a determination of the *account holder's* citizenship or residency for tax or AML due diligence purposes or an *account holder's* claim of citizenship or residency for tax or AML due diligence purposes.

**Effective date of the FFI agreement:** section 1.1471-1(b)(31): the date on which the IRS issues a *GIIN* to the *participating FFI*. For *participating FFIs* that receive a *GIIN* prior to December 31, 2013, the effective date of the *FFI agreement* is December 31, 2013.

**Established securities market:** section 1.1472-1(c)(1)(i)(C): for any calendar year,

- (i) a foreign securities exchange that is officially recognized, sanctioned, or supervised by a governmental authority of the foreign country in which the market is located, and has an annual value of shares traded on the exchange (or a predecessor exchange) exceeding \$1 billion during each of the three calendar years immediately preceding the calendar year in which the determination is being made;
- (ii) a national securities exchange that is registered under section 6 of the Securities Exchange Act of 1934 (15 USC 78f) with the Securities and Exchange Commission;
- (iii) any exchange designated under a limitation on benefits article of an income tax treaty with the United States that is in force; or
- (iv) any other exchange that the Secretary may designate in published guidance.

If an exchange in a foreign country has more than one tier or market level on which stock may be separately listed or traded, each such tier shall be treated as a separate exchange.

**Excepted inter-affiliate FFI:** section 1.1471-5(e)(5)(iv): a *foreign entity* that is a member of a *participating FFI group* if:

- (A) the entity does not maintain *financial accounts* (other than *financial accounts* maintained for members of its *expanded affiliated group*);
- (B) the entity does not hold an account with or receive payments from any *withholding agent* other than a member of its *expanded affiliated group*;
- (C) the entity does not make *withholdable payments* to any person other than to members of its *expanded affiliated group* that are not *limited FFIs* or *limited branches*; and

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(D) the entity has not agreed to report or otherwise act as an agent for chapter 4 purposes on behalf of any *financial institution*, including a member of its *expanded affiliated group*.

**Excepted NFFE:** section 1.1472-1(c)(1): an NFFE that is:

- (i) a corporation the stock of which is *regularly traded* on one or more *established securities markets* for the calendar year;
- (ii) any corporation that is a member of the same *expanded affiliated group* as a corporation described in the paragraph above;
- (iii) any *territory entity* that is directly or indirectly wholly owned by one or more bona fide residents of the U.S. territory under the laws of which the entity is organized;
- (iv) an *active NFFE*;
- (v) an *excepted nonfinancial group entity*;
- (vi) an *excepted nonfinancial start-up company*;
- (vii) an *excepted nonfinancial entity in liquidation or bankruptcy*;
- (viii) an *excepted inter-affiliate FFI*;
- (ix) a *foreign entity* that is described in section 501(c) other than an insurance company described in section 501(c)(15); or
- (x) a *non-profit organization*.

**Excepted nonfinancial entity in liquidation or bankruptcy:** section 1.1471-5(e)(5)(iii): a *foreign entity* that was not a *financial institution* or *passive NFFE* at any time during the past five years and that is in the process of liquidating its assets or reorganizing with the intent to continue or recommence operations as a non-financial entity.

**Excepted nonfinancial group entity:** section 1.1471-5(e)(5)(i): a *foreign entity* that is a member of a *nonfinancial group* if:

- (1) the entity is not a *depository institution* or *custodial institution* (other than for members of its *expanded affiliated group*);
- (2) the entity is a *holding company*, *treasury center*, or *captive finance company*;
- (3) the entity does not hold itself out as (and was not formed in connection with or availed of by) an arrangement or investment vehicle that is a private equity fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy to acquire or fund companies and to treat the interests in those companies as capital assets held for investment purposes; and
- (4) the entity is not a *specified insurance company*.

**Excepted nonfinancial start-up company:** section 1.1471-5(e)(5)(ii): a *foreign entity* that is investing capital in assets with the intent to operate a new business or line of business other than that of a *financial institution* or *passive NFFE* for a period of:

- (1) in the case of an entity intending to operate a new business, 24 months from the initial organization of such entity; and
- (2) in the case of an entity with the intent to operate a new line of business, 24 months from the date of the board resolution (or its equivalent) approving the new line of business, provided that such entity qualified as an *active NFFE* for the 24 months preceding the date of such approval, excluding an entity that functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buy-out fund, or any investment vehicle whose purpose is to acquire or fund companies and hold interests in those companies as capital assets for investment purposes.

**Exempt beneficial owner:** section 1.1471-6: a beneficial owner of a payment that is:

- (1) an integral part, *controlled entity*, or political subdivision of a foreign sovereign;

- (2) an international organization or wholly owned agency or instrumentality thereof; including an organization:
- (i) comprised primarily of foreign governments;
  - (ii) recognized as an intergovernmental or supranational organization under a foreign law similar to 22 U.S.C. 288-288f or that has in effect a headquarters agreement with a foreign government; and
  - (iii) whose income does not inure to the benefit of private persons;
- (3) a bank that is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency; including an instrumentality that is separate from a foreign government, whether or not owned in whole or in part by a foreign government;
- (4) a government of a U.S. territory;
- (5) a *foreign retirement fund*;
- (6) an entity that is an *FFI* solely because it is an *investment entity*, each direct holder of an equity interest in the *investment entity* is an exempt beneficial owner described herein, and each direct holder of a debt interest in the *investment entity* is either a *depository institution* (with respect to a loan made to such entity) or an exempt beneficial owner described herein; or
- (7) a person treated as an exempt beneficial owner pursuant to a *Model 1 IGA* or *Model 2 IGA*.

**Expanded affiliated group:** section 1.1471-5(i)(2): one or more chains of corporations connected through stock ownership with a common parent corporation, but only if (i) the common parent owns directly more than 50 percent of the stock (by voting power and value) in at least one of the other corporations, and (ii) more than 50 percent of the stock (by voting power and value) in each of the corporations (except the common parent) is owned directly by one or more of the other corporations. For these purposes, the term “stock” does not include any stock which:

- (A) is not entitled to vote;
- (B) is limited and preferred as to dividends and does not participate in corporate growth to any significant extent;
- (C) has redemption and liquidation rights which do not exceed the issue price of such stock (except for a reasonable redemption or liquidation premium); and
- (D) is not convertible into another class of stock.

A partnership or any entity other than a corporation shall be treated as a member of an expanded affiliated group if more than 50 percent (by value) of the beneficial interests in such partnership are owned by members of such group (including any entity treated as a member of such group by reason of this sentence).

**FATF-compliant jurisdiction:** section 1.1471-1(b)(41): a jurisdiction that:

- (i) is not subject to a Financial Action Task Force call on its members and other jurisdictions to apply counter-measures to protect the international financial system from the on-going and substantial money laundering and terrorist financing risks emanating from the jurisdiction;
- (ii) is not a jurisdiction with strategic AML/CFT (anti-money laundering and combating the financing of terrorism) deficiencies that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies; and
- (iii) is not a jurisdiction with strategic AML/CFT deficiencies that the Financial Action Task Force has identified as not making sufficient progress on its action plan agreed upon with the Financial Action Task Force.

**FFI:** section 1.1471-5(d): with respect to any entity that is not resident in a country that has in effect a *Model 1 IGA* or *Model 2 IGA*, any financial institution that is a *foreign entity*; with respect to any entity that is resident in a country that has in effect a *Model 1 IGA* or *Model 2 IGA*,

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any entity that is treated as a Financial Institution pursuant to such *Model 1 IGA* or *Model 2 IGA*. A *territory financial institution* is not an *FFI*.

**FFI agreement:** section 1.1471-4(a): an agreement pursuant to procedures prescribed by the IRS; including a qualified intermediary agreement, a withholding partnership agreement, and a withholding trust agreement that is entered into by an *FFI* (other than an *FFI* that is a *registered deemed-compliant FFI* or a *reporting Model 1 FFI*) and that has an effective date or renewal date on or after December 31, 2013, or a qualified intermediary agreement that is entered into by a foreign *branch* of a *U.S. financial institution* (other than a *branch* that is a *reporting Model 1 FFI*) and that has an effective date or renewal date on or after December 31, 2013.

**FFI with only low-value accounts:** section 1.1471-5(f)(2)(ii): an *FFI* if:

- (A) the *FFI* is not an *investment entity*;
- (B) no *financial account* maintained by the *FFI* (or, in the case of an *FFI* that is a member of an *expanded affiliated group*, by any member of the *expanded affiliated group*) has a balance or value in excess of \$50,000; and
- (C) the *FFI* does not have more than \$50 million in assets on its balance sheet as of the end of its most recent accounting year (or, in the case of an *FFI* that is a member of an *expanded affiliated group*, the entire *expanded affiliated group* does not have more than \$50 million in assets on its consolidated or combined balance sheet as of the end of its most recent accounting year).

**Financial account:** section 1.1471-5(b)(1):

- (i) any *depository account* maintained by a *financial institution*;
- (ii) any *custodial account* maintained by a *financial institution*;
- (iii) any equity or debt interest (other than interests *regularly traded* on an *established securities market*) in an *investment entity* described in paragraph (B)

or (C) (including an entity that is also a *depository institution, custodial institution, insurance company, or investment entity* described in paragraph (A));

- (iv) any equity or debt interest (other than interests *regularly traded* on an *established securities market*) in a *holding company* or *treasury center* if:
  - (1) the *expanded affiliated group* of which the entity is a member includes one or more *investment entities* described in paragraph (B) or (C) or *passive NFFEs* and the income derived by *such investment entities* or *passive NFFEs* is 50 percent or more of the aggregate income earned by the *expanded affiliated group*;
  - (2) the redemption or retirement amount or return earned on the interest is determined, directly or indirectly, primarily by reference to one or more *investment entities* described in paragraph (B) or (C) or one or more *passive NFFEs* that are members of the entity's *expanded affiliated group*;
  - (3) the value of the interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to *withholdable payments*; or
  - (4) the interest is issued with a principal purpose of avoiding the reporting or withholding requirements of chapter 4;
- (v) any equity or debt interest (other than interests *regularly traded* on an *established securities market*) in an entity that is a *depository institution, custodial institution, investment entity* described in paragraph (A), or insurance company if:
  - (1) the value of the interest is determined, directly or indirectly, primarily by reference to assets that give rise (or could give rise) to *withholdable payments*; or
  - (2) the interest is issued with a principal purpose of avoiding the reporting or withholding requirements of chapter 4; or

(vi) a contract issued or maintained by an insurance company, a *holding company* of an insurance company, a *depository institution*, a *custodial institution*, an *investment entity*, or a *holding company* or *treasury center* that is a *financial institution*, if the contract is a cash value insurance contract or an annuity contract.

A financial account does not include:

(A) a *retirement or pension account* if, under the laws of the jurisdiction where the account is maintained:

- (1) the account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);
- (2) either (i) contributions to the account that would otherwise be subject to tax under such laws are deductible or excluded from the gross income of the *account holder* or taxed at a reduced rate; or (ii) taxation of investment income from the account is deferred or taxed at a reduced rate;
- (3) annual information reporting is required to the relevant tax authorities with respect to the account;
- (4) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and
- (5) either (i) annual contributions are limited to \$50,000 or less, or (ii) there is a maximum lifetime contribution limit to the account of \$1,000,000 or less;

(B) an account (other than an insurance or annuity contract) if, under the laws of the jurisdiction where the account is maintained:

- (1) the account is subject to regulation as a savings vehicle for purposes other than for retirement;

(2) either (i) contributions to the account that would otherwise be subject to tax under such laws are deductible or excluded from the gross income of the *account holder* or taxed at a reduced rate; or (ii) taxation of investment income from the account is deferred or taxed at a reduced rate;

(3) withdrawals are conditioned on meeting specific criteria related to the purpose of the savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and

(4) annual contributions are limited to \$50,000 or less;

(C) a life insurance contract with a coverage period that will end before the insured individual attains age 90, if:

- (1) periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;
- (2) the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
- (3) the amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and
- (4) the contract is not held by a transferee for value;

(D) an account that is held solely by an estate if the *documentation* for such account includes a copy of the deceased's will or death certificate;

(E) an escrow account that is established in connection with:

- (1) a court order or judgment; or

- (2) a sale, exchange, or lease of real or personal property, provided that the account meets the following conditions:
- (i) the account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation of one of the parties directly related to the transaction, or a similar payment, or with a *financial asset* that is deposited in the account in connection with the sale, exchange, or lease of the property;
  - (ii) the account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
  - (iii) the assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;
  - (iv) the account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and
  - (v) the account is not associated with a credit card account;
- (F) a noninvestment linked, non-transferable, immediate life annuity contract (including a disability annuity) that monetizes a *retirement or pension account*; or
- (G) an account or product that is excluded from the definition of financial account under the terms of an applicable *Model 1 IGA* or *Model 2 IGA*.

**Financial asset:** section 1.1471-5(e)(4)(ii): a security (as defined in section 475(c)(2) without regard to the last sentence thereof), partnership interest, commodity (as defined in section 475(e)(2)), notional principal contract, insurance contract or annuity contract, or any interest (including a futures or forward contract or

option) in a security, partnership interest, commodity, notional principal contract, insurance contract, or annuity contract.

**Financial institution:** section 1.1471-5(e)(1): any entity that is:

- (i) a *depository institution*;
- (ii) a *custodial institution*;
- (iii) an *investment entity*;
- (iv) a *specified insurance company*; or
- (v) an entity that is a *holding company* or *treasury center* that:
  - (A) is part of an *expanded affiliated group* that includes a *depository institution, custodial institution, insurance company, or investment entity* described in paragraph (B) or (C); or
  - (B) is formed in connection with or availed of by a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in *financial assets*.

A financial institution does not include

- (i) an *excepted nonfinancial group entity*;
- (ii) an *excepted nonfinancial start-up company*;
- (iii) an *excepted nonfinancial entity in liquidation or bankruptcy*;
- (iv) an *excepted inter-affiliate FFI*;
- (v) a *foreign entity* that is described in section 501(c) other than an insurance company described in section 501(c)(15); or
- (vi) a *non-profit organization*.

**Flow-through entity:** section 1.1471-1(b)(46): a partnership, simple trust, or grantor trust, as determined under U.S. tax principles.

**Foreign entity:** section 1.1473-1(e): any entity that is not a *U.S. person*, including a *territory entity*.

**Foreign passthru payment:** section 1.1471-5(h)(2): [RESERVED].

**Foreign person:** section 1.1471-1(b)(51): any person other than a *U.S. person* and includes a *QI branch of a U.S. financial institution*.

**Foreign retirement fund:** section 1.1471-6(f):

- (1) a fund established in a country with which the United States has an income tax treaty in force, provided that the fund is entitled to benefits under such treaty on income that it derives from sources within the United States (or would be entitled to such benefits if it derived any such income) as a resident of the other country that satisfies any applicable limitation on benefits requirement, and is operated principally to administer or provide pension or retirement benefits;
- (2) a fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund:
  - (i) does not have a single beneficiary with a right to more than 5 percent of the fund's assets;
  - (ii) is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in the country in which the fund is established or operates; and
  - (iii) satisfies one or more of the following requirements:
    - (A) the fund is generally exempt from tax on investment income under the laws of the country in which it is established or operates due to its status as a retirement or pension plan;
    - (B) the fund receives at least 50 percent of its total contributions (other than transfers of assets from *retirement or pension accounts* or from other foreign retirement funds) from the sponsoring employers;
    - (C) distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to *retirement or pension accounts* or other foreign retirement funds), or penalties apply to distributions or withdrawals made before such specified events; or
    - (D) contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed \$50,000 annually;
- (3) a fund established to provide retirement, disability, or death benefits to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for prior services rendered, provided that:
  - (i) the fund has fewer than 50 participants;
  - (ii) the fund is sponsored by one or more employers that are not *investment entities* or *passive NFFEs*;
  - (iii) employee and employer contributions to the fund (other than transfers of assets from other foreign retirement funds or *retirement or pension accounts*) are limited by reference to earned income and compensation of the employee, respectively;
  - (iv) participants that are not residents of the country in which the fund is established or operated are not entitled to more than 20 percent of the fund's assets; and
  - (v) the fund is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in the country in which the fund is established or operates;
- (4) a fund formed pursuant to a pension plan that would meet the requirements of section 401(a), other than the requirement that the plan be funded by a trust created or organized in the United States;

- (5) a fund established exclusively to earn income for the benefit of one or more foreign retirement funds described above or *retirement or pension accounts*; or
- (6) a fund established and sponsored by an *exempt beneficial owner* to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees of the *exempt beneficial owner* (or persons designated by such employees), or that are not current or former employees, but the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the *exempt beneficial owner*.

**GIIN:** section 1.1471-1(b)(52): the identification number that is assigned to a *participating FFI*, *registered deemed-compliant FFI*, or a *reporting Model 1 FFI* for purposes of identifying such entity to *withholding agents*. All GIINs will appear on the *IRS FFI list*.

**Grandfathered obligation:** section 1.1471-2(b)(2)(i):

- (1) any obligation outstanding on January 1, 2014;
- (2) any *obligation* that gives rise to a *withholdable payment* solely because the *obligation* is treated as giving rise to a dividend equivalent pursuant to section 871(m) and the regulations thereunder, provided that the *obligation* is executed on or before the date that is 6 months after the date on which *obligations* of its type are first treated as giving rise to dividend equivalents;
- (3) any agreement requiring a secured party to make a payment with respect to, or to repay, collateral posted to secure a grandfathered obligation. If collateral (or a pool of collateral) secures both grandfathered obligations and *obligations* that are not grandfathered, the collateral posted to secure the grandfathered obligations must be determined by allocating (pro rata by value) the collateral (or each item comprising the pool of collateral) to all outstanding *obligations* secured by the collateral (or pool of collateral); or
- (4) solely for purposes of a *foreign passthru payment*, any *obligation* that is executed on or before the date that is 6 months after the date on which final regulations defining the term *foreign passthru payment* are filed with the Federal Register.

An *obligation* that constitutes indebtedness for U.S. tax purposes is outstanding as of its issue date; in all other cases, an *obligation* is outstanding as of the date a legally binding agreement establishing the *obligation* was executed between the parties to the agreement. Any *material modification* of an outstanding *obligation* will result in the *obligation* being treated as newly issued or executed as of the effective date of such modification.

**Holding company:** section 1.1471-5(e)(5)(i)(C): an entity whose primary activity consists of holding (directly or indirectly) all or part of the outstanding stock of one or more members of its *expanded affiliated group*.

**Investment entity:** section 1.1471-5(e)(4):

- (A) an entity that *primarily conducts as a business* one or more of the following activities or operations for or on behalf of a customer:
  - (1) trading in money market instruments (checks, bills, certificates of deposit, derivatives, etc.); foreign currency; foreign exchange, interest rate, and index instruments; transferable securities; or commodity futures;
  - (2) individual or collective portfolio management; or
  - (3) otherwise investing, administering, or managing funds, money, or *financial assets* on behalf of other persons;
- (B) an entity whose gross income is *primarily attributable to investing, reinvesting, or trading* and 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 paragraph (A); or
- (C) an entity that functions or holds itself out as a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in *financial assets*.

**IRS FFI list:** section 1.1471-1(b)(67): the list published by the IRS that contains the names and *GIINs* for all *participating FFIs*, *registered deemed-compliant FFIs*, and *reporting Model 1 FFIs*.

**Limited branch:** section 1.1471-4(e)(2)(iii): a *branch* of an *FFI* that, under the laws of the jurisdiction as of February 15, 2012, and that apply with respect to the *financial accounts* maintained by the *branch*, cannot both:

- (A) with respect to *financial accounts* that the *participating FFI* is required to treat as *U.S. accounts*, either report such accounts to the IRS, close such accounts within a reasonable period of time, or transfer such accounts to a *U.S. financial institution*, a *branch* of the *FFI* that will so report, a *participating FFI*, or a *reporting Model 1 FFI*; and
- (B) with respect to *recalcitrant account holders* and *financial accounts* held by *nonparticipating FFIs*, withhold with respect to each such account as required, prohibit such *account holder* from effecting any transactions with respect to a *financial account* until such time as such account is closed, transferred, or the *account holder* provides the *documentation* for the *FFI* to determine the U.S. or non-U.S. status of such account and report such account if required, close each such account within a reasonable period of time, or transfer each such account to a *U.S. financial institution*, a *branch* of the *FFI* that will so report, a *participating FFI*, or a *reporting Model 1 FFI*.

**Limited FFI:** section 1.1471-4(e)(3)(ii): a member of an *expanded affiliated group* that includes one or more participating *FFIs* if under the laws of each jurisdiction that apply with respect to the *financial accounts* maintained by the affiliate, the affiliate cannot both:

- (A) with respect to *financial accounts* that are *U.S. accounts*, report such accounts to the IRS, close such accounts within a reasonable period of time, or transfer such accounts to a *U.S. financial institution*, a *participating FFI*, or a *reporting Model 1 FFI*; and
- (B) with respect to *recalcitrant account holders* and *financial accounts* held by *nonparticipating FFIs*, withhold with respect to each such account as required, prohibit such *account holder* from effecting any transactions with respect to a *financial account*

until such time as such account is closed, transferred, or the *account holder* provides the *documentation* for the *FFI* to determine the U.S. or non-U.S. status of such account and report such account if required, close each such account within a reasonable period of time, or transfer each such account to a *U.S. financial institution*, a *participating FFI*, or a *reporting Model 1 FFI*.

**Limited life debt investment entity:** section 1.1471-5(f)(2)(iv): an *FFI* that:

- (A) is a collective investment vehicle formed pursuant to a trust indenture or similar fiduciary arrangement that is an *FFI* solely because it is an *investment entity* that offers interests primarily to unrelated investors;
- (B) was in existence as of December 31, 2011, and the *FFI's* organizational documents require that the entity liquidate on or prior to a set date, and do not permit amendments to the organizational documents, including the trust indenture, without the agreement of all of the *FFI's* investors;
- (C) was formed for the purpose of purchasing (and did in fact purchase) specific types of indebtedness and holding those assets (subject to reinvestment only under prescribed circumstances) until the termination of the asset or the vehicle;
- (D) all payments made to the investors of the *FFI* are cleared through a *clearing organization* that is a *participating FFI*, *reporting Model 1 FFI*, or *U.S. financial institution* or made through a trustee that is a *participating FFI*, *reporting Model 1 FFI*, or *U.S. financial institution*; and
- (E) the *FFI's* trust indenture or similar fiduciary arrangement only authorizes the trustee or fiduciary to engage in activities specifically designated in the trust indenture, and the trustee or fiduciary is not authorized through a fiduciary duty or otherwise to fulfill the obligations that a *participating FFI* is subject to absent a legal requirement to fulfill them, even if the consequence of the trustee failing to fulfill these obligations is to cause the *FFI* to be withheld upon, and, no other person has the authority to fulfill the obligations that a *participating FFI* is subject to on behalf of the *FFI*.

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**Local FFI:** section 1.1471-5(f)(1)(i)(A): an FFI that:

- (1) is licensed and regulated as a financial institution under the laws of its country of incorporation or organization (which must be a *FATF-compliant jurisdiction* at the time the *FFI* registers for deemed-compliant status);
- (2) does not have a fixed place of business outside its country of incorporation or organization; excluding a location that is not advertised to the public and from which the *FFI* performs solely administrative support functions;
- (3) does not solicit customers or *account holders* outside its country of incorporation or organization;
- (4) is required under the laws of its country of incorporation or organization to identify resident *account holders* for purposes of either information reporting or withholding of tax with respect to *financial accounts* held by residents or is required to identify resident accounts for purposes of satisfying such country's AML due diligence requirements;
- (5) at least 98 percent of the *financial accounts* by value maintained by the *FFI* as of the last day of the preceding calendar year are held by residents (including residents that are entities) of the country in which the *FFI* is incorporated or organized (or, with respect to an *FFI* incorporated or organized in a member state of the European Union, holders that are residents of other member states of the European Union);
- (6) by the later of December 31, 2013, or the date it registers as a *deemed-compliant FFI*, implements policies and procedures consistent with those set forth for a *participating FFI* to monitor whether the *FFI* opens or maintains a *financial account* for a *specified U.S. person* who is not a resident of the country in which the *FFI* is incorporated or organized (including a *U.S. person* that was a resident when the *financial account* was opened but subsequently ceases to be a resident), an entity controlled or beneficially owned (as determined under the *FFI's* AML due diligence) by one or more *specified U.S. persons* that are not residents of the country in which the *FFI* is incorporated or organized, or a *nonparticipating FFI*;

- (7) with respect to each *preexisting account* held by a nonresident of the country in which the *FFI* is organized or held by an entity, reviews such accounts to identify any *U.S. account* or account held by a *nonparticipating FFI*, and certifies to the IRS that it did not identify any such account as a result of its review, that it has closed any such accounts that were identified or transferred them to a *participating FFI*, *reporting Model 1 FFI*, or *U.S. financial institution*, or that it agrees to withhold and report on such accounts as if it were a *participating FFI*;
- (8) in the case of an *FFI* that is a member of an *expanded affiliated group*, each *FFI* in the group is incorporated or organized in the same country and, with the exception of any member that is a *foreign retirement fund*, meets the requirements herein; and
- (9) does not have policies or practices that discriminate against opening or maintaining *financial accounts* for individuals who are *specified U.S. persons* and who are residents of the *FFI's* country of incorporation or organization.

**Material modification:** section 1.1471-2(b)(2)(iv): in the case of an *obligation* that constitutes indebtedness for U.S. tax purposes, any significant modification of the debt instrument as defined in section 1.1001-3(e); in all other cases, whether a modification of an *obligation* is material is determined based on the facts and circumstances.

**Model 1 IGA:** section 1.1471-1(b)(72): an agreement or arrangement between the United States or the Treasury Department and a foreign government or one or more agencies thereof to implement FATCA through reporting by *financial institutions* to such foreign government or agency thereof, followed by automatic exchange of the reported information with the IRS. The IRS will publish a list identifying all countries that are treated as having in effect a Model 1 IGA.

**Model 2 IGA:** section 1.1471-1(b)(73): an agreement or arrangement between the United States or the Treasury Department and a foreign government or one or more agencies thereof to facilitate the implementation of FATCA through reporting by *financial institutions* directly to the IRS in accordance with the requirements of an *FFI agreement*, supplemented by the exchange of information between such foreign government or

agency thereof and the IRS. The IRS will publish a list identifying all countries that are treated as having in effect a Model 2 IGA.

**NFFE:** section 1.1471-1(b)(74): a *foreign entity* that is not a *financial institution* (including a *territory NFFE*), or a *foreign entity* treated as an NFFE pursuant to a *Model 1 IGA* or *Model 2 IGA*.

**Nonfinancial group:** section 1.1471-5(e)(5)(i)(B): an expanded affiliated group if:

- (1) for the three-year period preceding the year for which the determination is made,
  - (A) no more than 25 percent of the gross income of the *expanded affiliated group* (excluding income derived by any member that is an *excepted nonfinancial start-up company* or an *excepted nonfinancial entity in liquidation or bankruptcy*) consists of *passive income*;
  - (B) no more than 5 percent of the gross income of the expanded affiliated group is derived by members of the *expanded affiliated group* that are *FFIs* (excluding income derived from transactions between members of the *expanded affiliated group* or by any member of the *expanded affiliated group* that is a *certified deemed-compliant FFI*); and
  - (C) no more than 25 percent of the fair market value of assets held by the *expanded affiliated group* (excluding assets held by a member that is an *excepted nonfinancial start-up company* or an *excepted nonfinancial entity in liquidation or bankruptcy*) are assets that produce or are held for the production of *passive income*; and
- (2) any member of the *expanded affiliated group* that is an *FFI* is either a *participating FFI* or *deemed-compliant FFI*.

**Nonparticipating FFI:** section 1.1471-1(b)(75): an *FFI* other than a *participating FFI*, a *deemed-compliant FFI*, or an *exempt beneficial owner*.

**Non-profit organization:** section 1.1471-5(e)(5)(vi): a *foreign entity* that is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural or educational purposes if:

- (A) the entity is exempt from income tax in its country of residence;
- (B) the entity has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- (C) neither the laws of the entity's country of residence nor the entity's formation documents permit any income or assets of the entity to be distributed to, or applied for the benefit of, an individual or noncharitable entity other than pursuant to the conduct of the entity's charitable activities, or as payment of reasonable compensation for services rendered or the use of property, or as payment representing the fair market value of property that the entity has purchased; and
- (D) the 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 an integral part, *controlled entity*, or political subdivision of a foreign sovereign, or another non-profit organization or escheat to the government of the entity's country of residence or any political subdivision thereof.

**Nonregistering local bank:** section 1.1471-5(f)(2)(i): an *FFI* if:

- (A) it operates solely as (and is licensed and regulated under the laws of its country of incorporation or organization as) either (1) a bank or (2) a credit union or similar cooperative credit organization that is operated without profit;
- (B) its business consists primarily of receiving deposits from and making loans to unrelated retail customers;
- (C) it does not have a fixed place of business outside its country of incorporation or organization, aside from any location that is not advertised to the public and from which the *FFI* performs solely administrative support functions;

- (D) it does not solicit customers or *account holders* outside its country of incorporation or organization;
- (E) it does not have more than \$175 million in assets on its balance sheet and, if the *FFI* is a member of an *expanded affiliated group*, the group does not have more than \$500 million in total assets on its consolidated or combined balance sheets; and
- (F) with respect to an *FFI* that is part of an *expanded affiliated group*, each member of the *expanded affiliated group* is incorporated or organized in the same country and does not have a fixed place of business outside of that country, aside from any location that is not advertised to the public and from which the *FFI* performs solely administrative support functions, and each *FFI* in the group (other than an *FFI with only low-value accounts* or a *restricted fund*) is a nonregistering local bank.

**Nonreporting IGA FFI:** section 1.1471-1(b)(76): an *FFI* that is identified as a nonreporting financial institution pursuant to a *Model 1 IGA* or *Model 2 IGA* and that is not a *registered deemed-compliant FFI*.

**Nonreporting member of a participating FFI group:** section 1.1471-5(f)(1)(i)(B): an *FFI* that is a member of a *participating FFI group* and that:

- (1) by the later of December 31, 2013, or the date it registers with the IRS, implements policies and procedures to ensure that within 6 months of opening a *U.S. account* or a *financial account* held by a *recalcitrant account holder* or a *nonparticipating FFI*, the *FFI* either transfers such account to an affiliate that is a *participating FFI, reporting Model 1 FFI*, or *U.S. financial institution*, closes such account, or becomes a *participating FFI*;
- (2) reviews its *financial accounts* that were opened prior to the time it implements the policies and procedures described above, using the procedures applicable to *preexisting accounts* of *participating FFIs*, to identify any *U.S. account* or *financial account* held by a *nonparticipating FFI* and, within 6 months of the identification of any such account, the *FFI* transfers such account to an affiliate that is

a *participating FFI, reporting Model 1 FFI*, or *U.S. financial institution*, closes such account, or becomes a *participating FFI*; and

- (3) by the later of December 31, 2013, or the date it registers with the IRS, implements policies and procedures to ensure that it identifies any *financial account* that becomes a *U.S. account* or a *financial account* held by a *recalcitrant account holder* or a *nonparticipating FFI* due to a change in circumstances and, within 6 months of the date on which the *FFI* first has knowledge or reason to know of the change in the *account holder's chapter 4 status*, the *FFI* transfers any such account to an affiliate that is a *participating FFI, reporting Model 1 FFI*, or *U.S. financial institution*, closes such account, or becomes a *participating FFI*.

**Non-U.S. account:** section 1.1471-1(b)(77): a *financial account* that is not a *U.S. account* and that does not have an *account holder* that is a *nonparticipating FFI* or *recalcitrant account holder*.

**Obligation:** section 1.1471-2(b)(2)(ii): any legally binding agreement or instrument; including, for example:

- (1) a debt instrument (for example, a bond, guaranteed investment certificate, or term deposit);
- (2) an agreement to extend credit for a fixed term (for example, a line of credit or a revolving credit facility), provided that the agreement as of its issue date fixes the material terms (including a stated maturity date) under which the credit will be provided;
- (3) a derivatives transaction entered into between counterparties under an ISDA Master Agreement that is evidenced by a confirmation;
- (4) a life insurance contract under which the entire contract value is payable no later than upon the death of the individual(s) insured under the contract; or
- (5) an immediate annuity contract payable for a period certain or for the life of the annuitant.

An obligation does not include any legal agreement or instrument that:

- (1) is treated as equity for U.S. tax purposes;
- (2) lacks a stated expiration or term (for example, a savings deposit or demand deposit, a deferred annuity contract, or a life insurance contract or annuity contract that permits a substitution of a new individual as the insured or as the annuitant under the contract);
- (3) is a brokerage agreement, custodial agreement, investment linked insurance contract, investment linked annuity contract, or similar agreement to hold *financial assets* for the account of others and to make and receive payments of income and other amounts with respect to such assets; or
- (4) is a master agreement that merely sets forth standard terms and conditions that are intended to apply to a series of transactions between parties but that does not set forth all of the specific terms necessary to conclude a particular transaction.

**Offshore obligation:** section 1.1471-1(b)(82): any *financial account*, instrument, or contract that is maintained and executed at an office or *branch* of the *withholding agent* at any location outside of the United States or in any location in a U.S. territory, or any equity interest in a *foreign entity* that is purchased by the owner of such interest outside of the United States either directly from the entity or from another person that is located outside of the United States.

**Owner-documented FFI:** section 1.1471-5(f)(3): an *FFI* that:

- (A) is an *FFI* solely because it is an *investment entity*;
- (B) is not owned by or in an *expanded affiliated group* with any *FFI* that is a *depository institution*, *custodial institution*, or *specified insurance company*;
- (C) does not maintain a *financial account* for any *nonparticipating FFI*;
- (D) provides the designated *withholding agent* with all of the required *documentation* and agrees to notify the *withholding agent* if there is a change in circumstances; and

- (E) the designated *withholding agent* agrees to report to the IRS (or, in the case of a *reporting Model 1 FFI*, to the relevant foreign government or agency thereof) all of the information with respect to any *specified U.S. persons*; excluding information with respect to an indirect owner of the *FFI* that holds its interest through a *participating FFI*, a *deemed-compliant FFI* (other than an owner documented *FFI*), an entity that is a *U.S. person*, an *exempt beneficial owner*, or an *excepted NFFE*.

**Participating FFI:** section 1.1471-1(b)(85): an *FFI* that has agreed to comply with the requirements of an *FFI agreement*; including an *FFI* described in a *Model 2 IGA* that has agreed to comply with the requirements of an *FFI agreement*, and a *QI branch of a U.S. financial institution*, unless such *branch* is a *reporting Model 1 FFI*.

**Participating FFI group:** section 1.1471-1(b)(86): an *expanded affiliated group* that includes one or more *participating FFIs* and each *FFI* that is a member of the *expanded affiliated group* is either a *participating FFI* or *registered deemed-compliant FFI*; including an *expanded affiliated group* in which one or more members of the group is a *reporting Model 1 FFI* and each member of the group that is an *FFI* is a *registered deemed-compliant FFI*, *nonreporting IGA FFI*, *limited FFI*, or *foreign retirement fund*.

**Passive income:** section 1.1472-1(c)(1)(iv): the portion of gross income that consists of:

- (1) dividends, including substitute dividend amounts;
- (2) interest;
- (3) income equivalent to interest, including substitute interest and amounts received from or with respect to a pool of insurance contracts if the amounts received depend in whole or part upon the performance of the pool;
- (4) 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 *NFFE*;
- (5) annuities;

- (6) the excess of gains over losses from the sale or exchange of property that gives rise to passive income described above;
- (7) the excess of gains over losses from transactions (including futures, forwards, and similar transactions) in any commodities; **excluding** (i) any commodity hedging transaction described in section 954(c)(5)(A), determined by treating the corporation or partnership as a controlled foreign corporation, or (ii) active business gains or losses from the sale of commodities, but only if substantially all the *foreign entity's* commodities are property described in paragraph (1), (2), or (8) of section 1221(a);
- (8) the excess of foreign currency gains over foreign currency losses attributable to any section 988 transaction;
- (9) net income from notional principal contracts;
- (10) amounts received under cash value insurance contracts; or
- (11) amounts earned by an insurance company in connection with its reserves for insurance and annuity contracts.

Passive income does not include:

- (1) any income from interest, dividends, rents, or royalties that is received or accrued from a related person (as defined under section 954(d)(3), determined by substituting “foreign entity” for “controlled foreign corporation”) to the extent such amount is properly allocable to income of such related person that is not passive income; or
- (2) in the case of a *foreign entity* that regularly acts as a dealer in property that gives rise to passive income, forward contracts, option contracts, or similar financial instruments (including notional principal contracts and all instruments referenced to commodities):
  - (i) any item of income or gain (other than any dividends or interest) from any transaction (including hedging transactions and transactions

involving physical settlement) entered into in the ordinary course of such dealer’s trade or business as such a dealer; and

- (ii) if such dealer is a dealer in securities (within the meaning of section 475(c)(2)), any income from any transaction entered into in the ordinary course of such trade or business as a dealer in securities.

**Passive NFFE:** section 1.1471-1(b)(88): an *NFFE* other than an *excepted NFFE*.

**Passthru payment:** section 1.1471-5(h)(1): any *withholdable payment* and any *foreign passthru payment*.

**Payee:** section 1.1471-3(a): in general, the person to whom a payment is made, regardless of whether such person is the beneficial owner of the amount; with respect to a *financial account*, the holder of the *financial account*; **excluding** a *foreign person* that is acting as an agent or intermediary with respect to a payment if such *foreign person* is:

- (1) an *NFFE*, unless the *NFFE* is a qualified intermediary that has assumed primary withholding responsibility; or
- (2) in the case of a payment of U.S.-source FDAP income, a *participating FFI*, *deemed-compliant FFI*, or *restricted distributor*, unless the *participating FFI*, *deemed-compliant FFI*, or *restricted distributor* is a qualified intermediary that has assumed primary withholding responsibility.

A *foreign entity* that is a *flow-through entity* is a payee with respect to a payment only if the *flow-through entity* is:

- (1) an *FFI* that is not a *participating FFI* or *deemed-compliant FFI*, or *restricted distributor* receiving a payment of U.S.-source FDAP income;
- (2) an *excepted NFFE* that is not acting as an agent or intermediary with respect to the payment;
- (3) a withholding foreign partnership or withholding foreign trust that is not acting as an agent or intermediary with respect to the payment; or

- (4) receiving income that is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States, or receiving a payment of gross proceeds from the sale of property that can produce income that is effectively connected with the conduct of a trade or business in the United States and that is excluded from the definition of a *withholdable payment*.

A *withholding agent* that makes a *withholdable payment* to:

- (1) a *flow-through entity* that is not described in paragraphs (1) through (3) above will be required to treat the partner, beneficiary, or owner (as applicable) as the payee (looking through partners, beneficiaries, and owners that are themselves flow-through entities that are not described in paragraphs (1) through (3) above);
- (2) a *U.S. person* and has actual knowledge that the person receiving the payment is acting as an intermediary or agent of a *foreign person* with respect to the payment must treat such *foreign person*, and not the intermediary or agent, as the payee of such payment; excluding *withholdable payments* to a *U.S. financial institution* that is acting as an intermediary or agent with respect to the payment on behalf of one or more *foreign persons* if the *withholding agent* does not have reason to know that the *U.S. financial institution* will not comply with its obligations to withhold under sections 1471 and 1472;
- (3) an entity that is disregarded for U.S. federal tax purposes as an entity separate from its single owner must treat the single owner as the payee; except that a *withholding agent* that makes a payment to a *limited branch* will be required to treat the payment as being made to a *nonparticipating FFI*; and
- (4) a *U.S. branch* of either a *participating FFI* or *registered deemed-compliant FFI* is a payment to a *U.S. person* if the *U.S. branch* is treated as a *U.S. person*, and in such case the *U.S. branch* is treated as the payee.

A payment to a foreign *branch* of a *U.S. person* is generally a payment to a *U.S. payee*, unless the foreign *branch* is a qualified intermediary that is acting as an intermediary with respect to the payment.

**Preexisting account:** section 1.1471-1(b)(95): a *financial account* that is a *preexisting obligation*.

**Preexisting obligation:** section 1.1471-1(b)(98): any *financial account*, instrument, contract, debt, or equity interest maintained, executed, or issued by the *withholding agent* that is outstanding (i) on December 31, 2013, (ii) with respect to a *withholding agent* that is a *participating FFI*, on the *effective date of the FFI agreement*, or (iii) with respect to a *withholding agent* that is a *registered deemed-compliant FFI*, prior to the later of the date that the *FFI* registers as a *deemed-compliant FFI* and receives a *GIIN* or the date the *FFI* is required to implement account opening procedures; including any obligation (referring to a *financial account*, instrument, contract, debt, or equity interest) of an *account holder* or *payee*, regardless of the date such obligation was entered into, if:

- (A) the *account holder* or *payee* also holds with the *withholding agent* (or a member of the *withholding agent's expanded affiliated group* or *sponsored FFI group*) a *financial account*, instrument, contract, or equity interest that is a preexisting obligation as described above;
- (B) the *withholding agent* (and, as applicable, the member of the *withholding agent's expanded affiliated group* or *sponsored FFI group*) treats both of the aforementioned obligations, and any other obligations of the *payee* or *account holder*, as consolidated obligations; and
- (C) with respect to an obligation that is subject to AML due diligence, the *withholding agent* is permitted to satisfy such AML due diligence for the obligation by relying upon the AML due diligence performed for the preexisting obligations described above.

**Primarily attributable to investing, reinvesting, and trading:** section 1.1471-5(e)(4)(iv): an entity's gross income is primarily attributable to investing, reinvesting, or trading if the entity's gross income attributable to investing, reinvesting, or trading in *financial assets* equals or exceeds 50 percent of the entity's gross income during the shorter of:

- (1) the three-year period ending on December 31 of the year preceding the year in which the determination is made; or

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- (2) the period during which the entity has been in existence.

An entity with no operating history as of the date of the determination will be considered to have income that is primarily attributable to investing, reinvesting, or trading if such entity expects to meet the income threshold described above based on its anticipated functions, assets, and employees, with due consideration given to any purpose or functions for which the entity is licensed or regulated (including those of any predecessor).

**Primarily conducts as a business:** section 1.1471-5(e)(4)(iii): an entity is treated as primarily conducting a business if the entity's gross income attributable to such activities equals or exceeds 50 percent of the entity's gross income during the shorter of:

- (1) the three-year period ending on December 31 of the year preceding the year in which the determination is made; or
- (2) the period during which the entity has been in existence.

An entity with no operating history as of the date of the determination is treated as primarily conducting a business if such entity expects to meet the gross income threshold described above based on its anticipated functions, assets, and employees, with due consideration given to any purpose or functions for which the entity is licensed or regulated (including those of any predecessor).

**QI branch of a U.S. financial institution:** section 1.1471-1(b)(103): a foreign *branch* of a *U.S. financial institution* for which a qualified intermediary agreement is in effect.

**Qualified collective investment vehicle:** section 1.1471-5(f)(1)(i)(C): an *FFI* that:

- (1) is an *FFI* solely because it is an *investment entity*, and is regulated as an investment fund (or its manager is regulated with respect to the investment fund) either in its country of incorporation or organization or in all of the countries in which it is registered and all of the countries in which it operates;
- (2) each holder of record of direct debt interests in the *FFI* in excess of \$50,000, direct equity interests in the *FFI* (for example the holders of its units or global

certificates), and any other *account holder* of the *FFI* is a *participating FFI*, *registered deemed-compliant FFI*, *foreign retirement fund*, *non-profit organization*, *U.S. person* that is not a *specified U.S. person*, *nonreporting IGA FFI*, or *exempt beneficial owner*, excluding equity interests owned by *specified U.S. persons* acquired with an initial capital contribution that is intended as a temporary investment and is deemed by the manager of the entity to be necessary or appropriate for the establishment of the entity, such as for the purpose of establishing a track record of investment performance for such entity, achieving economies of scale for diversified investment, avoiding an artificially high expense to return ratio, or similar purposes, if such *specified U.S. person* is in the business of providing seed capital to form investment entities, the interests in which it intends to sell to unrelated investors and the *specified U.S. person* neither has held, nor intends to hold, such interest for more than three years; and

- (3) in the case of an *FFI* that is part of an *expanded affiliated group*, all other *FFIs* in the *expanded affiliated group* are *participating FFIs*, *registered deemed-compliant FFIs*, *sponsored investment entities*, *sponsored controlled foreign corporations*, *nonreporting IGA FFIs*, or *exempt beneficial owners*.

**Qualified credit card issuer:** section 1.1471-5(f)(1)(i)(E): an *FFI* that:

- (1) is an *FFI* solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and
- (2) by the later of December 31, 2013, or the date it registers as a *deemed-compliant FFI*, implements policies and procedures to either prevent a customer deposit (excluding credit balances to the extent of disputed charges but including credit balances resulting from merchandise returns) in excess of \$50,000 or to ensure that any customer deposit in excess of \$50,000 is refunded to the customer within 60 days.

**Recalcitrant account holder:** section 1.1471-5(g)(2): any holder of a *financial account* maintained by an *FFI* if such *account holder* is not an *FFI* (or presumed to be

an *FFI*), such account does not meet the requirements of the exception to *U.S. account* status for *depository accounts* with a balance of \$50,000 or less and does not qualify for any other exceptions from the *documentation* requirements (or the *participating FFI* elects to forego such exceptions) and:

- (i) the *account holder* fails to comply with requests by the *FFI* for the *documentation* or information that is required for determining the status of such account as a *U.S. account* or other than a *U.S. account*;
- (ii) the *account holder* fails to provide a valid Form W-9 upon request from the *FFI* or fails to provide a correct name and TIN combination upon request from the *FFI* when the *FFI* has received notice from the IRS indicating that the name and TIN combination reported by the *FFI* for the account holder is incorrect;
- (iii) if foreign law would (but for a waiver) prevent reporting by the *FFI* (or *branch* or division thereof) of the information required with respect to such account, the *account holder* (or *substantial U.S. owner* of an account holder that is a *U.S. owned foreign entity*) fails to provide a valid and effective waiver to permit such reporting; or
- (iv) the *account holder* provides the *documentation* required to establish its status as a *passive NFFE* (other than a withholding foreign partnership or withholding foreign trust) but fails to provide the information required regarding its owners.

**Registered deemed-compliant FFI:** section 1.14711(b)(105): an *FFI* that is either:

- (A) a *local FFI*;
- (B) a *nonreporting member of a participating FFI group*;
- (C) a *qualified collective investment vehicle*;
- (D) a *restricted fund*;
- (E) a *qualified credit card issuer*;
- (F) a *sponsored investment entity*;
- (G) a *sponsored controlled foreign corporation*;

- (H) treated as a registered deemed-compliant FFI under a *Model 2 IGA*;
- (I) a *reporting Model 1 FFI* that complies with a *Model 1 IGA*; or
- (J) a *QI branch of a U.S. financial institution* that is a *reporting Model 1 FFI*.

**Regularly traded:** section 1.1472-1(c)(1)(i)(A): Stock of a corporation is regularly traded on one or more *established securities markets* for a calendar year if:

- (1) one or more classes of stock of the corporation that, in the aggregate, represent more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote and of the total value of the stock of such corporation are listed on such market or markets during the prior calendar year; and
- (2) with respect to each class relied on to meet the more-than-50 percent listing requirement above:
  - (i) trades in each such class are effected, other than in de minimis quantities, on such market or markets on at least 60 days during the prior calendar year; and
  - (ii) the aggregate number of shares in each such class that are traded on such market or markets during the prior year are at least 10 percent of the average number of shares outstanding in that class during the prior calendar year.

**Reporting Model 1 FFI:** section 1.1471-1(b)(107): an *FFI* with respect to which a foreign government or agency thereof agrees to obtain and exchange information pursuant to a *Model 1 IGA*, other than an *FFI* that is treated as a *nonparticipating FFI* under the *Model 1 IGA*.

**Restricted distributor:** section 1.1471-5(f)(4): an underwriter, *broker*, dealer, or other person who participates, pursuant to a contractual arrangement with an *FFI*, in the distribution of securities and that holds debt or equity interests in a *restricted fund* as a nominee if:

- (i) it provides investment services to at least 30 unrelated customers and less than 50 percent of the distributor's customers are related persons;

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- (ii) it is required to perform AML due diligence procedures under the anti-money laundering laws of its country of incorporation or organization (which must be a *FATF-compliant jurisdiction*);
  - (iii) it operates solely in its country of incorporation or organization, does not have a fixed place of business outside that country (other than a location that is not advertised to the public and from which it performs solely administrative support functions), and, if such distributor belongs to an *expanded affiliated group*, has the same country of incorporation or organization as all other members of its *expanded affiliated group*;
  - (iv) it does not solicit customers or *account holders* outside its country of incorporation or organization;
  - (v) it does not have more than \$175 million in total assets under management and has no more than \$7 million in gross revenue on its income statement for the most recent financial accounting year and, if the distributor belongs to an *expanded affiliated group*, the entire group does not have more than \$500 million in total assets under management or more than \$20 million in gross revenue for its most recent financial accounting year on a combined or consolidated income statement;
  - (vi) it provides the *restricted fund* (or another distributor of the *restricted fund* that is a *participating FFI* or *registered deemed-compliant FFI*, and with which the distributor has entered into its distribution agreement) with a valid Form W-8 indicating that the distributor satisfies the requirements to be a restricted distributor;
  - (vii) the agreement governing the distributor's distribution of debt or equity interests of the *restricted fund*:
    - (A) prohibits the distributor from distributing any securities to *specified U.S. persons, passive NFFEs* that have one or more *substantial U.S. owners*, and *nonparticipating FFIs*;
    - (B) requires that if the distributor does distribute securities to any of the persons described in paragraph (A) above, it will cause the restricted fund to redeem or retire those interests, or it will transfer those interests to a distributor that is a *participating FFI* or *reporting Model 1 FFI*, within 6 months and the commission paid to the distributor will be forfeited to the *restricted fund* or to the *participating FFI* to which those interests are transferred; and
    - (C) requires the distributor to notify the *restricted fund* (or another distributor of the *restricted fund* that is a *participating FFI*, *reporting Model 1 FFI*, or *registered deemed-compliant FFI* and with which the distributor has entered into its distribution agreement) of a change in the distributor's *chapter 4 status* within 90 days of the change in status; and
  - (viii) with respect to sales after December 31, 2011, and prior to the time the restrictions described in paragraph (vii) above were incorporated into the distribution agreement, either the agreement governing the distributor's distribution of debt or equity interests of the relevant *FFI* contained a prohibition of the sale of such securities to U.S. entities or U.S. resident individuals, or the distributor reviews all accounts relating to such sales in accordance with the procedures (and time frames) applicable to *preexisting accounts* and certifies that it has caused the *restricted fund* to redeem or retire, or it has transferred all securities sold to any of the persons described in paragraph (vii) above. If the distribution agreement contained only a prohibition on the sale of securities to U.S. resident individuals, the distributor will not be required to review the individual accounts relating to such sales but must review and make certifications with respect to all entity accounts in the manner described herein.
- Restricted fund:** section 1.1471-5(f)(1)(i)(D): an *FFI* that:
- (1) is an *FFI* solely because it is an *investment entity*, and it is regulated as an investment fund (or its manager is regulated with respect to the fund) under the laws of its country of incorporation or organization (which must be a *FATF-compliant jurisdiction* at the time the *FFI* registers for deemed-compliant status) or in all of the countries in which it is registered and in all of the countries in which it operates;
  - (2) interests issued directly by the fund (including interests issued through a transfer agent or distributor that does not hold the interests as a nominee of the

- account holder*) are redeemed by or transferred by the fund rather than sold by investors on any secondary market;
- (3) interests that are not issued directly by the fund are sold only through underwriters, *brokers*, dealers, or other persons who participate (pursuant to a contractual arrangement with the *FFI*) in the distribution of securities, hold interests in the *FFI* as a nominee, and that are *participating FFIs*, *registered deemed-compliant FFIs*, *nonregistering local banks*, or *restricted distributors*;
- (4) ensures that by the later of June 30, 2014, or 6 months after the date the *FFI* registers as a *deemed-compliant FFI*, each agreement that governs the distribution of its debt or equity interests prohibits sales and other transfers of debt or equity interests in the *FFI* (other than interests that are both distributed by and held through a *participating FFI*) to *specified U.S. persons*, *nonparticipating FFIs*, or *passive NFFEs* with one or more *substantial U.S. owners*, and the *FFI*'s prospectus and all marketing materials indicate that sales and other transfers of interests in the *FFI* to *specified U.S. persons*, *nonparticipating FFIs*, or *passive NFFEs* with one or more *substantial U.S. owners* are prohibited unless such interests are both distributed by and held through a *participating FFI*;
- (5) ensures that by the later of June 30, 2014, or 6 months after the date the *FFI* registers as a *deemed-compliant FFI*, each agreement entered into by the *FFI* that governs the distribution of its debt or equity interests requires the distributor to notify the *FFI* of a change in the distributor's *chapter 4 status* within 90 days of the change, and the *FFI* certifies to the IRS that, with respect to any distributor that ceases to qualify as a distributor identified in paragraph (3) above, the *FFI* will terminate its distribution agreement with the distributor, or cause the distribution agreement to be terminated, within 90 days of notification of the distributor's change in status and, with respect to all debt and equity interests of the *FFI* issued through that distributor, will redeem those interests, convert those interests to direct holdings in the fund, or cause those interests to be transferred to another distributor identified in paragraph (3) above within 6 months of the distributor's change in status;
- (6) with respect to any of the *FFI*'s preexisting direct accounts that are held by the beneficial owner of the interest in the *FFI*, reviews those accounts in accordance with the procedures applicable to *preexisting accounts* to identify any *U.S. account* or account held by a *nonparticipating FFI* and, by the later of June 30, 2014, or 6 months after the date the *FFI* registers as a *deemed-compliant FFI*, certifies to the IRS either that it did not identify any *U.S. account* or account held by a *nonparticipating FFI* as a result of its review or, if any such accounts were identified, that the *FFI* will either redeem such accounts, transfer such accounts to an *affiliate* or other *FFI* that is a *participating FFI*, *reporting Model 1 FFI*, or *U.S. financial institution*, or withhold and report on such accounts as would be required if it were a *participating FFI*; excluding the account of any individual investor that purchased its interest at a time when all of the *FFI*'s distribution agreements and its prospectus contained an explicit prohibition of the issuance and/or sale of shares to U.S. entities and U.S. resident individuals;
- (7) by the later of December 31, 2013, or the date that it registers as a *deemed-compliant FFI*, implements the policies and procedures to ensure that it either:
- (i) does not open or maintain an account for, or make a *withholdable payment* to, any *specified U.S. person*, *nonparticipating FFI*, or *passive NFFE* with one or more *substantial U.S. owners* and, if it discovers any such accounts, closes all accounts for any such person within 6 months of the date that the *FFI* had reason to know the *account holder* became such a person; or
  - (ii) withholds and reports on any account held by, or any *withholdable payment* made to, any *specified U.S. person*, *nonparticipating FFI*, or *passive NFFE* with one or more *substantial U.S. owners* to the extent and in the manner that would be required if the *FFI* were a *participating FFI*; and
- (8) for an *FFI* that is part of an *expanded affiliated group*, all other *FFIs* in the *expanded affiliated group* are *participating FFIs*, *registered deemed-compliant FFIs*, *sponsored investment entities*, *sponsored controlled foreign corporations*, *nonreporting IGA FFIs*, or *exempt beneficial owners*.

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**Retirement or pension account:** section 1.14715(b)(2)(i)

(A): A retirement or pension account if:

- (1) it is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);
- (2) either (i) contributions to the account that would otherwise be subject to tax under such laws are deductible or excluded from the gross income of the *account holder* or taxed at a reduced rate; or (ii) taxation of investment income from the account is deferred or taxed at a reduced rate;
- (3) annual information reporting is required to the relevant tax authorities with respect to the account;
- (4) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and
- (5) either (i) annual contributions are limited to \$50,000 or less, or (ii) there is a maximum lifetime contribution limit to the account of \$1,000,000 or less.

**Sale or other disposition:** section 1.1473-1(a)(3): any sale, exchange, or disposition of property that requires recognition of gain or loss under section 1001(c), determined without regard to whether the owner of such property is subject to U.S. federal income tax with respect to such sale, exchange, or disposition; including (but not limited to) sales of securities; redemptions of stock; retirements and redemptions of indebtedness; entering into short sales; a closing transaction under a forward contract, option, or other instrument that is otherwise a sale; a distribution from a corporation to the extent the distribution is a return of capital or a capital gain to the beneficial owner of the payment; excluding grants or purchases of options; exercises of call options for physical delivery; transfers of securities for which gain or loss is excluded from recognition under section 1058; mere executions of contracts that require delivery of personal property or an interest therein; a constructive sale under section 1259; or a mark to fair market value under section 475 or section 1296.

**Specified insurance company:** section 1.1471-5(e)(1)

(iv): an insurance company or a *holding company* that is a member of an *expanded affiliated group* that includes an insurance company, and the insurance company or *holding company* issues, or is obligated to make payments with respect to, a cash value insurance or annuity contract.

**Specified U.S. person:** section 1.1473-1(c): any *U.S. person* other than:

- (i) a corporation the stock of which is *regularly traded* on one or more *established securities markets*;
- (ii) any corporation that is a member of the same *expanded affiliated group* as a corporation described in paragraph (i) above;
- (iii) any organization exempt from taxation under section 501(a) or an individual retirement plan as defined in section 7701(a)(37);
- (iv) the United States or any wholly owned agency or instrumentality thereof;
- (v) any State, the District of Columbia, 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;
- (vi) any bank as defined in section 581;
- (vii) any real estate investment trust as defined in section 856;
- (viii) any regulated investment company as defined in section 851 or any entity registered with the Securities Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-64);
- (ix) any common trust fund as defined in section 584(a);
- (x) any trust that is exempt from tax under section 664(c) or is described in section 4947(a)(1);
- (xi) 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;

(xii) a *broker*; or

(xiii) any tax exempt trust under a section 403(b) plan or section 457(g) plan.

**Sponsored, closely held investment vehicle:** section 1.1471-5(f)(2)(iii): an *FFI* that:

- (A) is an *FFI* solely because it is an *investment entity* and is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust;
- (B) has a contractual arrangement with a *sponsoring entity* that is a *participating FFI*, *reporting Model 1 FFI*, or *U.S. financial institution* and that is authorized to manage the *FFI* and enter into contracts on behalf of the *FFI* (such as a professional manager, trustee, or managing partner), under which the *sponsoring entity* agrees to fulfill all due diligence, withholding, and reporting responsibilities that the *FFI* would have assumed if it were a *participating FFI*;
- (C) does not hold itself out as an investment vehicle for unrelated parties;
- (D) 20 or fewer individuals own all of the debt and equity interests in the *FFI* (disregarding debt interests owned by *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*); and
- (E) the *sponsoring entity*:
  - (1) has registered with the IRS as a *sponsoring entity*;
  - (2) 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 6 years;
  - (3) identifies the *FFI* in all reporting completed on the *FFI's* behalf to the extent required; and
  - (4) has not had its status as a sponsor revoked.

**Sponsored controlled foreign corporation:** section 1.1471-5(f)(1)(i)(F): an *FFI* that:

- (i) is a controlled foreign corporation that is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust;
- (ii) is wholly owned, directly or indirectly, by a *U.S. financial institution* that agrees with the *FFI* to act as a *sponsoring entity* for the *FFI* and that:
  - (A) is authorized to manage the *FFI* and enter into contracts on behalf of the *FFI* (such as a fund manager, trustee, corporate director, or managing partner);
  - (B) has registered with the IRS as a *sponsoring entity*;
  - (C) has registered the *FFI* with the IRS;
  - (D) 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*;
  - (E) identifies the *FFI* in all reporting completed on the *FFI's* behalf to the extent required; and
  - (F) has not had its status as a sponsor revoked; and
- (iii) shares a common electronic account system with the *sponsoring entity* that enables the *sponsoring entity* to identify all *account holders* and *payees* of the *FFI* and to access all account and customer information maintained by the *FFI* including, but not limited to, customer identification information, customer documentation, account balance, and all payments made to the *account holder* or *payee*.

**Sponsored FFI:** section 1.1471-1(b)(113): a *sponsored investment entity*, *sponsored controlled foreign corporation*, or *sponsored, closely held investment vehicle*.

**Sponsored FFI group:** section 1.1471-1(b)(114): a group of *sponsored FFIs* that share the same *sponsoring entity*.

**Sponsored investment entity:** section 1.1471-5(f)(1)(i)(F): an *FFI* that:

- (i) is an *investment entity* that is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust; and
- (ii) an entity has agreed with the FFI to act as a *sponsoring entity* for the FFI and:
  - (A) is authorized to manage the FFI and enter into contracts on behalf of the FFI (such as a fund manager, trustee, corporate director, or managing partner);
  - (B) has registered with the IRS as a *sponsoring entity*;
  - (C) has registered the FFI with the IRS;
  - (D) 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*;
  - (E) identifies the FFI in all reporting completed on the FFI's behalf to the extent required; and
  - (F) has not had its status as a sponsor revoked.

**Sponsoring entity:** section 1.1471-1(b)(115): an entity that registers with the IRS and agrees to perform the due diligence, withholding, and reporting obligations of one or more FFIs.

**Substantial U.S. owner:** section 1.1473-1(b):

- (i) with respect to any foreign corporation, any *specified U.S. person* that owns, directly or indirectly, more than 10 percent of the stock of such corporation (by vote or value);
- (ii) with respect to any foreign partnership, any *specified U.S. person* that owns, directly or indirectly, more than 10 percent of the profits interests or capital interests in such partnership; and
- (iii) in the case of a trust, (A) any *specified U.S. person* treated as an owner of any portion of the trust under section 671 through 679; and (B) any *specified U.S. person* that holds, directly or indirectly, more than 10 percent of the beneficial interests of the trust.

In the case of an *investment entity* or *specified insurance company*, this section shall be applied by substituting “0 percent” for “10 percent” in each place that it appears.

**Territory entity:** section 1.1471-1(b)(120): any entity that is incorporated or organized under the laws of any U.S. territory.

**Territory financial institution:** section 1.1471-1(b)(121): a *financial institution* that is incorporated or organized under the laws of any U.S. territory; excluding a *territory entity* that is an *investment entity* but that is not a *depository institution*, *custodial institution*, or *specified insurance company*.

**Territory NFFE:** section 1.1471-1(b)(123): a *territory entity* that is not a *financial institution*; including a *territory entity* that is an *investment entity* but is not a *depository institution*, *custodial institution*, or *specified insurance company*.

**Treasury center:** section 1.1471-5(e)(5)(i)(D): an entity whose primary activity is to enter into investment, hedging, and financing transactions with or for members of its *expanded affiliated group* for purposes of:

- (i) managing the risk of price changes or currency fluctuations with respect to property that is held or to be held by the *expanded affiliated group* (or any member thereof);
- (ii) managing the risk of interest rate changes, price changes, or currency fluctuations with respect to borrowings made or to be made by the *expanded affiliated group* (or any member thereof);
- (iii) managing the risk of interest rate changes, price changes, or currency fluctuations with respect to assets or liabilities to be reflected in financial statements of the *expanded affiliated group* (or any member thereof);
- (iv) managing the working capital of the *expanded affiliated group* (or any member thereof) by investing or trading in *financial assets* solely for the account and risk of such entity or any member of its *expanded affiliated group*; or

(v) acting as a financing vehicle for borrowing funds for use by the *expanded affiliated group* (or any member thereof).

An entity is not a treasury center if any equity or debt interest in the entity is held by a person that is not a member of the entity's *expanded affiliated group* and the redemption or retirement amount or return earned on such interest is determined primarily by reference to:

- (i) the investment, hedging, and financing activities of the treasury center with members outside of its *expanded affiliated group*; or
- (ii) any member of the group that is an *investment entity* described in paragraph (B) or *passive NFFE*.

**U.S. account:** section 1.1471-5(a)(2): any *financial account* maintained by an *FFI* that is held by one or more *specified U.S. persons* or *U.S.-owned foreign entities*; excluding any *depository account* maintained by such *financial institution* during a calendar year if such account is held solely by one or more individuals and, with respect to each holder of such account, the aggregate balance or value of all *depository accounts* held by each such individual does not exceed \$50,000 as of the end of the calendar year or on the date such account is closed.

**U.S. financial institution:** section 1.1471-1(b)(127): a *financial institution* that is a *U.S. person*; including a *U.S. branch* of a *participating FFI* or *registered deemed-compliant FFI* that is treated as a *U.S. person*.

**U.S.-owned foreign entity:** section 1.1471-5(c): any *foreign entity* that has one or more *substantial U.S. owners*.

**U.S. person:** section 1.1471-1(b)(132):

- (A) a citizen or resident of the United States;
- (B) a domestic partnership;
- (C) a domestic corporation;
- (D) any estate the income of which is includible in gross income under subtitle A;
- (E) any trust if:

(i) a court within the United States is able to exercise primary supervision over the administration of the trust; and

(ii) one or more United States persons have the authority to control all substantial decisions of the trust;

- (F) the United States government (including an agency or instrumentality thereof);
- (G) a state (including an agency or instrumentality thereof); or
- (H) the District of Columbia (including an agency or instrumentality thereof).

**U.S. withholding agent:** section 1.1471-1(b)(135): a *withholding agent* that is either a *U.S. person* or a *U.S. branch* of a *participating FFI* or *registered deemed-compliant FFI* that is treated as a *U.S. person*.

**Withholdable payment:** section 1.1473-1(a)(1):

- (i) any payment of U.S.-source FDAP income; and
- (ii) for any sale or other disposition occurring after December 31, 2016, any gross proceeds from the *sale or other disposition* of any property of a type that can produce interest or dividends that are U.S.-source FDAP income.

The following payments are not withholdable payments:

- (i) a payment of interest or original issue discount on an obligation payable 183 days or less from the date of original issue (without regard to the period held);
- (ii) any payment to the extent it gives rise to an item of income that is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States and is includible in the beneficial owner's gross income for the taxable year; excluding income that is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States and the beneficial owner claims an exception from tax under an income tax treaty because the income is not attributable to a permanent establishment in the United States;

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- (iii) payments for services (including wages and other forms of employee compensation such as stock options), the use of property, office and equipment leases, software licenses, transportation, freight, gambling winnings, awards, prizes, scholarships, and interest on outstanding accounts payable arising from the acquisition of goods or services; excluding payments in connection with a lending transaction (including loans of securities), a forward, futures, option, or notional principal contract, or a similar financial instrument; premiums for insurance contracts or annuity contracts; amounts paid under cash value insurance or annuity contracts; dividends; interest (including substitute interest described in section 1.861-2(a)(7)) other than interest on outstanding accounts payable arising from the acquisition of goods or services; investment advisory fees; custodial fees; and bank or brokerage fees;
- (iv) gross proceeds from the *sale or other disposition* of any property that can produce U.S.-source FDAP income if all such U.S.-source FDAP income would be excluded from the definition of withholdable payment under the above paragraphs;
- (v) payments arising in sales described in section 1.6045-1(c)(3)(ix) (fractional shares); or
- (vi) payments of U.S.-source FDAP income made prior to January 1, 2017, with respect to an *off-shore obligation* if such payment is made by a person that is not acting as an intermediary (including a person that acts as a qualified securities lender as defined for purposes of chapter 3) with respect to the payment, except in the case of a *flow-through entity* that has a residual withholding requirement with respect to its partners, owners, or beneficiaries.
- Withholding agent:** section 1.1473-1(d)(1): any person, U.S. or foreign, in whatever capacity acting, that has the control, receipt, custody, disposal, or payment of a *withholdable payment* or *foreign passthru payment*; excluding an individual making a *withholdable payment* outside the course of such individual's trade or business (including as an agent with respect to making or receiving such payment).

## Key Contacts

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If you require advice on any of the matters raised in this document, please call any of our partners or your usual contact at Allen & Overy.

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