



REPUBLIC OF CYPRUS
MINISTRY OF FINANCE



ΤΜΗΜΑ
ΦΟΡΟΛΟΓΙΑΣ
TAX DEPARTMENT

Cyprus Administrative Service Providers (ASPs)

Are They FIs under FATCA
and CRS

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A. Administrative services

Definitions of custodial institutions and investment entities for reference purposes:

1. Custodial Institution

The term "Custodial Institution" means any Entity that holds, as a substantial portion of its business, financial assets for the account of others. An entity holds financial assets for the account of others as a substantial portion of its business if the entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 percent of the entity's gross income during the shorter of:

- (i) the three-year period that ends on December 31 (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or*
- (ii) the period during which the entity has been in existence.*

2. Investment Entity

The term "Investment Entity" means any Entity that:

- a) Conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:*
 - (i) Trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;*
 - (ii) Individual and collective portfolio management; or*
 - (iii) Otherwise investing, administering, or managing funds or money on behalf of other persons; or*
- b) The gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity. An Entity is*

treated as primarily conducting as a business one or more of the activities described in subparagraph (a) above, or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for purposes of the current subparagraph, 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:

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

(i) Managed Investment Entity

An entity will be an investment entity if it is investing on its own account, is managed by a financial institution AND meets the Financial Assets test as described below.

An entity is managed by a financial institution if that financial institution performs, either directly or through another service provider, any of the activities described in the section above (Activity Based Investment Entity) on behalf of the entity. An entity is not regarded as managed by a financial institution if that financial institution does not have discretionary authority to manage the entity's assets either in whole or in part (no percentage threshold exists for in part).

An entity may be managed by a mix of other entities and individuals. If one of the entities so involved in the management of the entity is a financial institution within the meaning of the agreements then the entity meets the requirements for being managed by a financial institution.

An entity meets the Financial Assets test if its gross income is primarily attributable to investing, reinvesting or trading in Financial Assets. This is a similar test to that in the section above requiring that at least 50% of its income is attributable to investing, reinvesting or trading in Financial Assets in the shorter of:

- The three year period ending on 31 December in the year preceding that in which its status as an investment entity is to be determined; or
- The period in which the entity has been in existence.

This definition of Investment Entity should be interpreted in a manner consistent with similar language set forth in the definition of 'financial institution' in the Financial Action Task Force Recommendations.

The following entities will ordinarily fall within of an Investment Entity:

- collective investment vehicles
- fund managers; and
- fund administrators

In practice, when applying the definition, an entity that is professionally managed by a third party will generally be an Investment Entity, by virtue of the managing entity being an Investment Entity. This is referred to as the "managed by" test

For the purpose of the "managed by" test, a distinction should be made between one entity "managing" another and one entity "administering" another. For instance, the following services provided by an entity to another will not (on their own) constitute the latter entity being "managed by" the former:

- Provision of secretarial and/or company secretarial services
- Provision of registered office, registered agent services
- Provision of the services of an authorized representative
- Preparation of financial statements
- Preparation of tax returns
- Provision of bookkeeping services including accounting, budgeting, and cash-flow forecasts and maintenance of books and records
- Provision of nominee shareholder(s)
- Acting as an insurance manager to an entity

A distinction must also be made in relation to the provision of directors to a company. The provision of individual employees or partners of a company services provider to serve as directors of an entity will not usually (on its own) cause the company to fall within the “managed by” test. Further the provision of a corporate director by a company services provider does not usually (on its own) constitute the company being “managed by” the corporate services provider, as such directors would not usually conduct as a business any of the Definition activities. A typical corporate director in its capacity as director of a company does not usually invest, administer or manage funds or money (as a business) on behalf of other persons in its capacity as corporate director; it is the company itself which is doing this acting by its corporate directors. In this capacity, such directors are to be distinguished from a third party investment manager, broker or advisor, engaged by a company to provide professional investment business services to the company inclusive of investing, administering or managing funds or money on behalf of the company. However, a company with individual or corporate directors provided by a corporate services provider may, should it wish to do so, elect to be treated as being managed by such service provider and so be an investment entity itself. Such an election may also be made under the CRS and US regulations definitions of Investment entity.

B. Provisions of ASP Law

Under Article 4 of the ASP Law, ASPs are licensed to provide the following services in relation to management and administration of trusts and companies. Nominee companies wholly owned by licensed ASPs are automatically authorised under the same license to offer administrative services.

1. Directors

As per the above definitions and clarifications ASPs do not qualify as FFIs being investment entities because the board of directors is not engaged in “*otherwise investing, administering, or managing funds or money on behalf of other persons*”. In addition, the board of directors is not engaged in the provision of custodial services.

The provision of directorship services is an administrative service which is outside the scope of investment or custodial services.

2. Secretary

The secretary is the chief administrative officer of a company. The secretary is appointed by the board of directors and is responsible for the administrative functions of the company (maintaining corporate records, preparing minutes of meetings, organizing meeting agendas etc.). The secretary is not involved in the provision of custodial or investment services.

The provision of secretarial services is an administrative service outside the scope of investment or custodial services.

3. Registered office

The provision of registered office for companies managed by ASPs is an administrative service which is outside the scope of investment services. In relation to custodial services, this is examined under Section 6: "Safekeeping of financial instruments".

4. Bank signatory

a) Bank accounts of companies

A company's bank account (and its balance) is a corporate asset which belongs to the company. If the signatory of a client company's bank account is among the directors or employees of the ASP that also sit at the board of directors of the client company, bank signatory services are not considered as "*managing funds or money on behalf of other persons*" (for the reasons explained under Section 1: "Directors"). Only where signatories of the client company's bank account are persons other than the directors (or the shareholders/UBOs) of the client company, and they have discretionary authority and rights over the use of the funds in the bank account, bank signatory services are considered as "*managing funds or money on behalf of other persons*".

b) Bank accounts of trusts

A trust's bank account is opened in the name of the trustee of the trust. As the trustee is the legal owner of the trust fund (the bank account being among the trust's assets), then bank signatory services for trusts are an investment service due to "*managing funds or money on behalf of other persons*" - as the trust's assets are managed for the benefit of the trust's beneficiaries. .

5. Nominee shareholder

- *"Where a company acts as a nominee shareholder of other companies then such activity can be disregarded for the purposes of entity classification. This treatment is optional and such companies can be treated as Custodial Institutions if preferred."*
- *"The custody business (nominee shareholding) may be conducted through a wholly owned subsidiary of the ASP. However, the invoices for the custody business may be put through the parent entity rather than the subsidiary. There is no requirement to attribute income to the subsidiary and as such the subsidiary will not be treated as a custodial institution."*

6. Safekeeping of financial instruments

In case of client entities incorporated in Cyprus, it is actually a statutory requirement to maintain all corporate documents at the registered office of the company (including financial instruments). Safekeeping of financial instruments in this case is not a custodial service.

In case of non-Cyprus managed entities (i.e. incorporated in offshore jurisdictions), the safekeeping financial instruments at the registered office of the ASP and not of the registered agent of the offshore company is a custodial service.

7. Trustee services

Corporate trustee services qualify as investment services as *"otherwise investing, administering, or managing funds or money on behalf of other persons"*. Similar to nominee shareholding services, such services may be billed directly by the ASP and not by its wholly owned subsidiary (or other nominee) acting as trustees. The non-attribution principle also applies for trustee services.