

# *Manual for the Form for Entities*

NVB FATCA Form

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### History Log

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1.0	March 2014	NVB	Based on the “similar agreed” forms with the Ministry of Finance version March 2014.

## 1. Introduction

The Foreign Account Tax Compliance Act (“FATCA”) will enter into force on 1 July 2014. Financial institutions are obliged to classify their clients on the basis of this act. Determination of the FATCA status of clients and verification of whether these clients are designated as a U.S. Person are part of this process.

Several countries, including the Netherlands, have concluded a bilateral agreement with the United States concerning the FATCA, a so-called Intergovernmental Agreement (“IGA”). Financial institutions are required to request a self-certification from the client pursuant to this agreement. Clients can indicate both their FATCA status with this self-certification and whether they are a U.S. Person.

### *Purpose of the form*

The NVB FATCA Steering Group has developed a self-certification form that can be used by Dutch financial institutions to request the FATCA status of individuals and entities. The self-certification form was created in consultation with the Ministry of Finance and other financial sector associations. This form can be used as an alternative to the U.S. W-8 and W-9 forms.

The objective of the NVB FATCA Steering Group was to develop a form that is as simple to understand as possible. The U.S. W-8 and W-9 forms are drafted in the English language and contain many technical FATCA terms. By creating a standard form for the Dutch financial sector, we hope to standardize elements of the process for financial institutions and in turn reduce the impact of FATCA on clients. The following rules were applied when the form was drafted:

1. All possibilities offered by the IGA must be included in the form;
2. The Dutch text in the forms must comply exactly with the terms included in the IGA;
3. The questions in the form must be unambiguous and were therefore divided into sub questions where necessary in order to avoid words such as 'or' and 'and';
4. It must be possible for these questions to be answered by someone:
  - a. Of average intelligence
  - b. Without knowledge of U.S. tax law or FATCA.
5. The person who completes the form should have to answer the smallest number of questions possible.

Requirements 1-3 must be complied with 100%, requirements 4-5 as much as possible. Requirements 4-5 were applied in reverse order in some instances for pragmatic reasons.

This manual was developed to ensure that not just the form is uniform, but that the application and processing of the form are also uniform. A uniform manual and form ensure that:

1. All clients of Dutch financial institutions receive the same form and that they are not confronted with a multitude of different forms;
2. The forms are processed in a uniform manner, which means that the client receives the same FATCA status at various financial institutions provided the client completes the forms in the same manner.

The NVB recommends that this manual be followed closely in order to achieve uniformity. Please note the manual cannot be used as a replacement for guidance about relevant underlying legislation.<sup>1</sup> Financial institutions must be acquainted with the statutory framework described in the various acts and are responsible for correct implementation thereof.

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<sup>1</sup> This includes for example the FATCA Final Regulations, the IGA agreement between the Netherlands and the United States, and the Dutch Financial Supervision Act.

### *Structure and framework of the manual*

This manual provides a more detailed explanation of the form for Entities. A separate form and manual are available for natural persons. All forms and manuals can be downloaded from the NVB member site (<https://ledennet.nvb.nl>).

This manual has been drawn up exclusively for NVB members. The manual should not be provided to clients themselves. Clients can find more detailed information about FATCA on the NVB's public website ([www.nvb.nl](http://www.nvb.nl)).

This manual is structured as follows:

- Section 2 deals with the purpose of the form and explains to whom the form should be sent
- Section 3 describes the structure of the form
- Section then explains how a financial institution should process the form and how it should classify its clients on the basis of this form.
- Section 5 explains how communication with clients may take place
- Section contains exceptional provisions

This manual is meant to be applied to a specific form. The relevant financial institution is free to determine the method used to request self-certification of FATCA status from its clients. This can be done, for example, by means of forms sent by post or electronically (using dialogue screens). The financial institution must be able to reproduce the client's declaration when requested to do so by the Dutch tax authorities or the Internal Revenue Service (IRS).

Several sections contain references to specific articles of the IGA or the FATCA Financial Regulations. These are described in the footnotes. Manual version 1.0 is based on the signed IGA dated 18 December 2013.

## 2. Purpose of the Form for Entities

The details of the entity form for Entities is explained in the next chapter.

### Purpose

The purpose of this form is to request a self-certification of FATCA status from a corporate client. In this manual, a corporate client is defined as a legal entity or partnership or any non-natural person.

### Starting principles and target group

This manual was written for financial institutions that will implement the US-Netherlands IGA and has been coordinated with the Ministry of Finance. It will be possible in some cases to follow the steps from the Final Regulations instead of those of the IGA.

According to the IGA, a financial institution has the option, if Dutch law permits, to follow the steps from the Final Regulations instead of the IGA guidelines when classifying clients. The certification must be tested for reasonableness in all cases.

This form contains four basic questions that can immediately exclude clients that are not in scope for FATCA in a simple and effective manner. The order described in the IGA is not the order followed in this document, because it was decided to address the question of Controlling Persons first and then deal with the matter of Active/Passive NFFE. This leads to the category NFFE without U.S. Controlling Persons. This is not an official FATCA status that is included in the W-8 forms. This form focuses exclusively on classification for FATCA purposes. This form is not suitable for determining the Chapter 3 Internal Revenue Code status, as required pursuant to the Qualified Intermediary regime.

The form does not support the FATCA status owner-documented FFI<sup>2</sup>. The reason is that banks have made a policy decision not to facilitate these parties.<sup>3</sup>

### Method

Financial institutions are required in several cases to request a self-certification. In order to reduce the impact on Dutch clients, the Dutch Banking Association (NVB) has searched for a method to classify clients where possible on the basis of reliable publicly-available information instead of requesting a self-certification. The SBI codes of the Chamber of Commerce were found to be suitable for this purpose.<sup>4</sup> Self-certification must be requested in cases where classification on the basis of the SBI codes is not possible. A financial institution is also free to request a self-certification from all of its clients.

It would be logical to use the U.S. W-8 form for foreign Entities and for transactions between financial institutions. Financial institutions can also use a W-8 form to indicate whether they receive payments on their own behalf or as an intermediary. Please note there are multiple types of W-8 forms that are used for different situations, for example the W-8 BEN-E is used for a beneficial owner, but a W-8 IMY is used for an intermediary. Please consult a tax advisor if there are questions about which form W-8 is appropriate for a specific situation.

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<sup>2</sup> Article 1q IGA in conjunction with §1.1471-5(f)(3).

<sup>3</sup> Nevertheless, the possibility that an FFI, which is not a bank, is willing to facilitate an owner-documented FFI cannot be excluded. In that case, the owner-documented FFI could fill in a W-8BEN-E.

<sup>4</sup> The SBI table is published on the NVB member site and is evaluated annually in the case of changes to the SBI codes.

### **New clients<sup>5</sup>**

Under the IGA there are several circumstances in which a corporate client would be required to submit a declaration that indicates whether or not the organization is substantially owned or controlled by a U.S. person.<sup>6</sup> In addition, a financial institution is required at all times to check its client's classification as an organization. The NVB has drawn up a table for this purpose that can be used by financial institutions to quickly determine the FATCA status of the client on the basis of the SBI codes.

Clients can be classified into 3 main categories on the basis of the SBI code:

1. *Active NFFE;*
2. *Financial institution (Foreign Financial Institution(FFI));*
3. *Cannot be derived (unclear designation, requires follow-up and additional information).*

In the case of the first category, the financial institution is not required to send the client a form if it has no further reasons to doubt the activities of the organization. The financial institution can also cross-reference the 'white list' of participating FFIs published by the IRS, which should include all financial institutions who have registered with the IRS. A self-certification form must be sent in the cases of the third category, which is 'Cannot be derived'.

### **Existing clients<sup>7</sup>**

The IGA includes certain circumstances under which a corporate client would be required to submit a declaration that indicates whether or not the organization is substantially owned or controlled by a U.S. person.<sup>8</sup> In addition, a financial institution is required at all times to check your client's classification as an organization. The NVB has drawn up a table for this purpose that can be used by financial institutions to quickly determine the FATCA status of the client on the basis of the SBI codes.

A client can be classified into 3 main categories on the basis of the SBI code:

1. *Active NFFE;*
2. *Financial institution (Foreign Financial Institution(FFI));*
3. *Cannot be derived (unclear designation, requires follow-up and additional information).*

In the case of the first category, the financial institution is not required to send the client a form if it has no further reasons to doubt the activities of the organization. The financial institution can also cross-reference the 'white list' of participating FFIs published by the IRS, which should include all financial institutions who have registered with the IRS. The financial institution can also use internal sources. A form must be sent in the case of the third category, which is 'Cannot be derived'.

### **Optional for existing clients: Decision to apply a capital threshold.**

The IGA provides the option to apply a capital threshold.<sup>9</sup> Holders of accounts that do not exceed this threshold do not have to be identified and reported within the context of FATCA. Financial institutions are free to apply the threshold or opt not to.

### **Changes in circumstances**

The FATCA status must be re-confirmed if changes have occurred that could have an impact on the client's FATCA status. The form must be resubmitted in the event of a change in the Controlling Persons of an NFFE

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<sup>5</sup> See Section IV of Annex I IGA.

<sup>6</sup> This provision has been or will be included in the International Assistance (Levying of Taxes) Act Implementation Decree (UB WIB). This provision can also be found in the IGA Model I agreement Annex I Section IV.

<sup>7</sup> The FATCA legislation and the IGA assume an account-based approach. Dutch banks generally apply an approach at account holder level. This manual assumes that the account holder approach is allowed on the basis of Article 4, paragraph 7, of the IGA combined with the terms in the FATCA Final Regulations 'consolidated obligations' (1471-1(b)(20)) and 'preexisting obligation' (1471-1(b)(98)).

<sup>8</sup> This provision has or will be included in the UB WIB. See also note 4. This provision can also be found in the IGA Model I agreement Annex I Section IV.

<sup>9</sup> IGA Annex I, Section IV.B and Section IV.D.c

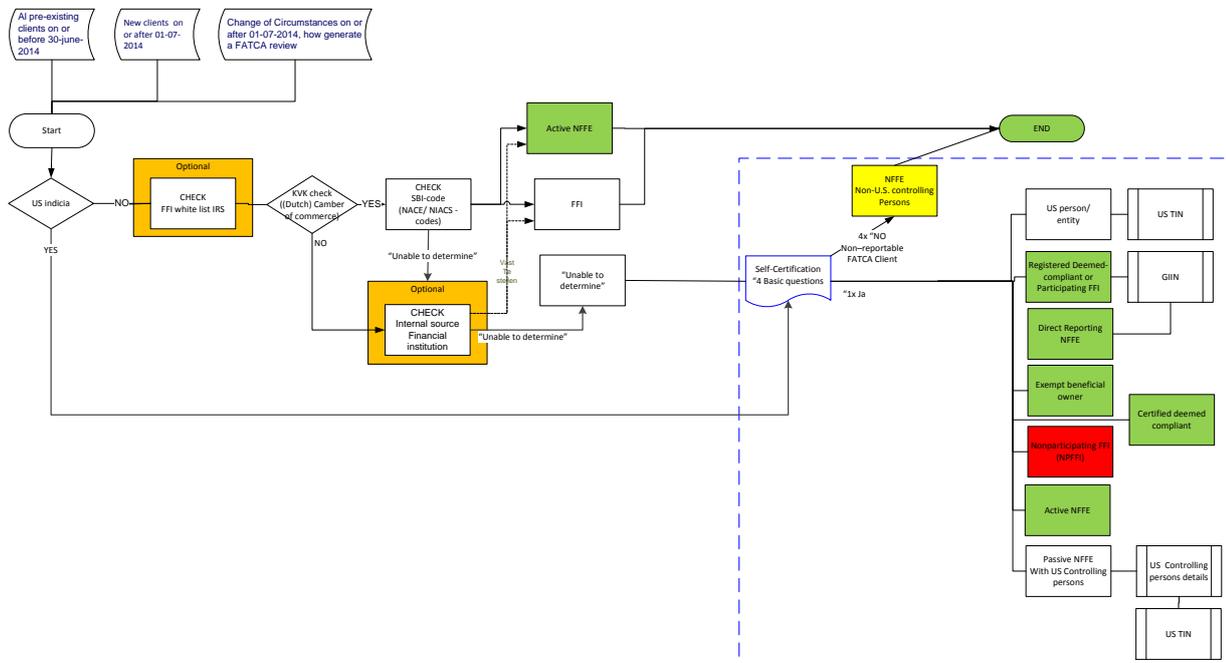
without U.S. Controlling Persons, whereby one of the Controlling Persons becomes a U.S. Person.

**Table: When should a Self-Certification Form be requested?**

Check for U.S. indicator --> Hit?	SBI category	Action	FATCA Status
<b>Yes</b>	<i>N/A</i>	Request self - certification	To be determined using the form.
<b>No U.S. indicators found</b>	<b>Active NFFE</b>	No self-certification required	<b>Active NFFE</b> < <b>account does not need to be reported</b> >
	<b>Financial institution<sup>1</sup></b>	Optional: check GIIN against the IRS 'white' list.	<b>FATCA:</b> Registered Deemed Compliant FFI/Participating FFI  <b>IGA:</b> FATCA Partner financial institution/other Partner Jurisdiction Financial Institution
	<b>'Cannot be derived'</b>	Request self-certification	Provided by client via the self-certification form form

**Flow corporate<sup>10</sup>**

The following chart shows a sample due diligence process under the FATCA IGA.



<sup>10</sup> See the annex for an enlarged version of the flow.

### **3. Explanation of the form**

This section provides a brief explanation of the form. The form was drawn up in accordance with the IGA regulations.

#### **Structure**

The form for Entities consists of eight sections which are explained separately. First and foremost, only the authorized representatives of the organizations are allowed to fill in the form.

#### **Section 1: General information**

*Purpose: Identification of the client*

The corporate client's basic information is requested in this block. This information concerns the name, business address and Chamber of Commerce number of the relevant client. The account number will also be requested.

Only changes to the first section of the corporate form, which is entitled 'General information' will be allowed. Keep in mind in that you should collect and maintain sufficient information about the client to comply with reporting obligations towards the Dutch tax authorities. It is also advisable to ensure that the self-certification form can be distinguished by means of a unique number or code so that the form can be linked to the relevant client.

Note: the country of establishment indicated in question 1 (Country of the Business address) is used in question 4 (financial institution) to determine whether a financial institution is established in an IGA country.

#### **Section 2: Additional information**

*Purpose: Basic questions about FATCA Status.*

In this section, the corporate client is asked whether 1) whether the organization is a U.S. person, 2) whether it is a financial institution and 3) whether the organization has any Controlling Persons who are U.S. persons. The client is then directed to the next section.

If the client answers 'no' to all questions in this section, then the he client is immediately directed to the signing of the certification. The financial institution observes that the client is not a U.S. person, is not a financial institution and does not have any U.S. persons as Controlling Person. This means that the client is out of scope and will not need to be reported under FATCA. However, in these cases it is recommended to automatically assign the client a FATCA status of Passive NFFE, so that financial institution can continue to monitor the client for any changes that might influence the FATCA status, such as a change in shareholders.

#### **Section 3: Employer identification number (EIN)**

*Purpose: Certification on the part of the organization whether it is or is not a U.S. person.*

The client should complete Section 3 if the client has indicated in Section 2 that the organization is established or incorporated in the United States. The client is requested in this section to provide its U.S. EIN (tax identification number) and the client is required to indicate whether the organization is a non-specified U.S. person. The client can fill in its exempt code if this is applies.

#### **Section 4: Information about the financial institution**

*Purpose: Certification by the organization that the organization is a financial institution*

The client has indicated in Section 2 that it meets the definition of the term 'Financial institution (FFI)'. The client is then asked several questions concerning the type of financial institution the organization is.

#### **Section 5: Information about an entity that is not a financial institution**

*Purpose: Certification on the part of the organization whether or not it is an Active NFFE.*

The organization has indicated for question 2 that it has one or more Controlling Persons who are U.S. Persons. The difference between an Active NFFE and Passive NFFE is important under FATCA. FATCA prescribes the reporting of Passive NFFEs with U.S. persons as Controlling Persons. A distinction is made in this section between Active and Passive NFFEs.

### **Section 6: Information about Controlling Persons**

*Purpose: Identification of the Controlling Persons of the Passive NFFE*

The organization has indicated for question 2d that it has one or more Controlling Persons who are U.S. Persons. As indicated in Section 5 because the organization does not satisfy the definition of an Active NFFE according to the FATCA, it is therefore a Passive NFFE. Financial institutions are required under FATCA to identify the Controlling Persons of a Passive NFFE so that these can be reported.

If you, as a financial institution, have already requested more information from the Controlling Persons within the context of other ongoing processes, it will be possible to include this information in the form as well.

### **Section 7: Declaration and signature**

*Purpose: Signature by the client*

An authorized representative of the organization is required to sign the self- certification in Section 7.

### **Glossary**

*Purpose: Explanation of the terms used*

The glossary provides a further explanation of the terms that are used in the self-certification form. It is important that these are always included with the form.

## 4. Processing of the form

It is important that the client is assigned the correct classification after the completed form has been received. The form is structured such that a client follows a specific route via Section 2. This route is chosen to only capture reportable FATCA clients in this section. So questions were created to find the U.S. person, Financial institution or NFFE with US Controlling persons. Also the order of the US controlling person question was changed, because the complexity of the Active vs Passive determination (section 5).

### Important points per section

As indicated above, it is important that clients are requested to provide a declaration of FATCA status in a uniform manner. The issues a financial institution should bear in mind for each section are indicated below. The ultimate classification per question is also indicated. An explanation of these classifications can be found in section 5, "Communication with clients".

### Section 1: General information

This section must be completed in full. Question 1b may be answered by including the client's IBAN or account number as long as it is possible for the financial institution to identify the client through a unique identifier. Clients are allowed not to provide a Chamber of Commerce number as regards question 1c. It is recommended to inquire why the organization does not have a Chamber of Commerce number if it has not been provided. This situation may occur with foreign organizations, but this should not often be a common occurrence for Dutch organizations.

It is common for financial institutions to assign their own activity codes to clients in addition to the Chamber of Commerce number. The financial institution generally has more contact with the client than the Chamber of Commerce as a result of the nature of the business relationship, for example the provision of financing. It is possible that the internal client file is more accurate and complete than the file held by the Chamber of Commerce. This may result in a different FATCA status being assigned on the basis of the internal client file versus what is indicated by the SBI code.

### Section 2: Additional information

This section contains questions that facilitate entity classification for the client. It is important that the client follows the prescribed order of questions so that the form is completed correctly. Therefore changes to the structure or the order of the questions will not be allowed.

Question	Type of answer / Response	Next Step	Follow-up / Result
<b>2a: 'Is the entity organized in the United States?'</b>	Yes	Go to Section 3	n/a
	No	Go to Question 2b	n/a
<b>2b: 'Was the entity incorporated in the United States?'</b>	Yes	Go to Section 3	n/a
	No	Go to Question 2c	n/a
<b>2c: 'Is the entity a financial institution?'</b>	Yes	Go to Section 4	n/a
	No	Go to Question 2d	n/a

<b>2d: 'Does the entity have any Controlling Persons that are U.S. persons?'</b>	Yes	Go to Section 5	n/a
	No	Go to Section 7	The client has indicated that it does not have obligations towards FATCA and has answered 'No' to questions 2a, 2b, 2c and 2d. <b>Classification: NFFE without U.S. Controlling persons &lt;account not reportable for FATCA purposes&gt;</b>

### Section 3: Employer identification number (EIN)

The client has indicated in this section that it meets the definition of a U.S. person. The client is then presented with several more detailed questions about this status.

Question	Type of answer / Response	Next Step	Follow-up / Result
<b>3a: Please provide the EIN (Employer Identification Number) of the entity</b>	Complete EIN provided	Go to Question 3b	Check whether the EIN is complete and correct. <b>&lt; mark as FATCA reportable account &gt;</b>
	Incomplete EIN	Return form	<b>Action on the part of the financial institution:</b> return form to the client and request the information needed for this specific question (EIN).
	No EIN provided	Client must apply for EIN and complete question 3a once EIN has been obtained.	The client is required to request an EIN from the IRS. Once received, the client must then complete the form. <b>Action on the part of the financial institution:</b> the form may not be accepted until the EIN is provided.
<b>3b: 'Is the entity a non-specified U.S. person?'</b>	Yes	Client provides Exempt Code  Go to Section 7	<b>Classification: U.S. Entity exempt from FATCA reporting (Non-Specified U.S. Person)</b> Check whether the Exempt Code has been provided and that claimed status aligns with the Exempt Code.  <b>&lt; account not reportable for FATCA purposes &gt;</b>
	Yes	If the Exempt Code has not been provided	<b>Action on the part of the financial institution:</b> return form to the client and request the information needed for this specific question (Non-specified U.S. person).
	No	Go to Section 7	The client has indicated that it is a Specified U.S. person.  <b>Classification: Specified U.S. Person &lt; mark as FATCA reportable account &gt;</b>

### Section 4: Information about a financial institution

The client has indicated in Section 2 that it is a financial institution. There are, several subsequent classification under FATCA that should be evaluated. The form does not support the FATCA status owner-documented FFI, because Dutch banks have made a policy decision not to engage or facilitate these parties.

Question	Type of answer / Response	Next Step	Follow-up / Result
<b>4a: Does the financial institution have a GIIN (Global Intermediary Identification Number)?</b>	Yes Complete GIIN provided	Go to Section 7	<b>Classification: Participating FFI/ Registered Deemed-compliant FFI/ FATCA Partner FI/Partner Jurisdiction FI</b>  <b>Action on the part of the financial institution:</b> Check whether the GIIN is complete and correct. Cross-reference the IRS FFI white list  <b>&lt; account not reportable for FATCA purposes &gt;</b>
	Yes + Incomplete GIIN	If the GIIN is not completed	<b>Action on the part of the financial institution:</b> return form to the client and request the information needed for this specific question (GIIN).
	No	Go to Question 4b	n/a
<b>4b: 'Is the entity an Exempt Beneficial Owner?</b>	Yes	Go to Section 7	<b>Classification: Exempt Beneficial Owner</b>  <b>Action on the part of the financial institution:</b> Check Exempt Beneficial owner status against Annex II list of the IGA.  <b>&lt; account not reportable for FATCA purposes &gt;</b>
	No	Go to Question 4c	n/a
<b>4c Is the entity a certified deemed-compliant foreign financial institution (FFI)?</b>	Yes	Go to Section 7	<b>Classification: Certified Deemed compliant FFI</b>  <b>Action on the part of the financial institution:</b> reasonableness test  <b>&lt; account not reportable for FATCA purposes &gt;</b>
	No	Go to Question 4d	n/a
<b>4d Is the entity a non-participating FFI?</b>	Yes	Go to Section 7	<b>Classification: Non-participating FFI</b>  <b>&lt; all payments<sup>11</sup> to the non-participating FFI must be reported &gt;</b>
	No	Go to Section 7*	<b>Action on the part of the financial institution:</b>  See question 1d to check if entity was established in an IGA I country.

<sup>11</sup> The UK Guidance limits all payments to an exhaustive list of payments. The Dutch interpretation has not yet been published.

Question	Type of answer / Response	Next Step	Follow-up / Result
			<p>If established in IGA 1 country: <b>Classification: Registered Deemed Compliant FFI</b></p> <p>&lt; <b>account not reportable for FATCA purposes</b> &gt;</p> <p>If not established in an IGA I country: <b>Contact the client. No valid FATCA status can be assigned on the basis of the client's certification.</b></p>
<p><b>*Note:</b> Whether the organization is established in an IGA country can be determined based on the business address provided in question 1d. On the basis of IGA, Annex I, Section V.B.1<sup>12</sup> the financial institution holds information, namely a form containing the declaration of "financial institution established in IGA country" (2c "yes"+ 1d IGA country), which can be used to determine whether it is dealing with a FATCA Partner FI or a Partner Jurisdiction FI.</p> <p>Further, financial institutions in an IGA country are allowed to demonstrate their FATCA compliant status up to and including 31 December 2014 by means of evidence that they are established in an IGA Model I instead of providing a GIIN.<sup>13</sup> This means that such a financial institution can answer 'No' four times in Section 4, and still be a FATCA-compliant FFI. The financial institution has two options for acceptance of this client:</p> <ol style="list-style-type: none"> <li>1. Establish a policy that the client cannot be accepted until it is able to submit a GIIN (clients can apply for a GIIN from 01 January 2015 and can therefore be accepted), or</li> <li>2. Provisionally accept the client as a Registered deemed-compliant FFI; the financial institution will be able to check as of 01 January 2015 whether the client actually holds a GIIN and has therefore provided the correct status. However, the receiving financial institution is <u>not</u> required to designate this client as a so-called Non-participating FFI if this financial institution is established in an IGA country and does not have a GIIN after 01 January 2015, unless the client is designated as such by the authorities of the relevant IGA country.</li> </ol> <p>It is up to the financial institution to determine which of the above options it will apply. It is also possible for third situation in which a financial institution answers 'No' four times, but still is FATCA compliant. This may be the case if the financial institution is involved in a liquidation process. In such cases the financial institution will most likely not apply for a GIIN from the IRS and it will not qualify for the other categories. It is up to the financial institution to determine how it will handle this situation.</p>			

### **Section 5: Information about the non-financial institution**

This section contains questions intended to determine whether the organization is an Active or Passive NFFE. A specific classification is assigned on the basis of the responses.

Question	Type of answer / Response	Next Step	Follow-up / Result
<b>5a: Is the entity listed on a stock exchange?</b>	Yes	Go to Section 7	<p><b>Classification: Active NFFE</b></p> <p>&lt; <b>account not reportable for FATCA purposes</b> &gt;</p>
	No	Go to Question 5b	n/a

<sup>12</sup> The same applies to pre-existing entity accounts: Annex I, Section IV.D.2

<sup>13</sup> Paragraph 1.1471-3(d)(4)(iv) of the Final Regulations

Question	Type of answer / Response	Next Step	Follow-up / Result
<b>5b: Is the entity part of a group?</b>	Yes	Go to Question 5c	n/a
	No	Go to Question 5d	n/a
<b>5c: Are one or more entities of this group listed on a stock exchange?</b>	Yes	Go to Section 7	<b>Classification: Active NFFE</b> <b>&lt; account not reportable for FATCA purposes &gt;</b>
	No	Go to Question 5d	n/a
<b>5d: What percentage of the income of the entity consisted of passive income during the last year?</b>	50% or more	Go to Question 5f	n/a
	Less than 50%	Go to Question 5e	n/a
<b>5e: What percentage of the entity's assets was used to acquire passive income?</b>	50% or more of the assets of the entity	Go to Question 5f	n/a
	Less than 50% of the assets of the entity	Go to Section 7	<b>Classification: Active NFFE</b> <b>&lt; account not reportable for FATCA purposes &gt;</b>
<b>5f: Is the entity a holding company?</b>	Yes	Go to Question 5g	n/a
	No	Go to Question 5n	n/a
<b>5g: Are all subsidiaries of the holding company active operating companies?</b>	Yes	Go to Question 5h	n/a
	No	Go to Question 5n	n/a
<b>5h: Does the holding company perform activities that substantially consist of holding active operating companies?</b>	Yes	Go to Section 7	<b>Classification: Active NFFE</b> <b>&lt; account not reportable for FATCA purposes &gt;</b>
	No	Go to Question 5i	n/a
<b>5i: Does the holding company perform activities that substantially consist of providing financing and services to active operating companies?</b>	Yes	Go to Section 7	<b>Classification: Active NFFE</b> <b>&lt; account not reportable for FATCA purposes &gt;</b>
	No	Go to Question 5j	n/a
<b>5j: Does the holding company perform activities that substantially consist of a combination of the functions mentioned in 5h and 5i?</b>	Yes	Go to Section 7	<b>Classification: Active NFFE</b> <b>&lt; account not reportable for FATCA purposes &gt;</b>
	No	Go to Question 5k	n/a
<b>5k: Does the holding company have any</b>	Yes	Go to Question 5l	n/a



Question	Type of answer / Response	Next Step	Follow-up / Result
<b>5s: Is the entity an exempt beneficial owner?</b>	Yes	Go to Section 7	<b>Classification: Active NFFE according to the IGA definition</b> < account not reportable for FATCA purposes >  <b>Alternative classification: Exempt Beneficial Owner</b> < account not reportable for FATCA purposes >
	No	Go to Question 5t	n/a
<b>5t: Is the entity a U.S. territory NFFE?</b>	Yes	Go to Section 7	<b>Classification: Active NFFE</b> < account not reportable for FATCA purposes >
	No	Go to Question 5u	
<b>5u: Does the entity act as a Qualified Intermediary, a withholding partnership or a withholding trust?</b>	Yes	Go to Section 7	<b>Classification: Active NFFE</b> < account not reportable for FATCA purposes >
	No	Go to Question 5v	n/a
<b>5v: Is the entity a treasury center in a group?</b>	Yes	Go to Question 5w	n/a
	No	Go to Question 5z	n/a
<b>5w: Is the group primarily engaged in a business other than that of a financial institution?</b>	Yes	Go to Question 5x	n/a
	No	Go to Question 5z	n/a
<b>5x: Does the entity provide treasury services to third parties?</b>	Yes	Go to Question 5z	n/a
	No	Go to Question 5y	n/a
<b>5y: Does the entity provide treasury services to financial institutions?</b>	Yes	Go to Section 5z	n/a
	No	Go to Section 7	<b>Classification: Active NFFE</b> < account not reportable for FATCA purposes >
<b>5z: Is the entity currently operating a business?</b>	Yes	Go to Section 6	n/a
	No	Go to Question 5aa	n/a
<b>5aa Has the entity operated a business in the past?</b>	Yes	Go to Section 6	n/a
	No	Go to Question 5ab	n/a
<b>5ab Was the entity established less than 24 months ago?</b>	Yes	Go to Question 5ac	n/a
	no	Go to Section 6	n/a

Question	Type of answer / Response	Next Step	Follow-up / Result
<b>5ac Is the entity planning on performing activities?</b>	Yes	Go to Question 5ad	n/a
	no	Go to Section 6	n/a
<b>5ad Is the entity planning on performing activities similar to those of a financial institution?</b>	Yes	Go to Section 6	n/a
	no	Go to Section 7	<b>Classification: Active NFFE</b> <b>&lt; account not reportable for FATCA purposes &gt;</b>

### **Section 6: Information about Controlling Persons**

The client is directed to this section if it has indicated in Section 2 that it has one or more Controlling Persons who are U.S. persons and the organization does not satisfy the conditions for being an Active NFFE and is therefore a Passive NFFE. The client must then report of all its Controlling Persons who are U.S. persons and whose participating interests in or control of the company exceed 25%.

Question	Type of answer / Response	Next Step	Follow-up / Result
<b>6. Controlling Persons</b>	Provide the personal data of the Controlling Persons.  All fields must be completed including the U.S. TIN for U.S. Persons.	Section 7	The client is a Passive NFFE with U.S. Controlling Persons.  <b>Classification: Passive NFFE with U.S. Controlling Persons</b>  <b>Note: this section cannot be empty combined with question 2d and Section 5. The reason is that the client has indicated that it has Controlling Persons that are U.S. persons and it has been established that the organization is not an Active NFFE.</b>

### **Section 7: Declaration and signature**

This is the final section each client has to carry out. It concerns the signing.

Question	Type of answer/ Response and Next step	Follow-up / Result
<b>7. Declaration and signature</b>	This section must be completed fully and accurately on the basis of existing client data.  The date and place must also be noted for the declaration to be legally valid.  Check whether the person who has signed on behalf of the organization is authorized to do so. This can be done via the Chamber of Commerce or by using your own internal systems.	Processing of the form

## 5. Communication with clients

It is recommended to give a client sufficient opportunity to provide an explanation of its FATCA situation.

### How can the client be approached?

There are various ways in which each financial institution communicates with its clients. This may involve paper forms sent by post, via the internet using screen dialogues, or the client visiting the financial institution to complete the forms in-person. Each financial institution may use whatever form and style of communication that best suits their business.

### Framework for accompanying communication

It will also be necessary to inform the client by means of an accompanying letter when sending forms to the client.

Any form of communication with the client must describe the following points:

1. *Purpose of the form;*
2. *How the financial institution will use the information;*
3. *Why the client is receiving the form;*
4. *Statutory context/framework for receiving this form;*
5. *Time lines by when something is expected back from the client.*

It is important that the client is informed about the process, but that no advice is provided. This means that communication addressed to the client must not include advice on how the client should fill in the form. Additional information such as the *NVB brochure on FATCA* can provide further assistance to the client. It would be best to refer to the client to a tax consultant if the client is unable to determine how to complete the form independently.

### Framework for communication when the client does not respond

The situation may arise that a client repeatedly fails to respond to the financial institution's requests. The financial institution is required to report the client to the Dutch tax authorities in such situations. Please refer to the section 2 of this manual for further instructions.

We recommend that you inform the client of the consequences and how his/her information will be treated in this situation. Any outreach to the client must include the following points:

1. *Notification that the form has not been returned;*
2. *Reporting obligations of the financial institution under FATCA if the client does not respond.*

A financial institution may still choose to have the client complete the form.

### Framework for confirmation

The financial institution may send confirmation to the client following receipt of a form that has been fully and correctly completed. It is up to the financial institution to determine whether it will send confirmation or whether it will include communication about FATCA in a different (ongoing) process. If confirmation is sent, it is recommended to notify the client of the following points:

1. *that the form has been received;*
2. *what happens to the client's information if he/she is reported;*
3. *what the client can do if there are still questions.*

In addition, it is recommended that the confirmation include the answers that were provided by the client in the form. An example of the manner in which a financial institution can include this for each section in its letter of confirmation is provided below.

Classification	Explanation	Proposal for feedback
NFFE Non-U.S. Controlling persons	Concerns an organization that has answered all questions of section 2 negatively, which means that FATCA reporting does not apply to the organization.	You have indicated that: <ul style="list-style-type: none"> <li>- the entity is not organized in the US</li> <li>- the entity was not incorporated in the US</li> <li>- the entity is not a financial institution</li> <li>- the entity does not have Controlling Persons who are U.S. persons.</li> </ul> <p>The entity is not reported to the Dutch tax authorities with respect to FATCA.</p>
Non-Specified U.S. person	Concerns an organization that is established or that was incorporated in the US, but which has an exempt status.	You have indicated that: <ul style="list-style-type: none"> <li>- the entity is organized in the U.S. or</li> <li>- the entity was incorporated in the US</li> <li>- the entity is a non-specified U.S. person with Exempt code: XXX</li> </ul> <p>The entity is not reported to the Dutch tax authorities with respect to FATCA.</p>
Specified U.S. person	Concerns an organization that is established or that was incorporated in the US.	You have indicated that: <ul style="list-style-type: none"> <li>- the entity is organized in the U.S. or</li> <li>- the entity was incorporated in the US</li> </ul> <p>Information about the entity will be reported to the Dutch tax authorities. The Dutch tax authorities will then forward this information to the United States tax authorities.</p>
Exempt Beneficial Owner	Concerns an organization that it is exempted as a Financial Institution according to the IGA.	You have indicated that <ul style="list-style-type: none"> <li>- the entity is a financial institution</li> <li>- the entity is an Exempt Beneficial Owner</li> </ul> <p>The entity is not reported to the Dutch tax authorities with respect to FATCA.</p>
Participating FFI	Concerns an organization that indicates it is a financial institution under FATCA.	You have indicated that: <ul style="list-style-type: none"> <li>- the entity is a financial institution</li> <li>- GIIN: XX-XXX-XXX</li> </ul> <p>The entity is not reported to the Dutch tax authorities with respect to FATCA.</p>
Registered Deemed Compliant FFI	Concerns an organization that indicates it is a financial institution under FATCA.	You have indicated that: <ul style="list-style-type: none"> <li>- the entity is a financial institution</li> <li>- the entity is Registered Deemed Compliant FFI</li> <li>- GIIN: XX-XXX-XXX</li> </ul> <p>The entity is not reported to the Dutch tax authorities with respect to FATCA.</p>
Certified Deemed Compliant FFI	Concerns an organization that indicates that it is a financial institution under FATCA that is not registered as a financial institution, but does certify that it complies with the FATCA requirements of this certified deemed compliant status.	You have indicated that: <ul style="list-style-type: none"> <li>- the entity is a financial institution</li> <li>- the entity does not have a GIIN.</li> </ul> <p>The entity is not reported to the Dutch tax authorities with respect to FATCA.</p>
Non-Participating FFI	Concerns an organization that indicates that it does not comply with FATCA.	You have indicated that: <ul style="list-style-type: none"> <li>- the entity is a financial institution</li> <li>- the entity is not Deemed Compliant or an Exempt Beneficial Owner</li> <li>- the entity does not have a GIIN</li> </ul> <p>Information about the entity will be reported to the Dutch tax authorities. The Dutch tax authorities will then forward this information to the United States tax authorities.</p>

Classification	Explanation	Proposal for feedback
Active NFFE	Concerns an organization that indicates that it is not a financial institution and that conducts an active business.	<p>You have indicated that:</p> <ul style="list-style-type: none"> <li>- the entity is not organized in the US</li> <li>- the entity was not incorporated in the US</li> <li>- the entity is not a financial institution</li> <li>- the entity has Controlling Persons who are U.S. persons.</li> <li>- the entity is an active business that is classified in 1 of the following categories<sup>14</sup>: <ul style="list-style-type: none"> <li>o is listed on a stock exchange</li> <li>o is part of a group listed on a stock exchange</li> <li>o had less than 50% passive income in the previous year and generated passive income with less than 50% of the assets held by it</li> <li>o is in formation</li> <li>o is bankrupt or performing a re-launch</li> <li>o is non-profit</li> <li>o is a holding company. This holding company does not provide financial services to third parties. The holding company owns one or more active operating companies.</li> <li>o is an Exempt Beneficial Owner</li> <li>o is territory NFFE</li> <li>o is a group finance company</li> </ul> </li> </ul> <p>The entity is not reported to the Dutch tax authorities with respect to FATCA.</p>
Passive NFFE with U.S. Controlling persons	Concerns an organization that does not satisfy the definition of an Active NFFE and has U.S. persons as Controlling Persons and should therefore be reported.	<p>You have indicated that:</p> <ul style="list-style-type: none"> <li>- the entity is not organized in the US</li> <li>- the entity was not incorporated in the US</li> <li>- the entity is not a financial institution</li> <li>- the entity has one or more Controlling Persons who are U.S. persons.</li> </ul> <p>Information about the entity and the Controlling Persons who are U.S. persons will be reported to the Dutch tax authorities. The Dutch tax authorities will then forward this information to the United States tax authorities.</p>
Direct Reporting NFFE	Concerns an organization that indicates that it is not a financial institution, but which has concluded an agreement that includes an obligation to report towards the IRS.	<p>You have indicated that:</p> <ul style="list-style-type: none"> <li>- the entity is not organized in the US</li> <li>- the entity was not incorporated in the US</li> <li>- the entity is not a financial institution</li> <li>- the entity has one or more Controlling Persons who are U.S. persons.</li> <li>- the entity is registered with GIIN: XX-XXX-XX</li> </ul> <p>The entity is not reported to the Dutch tax authorities with respect to FATCA.</p>

<sup>14</sup> Depends on the choices of the client. State the applicable client-specific category in the response.

## 6. Annex: corporate flow

