

Implementation of International Tax  
Compliance (United States of America)  
Regulations 2013  
Belgian Guidance Notes

- DRAFT -

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## Lexique

- **AIM:** Alternative investment market
- **AML:** Anti-Money Laundering
- **AIFMD:** Alternative Investment Fund Managers Directive
- **BEVEK:** Beleggingsvennootschap met Veranderlijk Kapitaal
- **BEVAK:** Beleggingsvennootschap met Vast Kapitaal
- **BNB:** Banque Nationale de Belgique
- **CDTD:** Code des Droits et Taxes Divers
- **CIR92:** Code des Impôts sur les Revenus 1992
- **CFD:** Contrat for Differences
- **EBO:** Exempt Beneficial Owner
- **EAG:** Expanded Affiliated Group
- **FATCA:** Foreign Account Tax Compliance Act
- **FCP:** Fonds Commun de Placement.
- **FDAP income:** Fixed, Determinable, Annual, Periodic income
- **FFI:** Foreign Financial Institution
- **FI:** Financial Institution
- **FATF:** Financial Action Task Force
- **FOP:** Free of Payments
- **FPS Finances:** Belgian Federal Public Service Finances (*“FOD Financiën/SPF Finances”*)
- **FSMA:** Financial Services and Market Authority
- **GAAP:** Generally Accepted Accounting Principles
- **GBF:** Gemeenschappelijk Beleggingsfonds
- **GIIN:** Global Intermediary Identification Number
- **GVV:** Gereguleerde Vastgoedvennootschap
- **HIRE Act:** Hiring Incentives to Restore Employment Act

- **IDR:** International Depositary Receipts
- **IGAs:** Intergovernmental agreements
- **IGA or Agreement:** Belgian-US Agreement to Improve International Tax Compliance and to Implement FATCA
- **ITC92:** Income Tax Code 1992
- **IRS:** Internal Revenue Service
- **KYC:** Know your customer
- **MiFID:** Markets in Financial Instruments Directive
- **MTF:** Multilateral Trading Facility
- **NACE:** Statistische nomenclatuur van de economische activiteit van de Europese Gemeenschap/Nomenclature statistique des activités économiques dans la Communauté européenne
- **NAICS:** North American Industry Classification System
- **NBB:** National Bank of Belgium
- **NFFE:** Non-Financial Foreign Entity
- **NPFI:** Nonparticipating Financial Institution
- **OTC:** Over the counter settlements
- **PFFI:** Participating Foreign Financial Institution
- **QI:** Qualified intermediary
- **RO:** Responsible Officer
- **SEC:** Securities and Exchange Commission
- **SIC:** Société d'Investissement en Créances
- **SIC:** Standard Industrial Classification
- **SICAF:** Société d'Investissement à Capital Fixe
- **SICAV:** Société d'investissement à capital variable
- **SIR :** Société Immobilière Réglementée
- **TIN:** Taxpayer Identification Number
- **UBO:** Ultimate Beneficial Owners
- **US:** United States of America

- **USD:** United States Dollar
- **VBS:** Vennootschap voor Beleggingen in Schuldvorderingen
- **WDRT:** Wetboek diverse rechten en taken
- **WIB92:** Wetboek van de Inkomstenbelastingen 1992

DRAFT

## 1. Background

The Foreign Account Tax Compliance Act provisions (commonly known as “**FATCA**”) are contained in the HIRE Act 2010. These provisions are US legislation aimed at reducing tax evasion by US persons.

It requires Financial Institutions (“**FIs**”) outside the United States (“**US**”) to pass information about their US customers to the US tax authorities, the Internal Revenue Service (“**IRS**”). A 30% US withholding tax is imposed on the US source income of any FI that fails to comply with this requirement.

On 23 April 2014 the Kingdom of Belgium and the United States of America signed an Intergovernmental Agreement to implement FATCA in Belgium (“The Belgian-US Agreement to Improve International Tax Compliance and to Implement FATCA”) referred to hereafter as the “**Agreement**” or “**IGA**”. The Agreement and the legislation introduced to enact it will remove some of the implementation problems faced by Belgian FIs, such as the legal difficulty of complying without breaching data protection restrictions. As such Belgian FIs should not be subject to a 30% withholding tax on US source income, unless they fail to meet the requirements set out in the Agreement and in the Belgian legislation and they are determined by the IRS to be a Non-Participating FFI.

Under the terms of the Agreement, Belgian FIs will provide the FPS Finances with the required information. The FPS Finances will then forward that information to the US IRS.

The Belgian legislation bringing into effect the implementation of the Agreement is contained in the Law of (...)published in the *Belgisch Staatsblad/Moniteur Belge* on (...). The Agreement can be accessed on the FPS Finances website at <http://finances.belgium.be/fr/E-services> (international - FATCA) or on the US Treasury website <http://www.treasury.gov>.

### 1.1. Purpose of these Guidance Notes

The Guidance is for use by businesses, their advisers and the FPS Finances staff who deals with entities affected by the IGA. It applies to:

- Belgian FIs;
- Belgian entities and individuals that will need to certify their entity “classification” for the purposes of FATCA; **and**
- Entities that undertake FATCA obligations on behalf of FIs.

The application of the provisions of any further similar agreement entered into by the Kingdom of Belgium will be covered in separate guidance notes.

### 1.2. Scope of FATCA

FATCA and the Belgian legislation implementing the Agreement signed on 23 April 2014, apply to Belgian FIs as defined below. In the Agreement and in this Guidance these are referred to as “**Belgian FIs**”. In order to determine how the legislation applies it will be necessary for a FI to consider a number of questions, namely:

- Am I a FI as provided in the provisions of FATCA and/or the Agreement?

- Do I hold “Financial Accounts”?
- Are there indicators that any of the Account Holders is a “Specified US Persons” or a Passive Non-Financial Foreign Entity (“**NFFE**”) with one or more Controlling Persons who are Specified US Persons?
- After applying the relevant due diligence, do I have any “Reportable Accounts”?

### **1.3. Interaction with US Treasury Regulations and with other FATCA IGA’s.**

In policy terms a Belgian FI should not be at a disadvantage from applying the legislation implementing the Agreement, as compared to the position that they would have been in if applying the US Treasury Regulations.

Pursuant to section 4.7 of the Agreement, Belgium permits Belgian FIs to opt for the application of the definitions contained in the US Treasury Regulations, when it is more convenient to do so and provided that such application does not frustrate the purpose of the Agreement.

Pursuant to section 1, C of annex I of the Agreement, Belgian Financial Institutions may rely on the procedures described in relevant U.S. Treasury Regulations to establish whether an account is a U.S. Reportable Account or an account held by a Nonparticipating Financial Institution, in lieu of corresponding procedures in Annex I of the IGA. Belgium permits Reporting FIs to make such election separately for each section of annex I either with respect to all relevant Financial Accounts or, separately, with respect to any clearly identified group of such accounts (such as by line of business or the location of where the account is maintained).

Pursuant to article 7 of the IGA, Belgian financial Institutions shall be granted the benefit of any more favourable terms (under article 4 of annex 1 of the IGA) afforded to another partner jurisdiction of the USA. Such more favourable terms shall apply automatically unless Belgium (the FPS Finances) declines in writing the application thereof.

## 2. Financial Institutions

### 2.1. Introduction

The first step to be undertaken by an entity or its representative is to establish whether, for the purposes of the Agreement, the entity is a (Belgian) FI. This will determine the extent of the obligations that need to be undertaken.

FATCA introduces through the US Treasury Regulations the concept of a Foreign Financial Institution (“**FFI**”) (Section 2.2). This term applies to non-US entities that meet the definition of a FI. To determine whether a Belgian entity is a FI, guidelines are set out below (Section 2.2.1).

The definition of FI refers to “Entities” (being a legal person or a legal arrangement such as a trust<sup>1</sup>), meaning that individuals cannot qualify as FIs and that the type of activities performed by a given Entity shall be decisive for the purpose of determining the status of the said Entity.

Entities are regarded as Belgian FIs if they fall within one or more of the following categories:

- Depository Institution (Section 2.2.2.),
- Custodial Institution (Section 2.2.3),
- Investment Entity (Section 2.2.4),
- Specified Insurance Company (Section 2.2.52.2.5).

Certain holding companies of FIs may opt for the status of FI mainly for registration purposes as Lead FIs (Section 2.2.6).

FATCA also lays out a set of rules regarding the identification of subsidiaries and branches (Section 2.3) as well as for entities being Related Entities (Section 2.4).

Under the Agreement, Belgian FIs will be classified either as a Reporting Belgian FI or as a Non-Reporting Belgian FI (Section 2.5). As long as Belgian FIs are in compliance with the Belgian legislation implementing FATCA they will not be subject to any withholding tax on their US source income under Section 1471 of the US Internal Revenue Code.

Under the Agreement Non-Reporting FIs qualify either as Exempt Beneficial Owners (“**EBOs**”) or Deemed Compliant FIs (Section 2.5.2).

Section 2.6 describes specific entities that can be FIs.

Where a Belgian FI is not compliant with the Belgian legislation, the IRS may decide to treat the Belgian FI as Nonparticipating Financial Institution (“**NPFI**”) in case the enforcement actions have not resolved the non-compliance within a 18-month period (Section 2.7).

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<sup>1</sup> Article 1, gg) of the IGA.

Where an entity does not meet the criteria set in the Agreement for any of the four categories of FIs, the entity shall be regarded as an NFFE, unless it is a Specified US Person (See Section 3).

## 2.2. Financial Institutions - Definitions

### 2.2.1. Belgian Financial Institutions - Generalities

Under the Agreement, a Belgian FI is an Entity which is either a Custodial Institution, a Depository Institution, an Investment Entity or a Specified Insurance Company<sup>2</sup>.

As mentioned above, a Belgian FI is:

- any Entity resident in Belgium qualifying as a FI;
- any Belgian branch of a non-resident FI as defined in section 2.3<sup>3</sup>;

Any branch of a Belgian FI that is located outside Belgium would not qualify as a Belgian FI for the purpose of the Agreement.

In addition, a Belgian FI may assume that a Belgian entity is a FI if such entity can be classified according to the following criteria, unless the entity concerned proves otherwise:

- (i) a NACE code (or *Statistical Classification of Economic Activities in the European Community*) which appears on the list (Appendix 1) of (with) NACE codes specific to FIs; or
- (ii) publicly available information, such as industry codes (e.g. GIIN, NACE, SIC, NAICS), or
- (iii) information otherwise available to the Belgian FI, indicating that such entity is a FI.

### 2.2.2. Depository Institution

For the purpose of the Agreement, a Depository Institution is an institution that accepts deposits in the ordinary course of a banking or similar business<sup>4</sup>.

The FPS Finances will consider a Belgian resident Entity or a branch established in Belgium as a Depository Institution if it falls under the Law of 25 April 2014 on the legal status and supervision of credit institutions (*Wet op het statuut van en het toezicht op kredietinstellingen /loi relative au statut et au contrôle des établissements de credit*).

Entities that solely provide asset based finance services or that accept deposits solely from persons as collateral or security pursuant to; a sale or lease of property; a loan secured by property; or a similar financing arrangement, between such entity and the person making the

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<sup>2</sup> Article 1, g) of the IGA.

<sup>3</sup> Article 1, l) of the IGA.

<sup>4</sup> Article 1, i) of the IGA.

deposit with the entity, will not be Depository Institutions. This might for instance apply to factoring or leasing companies.

Entities that complete money transfers by instructing agents to transmit funds will not be considered to be engaged in banking or similar business.

### 2.2.3. Custodial Institution

A Custodial Institution is an institution which holds financial assets for the account of others as a substantial portion of its business<sup>5</sup>.

A substantial proportion in this context means where 20 per cent or greater of the entities gross income from either its last 3 accounting periods, or since it commenced business, arises from the holding of assets for the benefit of others and from related financial services.

An entity with no operating history as of the date of the determination is considered to hold financial assets for the account of others as a substantial portion of its business if the entity expects to meet the gross income threshold 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).

Related services are any ancillary service directly related to the holding of assets by the institution on behalf of others. Income arising from related services includes in this particularly context:

- custody, account maintenance and transfer fees;
- execution and pricing commission and fees from securities transactions;
- income earned from extending credit to customers;
- income earned from contracts for differences (“**CFDs**”) and on the bid-ask spread of financial assets; **and**
- fees for providing financial advice, clearance and settlement services.

Custodial Institutions could include brokers, custodial banks, trust companies, clearing organizations and nominees.

Insurance brokers and other insurance intermediaries defined under article 1, 6° of the Belgian Law (“*Wet van 27 maart 1995 betreffende de verzekerings- en herverzekeringsbemiddeling en de distributie van verzekeringen*”/“*Loi du 27 mars 1995 relative à l’intermédiation en assurances et en réassurances et à la distribution d’assurances*”) do not hold assets on behalf of clients and do not fall within the scope of this provision.

### 2.2.4. Investment Entity

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<sup>5</sup> Article 1, h) of the IGA.



The term “Investment Entity” includes two types of Entities: Entities that primarily conduct as a business investment activities or operations on behalf of other persons, and Entities that are managed by those Entities or other Financial Institutions.

The first type of “Investment Entity” is any Entity that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:

- a) 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;
- b) individual and collective portfolio management; or
- c) 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.

The second type of “Investment Entity” is any Entity 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. An Entity is “managed by” another Entity if the managing Entity performs, either directly or through another service provider, any of the activities or operations described above on behalf of the managed Entity. However, an Entity does not manage another Entity if it does not have discretionary authority to manage the Entity’s assets (in whole or part). Where an Entity is managed by a mix of Financial Institutions, NFFEs 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 an Investment Entity described above, if any of the managing Entities is such another Entity.

An Entity is treated as primarily conducting as a business one or more of the activities described above (first type of “Investment Entity”), or an Entity’s gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets (second type of “Investment Entity”), if the Entity’s gross income attributable to the relevant activities equals or exceeds 50% of the Entity’s gross income during the shorter of:

- the three-year period ending on 31 December of the year preceding the year in which the determination is made; or
- the period during which the Entity has been in existence.

The term “Financial Asset” includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract.

The term “Financial Asset” does not include a non-debt, direct interest in real property

The term “Investment Entity”, as defined above, does not include an Entity that is an Active NFFE because it meets any of the criteria in section 3.1.1 e) to h) (i.e. holding NFFEs and

treasury centres that are members of a nonfinancial group; start-up NFFEs; and NFFEs that are liquidating or emerging from bankruptcy).

An Entity that primarily conducts as a business investing, administering, or managing non-debt, direct interests in real property on behalf of other persons, such as a type of real estate investment trust, will not be an Investment Entity.

The definition of the term “Investment Entity” shall be interpreted in a manner consistent with similar language set forth in the definition of “financial institution” in the Financial Action Task Force Recommendations.

Section 2.5.5.4 provides further guidance on Collective Investment Vehicles where an Entity has gross income that is primarily attributable to investing, reinvesting, or trading in financial assets and is managed by a FI that performs any of the activities, either directly or through another third party service provider, listed above, the managed entity will be an Investment Entity.

A collective investment vehicle such as a FCP/GBF, SICAF/BEVAK, SICAV/BEVEK, PRICAF/PRIVAK (the PRICAF PRIVEE/PRIVATE PRIVAK is however considered a “passive NFFE”) and similar vehicles will be considered an Investment Entity even when it would be self-managed.

Each compartment or sub-fund of a single investment fund may, at the option of the investment vehicle, be treated as a separate Investment Entity for FATCA purposes. This means for example that a compartment of a fund may qualify as a Reporting FI whilst another compartment of the same fund may qualify as a Non-Reporting FI (each specific compartment must identify itself separately and clearly).

Belgian funds organized as a co-ownership pool of assets, referred to as “*Gemeenschappelijk Beleggingsfonds* (“GBF”) or *Fonds Communs de Placement* (“FCP”) under Article 3, 10° of the Law of 3 August 2012 On Certain Types of Collective Management of Investment Portfolio's (“*Wet betreffende de instellingen voor collectieve belegging die voldoen aan de voorwaarden van Richtlijn 2009/65/EG en de instellingen voor belegging in schuldvorderingen/Loi relative aux organismes de placement collectif qui répondent aux conditions de la Directive 2009/65/CE et aux organismes de placement en créances*”) and under Article 3, 10° Law of 19 April 2014 On Certain Types of Collective Management of Investment Portfolio's (“*Wet betreffende de alternatieve instellingen voor collectieve belegging en hun beheerders /Loi relative aux organismes de placement collectif alternatifs et à leurs gestionnaires*”) will be considered Investment Entities.

Where an Entity is managed by an individual who performs the activities described above the managed Entity will not be an Investment Entity.

An Entity that is self-managed shall not be considered as an Investment Entity (unless it is organised as or holds itself out as a collective investment vehicle such as an FCP/GBF, SICAV/BEVEK, SICAF/BEVAK, PRICAF/PRIVAK (with the exception of the PRICAF PRIVEE/PRIVATE PRIVAK, which is treated as a passive NFFE) or similar regulated investment fund) and may be treated as a Passive NFFE, except if:

- it qualifies as another type of FI;
- it is regulated as a collective investment scheme<sup>6</sup>; or

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<sup>6</sup> See section 2.6.1.

- it opts for the status of FI.

### 2.2.5. Specified Insurance Company

A Specified Insurance Company means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to a Cash Value Insurance Contract or an Annuity Contract<sup>7</sup>.

Insurance companies that only provide general insurance<sup>8</sup> or term life insurance<sup>9</sup> should not be FIs under this definition and neither will reinsurance companies<sup>10</sup>.

A Specified Insurance Company can include both an insurance company and its holding company. However, the holding company itself will only be a Specified Insurance Company if it issues or is obligated to make payments with respect to Cash Value Insurance Contracts or Annuity Contracts.

As only certain persons are permitted to provide Cash Value Insurance Contracts or Annuity Contracts, it is unlikely that an insurance holding company will in itself issue, or will be obligated to make payments with respect to Cash Value Insurance or Annuity Contracts<sup>11</sup>.

Insurance brokers are part of the payment chain and should not be classified as Specified Insurance Companies because they are not obligated to make payments under the terms of the Insurance or Annuity Contract.

### 2.2.6. Holding companies of Financial Institutions

In view of enabling holding companies of FIs to function as Lead FI of the EAG, holding companies of FIs can opt for the status of FI.

## 2.3. Subsidiaries and Branches

If a non-Belgian entity has a Belgian subsidiary or branch which carries on a business, as a Custodial Institution, a Depository Institution, an Investment entity or a Specified Insurance Company in Belgium, such subsidiary or branch will be a Reporting Belgian FI provided that, as far as a branch is concerned, the Belgian branch performs activities in Belgium that would qualify it as FI should it have been a separate legal entity.

Branches of US FIs are considered as US FIs notwithstanding the fact that they are not located in the US.

Subsidiaries and branches of Belgian FIs that are not located in Belgium are excluded from the scope of the Agreement and will not be regarded as Belgian FIs. These entities will be covered by the relevant rules in the jurisdiction in which they are located. Those rules will either be the US Treasury Regulations or the legislation introduced to bring effect to an

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<sup>7</sup> Article 1, k) of the IGA.

<sup>8</sup> See section 3.3.

<sup>9</sup> See section 4.10.14.10.2.

<sup>10</sup> As defined in the Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC.

<sup>11</sup> See section 2.2.6

Intergovernmental Agreement between that jurisdiction and the US. However, where such subsidiaries and branches act as introducers with regard to a Financial Account and the relevant account is held and maintained in Belgium by a Belgian FI **and** is subject to Belgian regulatory requirements, the account will be within the scope of the Belgian Agreement. The Belgian FI maintaining the account(s) will be required to undertake the appropriate due diligence processes and report the appropriate details to the FPS Finances.

**Example 1**

Bel Bank NV, located in Brussels, has within its group the following FIs:  
a subsidiary (S) located in Antwerp,  
a foreign subsidiary (D) located in Partner Jurisdiction 1,  
a foreign branch (F) located in Partner Jurisdiction 2,  
a foreign branch (X) located in non IGA country, and  
a foreign branch (Y) located in New York.

Under the terms of the Agreement:

Bel Bank in Brussels and its subsidiary S will be Belgian FIs and report to the FPS Finances. D and F will be classified under the Agreement as Partner Jurisdiction FIs and will report to their respective jurisdictions.

X will be a Limited FFI and will have to identify itself as a NPFI for withholding/reporting purposes **if** the non IGA country does not have an Agreement with the US and if X cannot enter into an FFI Agreement directly with the IRS due to legal or other impediments. However X will have to undertake the obligations required under the US Treasury Regulations as far as it is legally able to do so.

Y will report on Belgian persons who hold accounts within the IRS.

**Example 2 - Where a foreign bank has a branch located in Belgium**

Down Under Bank (Australia) has a branch Z located in Liège.

Z will be a Belgian FI and will therefore fall under the Agreement if it has an activity that qualifies as a FI. In that case the entity will need to comply with the Belgian regulations and legislation and report information on any reportable Financial Accounts to the FPS Finances.

**2.4. Related Entities**

For the purposes of FATCA an Entity is regarded as being related to another entity if one entity controls the other or the two entities are under common control<sup>12</sup>. For this purpose control is taken as including the direct or indirect ownership of more than 50 per cent of the vote or more than 50 % of the value in an Entity. Whether or not there are Related Entities is relevant in the context of the obligations placed on Belgian FIs, in respect of any related entities that are NPFI.

An Entity that is a member of a Related Entity group will not be a FI if:

- the entity does not maintain Financial Accounts (other than accounts maintained for members of its related entity group);
- the entity does not hold an account with or receive US Source Withholdable Payments from any withholding agent other than a member of its related entity group;

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<sup>12</sup> Article 1, jj) of the IGA.

- the entity does not make US Source Withholdable Payments to any person other than to members of its Related Entity group that are not limited FIs or limited branches;  
**and**
- the entity has not agreed to undertake reporting as a Sponsoring Entity or otherwise act as an agent regarding the Agreement on behalf of any FI, including a member of its related entity group.

Where a Belgian FI has any Related Entities that as a result of the jurisdictions they operate in, they are unable to comply with FATCA, then the Belgian FI must treat the Related Entity as an NPFI and fulfil obligations in respect of that NPFI as set out in Article 4 of the Agreement. Further guidance on these obligations is set out in more detail at Section 9.4.

Notwithstanding the foregoing, an Entity may opt not to be treated as a Related Entity of another Entity if the two Entities are not members of the same Expanded Affiliated Group (“EAG”) as defined in section 1471(e)(2) of the US Internal Revenue Code.

#### **Exemption for an Investment Entity**

For the purposes of the Agreement, an Investment Entity will not be considered a Related Entity as a result of a contribution of seed capital by a member of the group if:

1. the member of the group that provides the seed capital is in the business of providing seed capital to Investment Entities that it intends to sell to unrelated investors;
2. the Investment Entity is created in the course of its business;
3. any Equity Interest in excess of 50% of the total value of stock of the Investment Entity is intended to be held for no more than three years from the date of acquisition;  
**and**
4. in the case of an Equity Interest that has been held for over three years, its value is less than 50% of the total value of the stock of the Investment Entity.

For purposes of this Section, the term seed capital means an initial capital contribution made to an Investment Entity 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 before selling interests in the Entity to unrelated investors, achieving economies of scale for diversified investment, avoiding an artificially high expense to return ratio, or similar purposes.

## **2.5. Non-Reporting Financial Institutions: Exempt Beneficial Owners and Deemed Compliant Financial Institutions**

### **2.5.1. Definitions**

A Non-Reporting Belgian FI is any FI specifically described or identified as such in Annex II of the Agreement, or one which otherwise qualifies under Article 1. 1. q) of the Agreement as a Deemed Compliant FFI or an EBO under the relevant US Treasury Regulations in effect at the time of the signing of the Agreement.

A Non-Reporting Belgian FI will **not** need to obtain a GIIN from the IRS. Such entities do not have any reporting or registration requirements in relation to any Financial Accounts that they maintain. Reporting Belgian FIs will not be required to review or report on accounts held by EBOs and Deemed Compliant FFIs. However, such entities are required to meet the specific conditions of the relevant Deemed Compliant FFI or EBO status, which might require, among other things, to identify the FATCA status of their Account Holders,

To the extent that any Entity qualifies as a Deemed Compliant FFI under relevant US Treasury Regulations, whether as a registered or a certified Deemed Compliant FFI, such institution would be treated as a Non-reporting Belgian FI. Such entities will not be required to register with the IRS or obtain the GIIN.

However there are two scenarios in which an entity which is treated as Deemed Compliant FI or EBO under Annex II to the Agreement could still have some reporting obligations:

- that is where an entity meets the criteria of a FI with a Local Client Base, and has US Reportable Accounts (See Section 2.5.4.1), **or**
- If an EBO other than a fund makes or receives a payment that is derived from an obligation held in connection with a commercial financial activity of the type engaged in by a Specified Insurance Company, Custodial Institution or Depository Institution (See Section 2.5.2).

EBOs and Deemed Compliant FIs are Non-Reporting FI that fall within the categories described in Annex II of the Agreement are described in Sections 2.5.2 to 2.5.7.

Any Belgian FI that is not a Non-Reporting FI will be a Reporting Belgian FI<sup>13</sup>. Reporting Belgian FIs will be responsible for ensuring that the due diligence requirements are met and for reporting to the FPS Finances under the terms of the Belgian legislation. They will need to obtain a GIIN from the IRS.

In the cases of a non-Belgian FI holding an account with a Belgian FI, the domestic FATCA rules of the non-Belgian FI may be applied to determine whether the non-Belgian FI is a reporting or a non-reporting FI.

### **2.5.2. Exempt Beneficial Owner other than Funds**

The following entities are treated as Non-Reporting Belgian FIs and as EBOs for purposes of Sections 1471 and 1472 of the US Internal Revenue Code, *other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution*<sup>14</sup>. In the latter, if such an EBO makes or receives a payment that is derived from an obligation held in connection with a commercial financial activity of the type engaged in by a Specified Insurance Company, Custodial Institution or Depository Institution, it will be treated as Reporting FI.

#### **Example:**

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<sup>13</sup> Article 1, o) of the IGA.

Central Banks may have different statuses depending on their activities.

#### **2.5.2.1. Governmental Entity**

Foreign Government and any political sub divisions of a foreign government or any wholly owned agency or instrumentality of such, including governments of US territories.

For Belgium, the Belgian Government and the organizations listed (illustrative) below are Non-Reporting FIs and will be treated as EBOs:

- the Belgian Government,
- any political subdivision of the Belgian Government (including, regions and communities (“*gewesten en gemeenschappen/régions et communautés*”), provinces, cities, or municipalities, **or**
- any wholly owned agency or instrumentality of the Belgian State, including but not limited to the entities listed by the National Bank of Belgium (“**NBB**”) in the document “*de eenheden van de publieke sector/les unités du secteur public*”.

#### **2.5.2.2. National Bank of Belgium**

The NBB and any of its wholly owned subsidiaries are Non-Reporting FIs and will be treated as EBOs.

Referring to the exception mentioned above, if the NBB makes or receives a payment that is derived from an obligation held in connection with a commercial financial activity of the type engaged in by a Specified Insurance Company, Custodial Institution or Depository Institution, it will no longer be treated as an EBO for that obligation but as an intermediary.

#### **2.5.2.3. International Organizations or any wholly owned agency or Instrumentality of such organizations**

This category includes any intergovernmental organization (including a supranational organization) (1) that is comprised primarily of non-U.S. governments; (2) that has in effect a headquarters agreement with Belgium; and (3) the income of which does not inure to the benefit of private persons.

The organizations listed in the illustrative list below are EBOs and therefore Non-Reporting FIs:

- The International Monetary Fund
- The World Bank
- The International Bank for Reconstruction and Development
- The International Finance Corporation
- The International Finance Corporation Order, 1955 (SI 1955 No.1954)
- The International Development Association
- The Asian Development Bank
- The African Development Bank
- The European Community
- The European Coal and Steel Community
- The European Atomic Energy Community

- The European Investment Bank
- The European Bank for Reconstruction and Development
- The OECD Support Fund
- The Inter-American Development Bank
- The United Nations and related agencies (UN)
- Agence internationale de l'énergie atomique (AIEA)
- Agence interalliée des réparations (IARA)
- Agence spatiale Européenne (ASE - ESA)
- Assemblée de l'Atlantique Nord
- Association internationale de développement (AID - IDA)
- Banque Africaine de développement
- Banque asiatique de développement
- Banque européenne d'investissement (BEI)
- Banque Européenne pour la Reconstruction et le Développement (BERD)
- Banque interaméricaine de développement
- Banque internationale pour la Reconstruction et le développement (BIRD)
- Centre pour le développement industriel
- Centre européen pour les prévisions météorologiques à moyen terme
- Centre technique de Coopération agricole et rurale
- Comité intergouvernemental pour les migrations européennes (CIME)
- Commission tripartite pour la restitution de l'or monétaire
- Communauté économique européenne (CEE)
- Communauté européenne du charbon et de l'acier (CECA)
- Communauté européenne de l'énergie atomique (CEEA ou Euratom)
- Conseil africain de l'arachide
- Conseil de coopération douanière
- Conseil de l'Europe
- L'Ecole Européenne
- Fonds africain de développement
- Fonds belgo-congolais d'amortissement et de gestion
- Fonds international de développement agricole (FIDA)
- Fonds européen d'Investissement
- Fonds monétaire international (IMF - FMI)
- Fonds de rétablissement du Conseil de l'Europe
- Haut-commissariat de l'ONU pour les réfugiés
- Institut international du coton
- Institut universitaire européen
- Organisation de l'aviation civile internationale (OACI - ICAQ)
- Organisation de coopération et de développement économiques (OCDE)
- Organisation Européenne pour l'Exploitation de Satellites Météorologiques (EUMETSAT)
- Organisation Européenne de Télécommunication par Satellite (EUTELSAT)
- Organisation européenne des brevets
- Organisation européenne pour la sécurité de la navigation aérienne (Euro control)
- Organisation Intergouvernementale pour les transports internationaux ferroviaires (OTIF)
- Organisation Internationale de Télécommunication Maritimes par Satellites (IMMARSAT)
- Organisation Internationale de Télécommunications par Satellites (INTELSAT)
- Organisation internationale du travail (OIT - ILO)



- Organisation maritime consultative intergouvernementale - Organisation intergouvernementale consultative de la navigation maritime (OMCI - IMCO)
- Organisation météorologique mondiale (OMW - WMO)
- Organisation mondiale de la propriété intellectuelle (OMPI)
- Organisation mondiale de la santé (OMS - WHO)
- Organisation des Nations-Unies (ONU)
- Organisation des Nations-Unies pour l'alimentation et l'agriculture (OAA -FAO)
- Organisation des Nations-Unies pour l'éducation, la science et la culture (UNESCO)
- Organisation du Traité Atlantique Nord (OTAN)
- Quartier général suprême des Forces Armées en Europe (SHAPE)
- Société financière internationale (SFI - IFC)
- Union de l'Europe occidentale (UEO)
- Union internationale des télécommunications (UIT - ITU)
- Union postale universelle (UPU).

Moreover, the list available on the following website (<http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&id=f7ad646b-9c76-4403-9131-f8e21fc45a97&documentLanguage=FR#findHighlighted>) could also be used as an illustrative list of Non-Reporting FIs.

### 2.5.3. Funds that qualify as Exempt Beneficial Owners

The following entities are Non-Reporting Belgian FIs treated as EBOs for purposes of Sections 1471 and 1472 of the US Internal Revenue Code.

#### 2.5.3.1. Treaty-qualified Retirement Funds

A fund established in Belgium and described in Subparagraph 1(k) of Article 3 of the Convention between the Government of the United States of America and the Government of the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes On Income (the "**Income Tax Treaty**"), done at Brussels on November 27, 2006, provided that the fund is entitled to benefits under the Income Tax 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).

Pan European retirements funds excluded from the benefit of Treaty further to the Limitation of Benefits clause may be treated as Broad Participation Funds.

#### 2.5.3.2. Belgian Savings Funds

A collective investment fund ("*Gemeenschappelijk Beleggingsfonds*" ("**GBF**") or *Fonds Communs de Placement*" ("**FCP**") contemplated by Article 145/16 of the Income Tax Code 1992 ("**ITC92**") ("*Wetboek Inkomstenbelastingen 1992*" ("**WIB92**")/*Code des Impôts sur les Revenus 1992*" ("**CIR92**")), established for the investment of monies through a so-called collective savings account as part of a tax-favoured pension savings scheme may be considered an EBO.

#### 2.5.3.3. Broad Participation Funds

A fund established in Belgium 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:

1. does not have a single beneficiary with a right to more than five percent of the fund's assets;
2. is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in Belgium; **and**
3. satisfies at least one of the following requirements:
  - a) the fund is generally exempt from tax in Belgium on investment income under the Laws of Belgium 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 other plans described in Sections 2.5.3.1, 2.5.3.2., 2.5.3.4, and 2.5.3.5 or from retirement and pension accounts 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 other retirement funds described in Sections 2.5.3.1, 2.5.3.3, 2.5.3.4, and 2.5.3.5 or retirement and pension accounts), 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 applying the rules of account aggregation and currency translation.

#### **2.5.3.4. Narrow Participation Retirement Funds**

A fund established in Belgium 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 services rendered, provided that:

1. the fund has fewer than 50 participants;
2. the fund is sponsored by one or more employers that are not Investment Entities or Passive NFFEs;
3. the employee and employer contributions to the fund (other than transfers of assets from Treaty-Qualified Retirement Funds described in Section 2.5.3.1 or retirement and pension accounts) are limited by reference to earned income and compensation of the employee, respectively;
4. participants that are not residents of Belgium are not entitled to more than 20 percent of the fund's assets; **and**
5. the fund is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in Belgium.

#### **2.5.3.5. Pension fund of an Exempt Beneficial Owner**

A fund established in Belgium by an EBO to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees of the EBO (or persons designated by such employees), or that are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the EBO.

#### **2.5.3.6. Investment Entity wholly owned by Exempt Beneficial Owner**

An Entity that is a Belgian FI solely because it is an Investment Entity, provided that each direct holder of an Equity Interest in the Entity is an EBO, and each direct holder of a debt interest in such Entity is either a Depository Institution (with respect to a loan made to such Entity) or an EBO.

An example of an entity qualifying as EBO under this Section would be a Belgian *GBF/FCP* that is used by pension funds, qualifying as EBOs, as a pooling vehicle to pool the investments of such pension funds.

#### **2.5.4. Small or limited scope Financial Institution that qualify as Deemed Compliant Financial Institutions**

The following entities are Non-Reporting Belgian FIs treated as Deemed Compliant FIs for purposes of Section 1471 of the US Internal Revenue Code.

More explanation about the practical procedure will be provided into the Agreement Protocol that will be published on the dedicated website: <http://finances.belgium.be/fr/E-services> (international - FATCA)

##### **2.5.4.1. Financial Institutions with a Local Client Base**

There are 10 criteria that must **all** be met before a FI can be treated as a FI with a Local Client Base. A FI should self-assess whether it meets these criteria and maintain appropriate records to support its assessment. The criteria are listed below:

- a) The FI must be licensed and regulated as a FI under the Laws of Belgium. This would include FIs subjected to the supervision of the FSMA or the NBB and listed as such on their website;
- b) The FI must have no fixed place of business outside Belgium other than where the location outside of Belgium houses solely administrative functions and is not publicly advertised to customers. This applies even if the fixed place of business is within a jurisdiction that has entered into an Agreement with the US with regard to FATCA;
- c) The FI must not solicit potential Financial Account Holders or customers outside of Belgium. For this purpose, a FI shall not be considered to have solicited such customers or Account Holders outside of Belgium merely because it operates a website, provided that the website does not specifically indicate that the FI provides accounts or services to non-Belgian residents or otherwise target or solicit US customers or Account Holders;

A FI will also not be considered to have solicited potential Financial Account Holders outside of Belgium if it advertises in either print media or on a radio or television station and the advertisement is distributed or aired primarily within Belgium but incidentally also in other countries, as long as the advertisement does not specifically indicate that the FI provides services to non-residents, and the FI does not otherwise target or solicit US customers or Account Holders.

A FI issuing a prospectus will not, in itself, amount to soliciting Financial Account Holders, even when it is available to US Persons in Belgium. Likewise, publishing information such as reports and accounts to comply with the listing rules, disclosure rules and transparency or AIM rules to support a public listing or quotation of shares or bonds will not amount to soliciting customers outside of Belgium;

- d) The FI must be required under the Laws of Belgium to identify resident Account Holders for purposes of either information reporting or withholding of tax with respect to Financial Accounts held by residents or for purposes of satisfying Belgium's AML due diligence requirements;
- e) At least 98 per cent of the (Financial) Accounts by value, provided by the FI must be held by people or entities who reside in Belgium or another Member State of the European Union.  
The 98 per cent threshold can include the Financial Accounts of US Persons if they are resident within Belgium. It applies to both Individual and Entity Accounts. A FI will need to assess whether it meets this criteria annually. The measurement can be taken at any point of the preceding calendar year for it to apply to the following year, as long as the measurement date remains the same from year to year;
- f) Beginning on or before 1 July 2014, the FI must have policies and procedures, consistent with those set forth in Annex I, to prevent the FI from providing a Financial Account to any NPFI and to monitor whether the FI opens or maintains a Financial Account for any Specified US Person who is not a resident of Belgium (including a US Person that was a resident of Belgium when the Financial Account was opened but subsequently ceases to be a resident of Belgium) or any Passive NFFE with Controlling Persons who are US residents or US citizens who are not residents of Belgium;
- g) Such policies and procedures must provide that if any Financial Account held by a Specified US Person, a Passive NFFE with Controlling Persons who are US residents or US citizens who are not residents of Belgium or a NPFI is identified, the FI must report such Financial Account as would be required if the FI were a Reporting Belgian FI (including by following the registration requirements applicable to Reporting Belgian FIs) or close such Financial Account;
- h) With respect to a Pre-existing Account held by an individual who is not a resident of Belgium or by an Entity, the FI must review those Pre-existing Accounts in accordance with the procedures set forth in Annex I applicable to Pre-existing Accounts to identify any US Reportable Account or Financial Account held by a NPFI, and must report such Financial Account as would be required if the FI were a Reporting Belgian FI (including by following the registration requirements applicable to Reporting Belgian FIs) or close such Financial Account;

- i) Each Related Entity of the FI that is a FI must be incorporated or organized in Belgium and, with the exception of any Related Entity that is a retirement fund described in paragraphs A through D of Section II of Annex II to the Agreement, satisfy the requirements set forth in paragraph A of Section III of Annex II to the Agreement for FIs with a local client base; **and**
- j) The FI must not have policies or practices that discriminate against opening or maintaining accounts for individuals who are Specified US Persons and who are residents of Belgium.

#### **2.5.4.2. Local Bank**

A FI satisfying the following requirements:

- a) the FI operates solely as and is licensed and regulated under the Laws of Belgium as (a) a bank or (b) a credit union or similar cooperative credit organization that is operated without profit;
- b) The FI's business consists primarily of receiving deposits from and making loans to unrelated retail customers;
- c) The FI satisfies the requirements for FIs with local client base set forth in Section 2.5.4.1(b) and (c) above, provided that, in addition to the limitations on the website described in Section 2.5.4.1(c) above, the website does not permit the opening of a Financial Account;
- d) The FI does not have more than \$175 million in assets on its balance sheet, and the FI and any Related Entities, taken together, do not have more than \$500 million in total assets on their consolidated or combined balance sheets; **and**
- e) Any Related Entity must be incorporated or organized in Belgium, and any Related Entity that is a FI, with the exception of any Related Entity that is a Treaty-Qualified Retirement Fund, a Broad or Narrow Participation Retirement Fund, or a Pension Fund of an EBO<sup>15</sup> or a FI with only low-value accounts described in Section 2.5.4.3 below, must satisfy the requirements set forth in this Section 2.5.4.3.

#### **2.5.4.3. Financial Institutions with only Low Value Accounts**

A Belgian FI satisfying the following requirements:

- a) The FI is not an Investment Entity;
- b) No Financial Account maintained by the FI or any Related Entity has a balance or value in excess of \$50,000, applying the rules set forth in Annex I for account aggregation and currency translation; **and**

- c) The FI does not have more than \$50 million in assets on its balance sheet, and the FI and any Related Entities, taken together, do not have more than \$50 million in total assets on their consolidated or combined balance sheets.

#### **2.5.4.4. Qualified Credit Card Issuer**

A Qualified Credit Card Issuer is an entity that:

- a) is a FI solely because it is an issuer of credit cards that accepts deposits only when the customer makes a payment in excess of the outstanding balance due and that does not immediately return the overpayment to the customer; **and**
- b) implements policies and procedures (by the later of 30 June 2014 or the date it registers as a Deemed Compliant FI) either to prevent a customer deposit 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.

#### **2.5.5. Investment Entities that qualify as Deemed Compliant Financial Institutions**

The following entities are Non-Reporting Belgian FIs treated as Deemed Compliant FIs for purposes of Section 1471 of the US Internal Revenue Code:

- Sponsored Investment Entities and Controlled Foreign Corporation; see Section 2.5.5.1, as it applies to Belgium;
- Sponsored, Closely Held Investment Vehicles; see Section 2.5.5.2, as it applies to Belgium;
- Investment Advisors and Investment Managers; see Section 2.5.5.3, as it applies to Belgium;
- Collective Investment Vehicles held by certain owners; see Section 2.5.5.4, as it applies to Belgium;
- Publicly traded Collective Investment Vehicles; see Section 2.5.5.5; and
- Entities meeting conditions of Deemed Compliant FIs under the US Treasury Regulations; see Section 2.5.6.

##### **2.5.5.1. Financial Institutions that is either a Sponsored Investment Entity or a Controlled Foreign Corporation having a Sponsoring entity that complies with the requirements below.**

- A. A FI is a Sponsored Investment Entity if (a) it is an Investment Entity established in Belgium that is not a qualified intermediary (“**QI**”), withholding foreign partnership, or withholding foreign trust pursuant to relevant US Treasury Regulations; and (b) an Entity has agreed with the FI to act as a sponsoring entity for the FI as set forth in sub-Section C.

A FI is a sponsored controlled foreign corporation if (a) the FI is a controlled foreign corporation organized under the Laws of Belgium that is not a QI, withholding foreign partnership, or withholding foreign trust pursuant to relevant US Treasury Regulations; (b) the FI is wholly owned, directly or indirectly, by a Reporting US FI

that agrees to act, or requires an affiliate of the FI to act, as a sponsoring entity for the FI; and (c) the FI shares a common electronic account system with the sponsoring entity that enables the sponsoring entity to identify all Account Holders and payees of the FI and to access all account and customer information maintained by the FI including, but not limited to, customer identification information, customer documentation, account balance, and all payments made to the Account Holder or payee.

- B. A “controlled foreign corporation” means any foreign corporation if more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, or the total value of the stock of such corporation, is owned, or is considered as owned, by “United States shareholders” on any day during the taxable year of such foreign corporation. The term a “United States shareholder” means, with respect to any foreign corporation, a US person who owns, or is considered as owning, 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation.
- C. The sponsoring entity complies with the following requirements:
1. the sponsoring entity is authorized to act on behalf of the FI (such as a fund manager, trustee, corporate director, or managing partner) to fulfil applicable registration requirements on the IRS FATCA registration website;
  2. the sponsoring entity has registered as a sponsoring entity with the IRS on the IRS FATCA registration website;
  3. if the sponsoring entity identifies any US Reportable Accounts with respect to the FI, the sponsoring entity registers the FI pursuant to applicable registration requirements on the IRS FATCA registration website on or before the later of December 31, 2015 and the date that is 90 days after such a US Reportable Account is first identified;
  4. the sponsoring entity agrees to perform, on behalf of the FI, all due diligence, withholding, reporting, and other requirements that the FI would have been required to perform if it were a Reporting Belgian FI;
  5. the sponsoring entity identifies the FI and includes the identifying number of the FI (obtained by following applicable registration requirements on the IRS FATCA registration website) in all reporting completed on the FI’s behalf; **and**
  6. the sponsoring entity has not had its status as a sponsor revoked.

A sponsor must register with the IRS as a sponsoring entity, and must, where a sponsored entity has reportable accounts, register each of the funds or sub-funds or compartment it manages with the IRS as “Sponsored Entities”.

Where there is a sponsor/sponsored entity relationship the legal responsibility for undertaking the required due diligence and reporting remains that of the sponsored entity.

When a sponsor acts on behalf of a range of funds, the classification of an account as a New Account or a Pre-existing Account can be done by reference to whether the account is new to the sponsor and not the fund. This prevents a sponsor from having to seek FATCA documentation from the same Account Holder repeatedly, where that Account Holder is invested in more than one of the funds sponsored by the same sponsor. Where a sponsor is

able to link accounts in this manner, the accounts will need to be aggregated for the purposes of determining whether the accounts exceed the *de minimis* reporting threshold.

#### **2.5.5.2. Sponsored, Closely Held Investment Vehicle**

A Belgian FI satisfying the following requirements:

- A. the FI is a FI solely because it is an Investment Entity and is not a QI, withholding foreign partnership, or withholding foreign trust pursuant to relevant US Treasury Regulations;
- B. the sponsoring entity is a Reporting US FI, Reporting Model 1 FFI, or Participating FFI, is authorized to act on behalf of the FI (such as a professional manager, trustee, or managing partner), and agrees to perform, on behalf of the FI, all due diligence, withholding, reporting, and other requirements that the FI would have been required to perform if it were a Reporting Belgian FI;
- C. the FI does not hold itself out as an investment vehicle for unrelated parties;
- D. twenty or fewer individuals own all of the debt interests and Equity Interests in the FI (disregarding debt interests owned by Participating FFIs and deemed-compliant FFIs and Equity Interests owned by an Entity if that Entity owns 100 percent of the Equity Interests in the FI and is itself a sponsored FI described in this Section 2.5.5.1.); and
- E. the sponsoring entity complies with the following requirements:
  1. the sponsoring entity has registered as a sponsoring entity with the IRS on the IRS FATCA registration website;
  2. the sponsoring entity agrees to perform, on behalf of the FI, all due diligence, withholding, reporting, and other requirements that the FI would have been required to perform if it were a Reporting Belgian FI and retains documentation collected with respect to the FI for a period of six years;
  3. the sponsoring entity identifies the FI in all reporting completed on the FI's behalf; **and**
  4. the sponsoring entity has not had its status as a sponsor revoked.

#### **2.5.5.3. Investment Advisors and Investment Managers**

An Investment Entity established in Belgium that is a FI solely because it (1) renders investment advice to, and acts on behalf of, or (2) manages portfolios for, and acts on behalf of, a customer for the purposes of investing, managing, or administering funds deposited in the name of the customer with a FI other than a NPFI. Please note in this connection that the handling of monies by a transfer agent in connection with the subscription or redemption of fund shares or units does not amount to the collection of deposits or as a banking business.

#### **2.5.5.4. Collective Investment Vehicle held by certain owners**

An Investment Entity established in Belgium that is regulated as a Collective Investment Vehicle, provided that all of the interests in the Collective Investment Vehicle (including debt interests in excess of \$50,000) are held by or through one or more EBOs, Active NFFEs



described in Section 3.1, US Persons that are not Specified US Persons, or FIs that are not NPFIs.

Collective Investment Vehicles contemplated by article 3, first paragraph, 1° of the Law of 3 August 2012 and article 3, 1° of the Law of 19 April 2014, including those which are not subject to prudential supervision of the FSMA are considered to be regulated as a Collective Investment Vehicle for the purposes of FATCA in general and for this Non-reporting FI status more specifically.

#### **2.5.5.5. Publicly traded Collective Investment Vehicle**

A Belgian Collective Investment Vehicle, if all interests in the Collective Investment Vehicle are admitted for trading on a MTF or on a regulated market authorized pursuant to resp. Titles II and III of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC. The terms “MTF” and “Regulated Market” shall have the same meaning as that applicable under the aforementioned Directive.

Section 4.9.2 is not applicable to the Collective Investment Vehicles contemplated in this Section.

#### **2.5.6. Entities meeting conditions of Deemed Compliant Financial Institutions under the US Treasury Regulations**

As referred to in Article 1, 1, q of the IGA, the Agreement states that any Belgian FI that qualifies as a Deemed Compliant FI under the relevant Treasury Regulations is treated as Non-Reporting Belgian FI. This applies for both Certified and Registered Deemed Compliant FI categories under the US Treasury Regulations. Since all Non-Reporting Belgian FIs will be treated as Certified Deemed Compliant FIs for registration purposes (meaning that no registration is required), any Belgian entity that qualifies as a registered Deemed Compliant FI under the US Treasury Regulations will actually be treated as a Certified Deemed Compliant FI for registration purposes.

Entities listed in this Section 2.5.6 qualify as Deemed Compliant FI under the relevant US Treasury Regulations in effect at the time of signing of the Agreement. To the extent that there is a conflict between the rules set forth in this Section 2.5.6 and the relevant Sections of the US Treasury Regulations, as may be modified from time to time, the provisions of the US Treasury Regulations shall prevail.

##### **2.5.6.1.1. Non-Reporting members of Participating Financial Institution groups**

A FI that (i) has a Related Entity or a branch that is treated as a Participating FI and (ii) meets the following requirements:

- I. by the later of 30 June 2014 or the date it obtains a GIIN, the FI implements policies and procedures that ensure that it identifies (i) Pre-existing US Reportable Accounts and Pre-existing Accounts held by NPFIs; (ii) US Reportable Accounts and Accounts held by NPFIs opened on or after 1 July 2014; (iii) Accounts that become US Reportable Accounts or are held by NPFIs as a result of a change of circumstance; **and**
- II. within six months of the identification of such Pre-existing Accounts, opening of such New Accounts, or the date that the FI first has knowledge or reason to know of the change in

circumstance that results in an account being treated as US Reportable Account or an account held by a NPF, such FI: (i) transfers such account to the Related Entity or a branch that is a Model 1 FI, PFFI or US FI, (ii) closes the account, or (iii) becomes Belgian Reporting FI.

#### **2.5.6.1.2. Restricted Funds**

An entity that qualifies as a restricted fund under Section 1.1471-5(f)(1)(i)(D) of the US Treasury Regulations.

#### **2.5.6.1.3. Owner-documented Investment Entities**

An Investment Entity that meets all of the conditions of owner-documented FFI under Section 1.1471-5(f)(3) of the US Treasury Regulations.

### **2.5.7. Other Non-Reporting Belgian Financial Institutions that qualify as Deemed Compliant Financial Institutions**

The following are additional entities that present a low risk of being used by US Persons to evade US tax and that have similar characteristics to the entities described in Annex II to the Agreement.

#### **2.5.7.1. Entities issuing certificates or depositary receipts**

Certain Belgian companies issue, as their sole activity, International Depositary Receipts (“IDRs”) representing ownership of US (or non-US) shares held by the issuer of the IDRs in a fiduciary capacity. The holders of those IDRs are considered for tax purposes to be the holders of the underlying US (or non-US) shares. The issuers of these IDRs are considered Non-Reporting FIs.

#### **2.5.7.2. Consumer Credit companies**

This covers the Consumer Credit Institution registered under the Belgian Law of June 12, 1991 (“*Wet van 12 juni 1991 op het consumentenkrediet*”/“*Loi du 12 juin 1991 relative au crédit à la consommation*”).

These institutions grant consumers credits, defined as a contract whereby a lender agrees or commits itself to grant a credit to a consumer taking the legal form of a loan, deferral of payment or similar payment modalities.

Such institutions must hold a license number with the Belgian Ministry of Economy in order to carry on consumer credit transactions pursuant to the Consumers Credit Act of June 12, 1991 (Section 74 and seq.).

#### **2.5.7.3. Mortgage Loan companies**

This covers the Mortgage Loan Institutions under the Royal Decree of January 7, 1936 (“*Koninklijk besluit van 7 januari 1936 tot reglementeering van de hypotheaire leningen en tot inrichting van de controle op de ondernemingen van hypotheaire leningen*”/“*Arrêté royal du 7 janvier 1936 réglementant les prêts hypothécaires et organisant le contrôle des entreprises de prêts hypothécaires*”) and Belgian Law of August 4, 1992 (“*Wet van 4 augustus 1992 op het hypothecair krediet*”/“*Loi du 4 août 1992 relative au crédit hypothécaire*”).

These institutions grant mortgage loans which are defined as a loan secured either by a mortgage on a real estate situated in Belgium, on a ship, or on a boat registered in Belgium, or by the pledge of a receivable.

Such company must be registered with the Belgian regulator (FSMA) and falls under the prudential control of the Belgian regulator.

#### **2.5.7.4. Credit insurance companies**

This covers the credit insurance institutions authorized under the Belgian Law of July 9, 1975 (*“Wet van 9 juli 1975 betreffende de controle der verzekeringsondernemingen”/“Loi du 9 juillet 1975 relative au contrôle des entreprises d’assurances”*),

These institutions offer insurance policies which protect the underwriters from the default of payment of the debtor.

#### **2.5.7.5. Leasing companies**

This covers the leasing companies under Royal Decree n°55 of November, 10 1967. (*“Koninklijk besluit 55 van 10 november 1967 tot regeling van het juridisch statuut der ondernemingen gespecialiseerd in financieringshuur”/“Arrêté royal 55 du 10 novembre 1967 organisant le statut juridique des entreprises pratiquant la location-financement”*).

The entities regulated by this Royal Decree might potentially qualify as an FFI within the meaning of §1.1471-5(e)(1)(i) of the US Treasury Regulations (i.e. entities that accept deposits in the ordinary course of a “banking or similar business as defined under Section 2.2.2”). However, leasing companies active in Belgium do not accept deposits in the ordinary course of their business. Furthermore, these entities do not maintain any Financial Account, based on the definition provided in §1.1471-5(b)(3) of the US Treasury Regulations.

#### **2.5.7.6. Factoring companies**

Entities located in Belgium and offering factoring services. With a factoring solution, the factor agrees to pay an agreed percentage of approved debts as soon as the receivables are assigned to him. If credit protection is part of the factoring agreement, it is referred to as “non-recourse” factoring, while a factoring agreement where the credit risk on the debtor remains with the seller is called “with-recourse” factoring.

#### **2.5.7.7. Institutional securitization investment companies**

An institutional securitization investment company, duly regulated and licensed under Belgian Law, provided its interests are fully held by a compliant or deemed compliant FFI, or any of its affiliates, which also acted as originator of the securitization transaction.

#### **2.5.7.8. Central securities Depositories exemption**

It has been understood at the signing of the Agreement<sup>16</sup> that in the case of securities registered in a Belgian entity acting as a central securities depository that are held by or through one or more other Financial institutions that are not nonparticipating financial institutions, the relevant financial accounts would be treated as being held by such other financial institutions, and such other financial institutions would be considered responsible for any reporting required with respect to such financial accounts. It is also understood that in

<sup>16</sup> See Memorandum of understanding of the agreement.

accordance with paragraph 3 of article 5 of the agreement, such entity acting as a Belgian central securities depository may report on behalf of such other financial institutions.

## 2.6. Other entities potentially qualifying as Financial Institutions

### 2.6.1. Collective investment schemes

For the purposes of the Agreement, the notion Investment Entity comprises the following types of entities:

- Collective investment schemes:
  - ~~— closed ended investment,~~
  - fund managers,
  - investment managers,
  - fund administrators,
  - transfer agents.

References in this Guidance to collective investment schemes, unless otherwise specified, should be read as defined under Belgian Law. The notion “collective investment scheme” broadly has the same meaning as under the Law of 3 August 2012 regarding certain types of collective management of investment portfolios and the Law of 19 April 2014 regarding certain types of collective management of investment portfolios.

SIR/GVV as contemplated by the Law of 12 May 2014 regarding regulated real estate investment companies are not considered Collective Investment Schemes. The only Financial Accounts that are relevant to the Agreement are the Equity and debt Interests in collective investment schemes.

Where the Investment Entity is a collective investment scheme, only the collective investment scheme will have reporting responsibilities in relation to the Financial Accounts (the Equity and debt Interests) of that collective investment scheme. This also applies to *GBF/FCP*.

For example, a fund administrator will not be a Reporting FI by virtue of providing fund administration services to a collective investment scheme.

Nevertheless an entity may have reporting responsibilities if it maintains Financial Accounts other than those of the collective investment scheme.

### 2.6.2. Fund distributors

Fund distributors, which may include, amongst others:

- financial advisers,

- fund platforms,
- wealth managers,
- brokers (including execution-only brokers), **and**
- banks

may fall within the definition of Investment Entity depending on their role in distributing a collective investment scheme as defined for the purposes of the Agreement. In certain cases, they may also qualify as a custodial institution.

There are two different types of fund distributors:

- those that act as an intermediary in holding the legal title to the collective investment scheme (such as a nominee); **and**
- those that act on an advisory only basis.

### **Example 1**

Fund platforms may hold legal title to collective investment scheme interests on behalf of their customers (the investors or other financial intermediaries) as nominees. The customers directly or indirectly access the platform in order to buy and sell investments and to manage their investment portfolio. The platform will back the holdings of investors and financial intermediaries with holdings in the collective investment scheme but only the platform will appear on the shareholders' register of the collective investment scheme. Where this is the case the platform will be responsible for reporting on the platform's Financial Accounts. If however the platform is not interposed in the ownership chain and merely operates or maintains the collective investment scheme register or merely acts in an advisory capacity, it would not be viewed as the holder of the interest in the collective investment scheme and regard must be had at the customers recorded in the register to determine whether the collective investment scheme qualifies as a Non-Reporting FI or whether any of the holders of the interests in the collective investment scheme is a reportable person.

If the customer appears on the collective investment scheme's register (whether the customer has invested in the collective investment scheme via a fund platform or not), the responsibility to report on the customer lies with the fund. If the customer invests in the fund via a fund platform and the fund platform holds legal title to the fund interests on behalf of the customer, the responsibility to report on the customer lies with the platform.

### **Example 2**

Where a FI acts in an advisory only capacity and simply advises its customers on a range of investments and intermediate between the collective investment scheme, or fund platform and the customer, they will not hold legal title to the assets and therefore are not in the chain of legal ownership of a collective investment scheme and will not be regarded as a FI in respect of the Financial Accounts they merely advise on.

### **2.6.3. Fund nominees - Distributors in the chain of legal ownership**

Under both Belgian and foreign laws (please refer to the Circular ICB 4/2007 of the FSMA in this respect), interest in a collective investment scheme may, under certain conditions, be held in the name of a nominee. In such case, the collective investment scheme generally does not know who the beneficial owners are of those interests.

Distributors or nominees that hold legal title to the interests in collective investment schemes on behalf of customers and are part of the legal chain of ownership of interests in collective investment schemes are FIs. In most cases they will be Custodial Institutions because they will be holding assets on behalf of others.

In considering whether such a distributor meets the condition requiring 20 per cent of the entity's gross income to derive from holding financial assets and from related financial services, consideration should be given to the question as to whether the income derived from acting as nominee arises in another group company, or whether income is derived from commission, discounts or other sources.

The Belgian tax authorities will treat fund nominees, and fund platforms as Custodial Institutions unless specific factors indicate that their businesses are better characterized as falling within the definition of an Investment Entity. Normally, the primary business of a fund nominee, fund intermediary or fund platform will be to hold financial assets for the accounts of others.

For the purpose of aggregating accounts to determine whether any Pre-existing Custodial Accounts are below the *de minimis* threshold, a Custodial Institution will need to consider all the Financial Accounts of its customers without reference to whether the customers underlying interests are in different collective investment schemes.

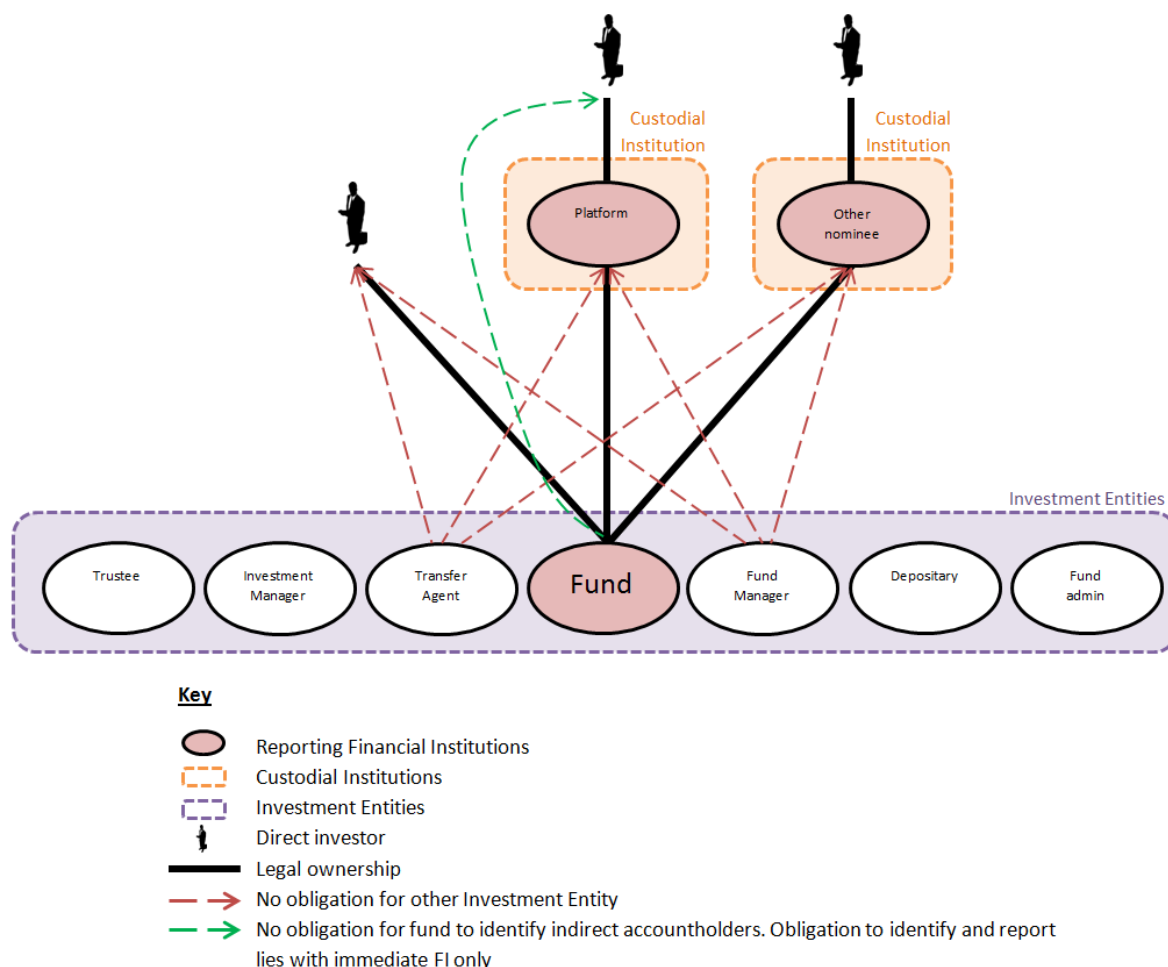
### **2.6.4. Advisory only distributors**

Whilst distributors that act in an advisory only capacity are not considered to maintain the interests in the collective investment scheme in respect of which they advise, they may nevertheless be asked by FIs to provide assistance in identifying Account Holders and obtaining required documentation, if any.

For example, wealth managers will often have the most in-depth knowledge of the investor and direct access to the investor so they may be best placed to obtain self-certifications. However, the Belgian tax authorities do not regard such advisory only distributors as FIs with respect to the investment assets on which they merely advise and they will only have obligations pursuant to contractual agreements with those FIs where they act as a third party service provider in relation to those Financial Accounts.

### **2.6.5. Identification and reporting of interests in a collective investment scheme**

The diagram below illustrates how the Belgian tax authorities believe the account identification and reporting obligations under the US Treasury Regulations should work for collective investment schemes.



Depending on how the fund is structured, various entities may fall within the definition of Investment Entity. However, as set out at 2.6.1 above, provided the fund is a collective investment scheme, only the fund has obligations under the Agreement.

### Example 1

Most Belgian funds are required to have a fund manager that acts as operator of the fund and is normally assigned responsibility for fulfilling the regulatory obligations of the fund.

Therefore, the fund manager will normally have contractual responsibilities for compliance with the obligations in relation to the Financial Accounts of the fund vis-à-vis the fund. In turn, fund operators typically use third party service providers to provide fund administration, including maintaining records of investors, account balances and transaction services provided by the transfer agent. In these cases the fund manager might appoint the third party service provider to fulfil account identification and reporting requirements as they will have the necessary records.

The fund's account identification and reporting obligations apply only to its immediate Account Holders. It is required to identify all direct Account Holders pursuant to the due diligence obligations outlined in this Guidance. It is not required to identify any indirect individual accounts held through a FI (for example a platform or other nominee). The fund's obligation is to identify the direct Account Holder (such as the FI) only. In turn the intermediary FI will have its own obligation to identify and report on its Account Holders.

In the diagram the fund would only need to identify any direct individual Account Holders (shown on left hand side), and the FIs on the share register. It would be required to report information on any of these that are Specified US Persons.

In turn Custodial Institutions that act as distributors (and not the fund) would be required to identify and report on their direct Account Holders. The fund has no obligation to identify and report on accounts held indirectly through other FIs.

#### 2.6.6. Personal investment companies

Personal investment companies will need to consider whether they are within the definition of Investment Entity. Where a personal investment company is managed by a FI it will be an Investment Entity. It will not be an Investment Entity when it is managed by an individual.

### 2.7. Nonparticipating Financial Institutions

A NPFI is a FI that is **not** FATCA compliant.<sup>17</sup> This non-compliance arises where:

- (i) either the FI is located in a jurisdiction that does not have an Intergovernmental Agreement with the US and the FI has not entered into an individual FATCA Agreement with the IRS and does not benefit from an exemption, **or**, the FI is classified by the IRS as being a NPFI following the conclusion of the procedures for significant non-compliance being undertaken **and**,
- (ii) after a period of enquiry (18 months) that non-compliance has not been addressed to the satisfaction of the FPS Finances. In such circumstances the Belgian FIs details may be published electronically by the IRS and the FI will cease to be covered by the Agreement.
- (iii) NPFIs are subject to a 30-percent withholding on US Source Withholdable Payments under Section 1471 of the US Internal Revenue Code.

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<sup>17</sup> Article 1, r) and Article 5 subparagraph 2 (b) of the IGA.



### 3. Non-Financial Foreign Entities

An NFFE is any non-US entity that is not treated as a FI<sup>18</sup>. There are two categories of NFFEs, i.e. Active NFFEs or Passive NFFEs.

#### 3.1. Criteria for determining an Active or Passive NFFE<sup>19</sup>

##### 3.1.1. Active NFFEs

Under the Agreement, there are different categories of Active NFFEs that can be summarized as follows.

- a) An NFFE that meets the following, cumulative income and assets tests:
- under the income test, less than 50 percent of the Entity's gross income for the preceding calendar year or other appropriate reporting period, is passive income **and**
  - under the asset test, less than 50 percent of the assets held by the Entity during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income<sup>20</sup>;

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<sup>18</sup> Annex I, VI, B, 2 of the IGA.

<sup>19</sup> Annexe I, VI, B, 4 of the IGA.

<sup>20</sup> Please refer to appendix 4 for the formula to calculate the asset test and the income test.

- b) 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 traded on an established securities market;
- c) The NFFE is organized in a US Territory and all of the owners of the payee are bona fide residents of that US Territory;
- d) The NFFE is a government (other than the US 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 US Territory, an international organization, a non-US central bank of issue, or an entity wholly owned by one or more of the foregoing;
- e) 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 FI, except that an Entity shall not qualify for Active 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) 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 FI, 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;
- g) The NFFE was not a FI 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 FI;
- h) The NFFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not FIs, 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 FI;
- i)
  1. The NFFE is an “excepted NFFE” as described in relevant US Treasury Regulations;  
**or**
  2. 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 organization, business league, chamber of commerce, labour organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare;
    - (ii) It is exempt from income tax in its jurisdiction of residence;
    - (iii) It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;

- (iv) the applicable Laws of the NFFE's jurisdiction of residence or the NFFE's formation documents do not permit any income or assets of the NFFE 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 NFFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFFE has purchased; **and**
- (v) the applicable Laws of the NFFE's jurisdiction of residence or the NFFE's formation documents require that, upon the NFFE'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 NFFE's jurisdiction of residence or any political subdivision thereof.

### 3.1.2. Passive NFFEs

A "Passive NFFE" means any NFFE that is not (i) an Active NFFE, or (ii) a withholding foreign partnership or withholding foreign trust pursuant to relevant US Treasury Regulations.

## 3.2. Active/Passive NFFE List

In addition, a Belgian FI may assume, unless the entity concerned proves otherwise, that an entity is either a Passive or an Active NFFE based on:

- a) The NBB "rechtvorm/forme juridique" code (see Appendix 2) is first applied to classify exempted, excepted and Active NFFEs.
- b) Some NFFE can then be classified as active by nature based on their NACE code (see Appendix 3)
- c) In order to determine if a Belgian NFFE is Active or Passive, the so-called "NFFE formula" as approved by the FPS Finances, translating the requirements under the Model I IGA into Belgian GAAP standards, can be used or may be applied by the FI itself. This formula is based on publicly available information issued by the Central Balance Sheet Office of the NBB and consists of 2 threshold tests: (1) on the gross income and (2) on the assets held by the NFFE (see Appendix 4). The NBB will run this formula and will provide a yearly updated list of "Active" and "Passive" NFFEs.
- d) In case the "NFFE formula" cannot be applied easily (e.g. for foreign entities or when financial statements are not available in the Central Balance Sheet office of the NBB), then the Financial Institutions may use NACE codes listed in Appendix 5 to classify the NFFE as passive "by default". In case the primary NACE code of the NFFE is not on this list, the NFFE will be classified as active.

For NFFEs, the FI can rely on publicly available information, such as financial statements (e.g. Active/passive ratio), self-certification by the client or industry codes, or information in its possession, that enables the FI to reasonably determine that such NFFE is either "Active" or "Passive".

### 3.3. Application to general insurance companies

A general insurance company<sup>21</sup> should generally not be treated as a FI under FATCA but will instead be classified as a NFFE unless it maintains Financial Accounts.

## 4. Financial Accounts

### 4.1. Introduction

Under the Agreement, Reporting Belgian FIs must provide information to the FPS Finances on an annual basis in relation to Financial Accounts held by Specified US Persons or by a Passive NFFE of which the Controlling Person(s) (see definition in Section 8.7) is (are) Specified US Person(s) and on Account Holders not having provided the required documentation in due time. In the Agreement, these are referred to as US Reportable Accounts.

A FI (unless otherwise exempt or deemed compliant, and therefore a Non-Reporting Belgian FI) must determine whether it maintains any Financial Accounts, and which type of Financial Accounts (Depository Accounts (See Section 4.5), Custodial Accounts (See Section 4.6), Cash Value Insurance Contracts (See Section 4.7), Annuity Contracts (See Section 4.8), Equity and debt Interests (See Section 4.9). The FI will then identify the Account Holder in view of reporting Specified US Persons or Passive NFFEs of which a Controlling Person is a Specified US Person (See Section 4.3).

For the purposes of the Agreement the term Financial Account is broadly defined and therefore may include products or obligations that would not normally be regarded as Financials Accounts either in other Belgian legislation or in everyday commercial use.

However, any social security benefits paid by the Belgian government, its government entities or public bodies under the Belgian social security shall in no situation be regarded as Financial Accounts. These benefits cannot be considered as a Financial Account, as they are neither an Equity or debt Interest, nor a Cash Value Insurance Contract, but an execution of Belgian social security Law. This also applies when a FIs responsible for the concrete administration and/or pay-out of the benefit on behalf of the Belgian government, its

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<sup>21</sup> I.e. An insurance company that only proposes insurance contracts of the classes 1 to 18 as defined in Annex 1 of the royal decree “*Koninklijk besluit van 22 februari 1991 houdende algemeen reglement betreffende de controle op de verzekeringsondernemingen*”/”*Arrêté royal du 22 février 1991 portant règlement général relatif au contrôle des entreprises d’assurances*”.

government entities or public bodies or an employer in the case of a collective agreement on early retirement.<sup>22</sup>

Each category of Financial Account is subject to exclusions and exemptions and further details can be found in Section 4.10.

## 4.2. Accounts maintained by Financial Institutions (FIs)

In relation to each type of Financial Account, “maintained” has the following meaning:

- A Depository Account is maintained by the FI, which is obliged to make payments with respect to the account.
- A Custodial Account is maintained by the FI that holds custody over the assets in the account (including a FI that holds assets in the name of the broker (“in street name”) for an Account Holder.
- An Insurance Contract or an Annuity Contract is maintained by the FI that is obligated to make payments with respect to the contract.
- Any Equity or debt Interest in a FI, where that Equity or debt Interest constitutes a Financial Account, is treated as being maintained by that FI where that FI is an Investment Entity (see Section 4.9).

A FI may maintain more than one type of Financial Accounts. For example a Depository Institution may also maintain Custodial Accounts as well as Depository Accounts.

When a Financial Account is created will depend on the type of account. An account will be created when the FI is required to recognize the account based on existing operating procedures or regulatory or legal requirements of the jurisdiction in which it operates.

Depository receipts representing securities issued by entities others than the issuer of the depository receipts do not constitute Financial Accounts maintained by the issuer of the depository receipts and do not qualify as interests in the issuing entity.

### **N.B.**

Debt instruments (“*kasbons/bons de caisse*”, “*achtergestelde certificaten/certificats subordonnés*”, etc.) issued by a Belgian FI and registered in the securities register of the FI (“*register van effecten op naam/registre des titres nominatifs*”) are no Financial Accounts. There is no FATCA reporting obligation for the Belgian FI relating to the payment of income generated by the registered debt interest issued by the Belgian FI. Of course, the obligation to report the balance of the account on which the income has been credited, remains. In addition, if the registered securities are mentioned on the Custodial Account (for information purposes) the Reporting FI may choose to include or not such registered securities when reporting the Custodial Account.

## 4.3. Reportable Accounts

A Financial Account is a US Reportable Account where it is held by one or more Specified US Persons, or by a Passive NFFE of which the Controlling Persons are Specified US Persons. An undocumented account, i.e. for which documentation has been requested but has not been provided in due time, is also reportable.

<sup>22</sup> Cfr. Collective Agreement n° 17 of December 19, 1974.

Reporting FIs with no Reportable Accounts will still be required to file a nil return to the FPS Finances.

#### 4.4. Account Holders

In order to identify the person or entity that is the Account Holder under the terms of the Agreement, a FI may need to consider the type of account and the capacity in which it is held. The Account Holder means in the first instance the person listed or identified as the holder of the Financial Account by the FI that maintains the account.

##### 4.4.1. Joint Accounts and joint ownership

Where a Financial Account is jointly held, all Account Holders qualify as 'Account Holders'.

The same rules apply also to joint ownerships such as "*burgerlijke maatschap/société de droit commun*" (see Section 11),

However, as regards life insurance contracts, the insurance company may consider that the Account Holder is the person who will receive a payment as a beneficiary in execution of the insurance contract, in case of death, life or surrender and this when this payment will be made.

##### 4.4.2. Bare ownership-usufruct

In accordance with Belgian civil Law, the usufruct holder is entitled to receive income (interest, dividends, etc.) generated by the assets subject to the usufruct and the bare owner is entitled to receive the assets (capital) and the gross proceeds of the sale or redemption of these assets.

For FATCA purposes, both the bare owner and the usufruct holder are to be considered as Account Holders notwithstanding the operational implementation of such account within the FI's system.

##### 4.4.3. Accounts held by persons other than Financial Institutions

A person, other than a FI, that holds a Financial Account for the benefit of another person, as agent, custodian, nominee, signatory, or intermediary is not treated as an Account Holder with respect to such account for purposes of the Agreement. Then the person on whose behalf the account is held is the Account Holder.

###### **Example 1**

Where a parent opens an account in the name of a minor child, the minor child will be the Account Holder.

###### **Example 2**

"*Een kind onder voogdijschap geplaatst- onder voogdij /un enfant placé sous tutelle* » follows the same principles.

#### 4.4.4. Undesignated Accounts (“*derden rekeningen/comptes de tiers*”)

Where a Financial Account held by a non-financial intermediary such as regulated professionals being among others lawyers, notaries and bailiffs, does not meet any of the conditions set out in Escrow Accounts<sup>23</sup>, but is an account, holding on a pooled basis, the funds of underlying clients of the non-financial intermediary where:

- the only person listed or identified on the Financial Account with the FI is the non-financial intermediary; **and**
- the non-financial intermediary is not required to disclose or pass their underlying client or clients’ information to the FI for the purposes of AML/KYC or other regulatory requirements,

then the FI is only required to undertake the due diligence procedures in respect of the non-financial intermediary.

#### 4.4.5. Cash Value Insurance Contracts and Annuity Contracts

An Insurance Contract is held by each person entitled to access the contract's value (for example, through a loan, withdrawal, surrender, or otherwise) or with the ability to change a beneficiary under the contract.

However, when a payment is made by the Insurance Company in execution of the insurance contract, in case of death or life, the Account Holder is the person entitled to receive the payment.

With regards to Annuity Contracts, the Account Holder is the person entitled to receive the Annuity.

This means that in case of payment under the insurance contract or annuity contract, the beneficiary of the amounts paid will be the Account Holder.

#### 4.4.6. Joint life second death Cash Value Insurance Contracts<sup>24</sup>

Joint life second death Cash Value Insurance Contracts are sometimes taken out by spouses. Such policies insure both parties, but do not pay out on the death of the first person. Instead the policy remains in force until the other person has died or the policy is surrendered.

Where one of the policyholders whose life is assured is a US Person (and the other is not a US person) this will be a Reportable Account which is reported annually. If the US Person dies during the term of the insurance it will cease to be a US Reportable Account.

### 4.5. Depository Account

A Depository Account is any commercial current account, and savings account evidenced by a certificate of deposit, investment certificate, certificate of indebtedness, or other similar instrument where cash is placed on deposit with an entity engaged in a banking or similar business as defined under Section 2.2.2.

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<sup>23</sup> See section 4.10.4.

<sup>24</sup> These are known in Belgium as ‘verzekeringen op twee hoofden’/‘assurances sur deux têtes assurées’.

The account does not have to be an interest bearing account or to provide for a specific return.

A Depository Account will include any credit balance on a credit card (a credit balance does not include credit balances in relation to disputed charges, but does include credit balances resulting from refunds of purchases) issued by a credit card company engaged in banking or similar business as defined under Section 2.2.2.

Where a FI elects to apply the threshold for Depository Accounts this will mean that a credit card account will only be reportable where, after applying the aggregation rules (See Section 5.9):

- there are no other accounts and the balance exceeds \$50,000.
- the total balance on all aggregated Depository Accounts (including the credit card balance) exceeds \$50,000.

See Section 2.5.4.4 for information in respect of entities that are credit card issuers.

The definition also includes an amount held by an Insurance Company under an agreement to pay or credit interest, as defined in art. 2, 6° of the royal decree of 14<sup>th</sup> of November 2003<sup>25</sup>. However, amounts held by an Insurance Company awaiting payment in relation to a Cash Value Insurance Contract where the term has ended will not constitute a Depository Account.

Cash collateral that is provided to a Belgian FI will not be treated as a Depository Account unless posted to a cash account opened in the name of the collateral provider, in which case the cash account would qualify as a Depository Account.

#### **4.6. Custodial Account**

A Custodial Account is an account (other than an Insurance Contract or Annuity Contract) for the benefit of another person that holds any financial instrument or contract held for investment. The Financial Account is the custodial relationship itself, not the underlying asset posted to the account.

Financial instruments/contracts which can be held in such accounts can include, but are not limited to:

- a share or 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 non-financial index,

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<sup>25</sup> So-called 'branche 26'/'tak 26'.



- a notional principal contract (in general, contracts that provide for the payment of amounts by one party to another at specified intervals. These are calculated by reference to a specified index upon a notional principal amount in exchange for specified consideration or a promise to pay similar amounts)
- an Insurance Contract or Annuity Contract, **and**
- any option or other derivative instrument for the benefit of another person.

A Cash Value Insurance Contract or an Annuity Contract is not considered to be a Custodial Account.

Financial instruments provided as collateral to a Belgian FI will not be treated as a Custodial Account in the case where the collateral is provided pursuant to a financial collateral arrangement transferring title to the collateral taker and giving the collateral taker the right to re-use or re-hypothecate the collateral.

#### 4.7. Cash Value Insurance Contract

An Insurance Contract is a contract, other than an Annuity Contract, under which the issuer agrees to make payments upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.

A Cash Value Insurance Contract is an insurance contract where the cash surrender or termination value (determined without reduction for any surrender charges or policy loan) or the amount the policyholder can borrow under (or with regard to) the contract, is greater than \$50,000.

The term Cash Value does not include an amount payable:

- by reason of and on the death of an individual insured under a life insurance contract;
- as a personal injury or sickness benefit or a benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
- as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an insurance contract (other than a life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract.

A Cash Value Insurance Contract does not include:

- indemnity reinsurance contracts between two insurance companies;
- term life<sup>26</sup> and pure protection Insurance Contracts<sup>27</sup>. These contracts include all term life insurance contracts (regardless of whether they are linked to a loan) under which the issuer, in exchange for consideration, agrees to pay an amount upon the death of one or more individuals within a contractually defined coverage period. The fact that

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<sup>26</sup> Annex II, V, B) of the Belgian IGA.

<sup>27</sup> Such as so-called « *schuldsaldoverzekeringen/assurances solde restant dû* ».

such a contract provides one or more payments (for example, for endowment benefits or disability benefits) in addition to a death benefit will not cause the contract to be other than a term life insurance contract;

- all insurance contracts of the classes 1 to 18 defined in Annex 1 of the above mentioned royal decree of 22 February 1991 (see Section 3.3).

When a policy becomes subject to a claim and an amount is payable this does not create a New Account, it is still the same policy.

## 4.8. Annuity Contract

An Annuity Contract is a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals<sup>28</sup>.

The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.

Pension annuities – as under Section 4.10 are not considered to be Annuity Contracts for the purposes of the Agreement.

Reinsurance of Annuity Contracts between two Insurance Companies are excluded from the definition of Annuity Contract.

## 4.9. An Equity or debt Interest

### 4.9.1. Definitions

Equity or debt Interest qualify as a financial account only in the following cases:

- Equity or debt Interests in a FI that qualifies solely<sup>29</sup> as a FI because it is an Investment Entity (excluding (i) Investment Entities that are an asset manager, investment advisor or other similar entity because debt and Equity Interests of such entities are not Financial Accounts (ii) interests in Publicly Traded Collective Investment Vehicles described in section 2.5.5.5): **or**
- Equity or debt Interests in FIs that are not Investment Entities:
  - Any Equity or debt Interest (other than interests regularly traded on an established securities market) in a FI that is not solely an Investment Entity (i.e. a Depository Institution, Custodial Institution, Investment Entity, and/or Insurance Company) if:
    - 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; **and**

<sup>28</sup> This definition includes all kinds of annuities, such as immediate or deferred annuities, with or without abandonment of the capital. However, pension annuities are not considered to be annuity contracts.

<sup>29</sup> i.e. other than an Entity that is also a Depository Institution, a Custodial Institution, or a Specified Insurance Company.

- the interest is issued with a principal purpose of avoiding the reporting or withholding requirements of FATCA.

#### **4.9.2. Debt or Equity Interests regularly traded on an established securities market**

For purposes of the Agreement, interests are “regularly traded” if there is a meaningful volume of trading with respect to the interests on an ongoing basis, and an “established securities market” means an exchange that is officially recognized and supervised by a governmental authority in which the market is located and that has a meaningful annual value of shares traded on the exchange.

An interest in a FI is not “regularly traded” if the holder of the interest (other than a FI acting as an intermediary) is registered on the books of such FI. The preceding sentence will not apply to interests registered on the books of such FI prior to July 1, 2014, and with respect to interests registered on the books of such FI on or after July 1, 2014, a FI is not required to apply the preceding sentence prior to December 31, 2015.

In practice the only debt or Equity Interests that may be reportable are those issued by Investment Entities that do not qualify as Non-Reporting FIs. When those interests are deemed regularly traded on an established securities market, they are, however, not reportable. For the purposes of the Agreement an Equity or debt Interest will be considered “regularly traded” if it is listed on a recognized stock exchange. For the purposes of this Agreement, interests are deemed to be regularly traded if they are admitted for trading on a MTF or on a regulated market authorized pursuant to resp. Titles II and III of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.

The terms “MTF” and “regulated market” shall have the same meaning as that applicable under the aforementioned Directive. There is no need to check annually if any transactions have been undertaken.

To prevent the risk that an entity could circumvent FATCA reporting by seeking a listing where there is no intention of the investment vehicle being widely available FPS Finances could treat as Financial Accounts those Equity or debt Interests established with a purpose of avoiding reporting in accordance with the Agreement - including interests that nevertheless meet the underlying criteria for regularly traded on an established securities market.

Where there is an attempt to set up a particular interest or class of interest to avoid reporting under the Agreement then all debt and equity interests will become reportable. This also should achieve the objectives of not requiring major FIs to report on their interests but targets reporting at where it will be of most relevance.

#### **4.10. Accounts exempt from being Financial Accounts**

Annex II of the Agreement sets out certain Financial Accounts that have been agreed as low risk (in terms of the likelihood of being used for tax evasion) and which are exempt from being treated as Financial Accounts.

The Agreement also provides the capacity for Annex II to be updated, either to allow for other low risk Financial Accounts to be added or to remove products that are no longer deemed low risk.

Exceptions: A Financial Account does not include:

- Certain Savings Accounts (See Section 4.10.1);
- Certain Term Life Insurance Contracts (See Section 4.10.2);
- Account held by Estate (See Section 4.10.3);
- Certain Escrow Accounts (See Section 4.10.4);
- Partner Jurisdiction Accounts (See Section 4.10.5);
- Accounts excluded under the IGA (See Section 4.10.6).
- Undesignated account (*derden rekeningen/comptes de tiers*) as mentioned under section 4.4.4. (**for example**, *kwaliiteitsrekeningen/comptes de qualité* as defined under the Law of 22 November 2013 “*Wet van 22 november 2013 tot wijziging van de wet van 25 ventôse jaar XI op het notarisambt wat de kwaliteitsrekening van notarissen betreft en van de hypotheekwet van 16 december 1831 wat de kwaliteitsrekening van advocaten, notarissen en gerechtsdeurwaarders betreft/Loi du 22 novembre 2013 modifiant la loi du 25 ventôse an XI contenant organisation du notariat en ce qui concerne le compte de qualité des notaires et la loi hypothécaire du 16 décembre 1831 en ce qui concerne le compte de qualité des avocats, des notaires et des huissiers de justice*)

#### 4.10.1. Certain Savings Accounts

- **Retirement and Pension Account as defined in the Agreement**

A retirement or pension account maintained in Belgium that satisfies the following requirements under the Laws of Belgium

- a) 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);
- b) the account is tax-favoured (i.e., contributions to the account that would otherwise be subject to tax under the laws of Belgium are deductible or excluded from the gross income of the Account Holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
- c) annual information reporting is required to the tax authorities in Belgium with respect to the account;
- d) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; **and**
- e) 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, in each case applying the rules set forth in Annex I for account aggregation and currency translation.

This includes all pensions linked to an occupation, even if the above mentioned requirement under e) is not met as all pensions are subject to substitute requirements by virtue of the Belgian legislation:

- Occupational pensions subscribed by the employer or the self-employed as defined in or for the purpose of Belgian Laws (2<sup>nd</sup> pillar pension contracts) (Annex II, V, A, 1.1.):
  - Law of April 28, 2003 (*“Wet van 28 april 2003 betreffende de aanvullende pensioenen en het belastingstelsel van die pensioenen en van sommige aanvullende voordelen inzake sociale”* / *“Loi du 28 avril 2003 relative aux pensions complémentaires et au régime fiscal de celles-ci et de certains avantages complémentaires en matière de sécurité sociale zekerheid – Moniteur belge du 15 mai 2003, 2<sup>ème</sup> édition* »);
  - Law of December 24, 2002 (*“Programmawet van 24 december 2002, Aanvullende pensioenen zelfstandigen”* / *“Loi-programme du 24 décembre 2002, Pensions complémentaires des indépendants”* - *Moniteur belge du 31 décembre 2012*”);
  - (Coordinated) Law of July 14, 1994 (*“Gecoördineerde wet van 14 juli 1994 betreffende de verplichte verzekering voor geneeskundige verzorging en uitkeringen”* / *“Loi coordonnée du 14 juillet 1994 relative à l'assurance obligatoire soins de santé et indemnités”*);
  - Articles 43 to 61, 71 and 77 of the Royal Decree of November 14, 2003 (*“Koninklijk besluit van 14 november 2003 betreffende de levensverzekeringsactiviteit”* / *“Arrêté royal du 14 novembre 2003 relatif à l'activité d'assurance sur la vie”*);
  - Article 34, 52, 3<sup>o</sup>, b, 52, 7<sup>o</sup> bis, 59, 145-1, 1<sup>o</sup>, 145-3 and 195 of the Income Tax Code;
  - Title 4. Additional pension for employers of the law of May 15, 2014 introducing various provisions (*Titel 4. Aanvullend pensioen voor bedrijfsleiders van de Wet van 15 mei 2014 houdende diverse bepalingen / Titre 4. Pension complémentaire pour dirigeants d'entreprise de la Loi de 15 mai 2014 portant des dispositions diverses*).
- Retirement Savings Account or Life Insurance Contract for the purpose of Articles 145-1, 5<sup>o</sup> and Articles 145-8 to 145-16 of the ITC92 (Annex II, V, A, 1.2.);
- Long-term savings products for the purpose of articles 145-1, 2<sup>o</sup> and 145-4 and 145-37 to 145-46 of the ITC92 (Annex II, V, A, 1.3.);

The above exclusions are applicable regardless of whether the pay-outs of the insurance contract are liquidated in the form of a lump-sum or with the form of an annuity.<sup>30</sup>

Furthermore it should be noted that there are several insurance products that are not considered to be Financial Accounts and as such are not subject to FATCA, such as all

<sup>30</sup> This is foreseen under article 28 of the Law of April 28, 2003; article 50 of Law of December 24, 2002; article 19 of the Royal Decree of November 14, 2003 and article 3 of the Royal Decree of January 12, 2007 and the explanatory memorandum of the Law of December 19, 2012.

insurance contracts of the classes 1 to 18 defined in Annex 1 of the Royal Decree of 22 February 1991 as well as the term life and pure protection insurance as defined under paragraph 4 of Section 4.7. An overview of all products that are exempt from FATCA can be found in Appendix 9.

- **Non-Retirement Savings Accounts as defined in the IGA**

An account maintained in Belgium (other than an insurance or Annuity Contract) that satisfies the following requirements under the laws of Belgium:

- a) the account is subject to regulation as a savings vehicle for purposes other than for retirement;
- b) the account is tax-favoured (i.e., contributions to the account that would otherwise be subject to tax under the laws of Belgium are deductible or excluded from the gross income of the Account Holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
- c) 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**
- d) annual contributions are limited to \$50,000 or less, applying the rules set forth in Annex I for account aggregation and currency translation.

#### 4.10.2. Certain Term Life Insurance Contracts

A life insurance contract maintained in Belgium with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements:

- a) 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;
- b) the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
- c) 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**
- d) the contract is not held by a transferee for value.

#### 4.10.3. Account held by Estate ("*nalatenschaps/succession*")

Accounts of deceased persons will not be treated as Financial Accounts on the condition that the Belgian FI has received and is in possession of a formal notification of the Account Holder's death (for example a copy of the deceased's death certificate or a copy of the will). Such an account is not reportable in the year of the Account Holder's death and subsequent years for as long that it qualifies as an account held by an Estate.

**Example:**

US Specified Person X deceases on June 15, 2017 and the FI is provided with the death certificate on June 20, 2017. As of June 20, 2017 the account will be treated as an estate account.

As long as an account remains an estate account, the account is not reportable. If the account is still an estate account on December 31, 2017, the account is not reportable for the whole year 2017.

As regards cash value insurance contracts, the specific rules described at 4.4.5, 7.5 and at 10.2.4, are applicable.

**4.10.4. Escrow Accounts**<sup>31</sup>

These are accounts maintained in Belgium established in connection with any of the following:

1. A court order or judgment
2. A sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:
  - a) the account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property;
  - b) 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. For example: “*huurwaarborgrekening/garantie locative*”;
  - c) 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;
  - d) the account is not a margin or similar account established in connection with a sale or exchange of a financial asset; **and**
  - e) the account is not associated with a credit card account.
3. An obligation of a FI servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time.
4. An obligation of a FI solely to facilitate the payment of taxes at a later time.

**4.10.5. Partner Jurisdiction Accounts**

In the spirit of the most favourable nation clause mentioned in article 7 of the Agreement, an account maintained in Belgium and excluded from the definition of Financial Account under an agreement between the United States and another Partner Jurisdiction to facilitate the

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<sup>31</sup> This term should not be interpreted as defined under level playing field.

implementation of FATCA, will be excluded from the definition of Financial Account provided that such account is subject to the same requirements and oversight in Belgium as it would be under the Laws of such other Partner Jurisdiction if such account were established in that Partner Jurisdiction and maintained by a Partner Jurisdiction FI in that Partner Jurisdiction.

#### 4.10.6. Others

Service provision by a Belgian FI of shareholder's register:

- Shareholder's register for nominal shares as required by the Belgian Company Code under article 357 and 463 (Annex II, V, F, 1).  
The definition of a financial account does not extend to shareholdings on an issuer's share register (nominal share register) nor bonds or stock holdings (including shareholdings which have been the subject of an acquisition, as a result of which the original share register no longer exists). However shareholdings and bonds can be 'financial instruments/contracts' and are reportable if held in a Custodial Account (See Section 4.6).
- Stock-remuneration plans qualifying under the Belgian Law of 22 May 2001 (*"Wet van 22 mei 2001 betreffende de werknemersparticipatie in het kapitaal en in de winst van de vennootschappen"*/*"Loi relative aux régimes de participation des travailleurs au capital et aux bénéfices des sociétés"*) Annex II, V, F, 2);
- Stock-Options as referred under the Belgian Plan for Employment Act of 26 March 1999 (*"Wet van 26 maart 1999 betreffende het Belgisch actieplan voor de werkgelegenheid 1998 en houdende diverse bepalingen"*/ *"Loi du 26 mars 1999 relative au plan d'action belge pour l'emploi 1998 et portant des dispositions diverses"*) (Annex II, V, F, 3);
- Any other account that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the accounts described in the sections 4.10.1 to 4.10.4 and is defined in domestic law as an excluded account provided that the status of such account as an excluded account does not frustrate the purposes of the Agreement.

These accounts will not be subject to the due diligence procedures and are not Reportable Accounts.

#### 4.11. Segregated Accounts

Where an investment manager or another FFI is appointed to provide investment management services directly by the legal owner of assets, as segregated accounts, then these are not Financial Accounts of the investment manager, but instead they will be Custodial Accounts of a Custodial Institution (who will need to treat the investors as their Account Holders as there is no interposing Investment Entity).

Note that in cases where a discretionary investment manager also holds assets on behalf of clients (by acting as Custodial Institution), reporting will be required on those accounts by virtue of the investment manager falling within the definition of a Custodial Institution. This also applies to discretionary investment managers who arrange for custody as agent on their clients' behalf, where the custody accounts are pooled nominee accounts.



The investment manager will be the reporting FI for those accounts by virtue of its status as an Investment Entity where:

- it alone has direct knowledge of its customers and their accounts and
- it carries out the AML/KYC procedures on those accounts.

#### **4.12. Dormant Accounts and dormant insurance contracts**

Belgian FIs may apply their existing normal operating procedures to classify an account or an insurance contract as dormant in accordance with the Belgian Law of 24 July 2008 on dormant accounts.

Where normal operating procedures are not applicable, then the Belgian FI is to classify an account as dormant for the purpose of the Agreement where:

- there has been no activity on the account in the past 5 years;
- the Account Holder has not contacted the FI regarding that account or any other account in the past 6 years;
- the account is not linked to an active account belonging to the same Account Holder.

The Belgian FI should classify the account or insurance contract based upon existing documentation it already has in its possession for the Account Holder. Where this review determines that the dormant account or insurance contract is reportable, then the Belgian FI should make the appropriate report notwithstanding that there has been no contact with the Account Holder.

An account will no longer be dormant where:

- under normal operating procedures the account is not considered dormant;
- the Account Holder contacts the FI in relation to that account or any other account held by the Account Holder with that FI;
- the Account Holder initiates a transaction with respect to the dormant account or any other account held by the Account Holder with that FI.

The FI would then have to ensure that it establishes the Account Holders' status, as if the account were a Pre-existing Account if not done previously.

#### **Dormant collective investment schemes**

When a collective investment scheme is closed but there remain residual debtors and recovery actions are being pursued, the collective investment scheme will be not an Investment Entity for the purposes of this Agreement.

#### **4.13. Rollovers**

Where some or all of the proceeds of a maturing fixed term product qualifying as a Financial Account are rolled over, automatically or with the Account Holder's interaction, into a new fixed term product this shall not be deemed to be the creation of a New Account.

## 5. Due diligence

### 5.1. General Requirements

The purpose of FATCA is to identify and report US Reportable Accounts. Such accounts are Financial Accounts held by Specified US Persons or Passive NFFEs with one or more Controlling Persons (see definition Section 8.2) who are Specified US Persons. The IGA sets out that FIs are responsible for the identification and the reporting of such accounts.

However, a FI can rely on a third party service provider to fulfil its obligations under the legislation, but the obligations remain the responsibility of the FI and so any failure will be seen as a failure on the part of the FI.

#### **Example 1**

A collective investment scheme may use a transfer agent or distributor to fulfil its due diligence requirements or a Specified Insurance Company may use its brokers to fulfil its due diligence requirements. However, in the event of the transfer agent, distributor or broker failing to meet the legislative requirements, it will be the fund or Specified Insurance Company that will be held accountable.

Annex I of the Agreement provides for a distinction between Financial Accounts maintained as of 30 June 2014 (“Pre-existing Accounts”) and those accounts opened on or after 1 July 2014 (“New Accounts”). A further distinction is made between accounts held by natural person (“Individual Accounts”) and those accounts held by entities (“Entity Accounts”).

According to Notice 2014-33 published by the IRS on 2 May 2014, FFIs covered by a Model 1 IGA or a Model 2 IGA will be allowed to treat Entity Accounts opened between 1 July 2014 and 31 December 2014 as Pre-existing Accounts. FFIs, will, however, not be allowed to

apply to such accounts the USD 250.000 threshold otherwise applicable for Pre-existing Entity Accounts that are not required to be reviewed, identified or reported.

The IGA sets out different processes that need to be accomplished in view of identifying the FATCA status of an account. In general, FI will need to follow one or more of the following three processes:

- Indicia search

The FI can identify Reportable Account's by searching for US indicia by reference to documentation or information held or collected in accordance with maintaining or the opening of an account; this may include for example information held for the purposes of compliance with Belgian AML/KYC rules.

- Self-certification

The FI can identify Reportable Account's by obtaining a self-certification from an account holder or Controlling Person of a Passive NFFE where applicable.

- Information in possession of the FI or Publicly available information (for entities only)

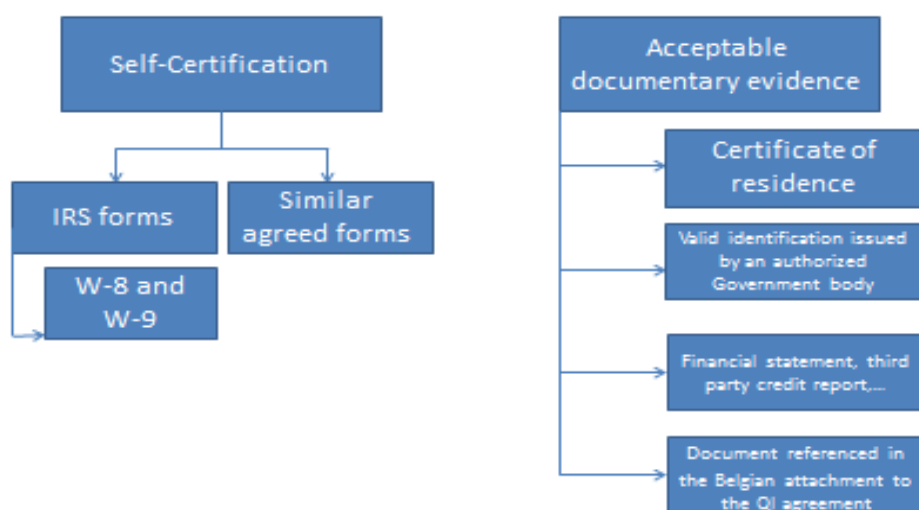
A FI may be able to determine, using information in its possession or publically available, the FATCA status of an entity account holder.

## **5.2. Documentation to support an account holder status**

The type of documentation that the FI (or the third party service provider acting on behalf of the FI) should obtain in order to support an account holder status may vary.

The IGA refers to different notions such as 'self-certification' similar agreed forms' and 'acceptable documentary evidence' to identify the type of documentation acceptable to support an account holder status.

The Section below provides an overview of what type of documents are covered by the different notions.



### 5.2.1. Self-certification

Self-certification can be in any format and can include the use of withholding certificates or other similar agreed forms.

#### 5.2.1.1. Withholding Certificates (IRS forms)

Withholding certificates issued by the IRS such as the W-8 and W-9 series are acceptable in establishing an account holder's status (<http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-FATCA> ).

A FI may rely upon a pre-FATCA W-8 or W-9 form, where one is required to establish the account holder's status, in lieu of obtaining an updated version of the form.

#### 5.2.1.2. Similar agreed forms

##### For individuals

FIs can use their own form instead of an official IRS form **only** where the replacement form contains the following information:

- The name and permanent residence address of the individual, city/town and/or country of birth.
- The TIN if available.
- For individuals, the date of birth.

The form must be dated and signed and should be accompanied by documentary evidence that supports the individual's status if required.

The form can also request other information required for other purposes, such as AML due diligence.

A FI can use its own forms to cure any US indicia found in order to determine the account holder's status.

#### For entities

FIs can use their own form instead of an official IRS form **only** where the replacement form contains the following information:

- The name and incorporation address of the entity.
- The TIN if available.
- FATCA status of the entity

The form must be dated and signed.

The form can also request other information required for other purposes, such as AML/KYC due diligence (e.g. UBO forms).

A FI can use its own forms to cure any US indicia found in order to determine the account holder's status (See Section 8.4).

#### **5.2.2. Acceptable documentary evidence**

Acceptable documentary evidence to support an account holder's status covers:

- A certificate of residence issued by an appropriate tax official of the country in which the account holder claims to be resident. For example a certificate in relation to a person's tax residence issued by the Belgian State.
- Any valid identification issued by an authorized government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes. For example an identity card, a passport or driving licence.
- With respect to an Entity, any official documentation issued by an authorized government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the jurisdiction (or U.S. Territory) in which it claims to be a resident or the jurisdiction (or U.S. Territory) in which the Entity was incorporated or organized.
- Any financial statement, third party credit report, bankruptcy filing, or US SEC report.
- Any of the documents referenced in the Belgian attachment to the QI Agreement as being acceptable in addition to Forms W-8 or W-9:
  - (i) For natural persons:

- (a) persons with the Belgian nationality and residing in Belgium:
  - if the identification takes place based on a non face-to-face documentary verification: the principles established by the Regulation of the supervisory authority of 23d February 2010, officialised by Royal Decree of 16th March 2010 (hereafter “the Regulation” and interpreted in the Circular (especially the point 4.2.4 of the Circular CBFA\_2010\_09 of 6th April 2010 modified by Circular CBFA\_2011\_09 of 1st March 2011 (hereafter “the circular”) should be applied.
  - if the identification takes place based on a face-to-face documentary verification: Electronic Belgian Personal Identity Card (e-ID)

(b) Persons with foreign nationality residing in Belgium: certificate of inscription in the register for foreigners or residence card for E.U.-citizens or identity card for foreigners;

(c) Other: National identity card, passport or driving license.

(ii) For legal persons:

(a) Copies of the certificate of incorporation, articles of association, or other organizational documents, or

(b) Copies of extracts from public registers.

### 5.3. Manner of obtaining all FATCA related documentation

Reporting Belgian FIs may obtain all FATCA related documentation from an individual or from an entity by any means that does not call into question the veracity of the certification, including:

- on paper,
- through scanned copies of paper form
- electronically, if the FI receives the documentation from a person who has been authenticated or who has been through an equivalent level of authentication (e.g. internet banking, web based proprietary communication means).

Moreover, where a Reporting Belgian FI is permitted under current Belgian Law to rely on information or documentation provided by someone other than the account holder for purposes

AML/KYC, the documentation provided in the same manner may be relied upon for the purpose of complying with the IGA.

### 5.4. Validity of Documentation

A withholding certificate (e.g. pre-FATCA W-forms) or other documentary evidence, including a self-certification, used to establish an account holder’s status will remain valid indefinitely unless a change in circumstance occurs which results in a change of the account holder’s status.

Please note that for QI purposes there may be other validity period.

## 5.5. Retention of Documentary Evidence

A FI or a third party undertaking due diligence procedures for a FI must retain records of the documentary evidence, **or**

a notation or record of documents reviewed and used to support an account holder's status.

The required retention period is fully aligned with existing Belgian AML/KYC rules. The documentary evidence can be retained as originals, photocopies or in an electronic format.

A FI that is not required to retain copies of documentation reviewed under AML due diligence procedures will be treated as having retained a record of such documentation if it retains a record in its files noting:

- the date the documentation was reviewed,
- each type of document,
- the document's identification number where present (for example, a passport number), **and**
- whether any US indicia were identified.

For High Value Pre-existing Accounts where a Relationship Manager enquiry is required, records of electronic searches, requests made and responses to Relationship Manager enquiries should also be retained for six years following the end of the year in which the due diligence was undertaken. Guidance on the identification and role of a Relationship Manager can be found at Section 6.5.4.

## 5.6. Document sharing

Documentation is required to support the status of each Financial Account held. However in the following circumstances documentation obtained by a FI can be used in relation to more than one Financial Account.

### 5.6.1. Single Branch System

A FI may rely on documentation furnished by a customer where an existing customer opens a new Financial Account with the same FI and where both accounts are treated as a single account or obligation for due diligence and reporting purposes (See Section 7.3).

### 5.6.2. Universal account systems

A FI may rely on documentation furnished by a customer for an account held at another branch location of the same FI or at a branch location of a related entity of the FI if:

- the FI treats all accounts that share documentation as a single account or obligations, **and**

- the FI and the other branch location or related entity are part of a universal account system that uses a customer identifier that can be used to retrieve systematically all other accounts of the customer.

In this scenario a FI must be able to produce to the FPS Finances the necessary records and documentation relevant to the status claimed (or a notation of the documentary evidence reviewed, if the FI is not required to retain copies of the documentary evidence for AML purposes).

### 5.6.3. Shared account systems

A FI may rely on documentation provided by a customer for an account held at another branch location of the same FI, or at a branch location of a member of the EAG of the FI, if:

- the FI treats all accounts that share documentation as consolidated accounts, **and**
- the FI and the other branch location or EAG member share an information system, electronic or otherwise, that is described below.

A shared account system must allow the FI to easily access data about the nature of the documentation, the information contained in the documentation (including a copy of the documentation itself), and the validity status of the documentation.

If the FI becomes aware of any fact that may affect the reliability of the documentation, the information system must allow the FI to easily record this data in the system.

Additionally the FI must be able to show how and when it transmitted data regarding such facts into the information system and demonstrate that any data it has transmitted to the information system has been processed and the validity of the documentation subjected to appropriate due diligence.

A FI that opts to rely upon the status designated for the Account Holder in the shared account system, without obtaining and reviewing copies of the documentation supporting the status, **must** be able to produce upon request by the FPS Finances all documentation (or a notation of the documentary evidence reviewed, if the FI is not required to retain copies of the documentary evidence for AML purposes) relevant to the status claimed.

## 5.7. Upfront or conditional Self-Certification in case US indicia are detected

Detailed guidelines regarding the self-certification for individual Account Holders and entity Account Holders are provided in Sections 6 to 9:

- upfront self-certification applies when FIs request self-certification from new account holders when required;
- whereas conditional self-certification is requested only in case US indicia are detected or, for entities, in the absence of publicly available information.

Self-certification may be used by a FI or may be required in some cases in relation to individual account holders or to entities as described in Sections 6 to 9.



A self-certification provided by an Account Holder cannot be relied upon if a FI has reason to know that it is incorrect, unreliable or there is a change in circumstance which changes the account holder's status.

#### **5.7.1. Wording of self-certification**

A FI can choose the form of wording it uses to determine the US tax residence of an Account holder. However the wording must be sufficient for an account holder to confirm whether he is a Specified US Person (see Section 7.4.1).

#### **5.7.2. Format of the self-certification**

FIs may permit individuals to open accounts in various ways. For example individuals can make investments or purchase financial products by telephone, online or on paper application forms. They may even invest without using any of the FIs set application processes and instead send a payment with a covering letter (which is then followed up with required documentation). The method of self-certification does not necessarily have to follow the account application method.

Self-certifications can be obtained in any of these account opening procedures.

### **5.8. Confirming the Reasonableness of Self-Certification**

A FI receiving a self-certification, must consider other information it has obtained concerning the individual to check whether the self-certification is reasonable.

#### **Example 1**

Where an account holder provides one of the US indicia, such as a US address, to the FI but then provides a self-certification confirming they are not US resident for tax purposes, the FI would need to make further enquiries to establish whether or not the self-certification is reasonable.

Where a FI relies on AML procedures performed by other parties and no self-certification is provided directly to the FI, the FI may request that the third party should obtain a self-certification for the purposes of the legislation. The third party should then confirm the reasonableness of the self-certification based on information that it has obtained.

For the avoidance of doubt, where self-certification is received directly by the FI, there is no requirement to ensure that any third party that carried out AML/KYC procedures has confirmed its reasonableness. The FI is required to confirm this based on any other information it alone has obtained or holds. So where an Insurance Broker has performed AML checks, the FI is not deemed to have seen any documentation the Insurance Broker has seen, unless the documentation is also provided to the FI.

#### **Example 2**

A FI has received a New Account opening instruction from an individual (this may have been by telephone) which includes a self-certification regarding the account holder's residence status. The FI has performed AML procedures by checking the identity of the individual (name, address and date of birth) against the records of, for example the Belgian National Register. The check confirmed the identity of the individual.

The FI can satisfy its obligations under the legislation by confirming the reasonableness of the self-certification against other information in the account opening instruction and any

other information it has on the individual. Where no other information exists, the reasonableness is confirmed based on information in the account opening instruction alone.

If the account opening instruction is received by phone, the account holder receives paperwork that includes their response to the self-certification question and other questions asked. The account holder is requested to contact the FI in the event that any of the information is not correct within the period specified by the FI (e.g. 30 days). Provided the FI does not receive any other information from the account holder within the specified time, and provided the self-certification is otherwise reasonable, then the requirements are met.

**Example 3**

As per example 2, but the FI has delegated the Distributor to perform the FATCA due diligence procedures on its behalf.

The Distributor carries out the AML checks and obtains a self-certification from the individual confirming its FATCA status. The FI can satisfy its requirements under the Agreement by obtaining confirmation from the Distributor that they have confirmed the reasonableness of the self-certification.

**Example 4**

As per example 1, but the individual has been introduced by an Insurance Broker, although the FI has not placed reliance on the Broker's AML procedures and instead has performed its own AML procedures.

The FI can satisfy its requirements under the Agreement by confirming the reasonableness of the self-certification against other information contained in the account opening instruction and any other information it has on the individual. Where no other information exists the reasonableness is confirmed based on the information in the account opening instruction alone.

## **5.9. Aggregation**

To identify whether the accounts are reportable a FI will need to consider aggregation of accounts of both individuals and entities in certain circumstances.

### **5.9.1. When do the aggregation rules apply?**

Aggregation is required where the FI has elected under the Belgian legislation to apply the thresholds in relation to Reportable Accounts set out in Annex I of the Agreement.

A FI is required to aggregate all Financial Accounts maintained by it or by a Related Entity, but only to the extent that the FIs current computerized systems link the Financial Accounts by reference to a data element, for example a customer or TIN.

Where accounts can be linked by a data element and details of the balances are provided, but the system does not provide an aggregated balance of the accounts, the FI will still be required to carry out the aggregation process.

### **5.9.2. Special Aggregation Rule Applicable to Relationship Managers**

For purposes of determining the aggregate balance or value of Financial Accounts held by a person to determine whether a Financial Account is a High Value Account, the FI is also

required, in the case of any Financial Accounts that a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts.

### 5.9.3. Account excluded from Financial Account

If an account is excluded from being treated as a Financial Account, it does not need to be included for the purposes of aggregation. So where an individual holds an account or life insurance contract qualifying as “*pensioensparen/épargne-pension*” as well as several Depository Accounts with the same FI and their systems allow these to be linked, then the Depository Accounts would be aggregated, but not the account or life insurance contract qualifying as “*pensioensparen/épargne-pension*”.

### 5.9.4. Related Entities

Where a computer system links accounts across Related Entities, irrespective of where they are located, the FI will need to aggregate in considering whether any of the reporting thresholds apply. However, once it has considered the thresholds, the FI will only be responsible for reporting on the accounts it holds. The following example sets out how this could work in practice.

#### **Example**

Bank A is a Belgian FI and has a related entity Bank C which is also a Belgian FI. Bank A can link the Depository Account of US Person X to another Depository Account in the name of US Person X with Bank C, by virtue of the TIN. The aggregation exercise shows that US Person X is above the Depository Account threshold for reporting.

Bank A and Bank C must each report individually on the accounts they hold for US Person X.

If Bank C is located in another jurisdiction it would have to report on the account it holds if it is a Reporting FI under the FATCA arrangements of that jurisdiction.

### 5.9.5. Aggregation of Pre-existing Individual Accounts

The following examples provide illustrative outcomes that could occur from the aggregation process.

#### **Example 1 – Application of the \$50,000 threshold**

Bank A has elected to apply the relevant thresholds in Annex 1. It can link the following accounts of US Person X by a TIN:

- A Depository Account with a balance of \$25,000
- A Custodial Account with a balance of \$20,000.

The aggregated total is below \$50,000; therefore regardless of the types of account neither account will be reportable.

#### **Example 2 – Application of the \$50,000 threshold**

In this scenario the account balances of US Person X are:

- A Depository Account with a balance of \$45,000
- A Custodial Account with a balance of \$7,000.

As the aggregated balance or value is \$52,000 then the accounts are potentially reportable. However, the Depository Account balance is below the \$50,000 threshold for Depository Accounts and is therefore not reportable. The Custodial Account in this example is reportable because the aggregated total exceeds \$50,000 and there is no Custodial Account exemption that can apply.

**Example 3 – Application of the \$250,000 Cash Value Insurance Contract threshold**

Company B is a Belgian FI and has elected to apply the relevant thresholds in Annex 1. It can link the following accounts of US Person Y by a client number:

A Cash Value Insurance Contract with a value of \$230,000  
A Custodial Account with a balance of \$30,000

The aggregated balance or value indicates the accounts are potentially reportable (aggregated value above \$50,000); however, as the Cash Value Insurance Contract is below the threshold that applies to that type of account, it is not reportable. There is no Custodial Account exemption; therefore the Custodial Account is reportable.

**Example 4 – Aggregation involving joint accounts**

Two US Persons have three accounts between them, one deposit account each and a jointly held deposit account with the following balances:

US Person A \$35,000  
US Person B \$25,000  
Joint Account \$30,000

A data element in the FIs computer system allows the joint account to be associated with both A and B. The system shows the individual balances of the accounts; however, it does not show a combined balance. The fact that there is not a combined balance does not prevent the aggregation rules applying.

The balance on the joint account is attributable in full to each of the Account Holders. In this example the aggregate balance for A would be \$65,000 and for B \$55,000. As the amounts after aggregation are in excess of the \$50,000 threshold, both account holders will be reportable.

If A was not a US Person then only B would be reportable following an aggregation exercise.

**Example 5 – Aggregation of negative balances**

Two US Persons have three accounts between them, one account each and a jointly held account, all with the same FI with the following balances:

US Person A \$53,000  
US Person B \$49,000  
Joint Account (\$ -8,000) – treated as nil

The accounts can be linked and therefore must be aggregated, but for the purposes of aggregation the negative balances should be treated as nil. Therefore the only reportable account after applying the thresholds would be that for A.

**5.9.6. Aggregation of Pre-existing Entity Accounts**

For purposes of determining the aggregate balance or value of accounts held by an entity, all accounts held by the entity will need to be aggregated where the FI has elected under the

Belgian legislation to apply the thresholds set out in Annex I of the Agreement and the FI's computerized system can link the accounts by reference to a common data element.

**Example 6- Aggregation of Pre-existing Entity Accounts**

Person A (a Specified US Person) has an individual Depository Account with Bank X. Person A also controls 100 per cent of entity Y and 50% of entity Z both of which also have Depository Accounts with Bank X. The balances are as follows:

Individual Depository Account \$ 35,000

Entity Y Depository Account \$130,000

Entity Z Depository Account \$110,000

Bank X has elected to apply the relevant thresholds in Annex 1 and both of these accounts can be linked in Bank X's system.

The individual Depository Account is not reportable as it is below the \$50,000 threshold. Entity Y's and Entity Z's Depository Accounts are also non reportable as the aggregated balances are below the \$250,000 threshold that applies to Pre-existing Entity Accounts.

**5.10. Currency Conversion**

Where accounts or reportable items are denominated in a currency other than US dollars then the threshold limits must be converted into the currency in which the accounts are denominated before determining if they apply.

This may be done using the exchange rate of the 31 December of the year being reported upon, or the exchange rate of the most recent contract anniversary date when applicable, or the exchange rate of the date on which it must be determined whether a ceiling is exceeded or not or other appropriate date foreseen in the IGA.

The balance or valuation of a Financial Account is the balance or value calculated by the FI for purposes of reporting to the Account Holder.

The method of conversion may be based on a published exchange rate or the exchange rate used towards the client.

This method of conversion must be applied consistently to all Financial Accounts or to a clearly identifiable group of accounts, such as by line of business or the location of where the account is maintained.

In the case of closed accounts the exchange rate to be used is the rate on the date the account was closed or the rate that is the most readily available.

**Example 1**

The threshold to be applied to EUR denominated Pre-existing Individual Depository Accounts when an appropriate exchange rate as of 30 June 2014 is 1.3000 would be €38,461.54. (\$50,000/1.3000).

**Example 2**

A Pre-existing Insurance Contract is valued at EUR 155,000 as of 30 April 2013. In order to be measured against the \$250,000 threshold, the FI can use the exchange rate at 30 April 2013.

Alternatively a FI could convert non-US dollar balances into US dollars and then apply the thresholds. Regardless of the method of conversion, the rules for determining the exchange rate apply.

Examples of appropriate exchange rates are a.o., Reuters, Bloomberg, Financial Times and exchange rates published on the Belgian State website ([www.fgov.be](http://www.fgov.be)).

### 5.11. Taxpayer Identification Numbers

Where it has been established that an account holder is a Specified US Person, a FI is required to obtain a US TIN in several instances. When referred to, a US TIN means a US Federal Taxpayer Identifying Number.

For Pre-existing Individual Accounts that are Reportable Accounts a US TIN needs only be provided if it is held by the Reporting FI. In the absence of a record of the US TIN, a date of birth should be provided. In line with the Agreement, the Belgian State will introduce legislation to require Reporting FIs to obtain the US TIN for relevant Pre-existing Accounts from 1 January 2017.

For all New Individual Accounts that are identified as Reportable Accounts from 1 July 2014 onwards, the account is to be treated as reportable.

There is no requirement for a FI to verify that any US TIN provided is correct. A FI will not be held accountable where information supplied by an individual proves to be inaccurate and the FI had no reason to doubt of the veracity of the information provided.

A FI is not restricted by the manner which it records a TIN, for example it is not necessary to retain a withholding certificate as the means of recording the TIN.

### 5.12. Change of Circumstances

A change of circumstances includes any change to or addition of information in relation to the Account Holder's account (including the addition, substitution, or other change of an account holder) or any change to or addition of information to any account associated with such account. A change in the Active/Passive ratio (Appendix 4) does not of itself trigger a change of status but shall be reviewed at the occasion of the AML periodic review.

A change of circumstance will only have relevance if the change to or addition of information affects the status of the Account Holder for the purposes of the Agreement. For instance, a change of address does not make the original self-certification unreliable and it is not necessary to obtain a new self-certification for every new address outside of the US or in case of a change of address within the US.

Associated accounts are those accounts that are associated through the aggregation rules or where a New Account is treated as being a pre-existing obligation. See Section 5.9 for aggregation, Sections 6 and 8 for pre-existing obligation rules.

#### **Example 1**

Where an Account Holder with a Pre-existing Account opens a New Account that is linked to the Pre-existing Account in the FI computer systems and, as part of the account opening process, a US address is provided, then this is a change in circumstance with respect to the Pre-existing Account.

The change will only be relevant if it indicates that an Account Holder's status has changed, that is, it either indicates that they are a Specified US Person or that they are no longer a Specified US Person.

If there is a change of circumstances that causes the FI to know or have reason to know that the original self-certification (such as one obtained on the opening of a New Individual Account) is incorrect or unreliable, the FI can no longer rely on the original self-certification. The FI should then obtain a new self-certification that establishes whether the Account Holder is a Specified US Person.

In the event that there is a change of circumstance which indicates a change in the Account Holder's status, the FI should verify the Account Holder's actual status in sufficient time to allow it to report the account, if required, in the next reportable period.

If the Account Holder fails to respond, before the communicated deadline, to a FI's requests for a self-certification or for other documentation to verify the Account Holder's status, then the FI should treat the account as a US Reportable Account as from the end of the cure period. It will remain a US Reportable account until receipt of the requested documentation.

### **5.13. Mergers or Bulk Acquisitions of Accounts**

Where a FI acquires accounts by way of a merger or bulk acquisition of accounts, the FI can rely on the status of Account Holders as determined by a predecessor that is a Reporting Model 1 FI, US withholding agent, or a Participating FI for a period of six months. This is provided that the predecessor FI has met its due diligence obligations.

The FI may continue to rely on the due diligence work of the predecessor beyond the six-month period where the documents that it holds, including any documentation (or copies of documentation) that was acquired as part of the merger or acquisition, continues to support the claimed status of Account Holders. An Account Holder's status will need to be verified by the acquiring FI in accordance with the due diligence procedures should the acquirer have reason to know that it is incorrect or if there is a change in circumstance.

Where a Deemed Compliant FI becomes part of a group as the result of a merger or acquisition, the status of any account maintained by the Deemed Compliant FI can be relied upon unless there is a change in circumstance in relation to the account.

#### **Mergers of Investment Entities**

Mergers of Investment Entities should be differentiated from mergers of other FIs. Because the Financial Accounts of Investment Entities are its Equity and Debt Interests, the merger of two Investment Entities can result in the issuance of New Accounts.

Mergers of Investment Entities will normally involve a surviving fund taking over the assets of the merging fund in exchange for issuing shares or units to the investors of the merging fund. The shares or units in the merging fund are then extinguished. The new shares in the surviving fund will be New Accounts except where both funds are sponsored by the same sponsor – see below.

So that fund mergers are not impeded, or held up by the requirement to perform due diligence on a series of New Accounts, special rules apply to the documentation of New Accounts on a merger of Investment Entities. There are a number of potential scenarios depending upon whether the merging fund (the investors of which will create the New

Accounts in the surviving fund) is a Belgian FI and whether it is a Reporting or Participating FI Deemed Compliant FI or NPFI. These are considered below.

**More than one fund sponsored by the same Belgian sponsor**

Where both funds are sponsored Belgian funds with the same Belgian sponsoring entity, no New Accounts are created. This is because for Sponsored FIs, whether a Financial Account is a New Account or not is determined by reference to whether it is new to the sponsor (for example the fund manager), and not whether it is new to the Sponsored FI (the fund).

**Merging fund is a Reporting Financial Institution**

Where the merging fund is a Reporting FI (including a Sponsored FI, but where the funds do not share the same sponsor), a FATCA Partner Jurisdiction FI or a Participating Foreign Financial Institution, the surviving fund can rely on the account identification and documentation performed by the merging fund and will not need to undertake any further account due diligence in order to comply with its FATCA obligations. The surviving fund can continue to use the same account classification as the merging fund until there is a change of circumstances for the Financial Account.

**Merging fund is not a Reporting Financial Institution**

Where the merging fund is not a Reporting FI, a FATCA Partner Jurisdiction FI or a Participating Foreign Financial Institution (because it is a Deemed Compliant fund, a Non-Participating Belgian FI or a NPFI), the surviving fund will need to undertake account identification procedures on the New Accounts. However, in these circumstances the account identification procedures will be limited to those that are required for Pre-existing Accounts (See Sections 6 and 8) and should be carried out at the latest by the 31 December following the date of the merger or 31 December of the year following the year of the merger, if the merger takes place after 30 September of any calendar year.

**Mergers and Acquisitions in relation to Pre-existing Cash Value Insurance Contracts**

It is fairly common for Insurance Companies in Belgium to sell off “backbooks” of business to another company, especially when the Insurance Company no longer sells that type of business. Where this relates to Pre-existing Accounts, the transferee can continue to rely on the original identification of the transferor company. Therefore provided the transferor company was prohibited from selling the business into the US (See Section 6.3.) the policies will remain out of scope, and the transferee company does not need to undertake any further due diligence checks.



## 6. Pre-existing Individual Accounts Identification

A Pre-existing Individual Account is a Financial Account maintained by a FI as of 30 June 2014.

Pre-existing Accounts will be considered as reportable if they are not exempt and the FI has identified US indicia (See Section 6.1) and those indicia have not been cured or repaired.

Pre-existing Accounts will fall into one of four categories depending on the balance or value of the account. These are:

- Financial Accounts exempt by threshold (See Section 6.2)
- Cash Value Insurance Contracts and Annuity Contracts unable to be sold to US residents (See Section 6.3)
- Lower Value Accounts (See Section 6.4)
- High Value Accounts (See Section 6.5)

Effects on finding US indicia are described in Section 6.6.

Timing of reviews is described in Section 6.7.

### 6.1. Reportable Accounts

Where it is established that the holder of a Pre-existing Individual Account is a US citizen or resident in the US for tax purposes then the account must be treated as a Reportable Account. In this instance the FI is required to retain a record of a US TIN. The US TIN may be retained in any manner and does not need to be on an IRS form.

Where a Pre-existing Lower Value or High Value Account closes on or after 30 June 2014 but prior to the FI carrying out its due diligence procedures, the account still needs to be reviewed. Where, following the due diligence procedures the account is found to be reportable, the FI must report the information for the closed account as required under Section 10.2.13.

Accounts that are closed prior to 30 June 2014 are not Reportable.

- The reporting requirement for Depository Account can alter annually even where the account holder remains a US Person. Whether a Depository Account is a Reportable Account is dependent on whether the annual balance or value is above the reporting threshold of \$50,000 and an election has been made to apply the thresholds.

Once an account is identified as a Reportable Account (unless it is a Depository Account) the account will remain reportable for all subsequent years unless the account holder ceases to be a Specified US Person (including death).

Whether a Depository Account is a Reportable Account is dependent on whether the balance or value is above the reporting threshold of \$50,000. A Depository Account is the only type of account where the reporting requirement can alter annually even where the Account Holder remains a Specified US Person.

### **Example 1**

A Depository Account belonging to a Specified US Person with a balance of \$65,000 at 31 December will need to be reported. The following year there is a large withdrawal from the account bringing the balance down to \$20,000 at 31 December. As the balance is now below the \$50,000 threshold the account does not need to be reported.

## **6.2. Threshold Exemptions that apply to Pre-existing Individual Accounts**

The legislation allows for each FIs to elect to apply the threshold exemptions when reviewing and identifying Pre-existing Individual Accounts. The election can apply to all Financial Accounts or to a clearly identifiable group of accounts, such as by line of business or the location of where the account is maintained. The following accounts do not need to be reviewed, identified or reported to the FPS Finances where the election is made by the FI.

- Any Depository Accounts with a balance or value of \$50,000 or less.
- Pre-existing Individual Accounts with a balance not exceeding \$50,000 at the 30 June 2014, unless the account becomes a High Value Account as of 31 December 2015 or any subsequent year
- Pre-existing Individual Accounts that qualify as Cash Value Insurance Contracts or Annuity Contracts with a balance or value of \$250,000 or less at the 30 June 2014, unless the account subsequently becomes a High Value Account as of 31 December 2015 or any subsequent year.

If a FI **does not make** an election to apply the threshold exemptions, then it will need to review all Pre-existing Individual Accounts.

## **6.3. Pre-existing Cash Value Insurance Contracts or Annuity Contracts unable to be sold to US residents**

Pre-existing Cash Value Insurance Contracts or Annuity Contracts that are unable to be sold to US residents because of legal or regulatory restrictions do not need to be reviewed, identified or reported.

This exemption only applies where both of the following conditions are met:

- The FI's Cash Value Insurance Contracts and Annuity Contracts cannot be sold into the US without legal or regulatory authority, **and**
- Belgian Law requires reporting or withholding in respect of these products.

No existing Belgian Law prevents the sale of Cash Value Insurance products or Annuity Contracts to US residents. However, the sale of contracts to US residents will be considered effectively prevented if the issuing Specified Insurance Company (not including any US branches) is not licensed to sell insurance in any state of the US and the products are not registered with the SEC.

Under Belgian Law there will either be reporting or withholding on such Pre-existing Contracts through one of the following mechanisms:

- Yearly reporting of the insurance premium tax for life insurance contracts where the account holder is a natural person, cfr. art. 179<sup>3</sup> of the “WDRT”/ “CDTD”.
- Withholding of tax applicable in principle on the interest paid in execution of non-fiscal life insurance contracts of branch 21 and branch 23 as defined by article 19, §1, 3°, a) and b) of Belgian ITC92 (“WIB92/CIR92”), when the exceptions provided by article 21,9° of the Belgian ITC92 (“WIB92/CIR92”) are not applicable.
- Yearly reporting (through fiscal form n° 281.40) to the Belgian tax administration regarding interest paid to Belgian residents in execution of an annuity contract with abandonment of the capital, as defined by art. 17, §1, 4° of the Belgian ITC92 and withholding of tax in case of payment to non-residents.

### Assignment of Pre-existing Insurance Contracts

When a Pre-existing Cash Value Insurance Contract or Annuity Contract is assigned to another person and the Insurance Company becomes aware of this assignment then the Insurance Company will need to carry out checks on the New Account Holder within the timescales for New Accounts following the rules on anti-money laundering. This is to ensure that Pre-existing Insurance Contracts assigned as from 1 July 2014 to US Persons are correctly identified and reported where necessary.

If the policyholder is reluctant to self-certify their status, when required, or provide relevant documentation, the Belgian Insurance Company will assume the person to be a US Person and will provide the relevant reports to FPS Finances on an annual basis.

## 6.4. Lower Value Accounts

These are Pre-existing Individual Accounts with a balance or value that exceeds \$50,000 or \$250,000 for Cash Value Insurance Contracts and Annuity Contracts, but does not exceed \$1,000,000.

### 6.4.1. Electronic Record Searches and Lower Value Accounts

Pre-existing Accounts will be reportable if they are not exempt and the FI has identified US indicia as defined hereafter and those indicia have not been cured or repaired. A FI must review its electronically searchable data for any of those US indicia.

US INDICIA	CURED BY
a) Identification of the Account Holder as a US citizen or resident;	
b) Unambiguous indication of a US place of birth;	<p>(1) A self-certification that the Account Holder is not a Specified US person (such as a form W-8) <b>and</b>;</p> <p>(2) A non-US passport or other government-issued identification evidencing the Account Holder’s citizenship or nationality in a country other than the US <b>and</b>;</p> <p>(3) A copy of the Account Holder’s Certificate of Loss of Nationality of the US <b>or</b> a reasonable explanation of:</p> <p>(a) The reason the Account Holder does not have such a certificate despite relinquishing US citizenship; <b>or</b></p> <p>(b) The reason the Account Holder did not</p>

	obtain US citizenship at birth.
c) Current US residence address (including a US post office box);	(1) A self-certification that the Account Holder is not a Specified US person (which may be on an IRS Form W-8 or other similar agreed form); <b>and</b> (2) a form of acceptable documentary evidence which establishes the account holder's non-US status. See Section 5.2.
d) Current US mailing address (including a US post office box);	
e) One or more US telephone numbers that are the only telephone numbers associated with the account;	
f) Standing instructions to transfer funds to an account maintained in the United States;	
g) Currently effective power of attorney or signatory authority granted to a person with a US address; or	
h) An "in-care-of" or "hold mail" address that is the sole address the Reporting Belgian FI has on file for the Account Holder	
i) One or more US telephone numbers (if a non-US telephone number is also associated with the account)	(1) A self-certification that the Account Holder is not a Specified US person (which may be on an IRS Form W-8 or other similar agreed form); <b>or</b> (2) a form of acceptable documentary evidence which establishes the account holder's non-US status. See Section 5.2.

In the case of a Pre-existing Individual Account that is a Lower Value Account, an "in-care-of" address outside the US or "hold mail" address shall not be treated as US indicia.

Where none of the indicia listed above are discovered through an electronic search, no further action is required in respect of Lower Value Accounts, unless there is a subsequent change of circumstance that results in one or more US indicia being associated with the account. Where that happens the account will become reportable unless further action is taken by the FI to attempt to cure or repair the indicia.

A FI will not be treated as having reason to know that an account holder's status is incorrect because it retains information or documentation that may conflict with its review of the account holder's status if it was not necessary under the procedures described in this Section to review that information or documentation.

### **Example 1**

For Lower Value Accounts, where only an electronic search is required and no US indicia are identified, the FI will not have reason to know that the Account Holder was a US Person even if it held a copy of a US passport for the Account Holder. This applies only if the FI was not required to or had not previously reviewed that documentation or information.

Where a FI has started its review, found indicia and attempted to verify or cure the indicia by contacting the Account Holder, but the Account Holder does not respond, the account should be treated as reportable after the final deadline communicated by the FI to its client. This timeframe is to allow the Account Holder sufficient time to respond to requests for information and does not alter the timings set out in Section 6.7.

In the case of any uncertainty as to whether a **phone number** is US or not, for example a mobile phone number, the number should not be treated as a US indicia, as long as reasonable steps have been taken to establish whether or not the number is a US number.

There will be a **standing instruction** if the Account Holder has mandated the FI to make repeat payments without further instruction from the Account Holder, to another account that can clearly be identified as being an account maintained in the US. Instructions to make an isolated payment will not be a standing instruction even when given significantly in advance of the payment being made.

### 6.4.2. Qualified Intermediaries

A Belgian FI that has previously established an Account Holder's status in order to meet its obligations under a QI, Withholding Partnership or Withholding Trust Agreement, or to fulfil its reporting obligations as a US payor under Chapter 61 of the IRS Code, can rely on that status for the purposes of the Agreement where the Account Holder has received a reportable payment under those regimes. The FI is not required to perform the electronic search in relation to those accounts. It will however have to apply the appropriate due diligence procedures to all other Pre-existing Individual Accounts it maintains.

## 6.5. High Value Accounts

These are Pre-existing Individual Accounts with a balance or value that exceeds \$1,000,000 at 30 June 2014 or at 31 December of any subsequent year.

### 6.5.1. Electronic Record Searches and High Value Accounts

A FI must review its electronically searchable data in the same manner as for Lower Value Accounts. If a FI has previously obtained documentation from a Pre-existing Individual Account Holder to establish the Account Holder's status:

- in order to meet its obligations under a QI, Withholding Partnership or Withholding Trust Agreement, **or**
- to fulfil its reporting obligations as a US payor under Chapter 61 of the Code,

it will not have to carry out either the electronic search or the paper record search in respect of such accounts

Any Belgian FI that falls into this category is required, however, to perform the Relationship Manager enquiry (See Section 6.5.4) where the accounts are High Value Pre-existing Individual Accounts.

### 6.5.2. Paper Record Search and High Value Accounts

A paper record search will not be required where **all** the following information is electronically searchable:

1. the account holder's nationality or residence status;
2. the account holder's residence address currently on file;
3. the account holder's mailing address currently on file;
4. the account holder's telephone number(s) currently on file, if any;
5. whether there are standing instructions to transfer funds to another account;
6. whether there is a current "in-care-of" address or "hold mail" address for the account holder; and
7. whether there is any power of attorney or signatory authority for the account.

The paper record search, where necessary, should include a review of the current customer master file and, to the extent they are not contained in the current master file, the following documents associated with the account and obtained by the FI within the last 5 years:

- the most recent documentary evidence collected with respect to the account;
- the most recent account opening contract or documentation;
- the most recent documentation obtained by the FI for AML/KYC procedures or for other regulatory purposes such as MiFID;
- any power of attorney or signature authority forms currently in effect; **and**
- any standing instructions to transfer funds currently in effect.

These should be reviewed for any US indicia.

A FI can rely on the review of High Value Accounts performed by third party distributors, on their behalf where there is a contract obligating the distributor to perform the review.

#### 6.5.3. Exceptions to the paper record search

A FI is not required to perform the paper record search for any Pre-existing Individual Account for which it has retained a withholding certificate and acceptable documentary evidence (See Section 5.2.2) which establishes the Account Holder's non-US status.

#### 6.5.4. Relationship Manager

In addition to the electronic and paper searches, the FI must also consider whether any Relationship Manager associated with the High Value Account (including any accounts aggregated with such account) has actual knowledge that the Account Holder is a Specified US Person.

If the Relationship Manager knows that the account holder is a Specified US Person then the account must be reported unless the indicia can be cured.

For these purposes a Relationship Manager is assumed to be any person who is an officer or other employee of the FI assigned responsibility for specific account holders on an ongoing basis, and who advises the Account Holders regarding their accounts and arranges for the overall provision of financial products, services and other related assistance. Following this definition self-employed insurance intermediaries cannot be considered as relationship managers.

If there is no relationship manager, the Belgian FI does not need to design a specific step for the High Value Accounts to undergo the "relationship manager inquiry" and does not need to apply the relationship manager aggregation rules.

A person is only considered a relationship manager for these purposes with respect to an account with a balance or value exceeding \$1,000,000, taking into account the aggregation rules.

A FI must also ensure that it has procedures in place to capture any change of circumstance in relation to a High Value Individual Account made known to the relationship manager in respect of the Account Holder's status. However, a FI is not obliged to have or to appoint a relationship manager.

**Example 1**

If a relationship manager is notified that the Account Holder has a new mailing address in the US, this would be a change in circumstance and the FI would either need to report the account or obtain the appropriate documentation to cure or repair that indicia.

The electronic search and paper search only need to be done once for each account identified as a High Value Account, but the responsibilities of relationship managers to ensure that any knowledge regarding the account holder's status or aggregation of accounts is captured are constant and ongoing.

Once the FI applies the enhanced review procedures to a High Value Account, it is not required to re-apply such procedures, other than the relationship manager inquiry, in any subsequent year.

## 6.6. Effects of Finding US Indicia

Where one or more indicia are discovered through the enhanced review procedures and none of the cures or repairs can be applied, the FI must treat the account as a US Reportable Account for the current and all subsequent years.

Where no indicia are discovered in the electronic search, the paper record search or by making enquiries of the relationship manager, no further action is required unless there is a subsequent change in circumstances.

If there is a change in circumstances that results in one or more of the indicia listed in this Section being associated with the account and none of the cures or repairs can be applied, it must be treated as a US Reportable Account for the year of change and all subsequent years. This applies for all accounts except Depository Accounts (See Section 6.1), unless the account holder ceases to be a Specified US Person.

Where a FI has started its review, indicia are found and attempts made to verify or cure those indicia by contacting the Account Holder, but the Account Holder does not respond, the account should be treated as reportable after the final deadline communicated by the FI to its client. This timeframe is to allow the Account Holder sufficient time to respond to requests for information.

## 6.7. Timing of reviews

### Lower Value Accounts

The review of Pre-existing Accounts that are Lower Value Accounts at 30 June 2014 must be completed by 30 June 2016.

Pre-existing Lower Value Accounts that are identified as reportable are only reportable from the year in which they are identified as such.

**Example 1**

The due diligence procedures are carried out on a Lower Value Account during March 2015 and the account is determined as reportable. The FI is only required to report on the account information for the year ending 31 December 2015 onwards.

### **High Value Accounts**

The review of Pre-existing Accounts that are High Value Accounts at 30 June 2014 must be completed by 30 June 2015.

Where the balance or value of an account does not exceed \$1,000,000 as of 30 June 2014, but does as of the last day of a subsequent calendar year, the FI must perform the procedures described for High Value Accounts by 30 June of the year following the year in which the balance or value exceeded \$1,000,000.

Once an account is identified as reportable, the FI must report the account for the year ended 31 December 2014.

In the case of a Pre-existing Account identified as reportable after 31 December 2014 and on or before 30 June 2015, the FI is not required to report information about such account with respect to 2014, but must report information about the account on an annual basis thereafter.

#### **Example 2**

The due diligence procedures are carried out on a High Value Individual Account during September 2014 and the account is determined as reportable. The FI is required to report on the account for calendar year 2014.

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## 7. New Individual Accounts Identification

A New Individual Account is an account opened on or after 1 July 2014.

### 7.1. Threshold Exemptions that apply to New Individual Accounts

The Belgian legislation allows for FIs to elect whether or not to apply the threshold exemptions when reviewing and identifying New Individual Accounts. The election can apply to all Financial Accounts or to a clearly identifiable group of accounts, such as accounts held by a line of business.

The threshold exemptions for New Individual Accounts are:

- Depository Accounts do not need to be reviewed, identified or reported unless the account balance exceeds \$50,000.
- Cash Value Insurance Contracts do not need to be reviewed, identified or reported unless the cash value exceeds \$50,000.

If a FI **does not make** an election under the Agreement to apply the threshold exemptions to Reportable Accounts, then it will need to review and identify the status of all of its New Individual Account holders.

### 7.2. Reportable Accounts

Where it is established that the holder of a New Individual Account is a US citizen or resident in the US for tax purposes then the account must be treated as a Reportable Account. In this instance the FI is required to retain a record of an IRS form W-9 or US TIN. The US TIN may be retained in any manner and does not need to be on an IRS form.

### 7.3. New Accounts for Holders of Pre-existing Accounts

Where a Pre-existing Account holder wishes to open a New Account with the same institution, there will be no need to re-document the account holder as long as:

- the appropriate due diligence requirements have already been carried out, or will be carried out as required for the Pre-existing Accounts; **and**
- the accounts are treated as linked or as a single account or obligation for the purposes of applying any of the due diligence requirements.

This means that the standards of knowledge to be applied, the change of circumstances rules and aggregation requirements will apply to all accounts held by the account holder. Therefore where there is a change of circumstance or where the FI has reason to know that the account holder's status is inaccurate in relation to one account, this will apply to all other accounts held by the account holder.

Where the FI has elected to apply thresholds, the accounts must be treated as linked for aggregation purposes. This can also be applied on a group basis where documentation is shared within the group (See Section 5.9.4).

## 7.4. New Individual Accounts for new customers

For accounts that are not exempt, and for accounts that previously qualified for the threshold exemption, but now have a balance or value above the threshold, the FI can carry out one of the following procedures to determine the account holder's status:

Each reporting Belgian FI may opt to use alternative 1 or alternative 2 to all New Individual Accounts or, separately, with respect to any clearly identified group of accounts (see Section 5.1).

### 7.4.1. Alternative 1: Upfront Self-Certification

The FI must:

- obtain a self-certification (See Section 5.2.1) that allows the FI to determine whether the Account Holder is Specified US person; **and**
- confirm the reasonableness of this self-certification based on the information the FI obtains in connection with the opening of the account, including any documentation obtained for AML/KYC procedures.

For these purposes a US citizen (nationality) is considered a specified US person for tax purposes even where they are also tax resident in another country.

For the purposes of the Agreement, where a self-certification determines that a New Individual Account Holder is a Specified US person, there is also a requirement to obtain a US TIN from the Account Holder (See Section 5.11).

Self-certification may be used by a FI in relation to Individual Account Holders to obtain a US TIN from a New Individual Account Holder who is a Specified US Person. See also table in Section 6.4 for which other purposes this self-certification may be used. In the absence of a valid self-certification being provided by the Account Holder, the account would become reportable.

### 7.4.2. Alternative 2: Conditional (Post) Self-Certification (Rely on existing KYC procedures)

The FI can retain documentary evidence of the type identified in Section 5.2 and confirm the reasonableness of the documentary evidence based on the information the FI obtains in connection with the opening of the account<sup>32</sup>, including any documentation obtained for AML/KYC or other regulatory procedures.

If the information provided during the account opening process contains any of the indicia described in Section 6.4 then the account will become reportable unless further action is taken by the FI to attempt to cure or repair the indicia. In the absence of indicia as described in Section 6.4, the account will not be reportable.

So a reporting Belgian FI may rely on existing (AML/KYC) customer on boarding procedures and only require a self-certification from the moment US indicia are detected. In the absence of a valid certification being provided by this Account Holder, the account will become reportable but not subject to FATCA withholding.

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<sup>32</sup> Including the assignment of a contract to another account holder.

For these accounts, the FI must determine the Account Holder's status within the timeframe (not exceeding 90 days) to report the account.

### **7.5. Accounts held by beneficiaries of a Cash Value Insurance Contract that is a Life Insurance Contract**

A FI can treat an individual beneficiary (other than the owner) who receives a death or life benefit under a Cash Value Insurance Contract that is a Life Insurance Contract as a non-US Person and treat such account as a Non-US account unless the Participating FI has knowledge or reason to know that the beneficiary is a Specified US Person on the basis of the identification according to the rules on anti-money laundering.

When the beneficiary of an insurance contract is determined to be the legal estate<sup>33</sup> of the Account Holder and the insurance company pays out to the notary it (the insurance company) thus has no knowledge or reason to know that the individual beneficiary(ies) is (are) a US person(s).

### **7.6. Reliance on Self Certification and Documentary evidence**

Where information already held by a FI conflicts with any statements or self-certification, or the FI has reason to know that the self-certification or other documentary evidence is incorrect, it may not rely on that evidence or self-certification and should renew the self-certification and/or documentary evidence.

A FI will be considered to have reason to know that a self-certification or other documentation associated with an account is unreliable or incorrect if, based on the relevant facts; a reasonably prudent person would know this to be the case.

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<sup>33</sup> Including the wettige erfgenenamen/héritiers légaux cfr. Art. 110/1 « WLVO/loi sur le contract d'assurance terrestre (LCAT) ».

## 8. Pre-existing Entity Accounts Identification

Pre-existing Entity Accounts are those accounts that are in existence at 30 June 2014 and also, if the FI has elected to rely on the provisions of the Notice 2014-33 issued by the IRS, the accounts opened on or after 1 July 2014, and before 1 January 2015.

### 8.1. Threshold Exemptions that apply to Pre-existing Entity Accounts

The Belgian legislation allows for FIs to elect whether to apply the threshold exemptions when reviewing and identifying Pre-existing Entity Accounts. The election can apply to all Financial Accounts or to a clearly identifiable group of accounts, such as accounts held by a line of business or specific classes of accounts.

If the threshold exemption is applied and where the account balance or value does not exceed \$250,000 at 30 June 2014 there is no requirement to review, identify or report the account until the account balance exceeds \$1,000,000, as of the last day of 2015 or any subsequent calendar year.

If a FI **does not make** an election under the Agreement to apply the threshold exemption, it will need to review and identify all Pre-existing Entity Accounts.

### 8.2. Reportable Accounts

An Entity Account is only reportable where the account is held by one or more entities that are Specified US Persons or by Passive NFFEs with one or more Controlling Persons who are US citizens or residents.

Where a Pre-existing Entity Account closes prior to the FI carrying out its due diligence procedures, then the Account is still required to be reviewed. Where following the due diligence procedures the account is found to be reportable, the FI must report the information as required under Section 10. This will not apply to accounts that are closed prior to 30 June 2014.

If the Account Holder is a NPFI, payments made to the NPFI will be reportable (See Section 10.5).

Controlling Persons are defined as natural persons who exercise control over an entity. This notion must be interpreted in a manner consistent with the Recommendations of the Financial Action Task Force regarding Beneficial Owners as these are transposed into Directive 2005/60/EC of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

Taking into consideration that one of the main goals of FATCA is to identify the investments of US taxpayers and that the Treasury Regulations refer only to the owners of the stock of a corporation, of the profits interests or capital interests in a partnership or of any portion or beneficial interest of a trust, persons who are to be considered as Beneficial Owners only in

their capacity of directors or decision makers of a Passive NFFE are excluded from the definition of “Controlling Persons”.

The Beneficial Owner is:

(a) in the case of corporate entities: the natural person(s) who ultimately owns or controls the legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings; a percentage of 25% plus one share shall be deemed sufficient to meet this criterion;

(b) in the case of legal entities: see Section 11 for more information

An Entity Account will also be reportable where a self-certification is not provided but is required, or the entity’s status cannot be determined from information held or that is publically available. In this situation the account should be reported after expiration of the communicated deadline until such time that the entity’s status is correctly identified.

### **8.3. Standardized Industry Codes for Identifying Pre-existing Entities**

A FI can rely on information previously recorded in its files in addition to standardized industry codes, in determining the status of an entity. For these purposes, a standardized industry code may be any coding system employed by the FI (such as NACE codes, SIC codes, etc.).

Industry code means a code that is part of a coding system used by the FI to classify Account Holders by business type.

### **8.4. Identification of an Entity as a Specified US Person**

In order to identify if an Entity is a US Person, information maintained for regulatory or customer relationship purposes (including information collected as part of any AML/KYC procedure) can be relied upon.

For this purpose, information indicating that the entity is a US Person includes a US place of incorporation or organization, or a US address.

If the Account Holder is found to be a US Person then the Account should be treated as reportable unless a self-certification is obtained from the Account Holder which shows that the Account Holder is not a Specified US Person or it can be reasonably determined from information held or that is publically available, that the Account Holder is not a Specified US Person.

Article 1 of the Agreement includes a list of exceptions for Specified US Persons at definition point ff). To avoid unnecessary reporting, a self-certification may be obtained from any entity that is believed to be within this definition, but where there is insufficient information held by the FI to allow it to make a correct determination.

### **8.5. Identification of an Entity as a Financial Institution**

In order to identify whether an entity is a FI, information maintained for regulatory or customer relationship purposes (including information collected as part of any AML/KYC procedure) or a GIIN can be relied upon.

Reporting Belgian FIs may use industry codes (including but not limited to NACE codes, SIC codes) to classify the accounts of Active NFFEs, Participating FFIs or Belgian or Partner Jurisdiction FIs, possibly supported, when necessary, by other information in their possession.

A reporting Belgian FI may rely on the FFI NACE Codes published by the FPS Finances to classify an entity as FFI. The NACE code to be taken into account should be (in principle) the primary NACE code.

If the entity is a FI, including Non-Reporting FIs listed in Annex II, then the account is not a US Reportable Account.

If the entity is a US FI, then that account will NOT be a 'Reportable Account' if the FI is included in the list of exceptions for Specified US Persons at definition Article 1 ff) of the Agreement.

## **8.6. Identification of an Entity as a Non-Participating Financial Institution**

If the Account Holder is a non US FI, but not a Belgian FI, a FI in another Partner Jurisdiction or a Participating FI, then it should be treated as a NPFI.

This applies unless the entity provides a self-certification stating that it is a Certified Deemed Compliant FI, an EBO or unless the Reporting FI is able to verify that the entity is a Participating FI or Registered Deemed Compliant FI, for instance from its GIIN.

A non US FI may become a NPFI where following significant non-compliance it is regarded as such by the IRS (See Section 13.2).

If the account holder is a NPFI then the Reporting FI will need to report on payments made to it (See Section 10.5).

## **8.7. Identification of an Entity as a Non-Financial Foreign Entity**

When an Entity Account Holder is not identified as either a US Person or a non US FI, the FI must consider whether the entity is a Passive NFFE and if any of the Controlling Persons of that Entity are Specified US Person. For the identification of an Entity as Non-Financial Foreign Entity, the following steps are recommended:

- a) The NBB "rechtvorm/forme juridique" code (see Appendix 2) is first applied to classify exempted, excepted and Active NFFEs.
- b) Some NFFE can then be classified as active by nature based on their NACE code (see Appendix 3)
- c) In order to determine if a Belgian NFFE is Active or Passive, the so-called "NFFE formula" as approved by the FPS Finances, translating the requirements under the Model I IGA into Belgian GAAP standards, can be used or may be applied by the FI itself. This formula is based on publicly available information issued by the Central Balance Sheet Office of the NBB and consists of 2 threshold tests: (1) on the gross income and (2) on the assets held by the NFFE (see Appendix 4). The NBB will run this formula and will provide a yearly updated list of "Active" and "Passive" NFFEs.

d) In case the "NFFE formula" cannot be applied easily (e.g. for foreign entities or when financial statements are not available in the Central Balance Sheet office of the NBB), then the Financial Institutions may use NACE codes listed in Appendix 5 to classify the NFFE potentially as passive ". In case the primary NACE code of the NFFE is not on this list, the NFFE will be classified as active.

For NFFEs, the FI can rely on publicly available information, such as financial statements (e.g. Active/passive ratio), self-certification by the client or industry codes, or information in its possession, that enables the FI to reasonably determine that such NFFE is either "Active" or "Passive".

In all cases, the NFFE concerned can prove otherwise with a self-certification. To identify the Controlling Persons of a Passive NFFE, a FI may rely on information collected and maintained pursuant to AML/KYC procedures.

To determine whether the Controlling Persons of a Passive NFFE are citizens or residents of the US for tax purposes, FIs may rely on:

- Information collected and maintained pursuant to AML/KYC procedures (e.g. UBO forms) in the case of an account held by one or more Passive NFFEs, with a balance that does not exceed \$1,000,000, **or**
- A self-certification from an Account Holder or Controlling Person in the case of an account held by one or more Passive NFFEs, with a balance that exceeds \$1,000,000.

The account will be reportable where Specified US Persons have been identified as Controlling Persons or where no self-certification is provided.

### **8.8. Timing of reviews**

The review of Pre-existing Entity Accounts with an account balance or value that exceeds \$250,000 at 30 June 2014 must be completed by 30 June 2016.

The review of Pre-existing Entity Accounts with a balance or value that does not exceed \$250,000 at 30 June 2014, but exceeds \$1,000,000 as of 31 December 2015 or any subsequent year, must be completed by 30 June of the following year.

## 9. New Entity Accounts Identification

A New Entity Account is an account opened by or for an entity on or after 1 July 2014 or on or after 1 January 2015 if the FI has elected to rely on the provisions of the Notice 2014-33 issued by the IRS.

Where a New Account is opened by an entity account holder who already has a Pre-existing Account the FI may treat both accounts as one account for the purposes of applying AML/KYC due diligence. In these circumstances, the FI may choose to apply the identification and documentation procedures for either Pre-existing or New Accounts to derive the FATCA classification for any New Account or Accounts opened by the same entity on or after 1 July 2014 or on or after 1 January 2015 if the FI has elected to rely on the provisions of the Notice 2014-33 issued by the IRS.

If the FI chooses to apply the identification and documentation procedure for Pre-existing Accounts to New Accounts of a pre-existing entity account holder, the deadline by which the identification and documentation must be performed for a Pre-existing Account may also apply to the New Accounts (i.e. 30 June 2016). This may also apply to a New Account of a pre-existing client maintained by a FI that chooses to apply the threshold exemption for Pre-existing Accounts until the account balance or value exceeds \$1,000,000 as of the last day of 2015 or any subsequent calendar year.

### 9.1. Exemptions that apply to New Entity Accounts

There are no threshold exemptions that apply to New Entity Accounts so there will be no need to apply any aggregation or currency conversion rules. However, where a FI maintains credit card accounts or revolving credit facility treated as a New Entity Account, these do not need to be reviewed, identified or reported where the FI has policies or procedures that prevent the account holder establishing a credit balance in excess of \$50,000.

### 9.2. Reportable Accounts

An Account Holder of a New Entity Account must be classified as either:

- a Specified US Person, or
- a US Person other than a Specified US Person, or
- a Belgian FI or other Partner Jurisdiction FI, or
- a Participating FFI, a Deemed Compliant FFI, an EBO, as those terms are defined in relevant US Treasury Regulations, **or**
- a NPFI, or
- an Active NFFE or Passive NFFE.

New Entity Accounts **will be** reportable where there is an account holder who is:

- a Specified US Person;
- or a Passive NFFE with one or more Controlling Persons who are citizens or residents of the U.S;
- or Undocumented Account Holder

Belgian FIs that have identified an Entity Account Holder as a Belgian FI or a Partner Jurisdiction FI do not need to further determine whether that Account Holder is an EBO or a Deemed Compliant FI under the Annex II.



If the Account Holder is one of those listed below then the account **is not** a US Reportable Account:

- a US Person other than a Specified US Person;
- a Belgian FI or other Partner Jurisdiction FI;
- a Participating FFI, a Deemed Compliant FFI, an EBO, as those terms are defined in relevant US Treasury Regulations;
- an Active NFFE;
- a Passive NFFE where none of the Controlling Persons are US citizens or resident in the US

### 9.3. Identification of an Entity as a Financial Institution

A FI may rely on publicly available information, a GIIN or information within the FI's possession to identify whether an account holder is an Active NFFE, Participating FFI or a Belgian or Partner Jurisdiction FI. In all other instances the FI must obtain a self-certification from the Account Holder to establish the account holder's status.

Reporting Belgian FIs may use industry codes (including but not limited to NACE codes, SIC codes) to classify the above-described accounts, possibly supported, when necessary, by other information in their possession or that is publicly available.

A reporting Belgian FI may rely on the FFI NACE Codes published by the FPS Finances to classify an entity as FFI (See Appendix 1). The NACE code to be taken into account should be in principle the primary NACE code.

### 9.4. Identification of an Entity as a Non-Participating Financial Institution

If the entity is a Belgian FI or a FI in another Partner Jurisdiction, no further review, identification or reporting will normally be required. The exception to this is if the FI is treated by the IRS as a NPFI following significant non-compliance.

If the Account Holder is a FI, but not:

- a Belgian FI,
- a FI in another Partner Jurisdiction
- or a Participating FI,

then the entity is treated as a NPFI.

This applies unless the Reporting FI:

- obtains a self-certification from the entity stating that it is a Certified Deemed Compliant FI, an EBO; **or**
- verifies its status as a Participating FI or Registered Deemed Compliant FI for instance by obtaining a GIIN.

If the Account Holder is a NPFI, then reports on certain payments made to such entities will be required (See Section 10.5).

A Belgian FI will not have the obligation to pro-actively monitor the change of status of a FFI into a NPFI.

## 9.5. Identification of an Entity Account Holder as a Specified US Person

If the FI identifies the Account Holder of a New Entity Account as a Specified US Person, the account will be a US Reportable Account and the FI must obtain a self-certification that includes a US TIN. The self-certification could be, for example an IRS form W-9 or a similar agreed form.

## 9.6. Identification of an Entity as Non-Financial Foreign Entity

For the identification of an Entity as Non-Financial Foreign Entity, the following steps are recommended:

- a) The NBB "rechtvorm/forme juridique" code (see Appendix 2) is first applied to classify exempted, excepted and Active NFFEs.
- b) Some NFFE can be classified as active by nature based on their NACE code (see Appendix 3)
- c) In order to determine if a Belgian NFFE is Active or Passive, the so-called "NFFE formula" as approved by the FPS Finances, translating the requirements under the Model I IGA into Belgian GAAP standards, can be used or may be applied by the FI itself. This formula is based on publicly available information issued by the Central Balance Sheet Office of the NBB and consists of 2 threshold tests: (1) on the gross income and (2) on the assets held by the NFFE (see Appendix 4). The NBB will run this formula and will provide a yearly updated list of "Active" and "Passive" NFFEs.
- d) In case the "NFFE formula" cannot be applied easily (e.g. for foreign entities or when financial statements are not available in the Central Balance Sheet office of the NBB), then the Financial Institutions may use NACE codes listed in Appendix 5 to classify the NFFE as passive "by default". In case the primary NACE code of the NFFE is not on this list, the NFFE will be classified as active.

For NFFEs, the FI can rely on publicly available information, such as financial statements (e.g. Active/passive ratio), self-certification by the client or industry codes, or information in its possession, that enables the FI to reasonably determine that such NFFE is either "Active" or "Passive".

An entity will be a Passive NFFE generally if it is not an Active NFFE (See Section 3.1) and the reporting FI must obtain a self-certification from the Account Holder to establish such Account Holder's status. The Reporting FI must identify the Controlling Persons of a Passive NFFE as determined under AML/KYC procedures.

To determine whether the Controlling Persons of a Passive NFFE are citizens or residents of the US for tax purposes the Reporting FI must obtain a self-certification from the Account Holder or Controlling Person. If they are a citizen or resident of the US, the account shall be treated as a Reportable Account. The account will also be reportable where a self-certification is not provided.

## 10. Reporting

Once a FI has applied the procedure and due diligence in respect of the accounts it holds and has identified Reportable Accounts then it must report certain information regarding those accounts to the FPS Finances in accordance with the timetable in Section 10.4.

Reporting FIs with no Reportable Accounts will still be required to make a nil return to FPS Finances.

### 10.1. Reportable accounts

A US Reportable Account is a Financial Account held by one or more Specified US Persons, or by a Passive NFFE of which the Controlling Persons are Specified US Persons.

An undocumented account, i.e. for which documentation has been requested but has not been provided in due time, is also reportable.

For transitional reporting on NPFIs, see chapter 10.5.

### 10.2. Information Required

#### 10.2.1. Specified US Persons and US Controlling Persons of Passive Entity Accounts

In relation to each Specified US Person that is the holder of a Reportable Account the information to be reported is:

- 1) Name of the Specified US Person
- 2) Address of the Specified US Person
- 3) US TIN (where applicable) of the Specified US Person
- 4) The account number or functional equivalent of the Specified US Person
- 5) The name and identifying number of the Reporting FI
- 6) The account balance or value as of the end of the previous calendar year or other appropriate period.

In relation to each Passive NFFE with US Controlling Persons the following information is to be reported:

In respect to the US Controlling Persons:

- 1) Name of the Controlling Person
- 2) Address of the Controlling Person
- 3) US TIN (if any) of the Controlling Person

In respect to the Entity:

- 1) Name of the Entity
- 2) Address of the Entity
- 3) US TIN (if any) of the Entity
- 4) The account number or functional equivalent of the Entity account
- 5) The name and identifying number of the Reporting FI
- 6) The account balance or value of the Entity account as of the end of the previous calendar year or other appropriate period.

### 10.2.2. Custodial Accounts

In addition to what is described in Section 10.2.1, where the account is a Custodial Account the following information is also required in relation to the calendar year or other appropriate reporting period when the account is not reportable over the full calendar year:

(v. Annex I, article 2, 2, 5, a) b) of the Agreement)

- the total gross amount of interest generated with respect to the assets held in the account, (paid or credited to the account or with respect to the account) ;
- the total gross amount of dividends generated with respect to the assets held in the account, (paid or credited to the account or with respect to the account) ;
- the total gross amount of other income generated with respect to the assets held in the account, (paid or credited to the account or with respect to the account) ;
- the total gross proceeds from the sale or redemption of property (paid or credited to the account or with respect to the account) with respect to assets held on the Custodial account.

### 10.2.3. Depository Accounts

In addition to what is described in Section 10.2.1, where the account is a Depository Account the following information is also required:

- the total amount of gross interest paid or credited to the account in the calendar year or other appropriate reporting period when the account is not reportable over the full calendar year<sup>34</sup>.

### 10.2.4. Cash Value Insurance Contracts

In addition to 1 to 5 above of Section 10.2.1 and **if the cash value Insurance contract is still in existence at the end of the year** the following information must be reported each year:

- the annual amount reported to the policyholder as the "surrender value"<sup>35</sup> of the account; **or**

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<sup>34</sup> Cf. This includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon. This is the so-called 'tak 26'/'branche 26', cfr. Article 2, 6° of the Royal Decree of 14th November, 2003. Each insurer choses to report:

- either the reserves of the contract at 31<sup>st</sup> of December without the profit sharing that has been attributed to the contract in the last year, but has not yet been approved by the General Assemblée of shareholders;
- or the reserves of of the contract at 31<sup>st</sup> of December including the profit sharing that has been attributed to the contract in the last year, but has not yet been approved by the General Assemblée of shareholders;

However this choice becomes definite and irreversible. The consecutive reportings have to be done in the same way.

- the “surrender value” calculated by the Specified Insurance Company as at 31 December; **and**
- any partial surrenders taken throughout the policy year.<sup>36</sup>

If the cash value insurance contract is no longer in existence at the end of the year, see chapter 10.2.13.

#### 10.2.5. Immediate Annuities

If an Annuity does not have a cash/surrender value to which the account holder has access, there is no account balance to report. A Specified Insurance Company will only be required to report the amount paid out or credited to the account holder (the beneficiary of the Annuity). In any other case, the contract is similar to a Cash value Insurance Contract and should be treated as such for reporting as set out above.

#### 10.2.6. Deferred Annuities

In Belgium, deferred annuities have two stages:

- the accumulation phase where the contract is similar to a Cash Value Insurance Contract and should be treated as such for reporting as set out above.
- the pay-out phase where the annuity becomes an immediate annuity and should be treated as such for reporting as set out above.

#### 10.2.7. Other Financial accounts

In addition to information 1 to 6 above (in Section 10.2.1), for other accounts the following information is also required:

- the total gross amount paid or credited to the Account Holder with respect to the account with respect to which the Reporting Belgian FI is the obligor or debtor, including the aggregate amount of any redemption payments made to the account holder.

#### 10.2.8. Joint Accounts and joint ownership

Where a Financial Account is jointly held, the balance or value in the account is to be attributed in full to all joint holders of the account. This will apply for both aggregation and reporting purposes.

If an account is jointly held by an individual and an entity, the FI will need to apply separately both the individual and entity due diligence requirements in relation to that account.

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<sup>35</sup> This is the surrender value that is reported yearly in virtue of article 19, §1, 3° and article 20, §1, 6° of the Royal Decree of 14th of November 2003.

<sup>36</sup> Cf. This is the partial surrender value that is reported yearly in virtue of article 19, §1, 2° and article 20, §1, 5° of the Royal Decree of 14th of November 2003.

The same principles (full allocation) apply also to joint ownerships where the members are legally entitled to a part of the income paid to the joint ownership in proportion to their respective shares, “*burgerlijke maatschap/société de droit commun*”, see Section 11.

### 10.2.9. Reportable payments (dividends, interest, gross proceeds,...)

#### 10.2.9.1. Preliminary remark

Where the Reporting FI has only a passive role in the payment process and so, alternatively either no knowledge of the facts that give rise to the payment or no control over the payment or no custody of the property which relates to the payment (e.g. processing a cheque or arranging for the electronic transfer of funds on behalf of one of its customers, or receives payments credited to a customer’s account) or does not have custody of property which relates to the payment, in this case the FI is not required to report.

#### 10.2.9.2. Determination of a FATCA reportable period

Payments are reportable over the full calendar year unless another appropriate reporting period would apply in function of the US Reportable status of the account (see examples below)

In line with QI, only income paid or credited to the account should be reported as of the date the account becomes a US Reportable Account. As of the date an account ceases to be a US Reportable Account, income paid or credited to the account as of that date should no longer be reported.

Furthermore, the total amount of these income or proceeds is to be reported if they are paid or credited during a FATCA reportable period even when a part of this total amount has been generated during a non FATCA reportable period. In other words: the *pro rata temporis* computation cannot be applied.

#### **Example 1**

At the beginning of the year the account is not US Reportable. The account holder moves to the US on 1 July 2015 and becomes a Specified US person. Interest were paid on the account on 1 March 2015. The amount of the interest paid in March must not be reported.

#### **Example 2**

At the beginning of the year the account is not US Reportable. The account holder moves to the US on 1 July 2015 and becomes a Specified US person. Interest were paid on the account on 1 September 2015. The amount of the interest paid in September must be reported in full (no *pro rata temporis* computation).

#### **Example 3**

At the beginning of the year the account is a US Reportable (e. g. Belgian national living in the US). The account holder moves to Belgium on 1 July 2015. The account remains a US reportable account unless appropriate documentation is provided to sustain its non US status.

#### 10.2.9.3. Connecting factor with a FATCA reportable period

The date on which interest, dividends, proceeds of sale or redemption of securities, etc. are credited on the reportable account of the beneficiary determines to which FATCA reportable period that payment is related.

**Example 1**

Total amount of interest from a regulated saving account paid by a Belgian Bank and credited on January 3, 2015 on the account of the beneficiary are related to the FATCA reporting period 2015 (reporting in 2016) and have to be reported.

**Example 2**

Total amount of dividends distributed by shares held on a custodial account in a Belgian bank and credited on December 30, 2014 on the account of the beneficiary do not have to be reported.

**Example 3**

Total amount of dividends distributed by shares held on a custodial account in a Belgian bank and credited on May 30, 2015 on the account of the beneficiary are related to the FATCA reporting period 2015 (reporting in 2016) and have to be reported.

**Example 4**

Total amount of interest from a 5-year term account paid by a Belgian Bank and credited on January 2, 2015 on the account of the beneficiary are related to the FATCA reporting period 2015 (reporting in 2016) and have to be reported.

**10.2.9.4. Amount and characterization of the payments to be reported**

The amount and characterization of payments made with respect to a US reportable account may be determined in accordance with the principles of the tax Laws in Belgium.

**10.2.9.4.1. Amount of the payments to be reported**

(i) Gross amount of income and proceeds include any Belgian tax that would have been withheld (for example, the Belgian withholding tax – “*roerende voorheffing/précompte mobilier*”) as well as fees.

(ii) When credit interest and debit interest are calculated within the same interest closure period regarding to the same Depository Account, the amount which has to be reported is the positive difference between the credit interest and the debit interest paid or credited to the account, for that period.

**Example**

A current account calculates debit interest on a monthly basis and credit interest on a yearly basis. On December 31<sup>st</sup>, Year X, the total amount of credit interest for the Year X is 1.000 EUR and the total amount of debit interest for the month December of Year X is 150 EUR. With respect to the interest closure period on December 31<sup>st</sup>, Year X, the total amount of interest to be reported is 850 EUR (= amount of interest which has been paid and credited to the current account of the client).

**10.2.9.4.2. Characterization of the payments to be reported**

(i) When there is no payment (interest, dividend, gross proceeds, etc.) within the meaning of the Belgian tax Law generated with respect to the assets held in the custodial account, there is no FATCA reporting to be done.

**For example**, there is no payment of income within the meaning of the Belgian tax Law in the following cases:

- the distribution of bonus shares (“*bonusaandelen /actions de bonus*”);
- the distribution of additional shares in the case of a stock split (without payment of fractional shares);
- the distribution of warrants (subscription rights).

(ii) In the case of sale or redemption of securities, the Reporting Belgian FI has to report the total gross proceeds from the sale or redemption without finding out if the distribution qualifies as “movable income” within the meaning of the Belgian tax Law.

**For example**, there is a FATCA reporting to be done in the following cases:

- the reduction of capital (regardless the application of article 18, 2°, ITC 1992);
- the sale or redemption of shares/units of funds (FCP/GBF or SICAV/BEVEK) (regardless the application of articles 19bis or 21,2°, ITC 1992 for example). Regarding the sale, liquidation or repurchase of shares/units of funds (FCP/GBF or SICAV/BEVEK) which fall in scope of art. 19bis, ITC 1992, the movable income (= interest) is included in the amount of proceeds. The Reporting Belgian FI must only report the total gross proceeds from the sale, liquidation or repurchase of the shares (which includes the amount of interest within the meaning of article 19bis, ITC 1992).

(iii) In the case of sale or redemption of securities, movable income may be paid at the same time as the proceeds from the sale or redemption of securities.

**For example**, when bonds are repurchased/redeemed, interest/original issue discount/redemption premium may be included in the proceeds.

**For example**, sale of bonds on the secondary market. The Reporting Belgian FI may only report the amount paid (“dirty price”) as a total gross proceeds from the sale of the bonds.

In that case, the Reporting Belgian FI has no obligation to split the proceeds and the movable income: it may choose to report the amount which has been paid or credited as a proceed.

(iv) The concept of “sale” of securities should be interpreted broadly (sale, repurchase, contribution, liquidation, exchange, etc.) and implies in principle a “transfer of ownership”.

(v) For simplification purpose, the payment of a coupon by a *FCP/GBF* may be reported as “interest” (with or without application of article 19ter, ITC 1992).

See reporting table in Appendix 7.

#### **10.2.10. Non reportable income**

Incoming payments (“credit transfers”) credited or paid in Belgium through a domestic or international transfer on a Belgian account (depository account or custodial account) in favor of a Belgian bank’s client who is the holder of that account.

**Example:**

A, US Reportable Person, has a current account in a Belgian bank and he is shareholder of a French company which decides to distribute dividends. The shares are not held on a Custodial account in the Belgian bank. The French company pays the amount of the distributed dividends through a credit transfer from its bank account held in a French bank on the Belgian bank account of shareholder A. In that case, there is no reporting obligation for



the Belgian bank relating to the payment of that income. Of course, the obligation to report the balance of the account on which the income has been credited, remains.

- Collect of a dividend-check or a coupon cut of a bearer bond at the counter of a Belgian bank.

In that case, there is no FATCA reporting obligation for the Belgian bank relating to the payment of that income. Of course, the obligation to report the balance of the account on which the income has been credited, remains.

#### 10.2.11. Cure period

For accounts that appear to be non-reportable at the reception of the client documentation within the deadline communicated by the FI to the Account Holder, the FI is not required to report information on these accounts. We consider in such cases that these accounts have never been reportable.

In the case of an account identified as a US Reportable Account after December 31, 2014 and on or before June 30, 2015, the Reporting FI is not required to report information about such account with respect to 2014, but must report information about the account on an annual basis thereafter.

#### 10.2.12. Separate account reporting

Once aggregation has taken place and it is determined that the accounts are reportable, the accounts should be reported individually. A FI should not consolidate the accounts for reporting purposes.

##### **Example – Separate account reporting**

Person Y (a Specified US Person) holds three Depository Accounts with bank Z. The balances are as follows:

Account 0001 \$ 3,000  
Account 0002 \$32,000  
Account 0003 \$25,000

The aggregated balances total \$60,000 and all the accounts are reportable. Bank Z should report on the three accounts individually and not consolidate the information into a single entry for reporting purposes.

#### 10.2.13. Account closures

In the case of a Depository or Custodial Account closed by an account holder during a calendar year, the payments made with respect to the account shall be the payments and income paid or credited to the account that are described earlier in this Section for Custodial, Depository and Other Accounts.

In the case of a Cash Value Insurance Contract that has been fully surrendered or has ended during the calendar year, the Specified Insurance Company will need to report the total amount paid out to the account holder or beneficiary at the termination of the contract. This will include any amount of interest following maturity where the amount is awaiting payment.

In the case of a Life Annuity, if the annuitant has died or the term has ended, the Specified Insurance Company will have no further reporting requirement if the annuitant died at a time before the annual payment has been made.

In the case of the death of the insured of a cash value insurance contract or if the term has ended the insurance company will have no further reporting requirement with regard to the account holder. However, the beneficiaries of such a contract will be treated as new account holders and the insurance company has a reporting obligation with regard to these new account holders if required following FATCA-rules as described under chapter 7.5.

### 10.3. Explanation of information required

#### 10.3.1. Reportable account for income / gross proceeds

As a general rule, it is the number of the account generating income/gross proceeds.

**Example:**

A current account generates interest paid or credited to this account. The account number to report is the current account's number.

Where income is generated by an account, but where the payment is made to another account, such income should be reported in relation to the account generating the income.

**Example:**

Bonds on a custodial account generate interest paid or credited to a current account. The account number to report is the custodial account number.

This would also be the case where the account is held in bare ownership-usufruct (*infra* 10.3.11).

#### 10.3.2. Address

The address to be reported with respect to an account held by a Specified US Person is the latest residence address recorded by the Reporting FI for the account holder or, if no residence address is associated with the account holder, the address for the account used for mailing or other purposes by the Reporting FI.

In the case of a Passive NFFE with US Controlling Persons, the address required will be the address of each US Controlling Person who is reportable and the address of the Passive NFFE.

#### 10.3.3. Taxpayer Identification Numbers of account holders or US Controlling Persons

Where it has been established that an account holder is a US Person or a US Controlling Person of a Passive NFFE is a Specified US Person, a FI is required to obtain a US TIN in several instances. When referred to, a US TIN means a US Federal Taxpayer Identification Number.

For Pre-existing Individual Accounts that are Reportable Accounts then a US TIN need only be provided if it exists in the records of the Reporting FI. In the absence of a record of the US TIN, a date of birth should be provided, only where it is held by the Reporting FI.

For all New Accounts that are identified as Reportable Accounts, the Reporting Institution **must** obtain a self-certification from each specified US person that includes a US TIN of each specified US person. This self-certification could be on for example, IRS forms W-9 or on another similar agreed form (see Section 5.2.2).

Where for a New Account the proposed account holder fails to provide a US TIN or evidence of non-US status before the deadline communicated by the FI and the account becomes active, the account is to be treated as reportable.

There is no requirement for a FI to verify that any US TIN provided is correct. A FI will not be held accountable where information supplied by an individual proves to be inaccurate and the FI had no reason to know.

In line with the Agreement, Belgium will introduce legislation to require Reporting FIs to obtain the US TIN for relevant Pre-existing Accounts as from the 1 January 2017.

For minors where no TIN number is available, Belgian FIs are allowed to use the TIN number of a parent.

#### **10.3.4. Account Number**

The account number to be reported with respect to an account is the identifying number assigned to the account or other number that is used to identify the account within the FI.

#### **10.3.5. Currency conversion principles**

The account balance or value of an account may be reported in US dollars or in the currency in which the account is denominated.

The balance or valuation of a Financial Account is the balance or value calculated by the FI for purposes of reporting to the account holder.

The method of conversion, which may be based on a published exchange rate or the exchange rate used for the client, must be applied consistently to all Financial Accounts or to a clearly identifiable group of accounts, such as by line of business or the location of where the account is maintained.

#### **10.3.6. Depository Accounts**

The balance or value will be that shown on the 31 December, unless the account is closed on a date before that or in case of other appropriate reporting period.

#### **Example**

For a reportable Depository Account the balance or value to be reported will be the balance or value as of the 31 December 2014. This will be reported in 2015.

### 10.3.7. Other Financial Accounts

The balance or value will either be that shown on 31 December of the year to be reported or where it is not possible or usual to value an account at 31 December, the normal valuation point for the account that is nearest to 31 December is to be used.

#### **Example**

When a Specified Insurance Company has chosen to use the anniversary date of a policy for valuation purposes, if for example the policy was opened on 3 July 2013, it will be valued on 2 July 2014. If it exceeds the reporting threshold then it is the 2 July 2014 value that will be reported for the year ending 31 December 2014. This will be reported to the FPS Finances in 2015.

### 10.3.8. Other remarks with respect to the account

Where the 31 December falls on a weekend or non-working day, one can use the last working day before the 31 December.

The balance or valuation of an Account is the balance or value calculated by the FI for purposes of reporting to the Account Holder.

The balance or value of an Equity Interest is the value calculated by the FI for the purpose that requires the most frequent determination of value, and the balance or value of a Debt Interest is its principal amount.

The balance or value of the account is not to be reduced by any liabilities or obligations incurred by an Account Holder with respect to the account or any of the assets held in the account and is not to be reduced by any fees, penalties or other charges for which the Account Holder may be liable upon terminating, transferring, surrendering, liquidating or withdrawing cash from the account.

### 10.3.9. Joint Accounts – Joint Ownerships

Where a Financial Account is jointly held, the balance or value in the account is to be attributed in full to each holder of the account.

The same principles apply also to joint ownerships where the members are legally entitled to a part of the income paid to the joint ownership in proportion to their respective shares; *“burgerlijke maatschap/société de droit commun”*, see Section 11.

#### **Example**

Where a jointly held account has a balance or value of \$100,000 and one of the account holders is a Specified US Person then the amount to be attributed to that person would be \$100,000.

If both account holders were Specified US Persons then each would be attributed the \$100,000 and reports would be made for both.

### 10.3.10. Account Closures

For the purpose of reporting, it is acceptable for the FI:

- (i) to record the balance or value within five business days of when they receive instruction from the account holder to close the account; **or**
- (ii) where the FI is unable to report the balance or value at the time of receiving instruction to close the account, to record the most readily available balance or value. This may include a balance or value that predates (not earlier than the 31/12 position of the preceding year) the instructions to close the account. According to the technical systems used, FIs may opt to fall back on positions of the account at different frequencies (daily, weekly, monthly, quarterly and annually).

For all accounts where a client has had a reportable status at least one day during the reportable year, the most readily available balance or value should be reported for all accounts on which he was (co)-holder while having this reportable status, to the extent that the account existed or that he was (co)-holder of the account at the moment the balance or value was recorded. This balance can be a zero-balance and should never go back further than one year.

The table attached in Appendix 7 illustrated these principles.

#### **10.3.11. Bare ownership/usufruct**

In accordance with Belgian civil Law, the usufruct is entitled to receive income (interest, dividends, etc.) generated by the assets held in bare ownership-usufruct and the bare owner is entitled to receive the assets (capital) and the gross proceeds of the sale or redemption of the assets held in bare ownership-usufruct.

The capital and the gross proceeds of the sale or redemption will be reported in name of the bare owner.

The income (interest, dividends,..) paid or credited with respect to the assets will be reported in name of the usufruct holder.

In that case the Belgian reporting FFI may choose to report the generating account number or the account on which the income is received.

#### **10.3.12. Change of US Controlling Persons**

All US controlling persons should be reported once he/she has been actually US Controlling Person at one moment in the course of the Reportable year.

##### **Example**

In case there are two US Controlling Persons at the beginning of the year and one of them sells all his shares to the other one in the course of the reportable period, both will nevertheless been reported as US Controlling Persons on the account of the Passive NFFE.

If at the time the Passive NFFE is no more held by any US Controlling Person, then as from that time the account of the Passive NFFE is no longer reportable: so the last account balance available before that date is to be reported

## **10.4. Timetable for reporting**

Reporting Year	In respect of	Information to be	Reporting date to
----------------	---------------	-------------------	-------------------

		reported	FPS Finances
<b>2014</b>	<p>Each Specified US Person either holding a Reportable Account</p> <p><b>Or</b></p> <p>as a Controlling Person of an Passive NFFE Account</p> <p><b>Or</b></p> <p>Undocumented Account, i.e. for which documentation has been requested but has not been provided in due time</p>	<p>In respect to the Entity or Specified US Person or undocumented US Person</p> <ol style="list-style-type: none"> <li>1) Name</li> <li>2) Address</li> <li>3) US TIN (if any)</li> <li>4) The account number or functional equivalent of the account</li> <li>5) The name and identifying number of the Reporting FI</li> <li>6) The account balance or value of the account as of the end of the previous calendar year or other appropriate period.</li> </ol> <p>In respect to the US Controlling Persons</p> <ol style="list-style-type: none"> <li>1) Name</li> <li>2) Address</li> <li>3) US TIN (if any)</li> </ol>	30 June 2015
<b>2015</b> As 2014, plus the following	Custodial Accounts	<ul style="list-style-type: none"> <li>• The total gross amount of interest;</li> <li>• The total gross amount of dividends;</li> <li>• The total gross amount of other income paid or credited to the account</li> </ul>	30 June 2016
	Depository Accounts	The total amount of gross interest paid or credited to the account in the calendar year or other reporting period	

	Other Accounts	The total gross amount paid or credited to the account including the aggregate amount of any redemption payments made to the account holder during the calendar year or other appropriate reporting period	
<b>2016</b> As 2015, plus the following	Custodial Accounts	The total gross proceeds from the sale or redemption of property paid or credited to the account	30 June 2017
<b>2017 onwards</b>		All of the above	30 June All of the above

## 10.5. Reporting on Non-Participating Financial Institutions

### 10.5.1. Reportable accounts

A Reporting FI will only report payments made to NPFI's which are direct account holders of the Reporting FI in respect to that financial account. Under the Agreement it is required to report the name and the aggregated value of payments made to each Non-Participating FI for the years 2015 and 2016.

This obligation is included as a temporary solution to the requirement to withhold on 'foreign passthru payments' which is included in the US provisions.

### 10.5.2. Reportable payments

The payments that are to be reported in respect to 2015 and 2016 are:

- a) Non-US source interest
- b) Non-US source dividends paid on a shareholding and
- c) Non-US source payments, to a NPFI, that are the proceeds or benefits of a Cash Value Insurance Contract or Annuity Contract.

A Reporting FFI is permitted to report all relevant payments (interests, dividends, gross proceeds,..) made to the account if it does not want to distinguish US and non US amounts paid to the account.

The FFI may report payments made to NPFIs in the same way as what should be reported in respect to US Reportable Accounts.

#### 10.5.2.1. *Exceptions*

The following do not need to be reported:

- 1) Payments for the following: 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;
- 2) Payments where the Reporting FI has only a passive role in the payment process and so, alternatively either no knowledge of the facts that give rise to the payment or no control over the payment or no custody of the property which relates to the payment (e.g. processing a cheque or arranging for the electronic transfer of funds on behalf of one of its customers, or receives payments credited to a customer's account) or does not have custody of property which relates to the payment;

#### **Examples**

OTC and FOP do not need to be reported.

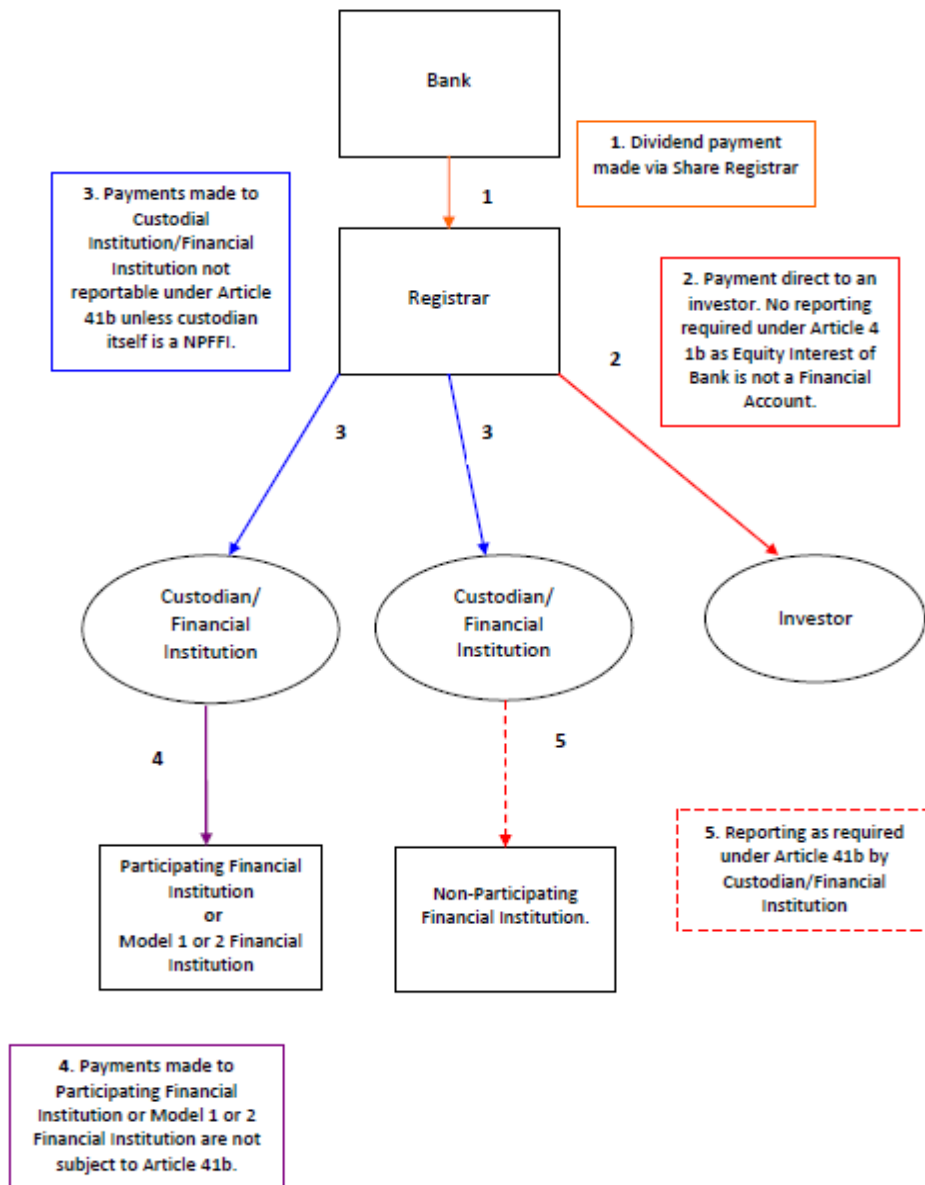
#### 10.5.2.2. *Payments of Dividends made by a Financial Institution*

Dividend payments made by a FI to its shareholders will only be reportable where the shareholding is held in a Financial Account, for example where the shareholding is held in a Custodial Account, of an NPFI.

Shareholdings of a FI, other than shareholdings or equity interest in certain Investment Entities (See Section 4.9), are not deemed to be Financial Accounts in their own right and as such where a payment is made directly to an Investor who is an NPFI, the payment will not be reportable.

The diagram below shows where the reporting for dividend payments will apply.





## 10.6. Central Securities Depository Reporting

In the case of securities registered in the NBB (acting as a Central Securities Depository) or Euroclear Belgium (*“Interprofessionnelle Effectendepositen Girokas NV”/ “Caisse Interprofessionnelle de Dépôts et de Virements de Titres SA”*) that are held by or through one or more other FIs, the relevant Financial Accounts will be treated as being held by such FIs, and such FIs will be responsible for any reporting required with respect to such Financial Accounts.

Notwithstanding the foregoing, in accordance with paragraph 3 of Article 5 of the Agreement, the NBB and Euroclear Belgium may report on behalf of such other FIs.

## **10.7. Format**

The format in which reporting will be required is the specific XML template provided by the Belgian FPS Finances. Details can be found on the on the FPS Finances website at <http://finances.belgium.be/fr/E-services> (international - FATCA)

## **10.8. Transmission**

Details about the way in which Financial Institutions will submit the information to the FPS Finances can be found on the FPS Finances website at <http://finances.belgium.be/fr/E-services> (international - FATCA)

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## 11. Specific constructions

### 11.1. De facto association

A *de facto association* is a group of two or more individuals (=members of the *de facto association*), without proper legal personality, established and maintained for a specific purpose, without any intention to provide any gain or income to their members.

**Examples:**

Sports club, youth movement, alumni associations.

The members of a *de facto association* are not entitled to receive any part of the gains or income realized and collected by the *de facto association* (for example, interest from a current account or proceeds from the sale of securities). Furthermore, the members of a *de facto association* have no right of return on the assets held by the *association*, even when they leave the association. On the death of a member, the heirs of the deceased member have no right to receive any assets held by the *de facto association*.

Such as *de facto associations* are qualified as “Excepted NFFE’s” under the Active NFFE definition (see Section 3 “Non-Financial Foreign Entities”).

Therefore *de facto associations* are not subject to the FACTA requirements.

### 11.2. Non-trading partnership under common Law

A non-trading partnership under common Law (“*burgerlijke maatschap/société civile de droit commun*”) is a contract whereby two or more persons (the partners) form a partnership to set up a partnership without legal personality by injecting capital (movable assets, real estate, etc.) into it in order to develop a non-trading activity.

**Examples:**

Association of accountants, association of Lawyers, association of tax consultants, association of notaries, association of family members for “family estate management”, etc.

A non-trading partnership must have at least two partners, who are jointly but not severally liable for all the obligations of the non-trading partnership. It may be established by notarial deed or by private instrument for a limited or unlimited period. No minimum contribution is prescribed by the Law, but each partner must contribute or promise to contribute to the non-trading partnership.

A non-trading partnership has no legal personality which means that the non-trading partnership has no own property. The assets used by the non-trading partnership do not belong to the partnership but are jointly held by the partners. The partners are legally entitled to a part of the income paid to the non-trading partnership in proportion to their respective shares.

The liquidation of a non-trading partnership results in the distribution of the joint assets between the partners. On the death of a partner and if the non-trading partnership is not wound up on that death, the shares held by the deceased partner will be shared between the heirs who will pay death duties on the deceased partner’s shares they receive as inheritors.

A non-trading partnership is treated as “transparent” for tax purposes in Belgium. Consequently, for tax purposes, the income of a non-trading partnership is considered as the income of the partners. Such income is taxed as such as far as the partners are concerned.

A non-trading partnership is treated as joint ownership (“*onverdeeldheid /indivision*”) for tax purposes in Belgium.

Therefore, each partner of a non-trading partnership is subject to the FATCA requirements as holder of the “Financial account” (see points 4.4.1, 10.2.8 and 10.3.9).

However, as regards cash value insurance contracts, the insurance company may consider the account holder is the person who will receive a payment as a beneficiary in execution of the cash value insurance contract, in case of death, life or surrender and this when this payment will be made.

### **11.3. Co-owners association (« *Vereniging van mede-eigenaars/ Association de copropriétaires* »)**

Co-owner associations with legal personality (managing real estate) as defined by Civil Belgian Law (article 577-5,§1 of the “*Burgelijk Wetboek/Code Civil*”) are considered as Active NFFEs.

### **11.4. Certification vehicle (« *Effecten certificaten Vehicle / Véhicule de certification de titres* »)**

Entities issuing certificates in accordance with the Law of July, 15, 1998 and art. 503 and following of the Belgian Company Code are contemplated by this Section and are referred to as certification entities.

A certification entity is an entity that issues certificates which represent certain financial instruments. The holder of the certificate is beneficially entitled to all income produced by the underlying financial instruments and bears all of the economics risk attached to these financial instruments, but cannot generally exercise the voting rights attached to the financial instruments. Such entities are mainly used to prevent hostile take overs and for estate planning purposes.

On the Belgian market, there are two main types of certification entities to be considered in the context of the Agreement:

- (a) Certification entities having legal personality as well as entities taking the form of foundations governed as and established by the Belgian Law of May 2, 2002 governing non-profit associations and foundations.
- (b) Certification entities governed by Dutch Law are the Stichting Administratiekantoor or the STAK commonly used in Belgium and indirectly covered by Belgian Law.

Are a.o. in scope of this category a *Stichting Administratiekantoor* under Dutch Law (STAK) and a « *belgische private stichting/fondation privée de droit belge*»<sup>37</sup>.

Such certification vehicles are treated as Passive NFFEs unless the certificates issued by the vehicles are regularly traded on an established securities market, in which case they are treated as Active NFFEs

### 11.5. Trust under UK Law

A trust could fall within any of the definitions of FI depending on the nature of its activities and the assets it holds. It is expected that a trust will be treated as a FI most commonly where it meets the definition of an Investment Entity.

The Agreement sets out that a Trust is, for these purposes, to be treated as an Entity.

However an Investment Entity is broadly an entity that undertakes activity on behalf of customers. With regard to Trusts this means that to be a FI the Trust must be professionally managed (this would typically be where the trustees have appointed a discretionary fund manager to manage the trust's assets).

If it is not professionally managed then the Trust will be treated as an NFFE rather than a FI.

So, a Trust will be an Investment Entity and therefore a FI where:

- The Trustee is a FI;
- The Trustee (on behalf of the Trust) engages a FI to manage the Trust; or
- The Trustee (on behalf of the Trust) engages a FI to manage the Financial Assets for the Trust.

A Trust which does not meet these conditions will not be an Investment Entity. For example, where a non-professionally managed trust has a Depository Account with a FI, and where that FI does not manage the account or the funds in the account, then that would not result in the Trust being treated as a FI.

In some cases a Trust may be a Custodial Institution. For example, where an Employee Benefit Trust holds shares for an employee.

#### Trusts that are not FI

Where a Trust is not a FI it will be a NFFE. In such circumstances it must be determined whether the Trust is either an Active or Passive NFFE.

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<sup>37</sup> Wet van 2 mei 2002 betreffende de verenigingen zonder winstoogmerk, de internationale verenigingen zonder winstoogmerk en de stichtingen/Loi du 2 mai 2002 sur les associations sans but lucratif, les associations internationales sans but lucratif et les fondations

Where the Trust is a Passive NFFE, the FIs where the Trust holds Financial Accounts will be required to undertake the necessary due diligence procedure to determine if any of these accounts are reportable accounts.

## **12. Withholding**

Under Article 4.1 (e), where the FI does not act as a QI with primary withholding responsibility and makes a payment of, or acts as an intermediary, in respect of a “US source withholdable payment” to any NPMI of which it holds a Financial Account, then the FI must provide information required for withholding and reporting to occur, with respect to the payment, to “any immediate payor” (only where there is an immediate payor).

However, in the current situation, if a Belgian Insurance Company or a Belgian Investment funds makes a payment to a NPMI as a debtor (and not an intermediary), the FI must not provide the above required information.

The detailed requirements for withholding and associated reporting (as distinct from the reporting of US reportable accounts and information on NPMIs to the Belgian authorities under the IGA) are to be found in US Treasury Regulations, Chapters 3 and 61 (as amended to coordinate with FATCA) and Chapter 4, as well as in the updated QI agreement, as set out in IRS Revenue Procedure 2014-39.

## 13. Compliance

### 13.1. Minor Errors

According to article 5, 1° of the Agreement, a competent Authority shall notify the Competent Authority of the other Party when the first-mentioned competent authority has reason to believe that administrative errors or other minor errors may have led to incorrect or incomplete information reporting or resulted in other infringements of this Agreement. The Competent Authority of such other Party shall apply its domestic law (including applicable penalties) to obtain corrected and/or complete information or to resolve other infringements of this Agreement:

- Data fields missing or incomplete;
- Data that has been corrupted;
- Use of an incompatible format.

Where this leads to the information having to be resubmitted this will have to be via the FPS Finances.

Continual and repeated administrative or minor errors could be considered as significant non-compliance where they continually and repeatedly disrupt and prevent transfer of the information.

Where a Reporting Belgian FI is concerned that an enquiry from the US extends beyond an enquiry on the quality or format of the data and potentially presents difficulties in respect of their obligations under the Data Protection Act 1988 (DPA), or implementing the requirements of the Data Protection Directive (Directive 95/46/EC) then they should contact the Belgian Competent Authority.

For more specific enquiries, for instance regarding a specific individual or entity, the US Competent Authority will contact the Belgian Competent Authority, who will then contact the FI.

### 13.2. Significant Non-Compliance

Significant non-compliance may be determined from either an IRS or FPS Finances perspective. In either event the relevant Competent Authorities will notify the other regarding the circumstances.

Where one Competent Authority notifies the other of significant non-compliance there is an 18 month period in which the FI must resolve the non-compliance.

Where FPS Finances is notified of or identifies significant non-compliance by a Belgian FI, FPS Finances will apply any relevant penalties under the legislation.

FPS Finances will also engage with the FI to:

- discuss the areas of non-compliance;

- discuss remedies/solution to prevent future non-compliance;
- agree measures and a timetable to resolve its significant non-compliance.

The FPS Finances will inform the IRS of the outcome of these discussions. In the event that the issues remain unresolved after a period of 18 months then the FI will be treated as a NPFI. Details of how such an entity can correct its status will be published at later date. The following are examples of what would be regarded as significant non-compliance include:

- Repeated failure to file a return or repeated late filing.
- Ongoing or repeated failure to register, supply accurate information or establish appropriate governance or due diligence processes.
- The intentional provision of substantially incorrect information.
- The deliberate or negligent omission of required information.

### **13.3. Tax Compliance Risk Management Process**

For those FIs with a Customer Relationship Manager (CRM), as part of the normal relationship management activity, a CRM should seek to understand how a business intends to meet its obligations under the legislation and the systems and process that it has put in place.

Areas of difficulty or particular risk could form part of the discussions about business systems and governance and the CRM should work with the company/entity to identify and deal with any risks that could lead to non-compliance. It is also envisioned that compliance with the legislation could form part of any Business Risk Review carried out with the business

CRMs will be able to call on support from Governance Specialists in Large Business Service (LBS) and Audit Specialists in both LBS and Local Compliance to help them to understand and address any issues identified.

For those FIs where there is no CRM, compliance activity will follow a risk based approach and will focus on those FIs where information indicates they are potentially in non-compliance with the legislation.

Any audit of systems and processes, of either Customer Relationship Manager (CRM) or non CRM businesses will encompass a review of whether or not a FI is able to correctly identify its account holders and meets its reporting obligations.

### **13.4. Anti-Avoidance**

The Regulations include an anti-avoidance measure which is aimed at arrangements taken by any person to avoid the obligations placed upon them by the Regulations. It is intended that 'arrangements' will be interpreted widely and the effect of the rule is that the Regulations will apply, as if the arrangements had not been entered into.



## 14. Registration

Each Reporting Belgian FI and any entity that is Registered Deemed Compliant Entity will be required to register and obtain a GIIN from the IRS.

The registration service is expected to be available from July 2013 and GIINs will be assigned to registered entities from the middle of October 2013. The IRS will publish guidance regarding the registration process.

FIs in a Model 1 jurisdiction are not required to provide a GIIN to in order to establish their FATCA status prior to 1 January 2015. Before that date Model 1 FIs can confirm their status by either:

- providing a Withholding Certificate
- providing a pre FATCA W-8 with an oral or written confirmation that the Entity is a Model 1 FI; **or**
- informing the withholding agent that they are a Model 1 FI.

The following types of entity are **not** required to register and should not seek to do so:

- Non-Reporting Belgian FIs
- Deemed Compliant Belgian FIs (unless they are Registered Deemed Compliant)
- Active and Passive NFFEs.

Where a FI with a Local Client Base that has a reporting obligation, because it has some US Reportable Accounts, a GIIN will be required.

Entities that are Reporting FIs and also acting as a sponsor for other entities will need to register separately for each of these roles

## 15. Appendix 1: FFI NACE codes list

NACEbel	NACEcred	Description
64100		Monetary intermediation
64190		Other monetary intermediation
64300		Trusts, funds and similar financial entities
64900		Other financial service activities, except insurance and pension funding n.e.c.
64990		Other financial service activities, except insurance and pension funding n.e.c.
64992		Securities houses
64999		Other financial services
65100		Insurance
65110		Life Insurance
65111		Direct life insurance
65112		Activities of mixed insurance companies, with life predominating
66110		Administration of financial markets
66120		Security and commodity contracts brokerage
66190		Other activities auxiliary to financial services, exc. Insurance, pension funds
66199		Other support activities relating to financial services, excluding insurance, pension funds
66300		Asset management (" <i>vermogensbeheer/gestionnaire de portefeuille</i> ")

### Legend:

 In Scope to Classify FFIs

## 16. Appendix 2: Exempted/excepted or active NFFE (NBB codes)

List of BNB codes "forme juridique" as found in following document:

[http://www.nbb.be/DOC/BA/consulting/CND\\_F\\_ABIN\\_CndTechn\\_v201302.pdf](http://www.nbb.be/DOC/BA/consulting/CND_F_ABIN_CndTechn_v201302.pdf)

Code	Dénomination
002	Organisme de financement des pensions
017	Association sans but lucratif (ASBL)
019	Mutualité / Société mutualiste de prévoyance
020	Union professionnelle
022	Organisation scientifique internationale de droit belge (jusqu'au 23/04/2004)
106	Société coopérative à responsabilité illimitée de droit public (jusqu'au 01/07/1996)
107	Coopérative à responsabilité illimitée, coopérative de participation, de droit public
108	Coopérative à responsabilité limitée de droit public
109	Société coopérative à responsabilité limitée, coopérative de participation, de droit public (jusqu'au 01/07/1996)
110	Etat, Province, Région, Communauté (jusqu'au 30/06/2003)
114	Société anonyme de droit public
116	Société coopérative de droit public (ancien statut) ((jusqu'au 30/10/1993)
117	Association sans but lucratif de droit public
121	Société d'assurance mutuelle (de droit public)
123	Corporations professionnelles - Ordres (jusqu'au 30/06/2003)
124	Etablissement public
125	Association internationale sans but lucratif
126	Centre public d'action sociale
127	Monts-de-Piété
128	Temporel des cultes / Etablissement culturel public (jusqu'au 30/06/2003)
129	Polders et wateringues
155	Police locale (jusqu'au 30/06/2003)
160	Organismes publics étrangers ou internationaux
301	Service public fédéral
302	Service public fédéral de programmation
303	Autres services fédéraux
310	Autorités de la Région flamande et de la Communauté flamande
320	Autorités de la Région Wallonne
330	Autorités de la Région de Bruxelles-Capitale
340	Autorités de la Communauté française
350	Autorités de la Communauté germanophone
370	Ministère des Affaires économiques (jusqu'au 30/06/2003)
371	Ministère des Affaires étrangères, du commerce extérieur et de la Coopération au Développement (jusqu'au 30/06/2003)
372	Ministère de l'Agriculture (jusqu'au 30/06/2003)
373	Ministère des Classes moyennes (jusqu'au 30/06/2003)
374	Ministère des Communications (jusqu'au 30/06/2003)
375	Ministère de la Défense nationale (jusqu'au 30/06/2003)
376	Ministère de l'Education nationale et de la Culture (jusqu'au 30/06/2003)
377	Ministère de l'Emploi et du Travail (jusqu'au 30/06/2003)
378	Ministère des Finances (jusqu'au 30/06/2003)

- 379 Ministère de l'Intérieur (jusqu'au30/06/2003)
- 380 Ministère de la Justice (jusqu'au30/06/2003)
- 381 Ministère de la Prévoyance sociale (jusqu'au30/06/2003)
- 382 Ministère de la Santé publique et de la Famille (jusqu'au30/06/2003)
- 383 Services du Premier Ministre (jusqu'au30/06/2003)
- 384 Ministère des Communications et de l'Infrastructure (jusqu'au30/06/2003)
- 385 Ministère de la Communauté flamande (jusqu'au30/06/2003)
- 386 Ministère de la Communauté française (jusqu'au30/06/2003)
- 387 Ministère de la Région de Bruxelles-Capitale (jusqu'au30/06/2003)
- 388 Ministère de la Région wallonne (jusqu'au30/06/2003)
- 389 Ministère de la Communauté germanophone (jusqu'au30/06/2003)
- 390 Ministère de la Fonction publique (jusqu'au30/06/2003)
- 391 Ministère des Classes moyennes et de l'Agriculture (jusqu'au30/06/2003)
- 392 Ministère des Affaires sociales, de la Santé publique et de l'Environnement (jusqu'au30/06/2003)
- 400 Autorités provinciales
- 401 Organismes immatriculés par l'ONSS-APL (jusqu'au31/12/2006)
- 411 Villes et Communes
- 412 Centre public d'action sociale
- 413 Police locale
- 414 Intercommunale
- 415 Projectvereniging
- 416 Dienstverlenende vereniging (Vlaams Gewest)
- 417 Opdrachthoudende vereniging (Vlaams Gewest)
- 418 Régie communale autonome
- 419 Régie provinciale autonome
- 420 Association de cpas
- 506 Société coopérative à responsabilité illimitée et à finalité sociale
- 508 Société coopérative à responsabilité limitée à finalité sociale
- 511 Société en nom collectif à finalité sociale
- 512 Société en commandite simple à finalité sociale
- 513 Société en commandite par actions à finalité sociale
- 514 Société anonyme à finalité sociale
- 515 Société privée à responsabilité limitée à finalité sociale
- 560 Groupement d'intérêt économique à finalité sociale
- 651 Autre forme à finalité sociale (de droit public)

### 17. Appendix 3: Active NFFE per nature

66210	Risk and damage evaluation
66220	Activities of insurance agents and brokers
68300	Real estate activities on a fee or contract basis
68310	Real estate agencies
68311	Intermediation in purchase, sale and hiring of real goods for account of third
68312	Estimate and evaluation of real goods for account of third
68320	Management of real estate on a fee or contract basis
68321	Administration of residential real goods for account of third
68322	Administration of nonresidential real goods for account of third
69000	Legal and accounting activities
69100	Legal activities
69101	Activities of Lawyers
69102	Activities of the notaries
69103	Activities of the bailiffs
69109	Other legal activities
69200	Accounting, bookkeeping and auditing activities, tax consultancy
69201	Activities of the experts-accountants and the auditors
69202	Activities of the accountants and the accountant-fiscalists
69203	Activities of the auditors
70200	Management consultancy activities
70210	Public relations and communication activities
70220	Business and other management consultancy activities

## 18. Appendix 4: Financial ratio formula

### Definitions

An “**Active Non Financial Foreign Entity (NFFE)**” means any NFFE that meets a.o. the following criterium: 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;

In general terms, **passive income** means 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;
- (7) The excess of gains over losses from transactions (including futures, forwards, and similar transactions) in any commodities but not including—(i) Any commodity hedging transaction described in section 954(c)(5)(A), determined by treating the entity as a controlled foreign corporation; or (ii) Active business gains or losses from the sale of commodities;
- (8) The excess of foreign currency gains over foreign currency losses;
- (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. Cfr page 473 of the Final Regulations for the full definition.

### Verkort Model

CODE	French Name	Dutch Name
[No code, it's 75-65] 75 65	Produits financiers Charges financières	Financiële opbrengsten Financiële kosten
9901	Bénéfice (perte) d'exploitation	Bedrijfswinst (Bedrijfsverlies)
[No code, it's 76-66] 76 66	Produits exceptionnels Charges exceptionnelles	Uitzonderlijke opbrengsten Uitzonderlijke kosten
6061	Approvisionnements, marchandises, services et biens divers	Handelsgoederen, grond- en hulpstoffen, diensten en diverse goederen
62	Rémunérations, charges sociales et pensions	Bezoldigingen, sociale lasten en pensioenen
630	Amortissements et réductions de valeur sur frais d'établissement, sur immobilisations incorporelles et corporelles	Afschrijvingen en waardeverminderingen op oprichtingskosten, op immateriële en materiële vaste activa
6314	Amortissements et réductions de valeur sur frais d'établissement, sur immobilisations incorporelles et corporelles	Waardeverminderingen op voorraden, op bestellingen in uitvoering en op handelsvorderingen: toevoegingen (terugnemingen)
6357	Provisions pour risques et charges: dotations (utilisations et reprises)	Voorzieningen voor risico's en kosten: toevoegingen (bestedingen en terugnemingen)
6408	Autres charges d'exploitation	Andere bedrijfskosten

649	Charges d'exploitation portées à l'actif au titre de frais de restructuration	Als herstructureringskosten geactiveerde bedrijfskosten
9960	<i>Amortissements sur écarts de consolidation positifs</i>	<i>Afschrijvingen op positieve consolidatieverschillen</i>
28	Immobilisations financières	Financiële vaste activa
50/53	Placements de Trésorerie	Geldbeleggingen
54/58	Liquidités	Liquide middelen
20/58	Total de l'actif	Totaal van de activa

## Ratio's to be calculated

## Formula

Ratio 1

$$\frac{\text{Financial Income}}{\text{Financial Income + Operating P/L + Extraordinary Income}} = \frac{75}{(9901+6061+62+630+6314+6357+6408+649+9960+75+76)}$$

Ratio 2

$$\frac{\text{Financial Assets + Investments + Cash at bank and in hand}}{\text{Total Assets}} = \frac{28+50/53+54/58}{20/58}$$

FATCA Status

if Ratio 1 &lt; 50% AND Ratio 2 &lt; 50%

=&gt; Active NFFE

Code 6061

Replaced by the sum of code 60 and 61 or by zero when unavailable.

Code 9960

Used only when consolidated accounts are considered. Not used when calculated by the National Bank of Belgium.

A negative ratio is considered to be below 50%.

## 19. Appendix 5: Rest category: Potentially Passive NFFE NACE code list where no financial ratio can be applied

NACE-code	Description
64200	Activities of holding companies
66290	Other activities auxiliary to insurance and pension funding
70000	Activities of head offices, management consultancy activities
70100	Activities of head offices
82900	Business support service activities n.e.c.
82910	Activities of collection agencies and credit bureaus
82990	Other business support service activities n.e.c.
92000	Gambling and betting activities
99000	Activities of extraterritorial organisations and bodies
99990	Undefined activities
99999	Undefined activities



## 20. Appendix 6: Example of self-certification

### FATCA Self-Certification for Legal Entities

The FATCA-agreement between Belgium and the United States of America requires the Bank to identify US tax residents amongst its clients. A specific obligation is to obtain a self-certification from all clients that are Passive Non-Financial Entities for FATCA-purposes in order to determine whether any of the Controlling Persons of the entity are U.S. tax residents. Passive Non-Financial Entities are entities for which the majority of income is passive income and/or for which the majority of assets produce or are held for the production of passive income.

Based on publicly available information the Bank has determined that your Entity is a Passive Non-Financial Entity for FATCA-purposes. Therefore you are invited to complete this document to certify the tax residency of the Controlling Persons of your Entity. For detailed information please consult the Explanatory Note, which forms an integral part of this document.

<b>Entity identification:</b>	
Entity name: ..... .....	
Legal form: .....	Company number: .....
Address of registered office:	
Street: .....	No.:
..... Box: .....	
Postal code: .....	City: ..... Country of residence: .....

PSP (to be completed by bank): .....

On . . / . . / . . . . , **the undersigned**, acting in the capacity of duly authorised representative(s) of the Entity, certify the following:

- The Entity is a Passive Non-Financial Entity:
  - At least 50% of the Entity's gross income for the preceding fiscal year is passive income and/or at least 50% of the assets held by the Entity at any time during the preceding fiscal year are assets that produce or are held for the production of passive income, **AND**
  - The Entity is not a U.S. Entity, nor a FI, nor an Active Non-Financial Entity.

In that respect I/we further certify that:

- None of the Controlling Persons of the Entity are U.S. tax residents
- OR**
- One or more Controlling Persons of the Entity are U.S. tax residents, and their name, permanent residence address and U.S. Taxpayer Identification Number (TIN) have been provided in the table below:

Surname and first name	Permanent residence address	U.S. TIN
PSP (to be completed by bank):		
PSP (to be completed by bank):		
PSP (to be completed by bank):		
PSP (to be completed by bank):		

In case your Entity is not a Passive Non-Financial Entity for FATCA-purposes, please certify below that:

- The Entity is not a Passive Non-Financial Entity and I/we commit to provide the Bank within the communicated deadline with the appropriate U.S. IRS self-certification form to justify the Entity's FATCA classification:
  - **W-8BEN-E** form for FIs or Active Non-Financial Entities, OR
  - **W-9** form for U.S. Entities.

The Undersigned declare(s) that the information provided in this form is, to the best of him/her/their knowledge and belief, true, correct and complete.

The Undersigned commit(s) him/herself/themselves to advise the Bank promptly of any changes which causes the information contained herein to become incorrect and to provide the Bank with a suitably updated self-certification within 30 days of the occurrence of the change.

The Bank reserves the right to terminate the relationship with the entity if the information provided proves to be incomplete or inaccurate, or any modification has not been disclosed.

The Bank may process the information contained in this form to comply with its obligation with respect to the fight against tax evasion. The requested information is compulsory by law and failure to complete this form could mean that the Bank may not be able to process your application in some cases. The Bank may be required to disclose information to governmental bodies to comply with local and regulatory obligations with respect to the fight against tax evasion. Please note that as per international tax information exchange agreements and local law, we may be obliged to share this information with the national tax authorities which may transmit it to other tax authorities. In accordance with the Belgian privacy legislation, you have a right of access, rectification and objection that may be exercised by writing to BNP Paribas Fortis SA/NV, Montagne du Parc 3, 1000 Brussels.

**If no self-certification is provided within the communicated deadline, the Bank is required to report the Entity and all Controlling Persons of the Entity to the relevant tax authorities for all reporting periods during which the self-certification is lacking. Once the self-certification is provided the Entity will only be reported from the next reporting period onwards if it has**

<b>Controlling Persons that are U.S. tax residents.</b>
---

Surname and first name of the undersigned	Job title	Signature
PSP (to be completed by bank):		
PSP (to be completed by bank):		

## Explanatory Note Accompanying the FATCA Self-Certification for Legal Entities

### A. Relevant Belgian regulations:

The agreement between the government of the Kingdom of Belgium and the government of the United States of America regarding the mutual exchange of financial account information and the implementation of the Foreign Account Tax Compliance Act (FATCA) was signed on 23/04/2014.

### B. Who must complete and sign this document?

The declaration must be completed and signed by the persons authorized to represent the entity in respect of third parties in accordance with its legal framework and articles of association as applicable.

### C. What is a Passive Non-Financial Entity?

A Passive Non-Financial Entity is any Non-Financial Entity (i.e. not U.S. Entity or FI, see F and G) that is not an Active Non-Financial Entity (see D). Examples of Passive Non-Financial Entities are patrimonial entities and holding companies.

### D. What is an Active Non-Financial Entity?

An Active Non-Financial Entity (NFE) is any NFE (i.e. not U.S. Entity or FI, see F and G) that meets any of the following criteria:

- a) Less than 50 percent of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income (see E) and less than 50 percent 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 (see E);
- b) 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 traded on an established securities market;
- c) The NFE is organized in a U.S. Territory and all of the owners of the payee are bona fide residents of that U.S. Territory;
- d) The NFE is a government (other than the U.S. government), a political subdivision of such government (which, for the avoidance of doubt, includes a state, province, county, or municipality), or a public body performing a function of such government or a political subdivision thereof, a government of a U.S. Territory, an international organization, a non-U.S. central bank of issue, or an Entity wholly owned by one or more of the foregoing;
- e) Substantially all of the activities of the 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 FI, except that an Entity shall not qualify for NFE status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- f) The 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 FI, 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;

- g) The NFE was not a FI 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 FI;
- h) The NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not FIs, 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 FI;
- i) The NFE is an “excepted NFE” as described in relevant U.S. Treasury Regulations; **or**
- j) 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 organization, business league, chamber of commerce, labor organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare;
  - ii. It is exempt from income tax in its jurisdiction of residence;
  - iii. It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
  - iv. The applicable laws of the 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 organization, or escheat to the government of the NFE’s jurisdiction of residence or any political subdivision thereof.

## E. What is Passive Income?

Passive income is the portion of gross income that consists of:

- Dividends;
- Interest;
- Rents and royalties, other than rents and royalties derived in the active conduct of a trade or business conducted by employees of the Non-Financial Entity;
- Annuities;
- Death benefits from life insurance contracts (under U.S. or applicable law);
- Amounts received from or with respect to a pool of insurance contracts if the amounts received depend upon the performance of the pool;
- The excess of gains over losses from the sale or exchange of property that gives rise to passive income;
- The excess of gains over losses from transactions (including futures, forwards, and similar transactions) in any commodities, but not including any commodity hedging transaction;
- The excess of foreign currency gains over foreign currency; and
- Net income from notional principal contracts.

## F. What is a Financial Institution?

A FI is a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.

## G. What is a U.S. Entity?

A U.S. Entity is an entity that is resident in the United States for tax purposes.

## H. What is a Controlling Person?

Any private individual who ultimately owns (either directly or indirectly) more than 25% of the shares (shareholder) or more than 25% of the voting rights (partner) of the Entity, or who is receiving the benefits of at least 25% of the assets (beneficiary) of the Entity. The ultimate beneficial owners ‘decision makers’ as defined in the Belgian legislation are thus excluded.

### I. Who are U.S. tax residents?

A U.S. citizen is by definition a U.S. tax resident. A non-U.S. citizen becomes a U.S. tax resident when holding a Green Card or by passing the Substantial Presence test: if an individual has been present in the U.S. more than 31 days in the current year, and more than 183 days using the following formula: current year days in U.S. + Previous year days in U.S. / 3 + Second previous year days in U.S. / 6. If >183, the individual will be considered as U.S. resident for tax purposes.

### J. Where can the official IRS self-certification forms W-8BEN-E and W-9 be found?

Both documents can be retrieved from the IRS Forms & Publications database:

- W-8BEN-E: <http://www.irs.gov/pub/irs-pdf/fw8bene.pdf>
- W-9: <http://www.irs.gov/pub/irs-pdf/fw9.pdf>

### K. What is the U.S. Taxpayer Identification Number (TIN)?

For individuals that are U.S. tax residents the TIN is the Social Security Number (SSN), or the Individual Taxpayer Identification Number (ITIN) if they are resident alien who are not eligible to get a SSN.

### L. How has it been determined that my Entity is a Passive Non-Financial Entity?

If your Entity deposits its annual accounts (in full or abbreviated form) at the National Bank of Belgium, this has been determined through the calculation of 2 financial ratios based on the most recent financial statement available. If either or both ratios are 50% or higher the Entity is considered to be a Passive Non-Financial Entity:

$$\text{Income ratio: } \frac{\text{Financial Income}}{\text{Operating P\&L+Financial Income+Extraordinary Income}} \quad \text{Assets ratio: } \frac{\text{Financial Assets+Investments+Cash at Bank and in Hand}}{\text{Total Assets}}$$

If your Entity does not deposit its annual accounts at the National Bank of Belgium, the primary NACE industry code defined for your Entity is used to determine whether the Entity is a Passive Non-Financial Entity.

### M. Am I required to complete the self-certification if my Entity does not have any ties with the U.S.?

Yes. In order to determine whether any Controlling Persons of the Entity are U.S. tax residents the Bank is required to obtain an explicit self-certification from all clients that are Passive Non-Financial Entities, regardless of the place of incorporation of the client or the nationalities of the Controlling Persons of the client.

### N. What happens if I do not complete the self-certification within the communicated deadline?

The Bank will be obligated to report specific information on your Entity, on your Entity's shareholder(s) (regardless of whether they are U.S. tax residents), and on the account(s) held by your Entity to the Belgian tax authorities, who will in turn report this information to the U.S. Internal Revenue Service (IRS), and this for all reporting periods during which the certification is missing.

**21. Appendix 7: Reporting table**

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REPORTING TABEL FATCA												
PRODUCTFACTORY	ACCOUNT TYPE	ACCOUNT SUBTYPE NA (not applicable)	FATCA TYPE FIN ACCOUNT D: Depository account C: Custody account E: Equity or debt instr. EX: Exempt account	SECURITIES TYPE NA (not applicable)	TRANSACTION TYPE NA (not applicable)	INCOME TYPE CAPITAL BALANCE NA(not applicable)	INCOME TYPE: DIV: dividend INT: interest OTH: other	GROSS PROCEEDS GRP	ACCOUNT BALANCE: 31/12 BAL INT BAL (intermediate)	REPORTING CODE XML FATCA501:DIV FATCA502:INT FATCA503:GRP FATCA504: OTH	NO REPORTING	COMMENTS
ACCOUNTS	current account	NA	D	NA	Interest payment	accrued interest	INT			FATCA502		
ACCOUNTS	current account	NA	D	NA	incoming transfer of money	NA				NA	X	1
ACCOUNTS	current account	NA	D	NA	Cash deposit	NA				NA	X	2
ACCOUNTS	current account	NA	D	NA	outgoing transfer of money	NA				NA	X	2
ACCOUNTS	current account	NA	D	NA	Cash withdrawal	NA				NA	X	2
ACCOUNTS	current account	NA	D	NA	end year balance	31/12 balance			31/12 BAL	31/12 BAL		
ACCOUNTS	current account	NA	D	NA	intermediate closing balance	int balance			INT BAL	INT BAL		
ACCOUNTS	Deceased person or estate account	NA	EX	NA	NA	NA				NA	X	3
ACCOUNTS	Escrow/third party account (derdenrekening/kwaliteitsrekening)	NA	EX	NA	NA	NA				NA	X	4
DEPOSITS	savings account	NA	D	NA	Interest payment	accrued interest	INT			FATCA502		
DEPOSITS	savings account	NA	D	NA	incoming transfer of money	NA				NA	X	1
DEPOSITS	savings account	NA	D	NA	Cash deposit	NA				NA	X	2
DEPOSITS	savings account	NA	D	NA	Cash withdrawal	NA				NA	X	2
DEPOSITS	savings account	NA	D	NA	end year balance	31/12 balance			31/12 BAL	31/12 BAL		
DEPOSITS	savings account	NA	D	NA	intermediate closing balance	int balance			INT BAL	INT BAL		
DEPOSITS	savings account	Deceased person on estate account	EX	NA	NA	NA				NA	X	3
DEPOSITS	savings account	Escrow/third party account (derdenrekening/kwaliteitsrekening)	EX	NA	NA	NA				NA	X	4
DEPOSITS	savings account	retirement and pension account	EX	NA	NA	NA				NA	X	5
DEPOSITS	savings account	non retirement savings account	EX	NA	NA	NA				NA	X	5
DEPOSITS	savings account	huurwaarborg rekening/garantie loc	EX	NA	NA	NA				NA	X	5
DEPOSITS	time deposit account	NA	D	NA	Interest payment	accrued interest	INT			FATCA502		
DEPOSITS	time deposit account	NA	D	NA	end year balance	31/12 saldo			31/12 BAL	31/12 BAL		
DEPOSITS	time deposit account	NA	D	NA	intermediate closing balance	int balance			INT BAL	INT BAL		
DEPOSITS	time deposit account	NA	D	NA	Redemption	capital + accrued interest	INT	GRP		FATCA502/FATCA503		6
DEPOSITS	time deposit account	NA	D	NA	Repurchase by the FI	repurchaseprice= capital + interest	INT	GRP		FATCA503		6
DEPOSITS	time deposit account	Deceased person on estate account	EX	NA	NA	NA				NA	X	3
DEPOSITS	time deposit account	Escrow/third party account (derdenrekening/kwaliteitsrekening)	EX	NA	NA	NA				NA	X	4
DEPOSITS	(savings) certificate	dematerialised	C	NA	Interest payment	accrued interest	INT			FATCA502		
DEPOSITS	(savings) certificate	dematerialised	C	NA	end year balance	31/12 saldo			31/12 BAL	31/12 BAL		
DEPOSITS	(savings) certificate	dematerialised	C	NA	intermediate closing balance	int balance			INT BAL	INT BAL		
NOMINEE ACCOUNTS	(saving) certificate ISSUED BY FI	NA	EX	NA	NA	NA				NA	X	7
NOMINEE ACCOUNTS	DEBT SECURITIES ISSUED BY FI	NA	EX	NA	NA	NA				NA	X	7
NOMINEE ACCOUNTS	EQUITY ISSUED BY THE FI	NA	EX	NA	NA	NA				NA	X	7
BEARER SECURITIES	NA	NA	EX	NA	NA	NA				NA	X	8
SECURITIES	Custody account	NA	C	NA	end year balance	31/12 balance			31/12 BAL	31/12 BAL		
SECURITIES	Custody account	NA	C	NA	intermediate closing balance	int balance			INT BAL	INT BAL		
SECURITIES	Custody account	NA	C	debt securities(XN/not XN)	issue	NA				NA	X	2
SECURITIES	Custody account	NA	C	debt securities(XN/not XN)	Purchase (secondary market)	NA				NA	X	2
SECURITIES	Custody account	NA	C	debt securities(XN/not XN)	Coupon payment	accrued interest	INT	GRP		FATCA502/FATCA503		9
SECURITIES	Custody account	NA	C	debt securities(XN/not XN)	Redemption at maturity date	accrued interest	INT	GRP		FATCA502/FATCA503		9
SECURITIES	Custody account	NA	C	debt securities(XN/not XN)	Redemption at maturity date	original issue discount	INT	GRP		FATCA502/FATCA503		9
SECURITIES	Custody account	NA	C	debt securities(XN/not XN)	Redemption at maturity date	redemption premium	INT	GRP		FATCA502/FATCA503		9
SECURITIES	Custody account	NA	C	debt securities(XN/not XN)	Redemption at maturity date	Principal		GRP		FATCA503		
SECURITIES	Custody account	NA	C	debt securities(XN/not XN)	Repurchase by the issuer	accrued interest	INT	GRP		FATCA502/FATCA503		9
SECURITIES	Custody account	NA	C	debt securities(XN/not XN)	Repurchase by the issuer	original issue discount	INT	GRP		FATCA502/FATCA503		9
SECURITIES	Custody account	NA	C	debt securities(XN/not XN)	Repurchase by the issuer	redemption premium	INT	GRP		FATCA502/FATCA503		9
SECURITIES	Custody account	NA	C	debt securities(XN/not XN)	Repurchase by the issuer	Principal		GRP		FATCA503		
SECURITIES	Custody account	NA	C	debt securities(XN/not XN)	Repurchase not by the issuer	accrued interest	INT	GRP		FATCA502/FATCA503		9

NA	C	debt securities(XN/not XN)	Repurchase not by the issuer	Principal+capital gain		GRP		FATCA503		
NA	C	debt securities(XN/not XN)	Sale (secondary market)	accrued interest	INT	GRP		FATCA502/FATCA503		9
NA	C	debt securities(XN/not XN)	Sale (secondary market)	Principal+capital gain		GRP		FATCA503		
NA	C	Real estate certificates	Issue	NA				NA	X	2
NA	C	Real estate certificates	Purchase (secondary market)	NA				NA	X	2
NA	C	Real estate certificates	Coupon payment	ordinary coupons	INT			FATCA502		
NA	C	Real estate certificates	Coupon payment	Liquidation coupons	INT			FATCA502		
NA	C	Real estate certificates	Redemption at maturity date	accrued interest	INT	GRP		FATCA502/FATCA503		9
NA	C	Real estate certificates	Redemption at maturity date	Principal + capital gain		GRP		FATCA503		
NA	C	Real estate certificates	Repurchase by the issuer	accrued interest	INT	GRP		FATCA502/FATCA503		9
NA	C	Real estate certificates	Repurchase by the issuer	Principal		GRP		FATCA503		
NA	C	Real estate certificates	Repurchase not by the issuer	accrued interest	INT	GRP		FATCA502/FATCA503		9
NA	C	Real estate certificates	Repurchase not by the issuer	Principal+capital gain		GRP		FATCA503		
NA	C	Real estate certificates	Sale (secondary market)	accrued interest	INT	GRP		FATCA502/FATCA503		9
NA	C	Real estate certificates	Sale (secondary market)	Principal+capital gain		GRP		FATCA503		
NA	C	Ordinary shares	Subscription	NA				NA	X	2
NA	C	Ordinary shares	Purchase (secondary market)	NA				NA	X	2
NA	C	Ordinary shares	Coupon payment	dividend	DIV			FATCA501		
NA	C	Ordinary shares	Coupon payment	dividend in shares	DIV			FATCA501		
NA	C	Ordinary shares	Capital reduction	dividend	DIV	GRP		FATCA501		
NA	C	Ordinary shares	Capital reduction	real capital	DIV	GRP		D		
NA	C	Ordinary shares	Repurchase by the issuer	Purchasebonus	DIV	GRP		FATCA501/FATCA503		9
NA	C	Ordinary shares	Repurchase by the issuer	Principal	DIV	GRP		FATCA501/FATCA503		9
NA	C	Ordinary shares	Liquidation	Liquidationbonus	DIV	GRP		FATCA501/FATCA503		9
NA	C	Ordinary shares	Liquidation	Principal		GRP		FATCA503		
NA	C	Ordinary shares	Sale (secondary market)	Principal+capital gain		GRP		FATCA503		
NA	C	Ordinary shares	CA	issue bonusshare				NA	X	2
NA	C	Ordinary shares	CA	stocksplit				NA	X	2
NA	C	Ordinary shares	CA	reverse stocksplit				NA	X	2
NA	C	Ordinary shares	CA	issue warrant				NA	X	2
NA	C	Ordinary shares	CA	warrant exercise: purchase shares				NA	X	2
NA	C	Ordinary shares	CA	warrant sale		GRP		FATCA503		
NA	C	Ordinary shares	CA	warrant repurchase		GRP		FATCA503		
NA	C	Ordinary shares	CA	Merger (fusie)	DIV	GRP		FATCA501/FATCA503		9
NA	C	Ordinary shares	CA	Split	DIV	GRP		FATCA501/FATCA503		9
NA	C	Ordinary shares	CA	Delisting				NA	X	2
NA	C	Ordinary shares	CA	Bankruptcy	DIV	GRP		FATCA501/FATCA503		9
NA	C	Ordinary shares	CA	Share premium	DIV	GRP		FATCA501/FATCA503		9
NA	C	Ordinary shares	CA	Spin off	DIV	GRP		FATCA501/FATCA503		9
NA	C	Investment companies	Issue KAP/DIV	NA				NA	X	2
NA	C	Investment companies	Purchase (sec. market) KAP/DIV	NA				NA	X	2
NA	C	Investment companies	Couponpayment (DIV)	Dividends	DIV			FATCA501		
NA	C	Investment companies	Couponpayment (DIV)	Dividends in shares	DIV			FATCA501		
NA	C	Investment companies	Repurchase by the issuer(KAP/DIV)	Principal + Purchasebonus	DIV	GRP		FATCA501/FATCA503		10
NA	C	Investment companies	Redemption at maturity date (KAP/DIV)	Principal + capital gain	DIV	GRP		FATCA501/FATCA503		10
NA	C	Investment companies	Liquidation compartment (DIV/KAP)	Principal + capital gain+ Liquidationbonus	DIV	GRP		FATCA501/FATCA503		10
NA	C	Investment companies	Liquidation company (DIV/KAP)	Principal + capital gain+ Liquidationbonus	DIV	GRP		FATCA501/FATCA503		10
NA	C	Investment companies	Merger (fusie) (DIV/KAP)	Principal + capital gain	DIV	GRP		FATCA501/FATCA503		10
NA	C	Investment companies	Sale (sec. market) KAP/DIV	Principal + capital gain	DIV	GRP		FATCA501/FATCA503		10
NA	C	Investment funds	Issue KAP/DIV					NA	X	2



NA	C	Investment funds	Purchase (sec. market) KAP/DIV					NA	X	2
NA	C	Investment funds	Couponpayment (DIV)	couponpayment	INT			FATCA502		11
NA	C	Investment funds	Couponpayment (DIV)	couponpayment in shares	INT			FATCA502		11
NA	C	Investment funds	Repurchase by the issuer(KAP/DIV)	Principal + Purchasebonus	INT	GRP		FATCA502/FATCA503		10
NA	C	Investment funds	Redemption at maturity date (KAP/DIV)	Principal + capital gain	INT	GRP		FATCA502/FATCA503		10
NA	C	Investment funds	Liquidation compartment (DIV/KAP)	Principal + capital gain+ Liquidationbonus	INT	GRP		FATCA502/FATCA503		10
NA	C	Investment funds	Liquidation company (DIV/KAP)	Principal + capital gain+ Liquidationbonus	INT	GRP		FATCA502/FATCA503		10
NA	C	Investment funds	Merger (fusie) (DIV/KAP)	Principal + capital gain	INT	GRP		FATCA502/FATCA503		10
NA	C	Investment funds	Sale (sec. market) KAP/DIV	Principal + capital gain	INT	GRP		FATCA502/FATCA503		10
NA	C	NA	Interest payment	accrued interest	INT			FATCA502		
NA	C	NA	end year balance	31/12 saldo			31/12 BAL	31/12 BAL		
NA	C	NA	intermediate closing balance	int balance			INT BAL	INT BAL		
NA	C	NA	Payment of manufactured dividend		OTH			FATCA504		
NA	C	NA	Lending fee	NA	OTH			FATCA504		
Stock option plans	EX	NA	NA	NA				NA	X	12
Stock remunerations plans	EX	NA	NA	NA				NA	X	13
Deceased person on estate account	EX	NA	NA	NA				NA	X	3
Escrow/third party account (derdenr	EX	NA	NA	NA				NA	X	4
NA	D	NA	Interest payment	accrued interest	INT			FATCA502		
NA	D	NA	end year balance	NA			31/12 BAL	31/12 BAL		
NA	D	NA	intermediate closing balance	NA			INT BAL	INT BAL		
NA	D	NA	Interest payment	accrued interest	INT			FATCA502		
NA	D	NA	end year balance	NA			31/12 BAL	31/12 BAL		
NA	D	NA	intermediate closing balance	NA			INT BAL	INT BAL		
NA	EX	Securities issued by the FI	Purchase	NA					X	2
NA	EX	Securities issued by the FI	Sale	Sale total price					X	14
NA	C	Securities issued by the FI	Purchase	NA					X	
NA	C	Securities issued by the FI	Sale	Sale total price		GRP		FATCA503		
NA	EX	All securities	NA	NA					X	2
NA	EX	NA	NA	NA					X	2
NA	EX	NA	NA	NA					X	2
NA	C	NA	Couponpayment	VOC payment	OTH			FATCA504		
NA	C	NA	Lendingfee payment	Lendingfee	OTH			FATCA504		

NR	Comments
1	<b>Belgian Guidance Notes (10.2.10):</b> Incoming payments ("credit transfers") credited or paid in Belgium through a domestic or international transfer on a Belgian account (depository account or custodial account) in favor of a Belgian bank's client who is the holder of that account are not considered as reportable income.
2	<b>cfr Belgian Guidance Notes (10.2.9.4.2.i):</b> When there is no payment (interest, dividend, gross proceeds, etc.) within the meaning of the Belgian tax Law generated with respect to the assets held in the custodial account, there is no FATCA reporting to be done.
3	<b>Cfr IGA Annex II V.C:</b> An "estate account" is an account excluded from being an financial account and is out of scope of FATCA reporting for the deceased person, who is US citizen/person.
4	<b>Cfr IGA Annex IIV.D:</b> "Escrow" accounts are excluded from being a financial account and are out of scope of FATCA. A third party account (derdenrekening/kwaliteitsrekening) of a notary, lawyer,... is also not considered as a reportable account. Huurwaarborgrekeningen (garantie locative) are also not considered as a reportable account.
5	<b>Belgian Guidance Notes</b> Retirement and Pension accounts are not considered as financial accounts and are exempt for FATCA
6	<b>Belgian Guidance Notes (10.2.9.4.2):</b> the FI has no obligation to split the proceeds and the movable income; it may choose to report the amount which has been paid or credited as proceeds. For time deposits: in case of a redemption or a repurchase by the FI; interest and capital can be reported together as "gross proceeds" instead of interest as "interest" and capital as "gross proceeds".
7	<b>Cfr IGA Annex II V.F.1:</b> A nominee account (a shareholders register for nominal shares) is an account excluded from being an financial account and is out of scope of FATCA (except If those nominee securities are reflected on the custody account).
8	<b>Belgian Guidance Notes (10.2.10):</b> Payments form bearer securities or dividend-checks paid at the counter of a Belgian bank is not considered as reportable payments for FATCA. In that case, there is no FATCA reporting obligation for the Belgian bank relating to the payment of that income. Of course, the obligation to report the balance of the account on which the income has been credited, remains.
9	<b>cfr Belgian Guidance Notes (10.2.9.4.2.ii):</b> the FI has no obligation to split the proceeds and the movable income; it may choose to report the amount which has been paid or credited as proceeds. The FI has the choice: a) report the income as "INT" or "DIV" and the proceeds and the capital in "GRP" or b) report income, proceeds and capital in "GRP"
10	<b>cfr Belgian Guidance Notes (10.2.9.4.2.ii):</b> for Belgian investment companies or investment funds, interest, capital gains and capital will be reported as "gross proceeds" in "GRP".
11	<b>cfr Belgian Guidance notes (10.2.9.4.2.v):</b> couponpayments of investment funds are considered as "interests" and will be reported as "INT"
12	<b>Cfr IGA Annex II V.F.3:</b> Stock-options as referred under the Belgian Plan for Employment Act of march 26, 1999 are not treated as financial accounts are not considered as reportable accounts.
13	<b>Cfr IGA Annex II V.F.2.</b> Stock remuneration plans qualifying under the Belgian Law of May 22, 2001 are not treated as financial accounts and are not considered as reportable accounts.
14	<b>AN OTC transaction with a sale of securities, which are in custody with another FI, no reporting has to be done because of the other FI has to report.</b>

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## 22. Appendix 8: Reporting on customer table

### FATCA Reporting on Customers

#### Reportable persons - assets and financial income

##### Practical cases

#### Examples of most readily available information

In the following examples, an account balance picture is taken at the end of each month for all accounts and all holders. If Financial Institutions use a different frequency, the examples will differ. Only interests received while the customer had a reportable status are to be reported (Belgian guidance interpretation)

In these examples, we consider the balance picture to be reported:

- 31/12 if the customer is reportable and if the account is still open at the end of the year; or
- the balance picture taken at the end of the month preceding the date
  - \* the account was closed; or
  - \* the date the client ceased being co-holder on the account; or
  - \* the client losing his reportable status

to the extent that the account existed or that the client was (co-)holder of the account at that moment (see example 9)

Cases for 2015 (and following)			Conditions				Reporting in 2016		End-of-month balance pictures available													
N	Description		Customer	Reportable period		[Co-]Holder		Reportable information		2014	2015											
	Reporting status	Account status		Start	End	Start	End	Account balance	Reportable income	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1	non-US	Account open all year	A	-	-	1/01/2015	31/12/2015	-	-	v	v	v	v	v	v	v	v	v	v	v	v	v
2	US	Account open all year	A	1/01/2015	31/12/2015	1/01/2015	31/12/2015	31/12/2015	01/01 - 31/12	v	v	v	v	v	v	v	v	v	v	v	v	v
3	US	Account closure	A	1/01/2015	31/12/2015	1/01/2015	15/07/2015	30/06/2015	01/01 - 15/07	v	v	v	v	v	v							
4	US > non-US	Account open all year	A	1/01/2015	15/07/2015	1/01/2015	31/12/2015	30/06/2015	01/01 - 15/07	v	v	v	v	v	v	v	v	v	v	v	v	v
5	Non-US > US	Account open all year	A	15/07/2015	31/12/2015	1/01/2015	31/12/2015	31/12/2015	15/07 - 31/12	v	v	v	v	v	v	v	v	v	v	v	v	v
6	US	Co-holder all year	A	1/01/2015	31/12/2015	1/01/2015	31/12/2015	31/12/2015	01/01 - 31/12	v	v	v	v	v	v	v	v	v	v	v	v	v
	US	Becomes co-holder	B	1/01/2015	31/12/2015	1/05/2015	31/12/2015	31/12/2015	01/05 - 31/12						v	v	v	v	v	v	v	v
7	US > non-US	Becomes co-holder while being reportable	A	1/01/2015	15/07/2015	1/03/2015	31/12/2015	30/06/2015	01/03 - 15/07				v	v	v	v	v	v	v	v	v	v
	non-US	Co-holder all year	B	-	-	1/01/2015	31/12/2015	-	-	v	v	v	v	v	v	v	v	v	v	v	v	v
8	non-US > US	Co-holder all year	A	15/07/2015	31/12/2015	1/01/2015	31/12/2015	31/12/2015	15/07 - 31/12	v	v	v	v	v	v	v	v	v	v	v	v	v
	non-US > US	Removed as co-holder while not being reportable yet	B	1/07/2015	31/12/2015	1/01/2015	1/02/2015	-	-	v	v											
9	US	Account opened and closed within one month	A	1/01/2015	31/12/2015	2/03/2015	20/03/2015	-	02/03 - 20/03													
	Non-US	Account opened and closed within one month	B	-	-	2/03/2015	20/03/2015	-	-													
10	non-US > US > non-US <i>in different months</i>	Removed as co-holder after becoming reportable	A	15/07/2015	28/11/2015	1/01/2015	15/08/2015	31/07/2015	15/07 - 15/08	v	v	v	v	v	v	v	v					
	non-US > US	Removed as co-holder within the same month of becoming reportable	B	15/08/2015	31/12/2015	1/01/2015	15/08/2015	31/07/2015	05/08 - 15/08	v	v	v	v	v	v	v	v					

The following examples deal with the situation in 2014, where FATCA enters into force on July 1<sup>st</sup> and the first aggregated account balance is recorded on June 30<sup>th</sup>

Cases for 2014			Conditions				Reporting in 2015		
N°	Description		Customer	Reportable period		(Co-)Holder		Reportable information	
	Reporting status	Account status		Start	End	Start	End	Account balance	Reportable income
11	Non-US	Account open all year	A	-	-	1/01/2014	31/12/2014	-	-
12	US	Account closed before FATCA go-live	A	1/07/2014	31/12/2014	1/01/2014	15/06/2014	-	-
13	US	Account closed within the month of FATCA go-live	A	1/07/2014	31/12/2014	1/01/2014	15/07/2014	30/06/2014	-
14	US	Account closed at least one month after FATCA go-live	A	1/07/2014	31/12/2014	1/01/2014	15/08/2014	31/07/2014	-
15	US	Account open all year	A	1/07/2014	31/12/2014	1/01/2014	31/12/2014	31/12/2014	-
16	non-US > US	Account open all year	A	15/09/2014	31/12/2014	1/01/2014	31/12/2014	31/12/2014	-
17	US > non-US	Account open all year	A	1/07/2014	15/09/2014	1/01/2014	31/12/2014	31/08/2014	-
18	US	Account opened in Q3	A	1/07/2014	31/12/2014	1/09/2014	31/12/2014	31/12/2014	-
19	non-US > US	Account opened at the latest a month before becoming US	A	15/09/2014	31/12/2014	1/08/2014	31/12/2014	31/12/2014	-
20	non-US > US	Account opened within the same month of becoming US	A	15/09/2014	31/12/2014	1/09/2014	31/12/2014	31/12/2014	-
21	non-US > US	Account opened within the same month of becoming US (after)	A	15/09/2014	31/12/2014	25/09/2014	31/12/2014	31/12/2014	-
22	non-US > US	Account opened after becoming US	A	15/09/2014	31/12/2014	1/10/2014	31/12/2014	31/12/2014	-
23	US > non-US	Account opened at the latest a month before becoming	A	1/07/2014	15/09/2014	1/08/2014	31/12/2014	31/08/2014	-
24	US	Account opened and closed within one month	A	1/07/2014	31/12/2014	2/09/2014	20/09/2014	-	-
25	Non-US	Account opened and closed within one month	A	-	-	2/09/2014	20/09/2014	-	-
26	US > non-US	Account opened within the same month of becoming non-US (after)	A	1/07/2014	15/09/2014	25/09/2014	31/12/2014	-	-
27	US > non-US	Account opened after becoming non-US	A	1/07/2014	15/09/2014	1/10/2014	31/12/2014	-	-

Balance pictures available						
2014						
Jun	Jul	Aug	Sep	Oct	Nov	Dec
v	v	v	v	v	v	v
v						
v	v					
v	v	v	v	v	v	v
v	v	v	v	v	v	v
v	v	v	v	v	v	v
			v	v	v	v
			v	v	v	v
				v	v	v
					v	v
				v	v	v
				v	v	v

**Legend**

- No balance picture available
- Balance picture available
- Reported balance picture



## FATCA Reporting on Customers

### Reportable accounts and financial incomes

#### Practical cases

#### Principles

- The resulting net amount of credit and debit interest is to be reported
  - If both credit and debit interests are related to the same account
  - If both credit and debit interests have been booked the same date
  - As long as the resulting amount is not negative
- Debit interest is never to be reported
- Financial income is always to be reported in name of the generating account
- The only financial income to be reported on a customer (ratione personae), is the financial income received
  - While being (co-)holder on the account
  - While having a reportable status
- 100% of the financial income is to be reported on each of the holders

#### Legend

- C Credit interest
- D Debit interest
- Div Dividend generated with respect to assets **not** held in the account
- (Div) Dividend generated with respect to the assets held in the account

Cases for 2015 (and following)								
N°	Conditions			Financial Incomes received				
	Account name	Account type	Holder	Interest	31-Mar	30-Jun	30-Sep	31-Dec

Reporting in 2016		
Reported account	reported in name of	Reported income

Marc is FATCA reportable

1	000-00000000-01	Current account	Marc	credit debit	D1	Div	D2	C1 D3
	000-00000000-02	Savings account	Marc	credit	C2	C3	C4	C5
	000-00000000-03	Securities account	Marc	credit		(Div)		

000-00000000-01	Marc	C1 - D3
000-00000000-02	Marc	C2 + C3 + C4 + C5
000-00000000-03	Marc	Div

Marc and Sophie are FATCA reportable

2	000-00000000-01	Current account	Marc Sophie (until August 15th)	credit debit	D1	Div	D2	C1 D3
	000-00000000-02	Savings account	Marc Sophie (until August 15th)	credit	C2	C3	C4	C5
	000-00000000-03	Securities account	Marc Sophie (until August 15th)	credit		(Div)		

000-00000000-01	Marc Sophie	C1 - D3 /
000-00000000-02	Marc Sophie	C2 + C3 + C4 + C5 C2 + C3
000-00000000-03	Marc Sophie	Div Div

Marc and Sophie are FATCA reportable

3	000-00000000-01	Current account	Marc Sophie (as from August 15th)	credit debit	D1	Div	D2	C1 D3
	000-00000000-02	Savings account	Marc Sophie (as from August 15th)	credit	C2	C3	C4	C5
	000-00000000-03	Securities account	Marc Sophie (as from August 15th)	credit		(Div)		

000-00000000-01	Marc Sophie	C1 - D3 C1 - D3
000-00000000-02	Marc Sophie	C2 + C3 + C4 + C5 C4 + C5
000-00000000-03	Marc Sophie	Div /

Marc is FATCA reportable until April 15th, Sophie becomes FATCA reportable on October 15th

4	000-00000000-01	Current account	Marc Sophie	credit debit	D1	Div	D2	C1 D3
	000-00000000-02	Savings account	Marc Sophie	credit	C2	C3	C4	C5
	000-00000000-03	Securities account	Marc Sophie	credit		(Div)		

000-00000000-01	Marc Sophie	/ C1 - D3
000-00000000-02	Marc Sophie	C2 C5
000-00000000-03	Marc Sophie	/ /

Marc is FATCA reportable

5	000-00000000-01	Current account	Marc	credit				C1
	000-00000000-02	Current account	Marc	debit				D3

000-00000000-01	Marc	C1
000-00000000-02	Marc	/

## 23. Appendix 9: Insurance products exempt from being financial accounts (nl)

	Producttype	Wettelijke basis
Niet van toepassing	Alle <i>tijdelijke zuivere overlijdensverzekeringen</i> (m.i.v. schuldsaldoverzekeringen) ongeacht de financieringswijze en de looptijd van het contract.	O.b.v. de uitsluiting opgenomen in de definitie van een 'cash value insurance contract', cfr. hoofdstuk 4.7 van de toelichtingsnota.
	<i>Langetermijnsparverzekeringen</i> (art. 145-1, 2° en 145-4 van de "Code des impôts sur les revenus 1992" / "Wetboek van de inkomstenbelasting 1992").	O.b.v. de uitsluiting via bijlage II van de IGA, cfr. hoofdstuk 4.10.6 van de toelichtingsnota.
	Alle <i>1<sup>e</sup> pijlverzekeringen</i> .	O.b.v. de uitsluiting van de definitie van 'financial account', cfr. hoofdstuk 4.1 van de toelichtingsnota.
	Alle <i>2<sup>e</sup> pijlverzekeringen</i> , individuele en collectieve contracten, ongeacht de vorm waaronder zij worden uitgekeerd, ongeacht het sociaal statuut.	O.b.v. de uitsluiting via bijlage II van de IGA, cfr. hoofdstuk 4.10.6 van de toelichtingsnota. In geval van beheer voor derden geldt bovendien de uitsluiting voor pensioenfondsen, cfr. hoofdstuk 2.5.3.1 van de toelichtingsnota.
	<i>Herverzekeringscontracten</i> (zoals gedefinieerd in de richtlijn 2005/68/EC van 16 november 2005 van het Europees Parlement en de Raad betreffende herverzekering en houdende wijziging van Richtlijnen 73/239/EEG en 92/49/EEG van de Raad en van Richtlijnen 98/78/EG en 2002/83/EG).	O.b.v. het feit dat herverzekeraars niet onder de definitie van een FI vallen, cfr. hoofdstuk 2.2.5 van de toelichtingsnota, en het feit dat een herverzekeringscontract is uitgesloten van de definitie van een 'cash value insurance contract', cfr. hoofdstuk 4.7 van de toelichtingsnota.

	<i>Pensioenspaarverzekeringen</i> (Artikel 145-1, 5° en 145-8 tot 145-16 van de "Code des impôts sur les revenus 1992" / "Wetboek van de inkomstenbelastingen 1992").	O.b.v. de uitsluiting via bijlage II van de IGA, cfr. hoofdstuk 4.10.6 van de toelichtingsnota.
	Alle verzekeringscontracten van de <i>takken 1 t.e.m. 18 en 22</i> zoals gedefinieerd in bijlage 1 van het Koninklijk Besluit van 22 Februari 1991 betreffende de controle op de verzekeringsondernemingen.	O.b.v. de uitsluiting opgenomen in de definitie van een 'cash value insurance contract', cfr. hoofdstuk 4.7 van de toelichtingsnota.
<b>Wel van toepassing</b>	Alle <i>renteverzekerings</i> voor <u>zover</u> zij niet vallen onder een van de categoriën van producten die buiten het toepassingsgebied vallen.	Deze producten vallen onder de definitie van 'annuity contract', cfr. hoofdstuk 4.8 van de toelichtingsnota.
	<i>Levenslange overlijdensverzekeringen</i> .	Deze producten vallen onder de definitie van een 'cash value insurance contract', cfr. hoofdstuk 4.7 van de toelichtingsnota.
	Alle <i>tak 26 kapitalisatieverrichtingen</i> .	Deze producten vallen onder de definitie van 'depository account', cfr. hoofdstuk 4.5 van de toelichtingsnota.
	Alle <i>flexibele producten zonder belastingvoordeel</i> van tak 21 en 23 met een eenmalige premie of vrije premiebetaling.	Deze producten vallen onder de definitie van een 'cash value insurance contract', cfr. hoofdstuk 4.7 van de toelichtingsnota.
	Alle <i>klassieke producten zonder belastingvoordeel</i> van tak 21.	Deze producten vallen onder de definitie van een 'cash value insurance contract', cfr. hoofdstuk 4.7 van de toelichtingsnota.
	Alle <i>andere levensverzekeringen</i> die niet vermeld worden in 1 van de bovenstaande categoriën.	Deze producten vallen onder de definitie van een 'cash value insurance contract', cfr. hoofdstuk 4.7 van de toelichtingsnota.



## 23. Annexe 9: Produits d'assurance n'étant pas des comptes financiers (fr)

	Type de produit	Base légale
<b>Pas d'application</b>	<i>Toutes les assurances-décès temporaires pures</i> (y compris les assurances de solde restant dû) quel que soit le mode de financement et la durée du contrat.	Sous réserve de l'exclusion contenue dans la définition de « contrat d'assurance avec valeur de rachat », cf. chapitre 4.7 de la note explicative.
	<i>Assurances épargne à long terme</i> (art. 145-1, 2° et 145-4 du « Code des impôts sur les revenus 1992 »).	Sous réserve de l'exclusion contenue dans l'annexe II de l'IGA, cf. chapitre 4.10.6 de la note explicative.
	<i>Toutes les assurances 1er pilier.</i>	Sous réserve de l'exclusion contenue dans la définition de « compte financier », cf. chapitre 4.1 de la note explicative.
	<i>Toutes les assurances 2ème pilier</i> , les contrats individuels et collectifs, quelle que soit la forme sous laquelle ils sont payés, indépendamment du statut social.	Sous réserve de l'exclusion contenue dans l'annexe II de l'IGA, cf. chapitre 4.10.6 de la note explicative. En cas de gestion pour des tiers s'applique en plus l'exclusion pour les fonds de pension, cf. chapitre 2.5.3.1 de la note explicative.
	<i>Les contrats de réassurance</i> (tels que définis dans la Directive 2005/68/CE du Parlement européen et du Conseil du 16 novembre 2005 relative à la réassurance et modifiant les directives 73/239/CEE et 92/49/CEE du Conseil ainsi que les directives 98/78/CE et 2002/83/CE).	Sous réserve du fait que les réassureurs ne relèvent pas de la définition d'une institution financière, cf. chapitre 2.2.5 de la note explicative, et du fait qu'un contrat de réassurance est exclu de la définition d'un « contrat d'assurance avec valeur de rachat », cf. chapitre 4.7 de la note explicative.

	Les <i>assurances épargne-pension</i> (articles 145-1, 5° et 145-8 à 145-16 du « <i>Code des impôts sur les revenus 1992</i> »).	Sous réserve de l'exclusion contenue dans l'annexe II de l'IGA, cf. chapitre 4.10.6 de la note explicative.
	Toutes les contrats d'assurance des <i>branches 1 à 18 et 22</i> tels que définis à l'annexe 1 de l'arrêté royal du 22 février 1991 portant règlement général relatif au contrôle des entreprises d'assurances.	Sous réserve de l'exclusion contenue dans la définition de « contrat d'assurance avec valeur de rachat », cf. chapitre 4.7 de la note explicative.
<b>D'application</b>	Toutes les <i>assurances de rentes à condition</i> qu'elles ne tombent pas dans l'une des catégories de produits qui ne relèvent pas du champ d'application.	Ces produits tombent sous la définition de « contrat de rente », cf. chapitre 4.8 de la note explicative.
	<i>Assurances-décès à vie.</i>	Ces produits tombent sous la définition de « contrat d'assurance avec valeur de rachat », cf. chapitre 4.7 de la note explicative.
	Toutes les <i>opérations de capitalisation de la branche 26.</i>	Ces produits entrent dans la définition de « compte de dépôt », cf. chapitre 4.5 de la note explicative.
	Tous les <i>produits flexibles sans avantage fiscal</i> des branches 21 et 23 avec une prime unique ou un paiement de primes libre.	Ces produits tombent sous la définition de « contrat d'assurance avec valeur de rachat », cf. chapitre 4.7 de la note explicative.
	Tous les <i>produits classiques sans avantage fiscal</i> de la branche 21.	Ces produits tombent sous la définition de « contrat d'assurance avec valeur de rachat », cf. chapitre 4.7 de la note explicative.
	Toutes les <i>autres assurances-vie</i> qui ne sont pas mentionnées dans l'une des catégories ci-dessus.	Ces produits tombent sous la définition de « contrat d'assurance avec valeur de rachat », cf. chapitre 4.7 de la note explicative.