

## Automatic Exchange of Information (AEOI) FATCA and CRS Explanatory Notes

### General information about FATCA and CRS

The Automatic Exchange of Information (AEOI) is the global model for automatically exchanging information between South Africa, the United States of America's treasury department and other jurisdictions under the Multilateral Competent Authority Convention, to which South Africa is a signatory. The Common Reporting Standard (CRS) is a collective term for these reporting requirements in the fight against tax evasion.

The following explanatory notes are based on the Foreign Account Tax Compliance Act (FATCA), and the Organisation for Economic Cooperation and Development (OECD) Common Reporting Standard (CRS), as implemented in South Africa.

*If you have any questions about your organisation's classification, please contact your tax adviser in order to receive professional advice on the subject.*

### What is FATCA?

FATCA stands for the Foreign Account Tax Compliance Act which was enacted in the US to create a new information reporting requirement on specified US persons. It implements a withholding regime for payments made to certain foreign financial institutions (FFIs) and other non-conforming US persons/entities. The FATCA rules became effective on 1 July 2014.

### What is the objective of FATCA?

FATCA is intended to increase information provided to the US Internal Revenue Service (IRS) with respect to US persons who may be investing and earning income through non-US institutions.

The South African government has signed an Intergovernmental Agreement (IGA) with the US IRS to exchange information provided by RSA financial institutions.

### What is CRS?

The Common Reporting Standard (CRS) is a standardised automatic exchange model, which builds on FATCA, and is extended to all foreign held accounts and not only those of US citizens.

### What does FATCA and CRS require of Sanlam Collective Investments and its clients?

As a South African Financial Institution, FATCA and CRS requires Sanlam to report to SARS on an annual basis on all financial accounts held directly or indirectly by all non-South African persons and entities, which SARS will, in turn, submit to the tax authorities in the participating countries.

Sanlam Collective Investments has registered with the IRS and has obtained a global intermediary identification number (GIIN).

The new opening account processes at Sanlam Collective Investments will thus change to ensure that we identify potential US and other non-resident persons or entities. Our existing client base will be reviewed and where necessary, we will contact clients in order to gather the information necessary to report in terms of FATCA and CRS.

### How will clients be affected?

In terms of the IGA, Sanlam is required to collect additional information from its clients. The requirement is up to the client to prove tax status, but the FFI must apply reasonability measures to ensure that information provided is accurate and true.

The additional information includes

- Certification of tax status. This may be via a tax self-certification form, or may be included in the new investment application forms.
- A Tax Identification Number (TIN)
- Certain other information that could indicate that the client or controlling persons of the client, are US or non-resident persons.

## What are the US territories?

This term refers to the United States of America as well as American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the US Virgin Islands and the Commonwealth of Puerto Rico.

## What does the term "US person" mean?

The term includes, but is not limited to:

- A US citizen (including dual citizen)
- An individual born in the US but resident elsewhere and who has not given up their US citizenship
- A person whose parents are citizens of the US
- A person residing in the US (resident alien)
- A green card holder
- A person who spends more than 183 days a year in the US
- Any US registered corporation, partnership, estate or trust. Trusts include if:
  - A court within the United States is able to exercise primary supervision over the administration of the trust
  - One or more United States persons have the authority to control all substantial decisions of the trust

## What happens if a client refuses to provide the information required?

Clients who do not wish to comply with reasonable requests for information, or fail to provide the information required, will be reported to SARS and the US IRS. They are known as recalcitrant account holders.

## What is a Controlling Person?

A Controlling Person is as defined in the FATF (Financial Action Task Force) and refers to any person who has an interest via any of a voting right; profit share; or participation right of more than 25% in any arrangement other than a trust.

In a trust, the controlling person is defined as any of the settler, founder, trustees, protector, beneficiaries, or any other person exercising effective control over the trust.

## What does "self-certification" mean?

Self-certification is to confirm in writing with a client whether they are a specified US person, a passive NFFE (see later definition) that is controlled by a US person or a FFI that has a GIIN or why not.

Self-certification can be done on the Sanlam Collective Investments *Investor's Update Form*; or via the *Unit Trusts Investment Form*. Both are available in the forms section of our website, [www.sanlaminvestments.com](http://www.sanlaminvestments.com)

The IRS's forms may also be used – W-8BEN (non-US individuals), W-8BEN-E (non-US entities) and W9 (US persons only).

## Who may sign the self-certification form?

The form must be signed by the client or the person authorised to act on behalf of the client, and copies of the authority to act, e.g. the power of attorney, should be attached to the self-certification form. In the case of minors, a parent or guardian may sign.

Where the client is not an individual, then the authorised representative of the entity must sign and must provide us with a company resolution or other supporting documents to prove the authority to act.

A financial adviser may not sign on behalf of the client unless he has power of attorney to do so.

## Where can I send the self-certification form?

Signed forms with any supporting documents can be emailed to [Utinstructions@sanlaminvestmentssupport.com](mailto:Utinstructions@sanlaminvestmentssupport.com) for Unit Trusts and TFSA investments; and to [forms@sanlamhedgefunds.com](mailto:forms@sanlamhedgefunds.com) for Hedge Fund investments.

## Why does Sanlam ask me for this information if I have no connections to the US or other Countries?

In order for Sanlam Collective Investments to fulfil its obligations under FATCA and CRS, we need to gather information in order to determine that you are not reportable to the US IRS or another tax jurisdiction. This applies to both individual and non-individual accounts.

The information requested will enable us to do the required reporting to all the included tax authorities.

## What is the definition of a Foreign Financial Institution (FFI)?

An FFI is any entity that:

1. Accepts deposits from banking or a similar business, for example custodial institutions, as well as insurance companies
2. Holds financial assets for the account of others
3. Is engaged in the business of investing, reinvesting, or trades in securities or commodities.

Generally non-US entities such as banks, broker/dealers, insurance companies, hedge funds, securitisation vehicles, and private equity funds will be considered FFIs.

## What is a participating FFI?

An FFI that has an agreement with the IRS is referred to as a "Participating Foreign Financial Institution." An FFI that does not enter into an agreement with the IRS is referred to as a "Non-Participating Foreign Financial Institution," and is subject to withholding under FATCA.

## What is expected of an FFI?

In the context where a country has signed an IGA, the participating FFI agrees to:

1. Obtain information on account holders that is necessary to determine if accounts are US accounts
2. Comply with any required due diligence and verification procedures
3. Report on US accounts annually to the IRS

## What will an FFI report on?

The information that Sanlam Collective Investments will provide to SARS and the US IRS includes name and addresses of all parties in the investment relationship, tax details, investment account number, account balance at year end, income flows and details of proceeds paid.

## Who is Exempt from FATCA?

Certain categories of FFIs and other entities may be exempt from FATCA regulations. Being exempt from FATCA regulations means that these types of entities may not have to register, and no reporting will be required from them.

The types of entities that may be exempt from FATCA regulations are:

- Most government entities
- Most non-profit organisations
- Certain small, local financial institutions
- Certain retirement funds

## What is a Non-Financial Foreign Entity (NFFE)?

A foreign entity that is not a financial institution is a non-financial foreign entity (NFFE). There are two types of NFFEs – active NFFEs and passive NFFEs.

## What is an Active NFFE?

An NFFE that conducts an active trade (active NFFE) and earns income mainly from business activities as opposed to earning income only from investment income such as dividends and interest is an active NFFE.

An active NFFE is a category of an excepted NFFE that only needs to certify that it is an excepted NFFE. It doesn't need to report on any substantial US owners it may have and there will not be any withholding upon such an entity.

## What is a Passive NFFE?

If your entity is classified as a passive NFFE, you have to certify whether any of your controlling persons are specified US persons or not.

A passive NFFE is an NFFE that earns more than 50% of its income from passive investments and more than 50% of its assets for the last financial year consist of passive investments.

Passive investment income includes the following types of income.

The portion of gross income that consists of:

- dividends, including substitute dividend amounts;
- interest;
- income equivalent to interest;
- rents and royalties, other than rents and royalties derived in the active conduct of a trade or business conducted, at least in part, by employees of the NFFE;
- annuities;
- excess of gains over losses from the sale or exchange of property that gives rise to passive income as described in this definition;
- the excess of gains over losses from transactions (including futures, forwards, and similar transactions) but not including:
  - any commodity hedging transaction; or
  - active business gains or losses from the sale of commodities;
  - the excess of foreign currency gains over foreign currency losses;
  - net income from notional principal contracts;
  - amounts received under a cash value insurance contract; or
  - amounts received by insurance companies in connection with its reserves for insurance and annuity contracts.

## What entities are US Reportable?

An entity will be a US reportable account if the entity:

- was incorporated or organised in the US;
- is a passive NFFE with one or more controlling US persons (owners);
- is a non-participating FFI; or
- is undocumented.

## Indication criteria for individuals and entities.

Should any of the below indications for a client exists, it does not mean that the account owner is a US citizen, it merely means that we have to contact the client and request further relevant documentation to determine their tax status. If during the life time of the investment, a change of circumstance takes place, then Sanlam Collective Investments may need to again request additional information and/or supporting documents.

## If the below US Indicia exist for any party, including the investor (individual or entity); or the controlling persons:

1. US place of birth or US nationality
2. US place of birth
3. US telephone number
4. US address, including a postal box
5. Mailing address i.e. in-care-of or hold-mail address
6. Settlement Instructions to pay to US address or bank account maintained in US
7. A power of attorney or signatory authority granted to a person with a US address

## In addition, if the below Indicia exists for entities.

1. Country of incorporation of organisation is US.
2. Any address (physical, postal, operating address) is in the US

## Where can I get more information?

The official FATCA regulations are in sections 1471 to 1474 of the US Internal Revenue Code and the Treasury Regulations, as well as supporting guidance notices issued, and as adopted by South Africa.

Your tax adviser will also be able to assist you.

## What do the definitions of FATCA and CRS mean?

Please refer to these definitions in order to complete the necessary classifications on the Sanlam Collective Investments forms.

<b>Partner Jurisdiction Financial Institution</b>	<p>A Partner Jurisdiction Financial Institution includes</p> <ol style="list-style-type: none"> <li>any Financial Institution resident in South Africa, but excluding any branches of such Financial Institution that are located outside South Africa and</li> <li>any South African branch of a Financial Institution not resident in South Africa.</li> </ol> <p>"Partner Jurisdiction" means any jurisdiction that has in effect an agreement with the US to facilitate the implementation of FATCA.</p>
<b>Non-IGA jurisdiction</b>	A jurisdiction where there is no agreement in place with the US to facilitate the implementation of FATCA.
<b>Participating Foreign Financial Institution (PFFI)</b>	A Financial Institution that is registered with the IRS and that complies with the requirements of FATCA; or an FI is in a country that has signed an IGA with the US.
<b>Non-Participating Foreign Financial Institution (NPFFI)</b>	A Financial Institution that is located in a jurisdiction that has not entered into an IGA with the US; and that has not registered with the IRS; or a FI in a partner jurisdiction that is treated as non-participating due to non-compliance.
<b>Exempt Beneficial Owner</b>	<p>A South African Governmental Organisation</p> <p>An International Organisation (examples of which include The International Monetary Fund, The World Bank, The International Bank for Reconstruction and Development and The European Community)</p> <p>For a full list please see the relevant guidance issued by SARS, or the IRS</p> <p>A Central Bank</p> <p>A South African broad or narrow participation retirement fund falling within the definition of Exempt Beneficial Owner for the purposes of FATCA</p> <p>A pension fund of, or an investment entity wholly owned by organisations listed in criteria (i) to (iii).</p>
<b>Deemed Compliant Foreign Financial Institution</b>	<p>Those entities</p> <ul style="list-style-type: none"> <li>classified as such in Annex II of the intergovernmental agreement between the US and South Africa, which includes Non-Profit Organisations and Financial Institutions with a Local Client Base, or</li> <li>Entities which otherwise qualify as such under the FATCA Regulations.</li> </ul>
<b>Investment Entity</b>	<p>Any Entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:</p> <ul style="list-style-type: none"> <li>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;</li> <li>Individual and collective portfolio management; or</li> <li>Otherwise investing, administering, or managing funds or money on behalf of other persons.</li> </ul>
<b>Active Non-Financial Foreign Entity (Active NFFE)</b>	<p>Any NFFE that meets any of the following criteria:</p> <ul style="list-style-type: none"> <li>Less than 50 percent of the NFFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 percent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;</li> <li>The stock of the NFFE is regularly traded on an established securities market or the NFFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;</li> <li>The NFFE is organized in a U.S. Territory and all of the owners of the payee are bona fide residents of that U.S. Territory;</li> <li>The NFFE is a government (other than the U.S. government), a political subdivision of such government (which, for the avoidance of doubt, includes a state, province, county, or municipality), or a public body performing a function of such government or a political subdivision thereof, a government of a U.S. Territory, an international organization, a non-U.S. central bank of issue, or an Entity wholly owned by one or more of the foregoing;</li> <li>Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an NFFE shall not qualify for this status if the NFFE functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;</li> <li>The NFFE is not yet operating a business and has no prior operating history, but is</li> </ul>

	investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial organization of the NFFE;
	<ul style="list-style-type: none"> <li>The NFFE 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;</li> <li>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;</li> <li>The NFFE is an "excepted NFFE" as described in relevant U.S. Treasury Regulations</li> </ul> <p>The Entity is Non-Profit Organisation.</p>
<b>Passive Non-Financial Foreign Entity (PNFFE)</b>	<ul style="list-style-type: none"> <li>A Passive NFFE is any Non-Financial Foreign Entity that is not an Active NFFE.</li> </ul>
<b>Organisation for Economic Cooperation and Development</b>	The Organization for Economic Cooperation and Development (OECD) is a group of 34 member countries that discuss and develop economic and social policy. OECD members are democratic countries that support free market economies.
<b>Non-Reporting Financial Institution</b>	<p>Any Financial Institution which is:</p> <ul style="list-style-type: none"> <li>A Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; a Pension Fund of a Governmental Entity, International Organisation or Central Bank; or a Qualified Credit Card Issuer;</li> <li>Any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described above, and is defined in domestic law as a Non-Reporting Financial Institution;</li> <li>Any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described above, and is included in the list of Non-Reporting Financial Institutions provided to the OECD by South Africa;</li> <li>An Exempt Collective Investment Vehicle; or</li> <li>A trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to the CRS with respect to all Reportable Accounts of the trust.</li> </ul>
<b>Related Entity</b>	<p>An Entity is a "Related Entity" of another Entity if:</p> <ul style="list-style-type: none"> <li>Either Entity controls the other Entity;</li> <li>The two Entities are under common control; or</li> <li>The two Entities are Investment Entities, are under common management, and such management fulfils the due diligence obligations of such Investment Entities. For this purpose control includes direct or indirect ownership of more than 50 % of the vote and value in an Entity.</li> </ul>
<b>Active NFE</b>	<p>Any NFE that meets any of the following criteria:</p> <ul style="list-style-type: none"> <li>Less than 50 per cent of the NFE's gross income for the preceding Reporting Period is passive income and less than 50 per cent of the assets held by the NFE during the preceding Reporting Period or other appropriate reporting period are assets that produce or are held for the production of passive income. Passive income includes dividends, interest, rental income and royalties.</li> <li>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.</li> <li>The NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing.</li> <li>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 NFE does not qualify for this status if the NFE 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.</li> <li>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 organization of the NFE;</li> <li>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;</li> <li>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</li> </ul>

	<p>Institution.</p> <ul style="list-style-type: none"> <li>The Entity is an "excepted NFE" as described in the US Treasury Regulations.</li> </ul>
<b>Passive Non-Financial Entity (PNFE)</b>	A Passive NFE is any Non-Financial Entity that is not an Active NFE, or an Investment Entity that is not a Participating Jurisdiction Financial Institution.
<b>Non-Financial Entity (NFE)</b>	<p>Any Entity that is not a Financial Institution Investment Entity, where "Investment Entity" means any Entity:</p> <ul style="list-style-type: none"> <li>Which primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer: <ul style="list-style-type: none"> <li>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; or</li> </ul> </li> <li>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.</li> </ul>
<b>Participating Jurisdiction</b>	A jurisdiction which has an agreement in place to exchange information in accordance with the OECD Common Reporting Standard.
<b>Non-Profit Organisation</b>	<p>An entity that meets ALL of the following criteria:</p> <ul style="list-style-type: none"> <li>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;</li> <li>It is exempt from income tax in its country of residence;</li> <li>It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;</li> <li>The applicable laws of the entity's country of residence or the entity's formation documents do not permit any income or assets of the entity to be distributed to, or applied for the benefit of, a private person or non-charitable entity other than pursuant to the conduct of the entity's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the entity has purchased; and</li> <li>The applicable 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 a governmental entity or other non-profit organisation, or escheat to the government of the entity's country of residence or any political subdivision thereof.</li> </ul>
<b>Controlling Persons</b>	<p>Means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor, 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, such term means persons in equivalent or similar positions.</p> <p>The term "Controlling Persons" must be interpreted in a manner consistent with the Financial Action Task Force Recommendations.</p>
<b>Control</b>	<p>"Control" over an Entity is generally exercised by the natural person(s) who ultimately has a controlling ownership interest in the Entity. A "control ownership interest" depends on the ownership structure of the legal person and is usually identified on the basis of a threshold applying a risk based approach (e.g. any person(s) owning more than a certain percentage of the legal person, such as 25%). 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 identified as exercising control of the Entity, the Controlling Person(s) of the Entity will be the natural person(s) who holds the position of senior managing official.</p>