





**PART D FATCA Instructions & Definitions**

(Note: The Guidance Note/notification issued by the CBDT shall prevail in respect to interpretation of the terms specified in the form)

- 1 (i) Financial Institution (FI)** - The term FI means any financial institution that is a Depository Institution, Custodial Institution, Investment Entity or Specified Insurance company, as defined.
- (ii) Depository institution:** is an entity that accepts deposits in the ordinary course of banking or similar business.
- (iii) Custodial institution:** is an entity that holds as a substantial portion of its business, holds financial assets for the account of others and where its income attributable to holding financial assets and related financial services equals or exceeds 20 percent of the entity's gross income during the shorter of-
- (i) The three financial years preceding the year in which determination is made; or
- (ii) The period, during which the entity has been in existence, whichever is less.
- (iv) Investment entity is any entity:**
- (a) That primarily conducts a business or operates for or on behalf of a customer for any of the following activities or operations for or on behalf of a customer
- (i) Trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading; or
- (ii) Individual and collective portfolio management; or
- (iii) Investing, administering or managing funds, money or financial asset or money on behalf of other persons;
- or
- (b) The gross income of which is primarily attributable to investing, reinvesting, or trading in financial assets, if the entity is managed by another entity that is a depository institution, a custodial institution, a specified insurance company, or an investment entity described above. An entity is treated as primarily conducting as a business one or more of the 3 activities described above, or an entity's gross income is primarily attributable to investing, reinvesting, or trading in financial assets of the entity's gross income attributable to the relevant activities equals or exceeds 50 percent of the entity's gross income during the shorter of :
- (i) The three-year period ending on 31 March of the year preceding the year in which the determination is made; or
- (ii) The period during which the entity has been in existence.
- The term "Investment Entity" does not include an entity that is an active non-financial entity as per codes 04, 05, 06 and 07 - refer point 2c.)
- (v) Specified Insurance Company:** Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

| <b>1 (vi) FI not required to apply for GIIN:</b> Refer Rule 114F(5) of Income Tax Rules, 1962 for the conditions to be satisfied as "Non- Reporting Financial Institution and Guidance issued by CBDT in this regard   |   |              |    |   |    |   |    |  |    |  |    |                              |    |  |    |                                      |    |       |    |                             |    |                                  |    |  |    |  |
|--|---|--------------|----|---|----|---|----|--|----|--|----|------------------------------|----|--|----|--------------------------------------|----|-------|----|-----------------------------|----|----------------------------------|----|--|----|--|
| <b>A. Reasons why FI not required to apply for GIIN:</b>   |   |              |    |   |    |   |    |  |    |  |    |                              |    |  |    |                                      |    |       |    |                             |    |                                  |    |  |    |  |
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| Code   | Sub-category  |              |    |   |    |   |    |  |    |  |    |                              |    |  |    |                                      |    |       |    |                             |    |                                  |    |  |    |  |
| 01   | Governmental Entity, International Organization or Central Bank   |              |    |   |    |   |    |  |    |  |    |                              |    |  |    |                                      |    |       |    |                             |    |                                  |    |  |    |  |
| 02   | Treaty Qualified Retirement Fund; a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; or a Pension Fund of a Governmental Entity, International Organization or Central Bank |              |    |   |    |   |    |  |    |  |    |                              |    |  |    |                                      |    |       |    |                             |    |                                  |    |  |    |  |
| 03   | Non-public fund of the armed forces, an employees' state insurance fund, a gratuity fund or a provident fund  |              |    |   |    |   |    |  |    |  |    |                              |    |  |    |                                      |    |       |    |                             |    |                                  |    |  |    |  |
| 04   | Entity is an Indian FI solely because it is an investment entity  |              |    |   |    |   |    |  |    |  |    |                              |    |  |    |                                      |    |       |    |                             |    |                                  |    |  |    |  |
| 05   | Qualified credit card issuer  |              |    |   |    |   |    |  |    |  |    |                              |    |  |    |                                      |    |       |    |                             |    |                                  |    |  |    |  |
| 06   | Investment Advisors, Investment Managers & Executing Brokers  |              |    |   |    |   |    |  |    |  |    |                              |    |  |    |                                      |    |       |    |                             |    |                                  |    |  |    |  |
| 07   | Exempt collective investment vehicle  |              |    |   |    |   |    |  |    |  |    |                              |    |  |    |                                      |    |       |    |                             |    |                                  |    |  |    |  |
| 08   | Trust   |              |    |   |    |   |    |  |    |  |    |                              |    |  |    |                                      |    |       |    |                             |    |                                  |    |  |    |  |
| 09   | Non-registering local banks   |              |    |   |    |   |    |  |    |  |    |                              |    |  |    |                                      |    |       |    |                             |    |                                  |    |  |    |  |
| 10   | FFI with only Low-Value Accounts  |              |    |   |    |   |    |  |    |  |    |                              |    |  |    |                                      |    |       |    |                             |    |                                  |    |  |    |  |
| 11   | Sponsored investment entity and controlled foreign corporation  |              |    |   |    |   |    |  |    |  |    |                              |    |  |    |                                      |    |       |    |                             |    |                                  |    |  |    |  |
| 12   | Sponsored, Closely Held Investment Vehicle  |              |    |   |    |   |    |  |    |  |    |                              |    |  |    |                                      |    |       |    |                             |    |                                  |    |  |    |  |

**2. Active Non-financial entity (NFE) :** (any one of the following): Refer Explanation (A) to 114F (6) of Income Tax Rules, 1962 for details

| Code | Sub-category  |
|------|---|
| 01   | Less than 50 percent of the NFE's gross income for the preceding financial year is passive income and less than 50 percent of the assets held by the NFE during the preceding financial year are assets that produce or are held for the production of passive income;  |
| 02   | The stock of the entity is regularly traded on an established securities market or the non-financial entity is a related entity of an entity, the stock of which is regularly traded on an established securities market.   |
| 03   | The NFE is a Governmental Entity, an International Organization, a Central Bank , or an entity wholly owned by one or more of the foregoing;  |
| 04   | 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 shall not qualify for this status if the entity functions 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;   |
| 05   | 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 shall not qualify for this exception after the date that is 24 months after the date of the initial organization of the NFE;   |
| 06   | The NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;   |
| 07   | 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;  |
| 08   | <p>Any NFE that fulfills all of the following requirements:</p> <ul style="list-style-type: none"> <li>• It is established and operated in India exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in India and it is a professional organization, business league, chamber of commerce, labor organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare;</li> <li>• It is exempt from income tax in India;</li> <li>• It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;</li> </ul> <p>The applicable laws of the NFE's country or territory 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</p> <p>The applicable laws of the NFE's country or territory 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 organization, or escheat to the government of the NFE's country or territory of residence or any political subdivision thereof.</p> <p>Explanation.- For the purpose of this sub-clause, the following shall be treated as fulfilling the criteria provided in the said sub-clause, namely:-</p> <ul style="list-style-type: none"> <li>(i) an Investor Protection Fund referred to in clause (23EA);</li> <li>(ii) a Credit Guarantee Fund Trust for Small Industries referred to in clause 23EB; and</li> <li>(iii) an Investor Protection Fund referred to in clause (23EC), of section 10 of the Act;</li> </ul> |

**3. Other definitions**

## (i) Related entity

An entity is a 'related entity' of another entity if either entity controls the other entity, or the two entities are under common control For this purpose, control includes direct or indirect ownership of more than 50% of the votes and value in an entity

## (ii) Passive NFE

The term passive NFE means

- (i) any non-financial entity which is not an active non-financial entity; or
- (ii) an investment entity described in sub-clause (B) of clause (c) of the Explanation to clause (3), which is not located in any of the jurisdictions specified by the Central Board of Direct Taxes in this behalf
- (iii) not a withholding foreign partnership or a withholding foreign trust

## (iii) Passive income

The term passive income includes income by way of:

- (1) Dividends,
- (2) Interest
- (3) Income equivalent to interest,
- (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 NFE
- (5) Annuities
- (6) The excess of gains over losses from the sale or exchange of financial assets that gives rise to passive income
- (7) The excess of gains over losses from transactions (including futures, forwards, and similar transactions) in any financial assets,
- (8) The excess of foreign currency gains over foreign currency losses
- (9) Net income from swaps
- (10) Amounts received under cash value insurance contracts

But passive income will not include in case of a non-financial entity that regularly acts as a dealer in financial assets, any income from any transaction entered into in the ordinary course of such dealer's business as a such dealer.

## (iv) Controlling persons are natural persons who exercise control over an entity and includes a beneficial owner under sub-rule (3) of rule 9 of the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005.

In determining the Beneficial Owner, the procedure specified in the following circular as amended from time to time shall be applied, namely:-

- (i) DBOD.AML.BC. NO.71/14.01.001/2012-13, issued on the 18<sup>th</sup> January, 2013 by the Reserve Bank of India; or
- (ii) CIR/MIRSD/2/2013, issued on the 24<sup>th</sup> January, 2013 by the Securities and Exchange Board of India; or
- (iii) IRDA/SDD/GDL/CIR/019/02/2013, issued on the 4<sup>th</sup> February, 2013 by the Insurance Regulatory and Development Authority.

In the case of a trust, the controlling person means the settler, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust. In the case of a legal arrangement other than a trust, the said expression means the person in equivalent or similar positions

| (A) Controlling Person Type: |  |
|------------------------------|--|
| Code                         | Sub-category   |
| 01                           | CP of legal person - ownership                           |
| 02                           | CP of legal person - other means                         |
| 03                           | CP of legal person - senior managing official            |
| 04                           | CP of legal arrangement - trust - settlor                |
| 05                           | CP of legal arrangement - trust - trustee                |
| 06                           | CP of legal arrangement - trust - protector              |
| 07                           | CP of legal arrangement - trust - beneficiary            |
| 08                           | CP of legal arrangement--trust-other                     |
| 09                           | CP of legal arrangement - Other - settlor equivalent     |
| 10                           | CP of legal arrangement - Other - trustee equivalent     |
| 11                           | CP of legal arrangement - Other - protector equivalent   |
| 12                           | CP of legal arrangement - Other - beneficiary equivalent |
| 13                           | CP of legal arrangement - Other - other equivalent       |
| 14                           | Unknown  |

**(v) Specified U.S. person – A U.S. person other than the following:**

- (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 defined in section 1471(e)(2) of the U.S. Internal Revenue Code, as a corporation described in clause (i);
- (iii) the United States or any wholly owned agency or instrumentality thereof;
- (iv) any State of the United States, any U.S. Territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing;
- (v) any organization exempt from taxation under section 501(a) of the U.S. Internal Revenue Code or an individual retirement plan as defined in section 7701(a)(37) of the U.S. Internal Revenue Code;
- (vi) any bank as defined in section 581 of the U.S. Internal Revenue Code;
- (vii) any real estate investment trust as defined in section 856 of the U.S. Internal Revenue Code;
- (viii) any regulated investment company as defined in section 851 of the U.S. Internal Revenue Code or any entity registered with the U.S. Securities and 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) of the U.S. Internal Revenue Code;
- (x) any trust that is exempt from tax under section 664(c) of the U.S. Internal Revenue Code or that is described in section 4947(a)(1) of the U.S. Internal Revenue Code;
- (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 as defined in section 6045(c) of the U.S. Internal Revenue Code; or
- (xiii) any tax-exempt trust under a plan that is described in section 403(b) or section 457(g) of the U.S. Internal Revenue Code.

**(vi) Direct reporting NFE**

A direct reporting NFE means a NFE that elects to report information about its direct or indirect substantial U.S. owners to the IRS.

| Exemption code for U.S. persons (Refer 114(9) of Income Tax Rules, 1962 for details) |   |
|--|---|
| Code   | Sub-category  |
| A  | An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)  |
| B  | The United States or any of its agencies or instrumentalities   |
| C  | A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities   |
| D  | A corporation the stock of which is regularly traded on one or more established securities markets, as described in Reg. section 1.1472-1(c)(1)(i)  |
| E  | A corporation that is a member of the same expanded affiliated group as a corporation described in Reg. section 1.1472-1(c)(1)(i)   |
| F  | 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 |
| G  | A real estate investment trust  |
| H  | A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940  |
| I  | A common trust fund as defined in section 584(a)  |
| J  | A bank as defined in section 581  |
| K  | A broker  |
| L  | A trust exempt from tax under section 664 or described in section 4947(a)(1)  |
| M  | A tax exempt trust under a section 403(b) plan or section 457(g) plan   |

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