

FATCA - CRS guidelines

As a summary, FATCA CRS legislation requires UniCredit Bank to identify account holders (both individuals and companies) who are not [tax residents](#) in Romania. Going further, the Bank has the obligation to report to ANAF all the [relevant information](#) about the financial accounts.

Thus, UniCredit Bank analyzes the financial accounts that the Bank manages and applies fiscal due diligence measures in order to identify [reportable accounts](#). For the accounts identified as reportable, the Bank reports the relevant information to the Romanian tax authorities. As a next step, the Romanian tax authorities will report this information to the foreign tax authorities whose residents appear in the report.

What is FATCA and CRS?

FATCA („FOREIGN ACCOUNT TAX COMPLIANCE ACT”) and **CRS** („COMMON REPORTING STANDARD”) are international agreements through which governments exchange fiscal information. It is also important to mention that FATCA is the agreement for information related to US [tax residents](#) or US citizens, and CRS is the agreement for information related to persons/entities [resident](#) in countries that have signed the CRS Agreement ([Jurisdiction list](#)). The purpose of these international agreements is to prevent tax evasion through transparency.

Considering that UniCredit Bank complies with the legislation in force, it has implemented a series of forms through which its clients provide information on fiscal residency and Tax Identification Number.

Legal basis

The legal basis for reporting information on the accounts of non-resident taxpayers and the application of fiscal due diligence measures is:

- Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, transposed in Law no. 207/2015 regarding the Fiscal Procedure Code, with subsequent amendments and modifications;
- Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information, ratified by Law no. 70/2016 (CRS)
- The agreement between the United States of America and Romania to Improve International Tax Compliance and to Implement FATCA, ratified by Law no. 233/2015;
- Emergency Government Ordinance no. 102/2022 for the amendment and completion of Law 207/2015 on the Fiscal Procedure Code;
- Order of the President of ANAF no. 503/2016 in order to publish the Agreement between the competent authorities of Romania and the United States of America regarding the improvement of fiscal compliance and the implementation of FATCA;
- Order of the President of ANAF no. 1711/2022 for the approval of the model and content of the forms used by the reporting financial institutions in order to fulfill the obligations provided for in art. 62 para. (1) and art. 291 para. (4) from Law no. 207/2015 regarding the Fiscal Procedure Code.

- ANAF Guide regarding the obligation of reporting financial institutions to provide information for the financial accounts of non-resident taxpayers (DAC2/CRS/FATCA) [GHID_DAC2_CRS_FATCA.pdf \(anaf.ro\)](#)
- Other relevant DAC2 CRS FATCA material published on the ANAF website [Informatii utile ANAF](#)

What is fiscal residency?

Fiscal residence is a concept for determining the competence of a country to tax the incomes made by its tax residents. As a general rule, **for individuals**, fiscal residence is linked to the country of domicile / citizenship / nationality or the center of vital interests. For **legal entities**, tax residency is linked to the country of registration/organization or the place of effective management.

In particular, if an individual has a residence permit (temporary/permanent) in a country, it does not automatically mean that he is a tax resident in that country, since the tax residence is not given by the country of the place of work or the country where salary tax is paid.

Diplomats, government officials and military personnel are generally tax residents in the jurisdiction of their country of origin.

The branch of an entity has its fiscal residence in the country of fiscal residence of the entity to which it belongs.

Each country/jurisdiction has its own rules for defining tax residence. For more information on tax residence, please consult your tax advisor or the [OECD AEOI portal](#).

Specifically, in the case of Romania, the determination of fiscal residency for natural persons is carried out by ANAF based on the criteria for determining fiscal residency in Romania, presented in detail in the material on the ANAF website [Guidelines for establishing the fiscal residency](#).

What is the tax identification number?

A tax identification number (**NIF/TIN**) is a unique combination of letters and/or numbers, assigned by a jurisdiction to a person and used to identify the person for the purpose of tax regulations.

Going further, for NIF/TIN to be correct, it must have values that allow taxpayers to be identified by the tax authorities. For example, in the case of Romania, the NIF/TIN is the same as the personal numerical code, but this is not a rule because there are countries that issue a tax identification number different from the personal numerical code.

In order to correctly and easily identify the NIF/TIN, the Organization for Economic Cooperation and Development (OECD) provides taxpayers with a guide for each individual country [NIF/TIN Guidelines](#).

Obligations of UniCredit Bank clients

In order to fulfill the above requirements, the Bank requests the declaration of [residence for tax purposes](#) and the [fiscal identification number](#) both for the account holders and for the persons [exercising control](#) over the passive entities ([passive ENF](#)).

As previously mentioned, the method of providing this information is by filling in some forms, as follows:

- Account opening forms for individuals
- Account opening forms for entities
- Tax residence certification forms for individuals, entities
- Forms for establishing the residence of the final beneficiary

If the client does not have documents and does not know his tax residency status, more information can be found on the ANAF website [FATCA CRS Guidelines](#).

Based on internal policies, UniCredit Bank cannot provide tax consultancy. Thus, in the event that exists any uncertainty regarding the establishment of fiscal residence or regarding the completion of the data in the Bank's FATCA CRS forms, please contact a tax consultant.

According to the definitions in section - *Glossary of terms*", a [reportable account](#) is a financial account managed by UniCredit Bank and owned by one or more persons who are the subject of reporting or by a [passive NFE](#) with one or more persons who are the subject of reporting and [exercise control](#).

As a rule, a [NFE Passive Entity](#) is a legal entity that obtains more than 50% [passive income](#) and is not a [financial institution](#). In general, a [passive income](#) is considered the income obtained from dividends, interest, rent, insurance, real estate, etc. In order to facilitate the identification of the category to which the clients belong, ANAF has published on its website ([ANAF Guidelines](#)) the list of CAEN codes that identify a potential passive entity or a financial institution.

If you declare in the account opening form to the section: "Type of legal entity as defined by the CRS/Type of Client" the fact that you are a [Passive Entity](#) (*option (h) of the form*) then, according to the law, it is required also to provide information about the [controlling person](#) (*the person who controls the company*). The information about the controlling person is provided through the "Declaration regarding the status of the person exercising control - Legal entities". At the same time, if as the individual account holder you are a person from the United States within the meaning of Law 233/2015, then he must complete the "Declaration regarding the FATCA Status - Legal Entities

Information subject to reporting

According to the legal provisions of Fiscal Procedure Code, UniCredit Bank must report to the competent authority in Romania the following information regarding each Account that is the subject of reporting:

1. the name, address, Member State(s) of residence, Tax Identification Number(s) and date and place of birth (in the case of individuals) of each Reporting Person who is an account holder and, in the case of an Entity that is an account holder and after applying due diligence procedures, is identified as having one or more Controlling Persons that are Reportable Persons, the name, address, Member State(s) Member States) of residence and tax identification number(s) of the Entity, as well as the name, address, Member State(s) of residence and tax identification number(s) and date and place of birth of each Person which is the subject of the report;

2. **account number** (or its functional equivalent in the absence of an account number);
3. **the current account balance** or value at the end of the relevant calendar year or at the end of another appropriate reporting period or, if the account was closed during the year or during the period under analysis, the account closure;
4. in the case of any [Custody Account](#):
 - a) **the total gross amount of interest, the total gross amount of dividends and the total gross amount of other income generated in relation to the assets held in the account**, in each case the amounts paid or credited to the account or in relation to the account during the calendar year or another appropriate reporting period;
 - b) **the total gross amounts from the sale or redemption of the Financial Assets** paid or credited to the account during the calendar year or other reporting period in relation to which the Reporting Financial Institution acted as custodian, broker, representative or any other kind of trustee of the Holder account;
5. in the case of any [Deposit Account](#), **the total gross amount of interest** paid or credited to the account during the calendar year or other appropriate reporting period;
6. in the case of any other account not described in point 4 or 5, **the total gross amount paid or credited** to the Account Holder in relation to that account during the calendar year or other appropriate reporting period in relation to which the Reporting Financial Institution is owed, including the aggregate amount of any refunds paid to the Account Holder during the calendar year or other appropriate reporting period.

Glossary of terms

The definitions related to these reports can be found in the Fiscal Procedure Code - Annex 1. Among them, below are the definitions for some of the most frequently encountered elements:

- The term **“Financial Institution”** means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.
- The term **“Reporting Financial Institution”** means any Romanian Financial Institution that is not a NonReporting Financial Institution. The term “Romanian Financial Institution” means: (i) any Financial Institution that is resident in Romania, but excludes any branch of that Financial Institution that is located outside Romania; and (ii) any branch of a Financial Institution that is not resident in Romania, if that branch is located in Romania.
- 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 **“Financial Account”** means an account maintained by a Financial Institution, and includes a Depository Account, a Custodial Account and:
 - a) in the case of an Investment Entity, any equity or debt interest in the Financial Institution. Notwithstanding the foregoing, the term “Financial Account” does not include any equity or debt interest in an Entity that is an Investment Entity solely because it (i) renders investment advice to, and acts on behalf of; or (ii) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than such Entity;
 - b) in the case of a Financial Institution not described in subparagraph C(1)(a), any equity or debt interest in the Financial Institution, if the class of interests was established with the purpose of avoiding reporting in accordance with Section I; and
 - c) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a non-investment-linked, non-transferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit provided under an account that is an Excluded Account.

The term “Financial Account” does not include any account that is an Excluded Account.

- The term **“Depository Account”** includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. A Depository Account also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon.
- The term **“Custodial Account”** means an account (other than an Insurance Contract or Annuity Contract) which holds one or more Financial Assets for the benefit of another person.
- The term **“Reportable Account”** means a Financial Account that is maintained by Romanian Reporting Financial Institution and is held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Reportable Person, as long as it has been identified as such under precautionary procedures.
- The term **“Reportable Person”** means a Romanian Person other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a Related Entity of a corporation described in clause (i); (iii) a Governmental Entity; (iv) an International Organization; (v) a Central Bank; or (vi) a Financial Institution.
- The term **“U.S. Person”** means a U.S. citizen or resident individual, a partnership or corporation organized in the United States or under the laws of the United States or any State thereof, a trust if (i) a court within the United States would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust, and (ii) one or more U.S. persons have the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the United States. This subparagraph 1(ff) shall be interpreted in accordance with the U.S. Internal Revenue Code.
- The term **“Member State Person”** from Romania’s perspective means an individual or Entity that is resident in any other Member State under the tax laws of that other Member State, or an estate of a decedent that was a resident of any other Member State. For this purpose, an Entity such as a partnership, limited liability partnership or similar legal arrangement, which has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated.
- The term **“Participating Jurisdiction”** from Romania’s perspective means:
 - a) any other Member State;
 - b) any other jurisdiction (i) with which Romania concerned has an agreement in place pursuant to which that jurisdiction will provide the information specified in Section I; and (ii) which is identified in a list published by Romania and notified to the European Commission;

- c) any other jurisdiction (i) with which the Union has an agreement in place pursuant to which that jurisdiction will provide the information specified in Section I; and (ii) which is identified in a list published by the European Commission.
- The term **“Controlling Persons”** means the individual persons who exercise control over an Entity. In the case of a trust, that term means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions.
 - The term **“Controlling Persons”** is equivalent to the term "real beneficiary", as defined in art. 4 of Law no. 129/2019 for the prevention and combating of money laundering and the financing of terrorism, as well as for the amendment and completion of some normative acts, with subsequent amendments and additions.
 - The term **“NFE”** means any Entity that is not a Financial Institution.
 - The term **“Passive NFE”** means any: (i) NFE that is not an Active NFE; or (ii) an [Investment Entity](#) that is not a Participating Jurisdiction [Financial Institution](#).
 - The term **“Active NFE”** means any NFE that meets any of the following criteria:
 - a) less than 50 % of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 % 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;
 - 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 regularly traded on an established securities market;
 - c) the NFE is a Governmental Entity, an International Organization, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
 - d) substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this 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;
 - e) the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organization of the NFE;
 - f) the NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;

- g) the NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; or
 - h) the NFE meets all of the following requirements:
 - i. it is established and operated in Romania or other jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in Romania or other 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 Romania or other 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 Romania or other 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 Romania or other 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 Romania or other jurisdiction of residence or any political subdivision thereof.
- Term “**Passive income**” would generally be considered to include the portion of gross income that consists of:
 - a) dividends;
 - b) interest and other income equivalent to interest;
 - c) rents and royalties, other than rents and royalties derived in the active conduct of a business conducted, at least in part, by employees of the NFE;
 - d) annuities;
 - e) the excess of gains over losses from the sale or exchange of Financial Assets that gives rise to passive income described above;
 - f) the excess of gains over losses from transactions (including futures, forwards, options, and similar transactions) in any Financial Assets;
 - g) the excess of foreign currency gains over foreign currency losses;
 - h) net income from swaps;
 - i) Amounts received under Cash Value Insurance Contracts.

Passive income will not include, in the case of an NFE that regularly acts as a dealer in Financial Assets, any income from any transaction entered into in the ordinary course of such dealer's business as such a dealer.

- The term “**Account Holder**” means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of this Directive, and such other person is treated as holding the account. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.
- The term “**Entity**” means a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation.
- The term “**Investment Entity**” means any Entity:
 - (a) which primarily 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 Financial Assets 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 described in subparagraph (a).