

## Discretionary Mandate – Potential effect upon entity classifications under tax regulations

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### Disclaimer

Please note that the below is not to be considered as tax advice, direct or indirect. Please contact a qualified tax advisor.

Entering into a Discretionary Mandate contract with a Financial Institution, such as Credit Suisse, may impact your status under the Foreign Account Tax Compliance Act (FATCA) and the Automatic Exchange of Information (AEI). Generally, "Investment Entities" such as domiciliary companies, private investment vehicles, and trust or foundation structures, with any assets managed under a discretionary mandate may be considered professionally managed *Investment Entities*, i.e. a type of "(Foreign\*) Financial Institution" for FATCA and AEI.

Outlined below are two exceptions where a professionally managed *Investment Entity* is not considered a (*Foreign*) *Financial Institution* for FATCA/AEI despite this general rule:

- 1) **Financial Income Exception** – If less than half (< 50%) of the **entity's** income over the last three years is classified as income from financial assets (i.e. income arising from investing, reinvesting, or trading in financial assets such as equities, bonds, partnership interests, derivatives etc.) the entity does not qualify as a professionally managed Investment Entity.

Financial statements, or a written explanation of income, for the entity can be provided which identify how much income is from financial assets and how much from non-financial assets (e.g. 20% Dividends and Interest [income from Financial Assets], 80% Commission, Sales, Rent etc. [income from Non-Financial Assets]).

- 2) **Country Exception** – Subject to fulfillment of certain conditions, local law or official guidance in the country where the entity is located may permit the entity to maintain a "Passive Non-Financial (Foreign) Entity" status despite professional management (e.g. Canada, Netherlands, Luxembourg, Malta). Furthermore, if an entity is tax resident in a non-participating jurisdiction, the status as *Passive Non-Financial Entity* is correct for AEI. Please consult your local tax advisor for more information.

If an entity does not meet either of the above exceptions, then it may be considered an (*Foreign*) *Financial Institution* for FATCA/AEI purposes. In general, a (*Foreign*) *Financial Institution* status requires an entity to register with the Internal Revenue Service (FATCA) / the local tax authorities (AEI) and to perform certain FATCA/AEI requirements, or to obtain a FATCA sponsor who in turn takes on certain FATCA obligations on behalf of the entity. Alternatively, we outline one type of (*Foreign*) *Financial Institution* for FATCA – Owner Documented Foreign Financial Institution (ODFFI) – where Credit Suisse agrees to report the account information in relation to the entity's Credit Suisse account(s) directly. This possibility does not exist under AEI, where reporting and other obligations always remain with the financial institution holding the account(s) itself.

### Owner Documented Foreign Financial Institution

The entity must:

- Be an *Investment Entity*,
- Not act as an Intermediary,
- Not be a Depository, Custodial or Specified Insurance Company,
- Not be owned by, or part of an group with, a Depository, Custodial or Specified Insurance Company,
- Not hold Financial Accounts for Non-Participating Foreign Financial Institutions

For the relationship with Credit Suisse, you would need to provide:

- A W-8BEN-E or Credit Suisse Legal Entity Self Certification Form with ODFFI status,
- A Credit Suisse Owner Reporting Statement (ORS),
- Documentation (FATCA Self-Certification Form for Individuals, or W-8BEN, or W9) for each owner on the ORS,
- If any owners are US Persons; a Waiver of banking secrecy from the entity, and each owner on the ORS

\* Generally, a "foreign" entity is referring to a non-US entity (FATCA)

If you were to qualify as an ODFFI, Credit Suisse would undertake reporting to the US authorities of any US owners on the ORS, as we would do if the entity were a *Passive Non-Financial Foreign Entity* with US controlling persons. All other aspects of FATCA affecting your accounts with us would remain the same. Please note that Credit Suisse is only responsible for reporting accounts of an ODFFI that you hold at Credit Suisse.

For a full list of available Financial Institution statuses and further information, please consult the **Credit Suisse Legal Entity Classification Guides** for [FATCA](#) and [AEI](#), or contact a tax advisor if more detailed information is needed.