

**FATCA AND CRS SELF CERTIFICATION FORM  
(CONTROLLING PERSON DECLARATION)**

**Appendix – Summary Descriptions of Selected Defined Terms**

Note: The following are selected summaries of defined terms provided to assist you with the completion of this form. Further details can be found within the OECD Common Reporting Standard for Automatic Exchange of Financial Account information (“CRS”), the associated Commentary to the CRS, Malaysia-US Intergovernmental Agreement on Foreign Account Tax Compliance Act (FATCA) and other domestic guidance.

**Account Holder**

The term “Account Holder” means the person listed or identified as the holder of a Financial Account. A person, other than a Financial Institution, holding a Financial Account for the benefit of another person as an agent, a custodian, a nominee, a signatory, an investment advisor, an intermediary, or as a legal guardian, is not treated as the Account Holder. In these circumstances that other person is the Account Holder. For example, in the case of a parent/child relationship where the parent is acting as a legal guardian, the child is regarded as the Account Holder. With respect to a jointly held account, each joint holder is treated as an Account Holder.

**Active Non-Financial Entity (Active NFE) (CRS)**

An NFE is an Active NFE if it meets any of the criteria listed below. In summary, those criteria refer to:

- a. Active NFE by reason of income and assets:
  - Less than 50% of the NFE’s gross income for the preceding calendar year or other appropriate reporting period is passive income; AND
  - Less than 50% of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
- b. Publicly Traded NFE or Related Entity of a Publicly Traded NFE:
  - The stock of the NFE is regularly traded on an established securities market; OR
  - The NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
- c. The NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
- d. Holding NFE that is a member of a nonfinancial group:
  - Substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- e. Start-up NFE:
  - The NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;
- f. NFE that is liquidating or emerging from bankruptcy:
  - The NFE was not a Financial Institution in the past five years; AND
  - It is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- g. Treasury Center that is a member of a nonfinancial group:
  - The NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions; AND
  - Does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution;

h. Non-Profit NFE:

- The NFE meets all of the following requirements
  - i) It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
  - ii) It is exempt from income tax in its jurisdiction of residence;
  - iii) It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
  - iv) The applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; AND
  - v) The applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organisation, or escheat to the government of the NFE's jurisdiction of residence or any political subdivision thereof.

**Active Non-Financial Foreign Entity (Active NFFE) (FATCA)**

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

- a. Active NFFE by reason of income and assets:
  - Less than 50% of the NFFE's gross income for the preceding calendar year or other appropriate reporting period is passive income; AND
  - Less than 50% of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period were assets that produce or are held for the production of passive income;
- b. Publicly Traded NFFE or a Related Entity of a Publicly Traded NFFE:
  - The share of the NFFE is regularly traded on an established securities market; OR
  - The NFFE is a Related Entity of an entity, the share of which is regularly traded on an established securities market;
- c. The NFFE is incorporated in a U.S. Territory and all the owners of the payee are bona fide residents of that U.S. Territory;
- d. Non-U.S. Government / Government of a U.S. Territory / International Organisation / Non-U.S. Central Bank:
  - The NFFE is a non-U.S. government, a political subdivision of such non-U.S. government (which, for the avoidance of doubt, includes a state, province, county, or municipality), or a public body performing a function of such government or a political subdivision thereof, a government of a U.S. Territory, an international organisation, a non-U.S. Central Bank of issue, or an entity wholly-owned by one or more of the foregoing;
- e. Holding NFFE that is a Member of a Non-Financial Group:
  - Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding share of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an entity shall not qualify for NFFE status if the entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- f. Start-up Company:
  - The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that such a NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial incorporation of the NFFE;
- g. NFFE in liquidation or emerging from bankruptcy:
  - The NFFE was not a Financial Institution in the past five years; AND
  - It is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution;

- h. Treasury Center that is a Member of a Non-Financial Group:
- The NFFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution;
- i. The NFFE is an “Excepted NFFE” as described in the U.S. Treasury Regulations; or
- j. Charity/Non-Profit Organisation:
- The NFFE meets all of the following requirements:
    - i) It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
    - ii) It is exempt from income tax in its jurisdiction of residence;
    - iii) It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
    - iv) The applicable laws of the charity’s jurisdiction of residence or the charity’s formation documents do not permit any income or assets of the charity to be distributed to, or applied for the benefit of, a private person or non-charitable entity other than pursuant to the conduct of the charity’s charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the charity has purchased; AND
    - v) The applicable laws of the charity’s jurisdiction of residence or the charity’s formation documents require that upon the charity’s liquidation or dissolution, all of its assets be distributed to a government entity or other non-profit organisation, or escheat to the government of the charity’s jurisdiction of residence or any political subdivision thereof.

### **Change in Circumstances**

As per CRS and FATCA requirements, the “Change in Circumstances” means any change in one or more of the information below:

- Change of tax residency details (to/from outside Malaysia; or one country to another)
- Change of residence or mailing address (to/from outside Malaysia; or one country to another)
- Change of contact number (to/from outside Malaysia; or one country to another)
- Application or cancellation of standing instructions to transfer funds to an account maintained outside Malaysia; or from an overseas account to another
- Change of address of the current effective power of attorney/signatory authority (to/from outside Malaysia; or one country to another)
- Change of nationality to/from U.S. (for FATCA only).

### **Common Reporting Standard (CRS)**

“CRS” stands for Common Reporting Standard, which is developed by the Organisation for Economic Co-operation and Development (OECD) to obtain information from financial institutions and for automatic exchange of financial account information with other jurisdictions on an annual basis for tax purposes.

### **Control**

“Control” over an Entity is generally exercised by the natural person(s) who ultimately has a controlling ownership interest (typically on the basis of a certain percentage (e.g., 25%)) in the Entity. Where no natural person(s) exercises control through ownership interests, the Controlling Person(s) of the Entity will be the natural person(s) who exercises control of the Entity through other means. Where no natural person(s) is/are identified as exercising control of the Entity through ownership interests, then under the CRS the Reportable Person is deemed to be the natural person who hold the position of senior managing official.

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

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

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

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

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

### **Entity**

The term “Entity” means a legal person or a legal arrangement, such as a corporation, organisation, partnership, trust or foundation.

### **Foreign Account Tax Compliance Act (FATCA)**

FATCA stands for the U.S. provisions commonly known as the Foreign Account Tax Compliance provisions, which were enacted into U.S. law as part of the Hiring Incentives to Restore Employment (HIRE) Act on March 18, 2010. FATCA creates a new information reporting and withholding regime for payments made to certain non-U.S. Financial Institutions and other non-U.S. entities.

### **Financial Account**

A “Financial Account” is an account maintained by a Financial Institution and includes: Depository Accounts; Custodial Accounts; Equity and debt interest in certain Investment Entities; Cash Value Insurance Contracts; and Annuity Contracts.

### **Investment Entity (CRS)**

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

- (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:
- Trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
  - Individual and collective portfolio management; or
  - Otherwise investing, administering, or managing Financial Assets or money on behalf of other persons.
- Such activities or operations do not include rendering non-binding investment advice to a customer.

- (b) An Entity the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets where the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or the first type of Investment Entity.

### **Investment Entity located in a Non-Participating Jurisdiction and managed by another Financial Institution (CRS)**

The term “Investment Entity located in a Non-Participating Jurisdiction and managed by another Financial Institution” means any Entity the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets if the Entity is (i) managed by a Financial Institution and (ii) not a Participating Jurisdiction Financial Institution.

### **Investment Entity managed by another Financial Institution (CRS)**

An Entity is “managed by” another Entity if the managing Entity performs, either directly or through another service provider on behalf of the managed Entity, any of the activities or operations described in paragraph (a) above in the definition of ‘Investment Entity’.

An Entity only manages another Entity if it has discretionary authority to manage the other Entity’s assets (either in whole or part). Where an Entity is managed by a mix of Financial Institutions, NFEs or individuals, the Entity is considered to be managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or the first type of Investment Entity described in paragraph (a) of the definition of ‘Investment Entity’, if any of the managing Entities is such another Entity.

### **Participating Jurisdiction (CRS)**

A “Participating Jurisdiction” means a jurisdiction with which an agreement is in place pursuant to which it will provide the information required on the automatic exchange of financial account information set out in the Common Reporting Standard and that is identified in a published list.

### **Participating Jurisdiction Financial Institution (CRS)**

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

### **Passive Non-Financial Entity (CRS)**

Under the CRS, a “Passive NFE” means

- (a) Any NFE that is not an Active NFE; or
- (b) An Investment Entity located in a Non-Participating Jurisdiction and managed by another Financial Institution.

### **Passive Non-Financial Foreign Entity (Passive NFFE) (FATCA)**

“Passive Non-Financial Foreign Entity” means any NFFE that is not an Active NFFE or withholding foreign partnership or withholding foreign trust pursuant to relevant U.S. Treasury Regulations.

### **Reportable Account**

The term “Reportable Account” means an account held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Reportable Person.

### **Reportable Person**

A “Reportable Person” is an individual (or entity) that is tax resident in a Reportable Jurisdiction under the laws of that jurisdiction. The Account Holder will normally be the “Reportable Person”; however, in the case of an Account Holder that is a Passive NFE, a Reportable Person also includes any Controlling Persons who are tax resident in a Reportable Jurisdiction. Dual resident individuals may rely on the tiebreaker rules contained in tax conventions (if applicable) to solve cases of double residence for purposes of determining their residence for tax purposes.

### **Resident for tax purposes**

Generally, an individual will only have one jurisdiction of residence. However, an individual may be resident for tax purposes in two or more jurisdictions. The domestic laws of the various jurisdictions lay down the conditions under which an individual is to be treated as fiscally “resident”. They cover various forms of attachment to a jurisdiction which, in the domestic taxation laws, form the basis of a comprehensive taxation (full liability to tax). They also cover cases where an individual is deemed, according to the taxation laws of a jurisdiction, to be resident of that jurisdiction (e.g. diplomats or other persons in government service). To solve cases of double residence, tax conventions contain special rules which give the attachment to one jurisdiction a preference over the attachment of the other jurisdiction for purposes of those conventions. Generally, an individual will be resident for tax purposes in a jurisdiction if, under the laws of that jurisdiction (including tax conventions), he pays or should be paying tax therein by reason of his domicile, residence or any other criterion of a similar nature, and not only from sources in that jurisdiction. Dual resident individuals may rely on the tiebreaker rules contained in tax conventions (if applicable) to solve cases of double residence for determining their residence for tax purposes.

The following examples illustrate how an individual’s residence for tax purposes may be determined:

**Example 1:** An individual has his permanent home in Jurisdiction A and is taxed as being a resident of Jurisdiction A. He has had a stay of more than six months in Jurisdiction B and according to the legislation of the latter Jurisdiction he is, in consequence of the length of the stay, taxed as being a resident of that Jurisdiction. Thus, he is resident of both Jurisdictions.

**Example 2:** Same facts as Example 1, except that the individual only had a stay of eight weeks in Jurisdiction B and according to the legislation of that Jurisdiction he is not, by reason of the length of the stay, taxed as being a resident of Jurisdiction B. Thus, he is only resident of Jurisdiction A.

For additional information on tax residence, please talk to your tax adviser or refer to the OECD Automatic Exchange Portal at this link:

<https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-residency/>

#### **TIN (including Functional Equivalent)**

The term "TIN" means Taxpayer Identification Number or a functional equivalent in the absence of a TIN. A TIN is a unique combination of letters or numbers assigned by a jurisdiction to an individual or an Entity and used to identify the individual or Entity for the purposes of administering the tax laws of such jurisdiction. Further details of acceptable TINs can be found at this link:

<https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/>

Some jurisdictions do not issue a TIN. However, these jurisdictions often utilise some other high integrity number with an equivalent level of identification (a "functional equivalent"). Examples of that type of number include, for individuals, a social security/insurance number, citizen/personal identification/service code/number, and resident registration number.

#### **U.S. Person (FATCA)**

A "U.S. Person" means a U.S. citizen or resident individual, a partnership or corporation organized in the U.S. or under the laws of the U.S. or any State thereof, a trust if (i) a court within the U.S. would have authority under applicable law to render orders or judgements concerning substantially all issues regarding administration of the trust, and (ii) one or more U.S. Persons have the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the U.S.