

# US FATCA – FAQ and Glossary of FATCA terms

These FAQs are intended to aid you in your understanding how FATCA affects your relationship with UBS. This is not intended as tax advice. If you are uncertain of your FATCA status (or of the impact of these regulations on you) we recommend you consult a professional tax advisor.

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# FAQ

## 1. What is US FATCA?

FATCA stands for “**Foreign Account Tax Compliance Act**”

**US FATCA** refers to legislation introduced by the US Government in 2010 which came into effect on **1 July 2014** and associated agreements entered into by the US with other countries to implement FATCA.

The objective of FATCA is to provide the US Internal Revenue Service (“IRS”) with information on **US Persons** holding financial accounts outside the US.

It requires **Foreign Financial Institutions (“FFIs”)** outside the US to register with the IRS, obtain and verify appropriate client information and report information concerning US account holders either to the IRS or to local tax authorities who will exchange this information with the IRS.

The US imposes a 30% withholding tax on US source payments made to FFIs who do not comply with FATCA and to certain account holders who fail to provide FATCA information to FFIs.

## 2. Who is affected by FATCA obligations?

- FFIs (which include **non US banks custodial institutions** and **specified insurance companies** as well as many **investment entities** such as funds, trusts and private investment companies) who now have reporting obligations,
- certain **non-financial foreign entities (“Passive NFFEs”)** who may now have to disclose if they have US owners or controlling persons, and
- **US withholding** agents and FFIs with primary withholding responsibility who must apply FATCA withholding to US source payments.

## 3. What is a GIIN?

Each FFI with reporting obligations must register with the IRS and obtain a **Global Intermediary Identifier Number (“GIIN”)** which will be published by the IRS on their website.

Those FFIs which do not have a GIIN must be treated as non-participating FFIs (“NPFFI”) and generally will be subject to withholding on US source payments they receive on their own behalf or on behalf of their clients from 1 July 2014 onwards, unless they are exempt from FATCA obligations under applicable FATCA regulations.

## 4. How does US FATCA impact UBS?

FATCA has a significant impact on onboarding, reporting and tax withholding procedures for **all UBS entities and their business divisions**.

**UBS AG has registered all of its branches and subsidiaries** within the scope of FATCA with the IRS and their GIINs are available on request (and published on the IRS website).

FATCA requires UBS to document clients for FATCA purposes and, if required, to report client details and related financial account information to the relevant tax authorities. UBS intends to comply fully with its obligations under FATCA and is implementing these obligations in accordance with local regulations and guidance issued in the countries in which it operates.

## 5. How does US FATCA affect UBS clients?

Since the introduction of US FATCA our clients are required to provide UBS with additional documentation to establish their FATCA status.



**New account** holders must supply identifying data in order to establish if they are US Persons.

**New entity account holder** must supply additional identifying data in order to establish their status for FATCA reporting and withholding purposes. New entity account holders who are Passive NFFEs must supply details of any US Controlling Persons.

UBS has updated its **on boarding procedures** to request FATCA relevant information (which will differ depending on the UBS entity's jurisdiction and client type and products or services offered). This may include requests for US tax forms, written statements or self-certification forms.

UBS is also required to review and remediate all **existing accounts** in a phased approach to establish if account holders and Controlling Persons of Passive NFFEs are US Persons. UBS is required to report details of US Persons and related financial accounts either to the IRS or via local tax authorities according to local regulations within the timelines prescribed.

## 6. When will UBS clients be subject to reporting under FATCA?

UBS will provide information on reportable accounts (including those held by US individuals, certain US entities and non-US entities which are Passive NFFEs with US Controlling Persons).

FATCA reporting requirements come into effect on a phased basis with the first level of reporting taking place in 2015 (in respect of 2014 calendar year). Information being reported in relation to 2014 includes name, address and TIN of US account holders or reportable persons, the account number and the balance or value of the account at the end of 2014.

For 2015 and onwards income paid or credited to reportable accounts in each calendar year will be included along with year end balances.

For 2016 and onwards gross proceeds from the sale or redemption of property paid or credited to the account in that year will be added.

For 2015 and onwards UBS must also report on payments made to accounts held by **NPFFIs**.

UBS will report accounts in the UBS location where the account is maintained. UBS clients may also be subject to reporting if they invest directly in non-US investment entities which have separate reporting obligations under FATCA (e.g. interests in certain limited partnerships and trusts which are not held by UBS as custodian).

Certain investments are excluded from reporting (such as pension accounts and some tax exempt savings accounts).

## 7. When are UBS clients subject to withholding under FATCA?

Withholding under FATCA (referred to as Chapter 4 withholding) generally applies to clients who are **NPFFIs** (i.e. financial institutions that are not compliant with FATCA). Withholding can also apply in countries where banking secrecy laws prevent individual reporting of client information without their consent. In this case "**recalcitrant clients**" (generally individuals identified as US Persons who fail to provide information on their tax status or **Passive NFFEs** who fail to provide information on their US controlling persons) will also be subject to withholding.

Payments which are currently subject to **US back-up** or **NRA withholding** will continue to be subject to withholding under existing rules unless Chapter 4 withholding has been applied already.

From **1 July 2014** withholdable payments under Chapter 4 include payments of **US source income** such as interest and dividends from US bonds and shares or from a US obligor in respect of loan obligations. However payments relating to collateral arrangements are generally excluded from withholding until 2017.

The IRS has reserved the possibility of introducing withholding on "**foreign passthru payments**" after consultation with other jurisdictions but not before 2019.



**Transitional rules** delay the introduction of withholding on certain pre-existing obligations outstanding as at 30 June 2014 (“**Grandfathered Obligations**”).

#### **8. What onboarding documentation (tax forms) needs to be completed for FATCA?**

Account opening procedures vary by UBS contracting entity, client type and, products and services offered so it is best to consult your UBS contact person to determine which tax forms or written statements are required.

#### **9. How must UBS determine whether FFI counterparties and clients are FATCA compliant?**

Each counterparty or client is responsible for determining its own FATCA status. UBS cannot advise counterparties or clients on their FATCA obligations.

Where the counterparty or client has registered and obtained a GIIN UBS may rely on this by verifying the GIIN on the list published by the IRS.

Certain FFIs (who are classified as “certified deemed compliant FFI” or as a “non-reporting IGA FFI”) are not required to register to obtain a GIIN. In such cases UBS will require a certification from that entity to confirm its FATCA status.

#### **10. How must UBS determine which existing accounts are reportable?**

US and local FATCA regulations specify procedures for the review and remediate individual accounts existing as at 30<sup>th</sup> June 2014 and entity accounts existing as at 31<sup>st</sup> December 2014. In the UK and certain other jurisdictions entity accounts existing as at 1 July 2014 are subject to remediation as new FATCA onboarding requirements applied in those countries from that date.

UBS is required to review information it holds on each account holder to determine if there are any US indicia in relation to that account. If such indicia are found they may be cured by the account holder supplying acceptable documentary evidence which establishes that they are not a US Person. Where a request for additional information is not complied with there are presumption rules which will determine if that account is reportable.

#### **11. Will UBS automatically report information on all US clients regardless of whether they consent to be disclosed to the IRS?**

In countries which have entered into intergovernmental agreements (“IGA”) to exchange information automatically with the US (“Model I IGA”) UBS will be required to report information on US Persons to the local tax authority. Such reporting to the local tax authority is mandatory and does not require client consent.

Other countries where local law prohibits the cross border supply of information without the client’s consent such as Switzerland, Hong Kong, Japan and Austria have entered into a Model II IGA with the US. In these countries UBS must report information on US Persons directly to the IRS. However reporting in relation to non-consenting clients will be done on a pooled basis (without disclosure of the clients’ names). The US may request information on specific clients via automatic exchange of information provisions with the relevant tax agencies in that country. Clients who do not cooperate with these exchange of information provisions will be classified as recalcitrant account holders and will become subject to withholding on US source payments they receive. UBS may also close the accounts of recalcitrant account holders.

# Glossary

## **Account holder**

Means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. However, 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 adviser, or intermediary, is not treated as holding the account for the purposes of FATCA. In this case the account holder will be the person on whose behalf the Financial Account is held.

## **Certified deemed-compliant FFI**

Means an FFI that has certified as to its status as a certified deemed-compliant FFI by providing a withholding agent with the documentation required (can include a non-reporting IGA FFI). A certified deemed-compliant FFI is not required to register with the IRS.

## **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:

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

## **Depository Institution**

Means any Entity that accepts deposits in the ordinary course of a banking or similar business.

## **Entity**

Means a legal person or a legal arrangement such as a trust or partnership.

## **Entity account**

Means an account held by an Entity. "New entity accounts" are those accounts which are opened on or after 1 January 2015. Generally "Pre-existing entity accounts" are those accounts which are maintained as of 31 December 2014.

## **FATCA**

Means the Foreign Account Tax Compliance Act, enacted by provisions in Chapter 4 of the 2010 Hiring Incentives to Restore Employment (HIRE) Act that requires US individuals to report their financial accounts held outside of the United States and foreign financial institutions to report to the IRS about their US Person accounts. FATCA was designed primarily to combat US offshore tax evasion.

## **Financial account**

Means an account maintained by a Financial Institution and includes a Depository Account, a Custodial Account, a Cash Value Insurance Contract, an annuity contract, equity or debt interests in an Investment Entity and in certain specified cases equity or debt interests issued by other financial institutions.



A Custodial account is an account for the benefit of another person that holds any financial instrument or contract held for investment, including a share in a company, a bond or a debenture. A Cash Value Insurance Contract is an insurance contract with a cash value greater than 50,000 US dollars.

### Foreign Financial Institution (FFI)

Generally means any non-US financial institution that is a:

- **depository institution** - entity that accepts deposits or other similar fund investments in the ordinary course of a banking or similar business;
- **custodial institution** - entity that holds assets for third parties as a substantial portion of its business;
- **investment entity** - entity that conducts investment or portfolio management business for third parties or an investment entity that is professionally managed by such a person or investment fund established to invest in financial assets;
- **specified insurance company** - insurance company or holding company that issues or is obligated to make payments with respect to cash value insurance or annuity contracts;

FATCA applies to a wide range of non-US entities such as banks, broker/dealers, insurance companies, hedge funds, securitization vehicles, and private equity funds. For entities in Model 1 or Model 2 jurisdictions the definition of FFI may be modified under the terms of the IGA.

### Forms W-8 Series

Means the forms used by foreign persons (including corporations) to certify their non-US status, usually to financial institutions. The forms establish that an entity is a non-resident alien or foreign corporation, to avoid or reduce tax withholding from US source income.

<b>Form W-8BEN (Individuals)</b>	Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding. Used by a non-US Person to self-certify beneficial ownership of US source income and, if applicable, claim the benefits under an income tax treaty. The form is provided to a payor of income, such as a QI.
<b>Form W-8BEN-E (Entities)</b>	Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding. Allows the entity completing the form to certify as to its status as a beneficial owner or payee of a payment for purposes of chapters 3 (withholding of tax on non-resident aliens and foreign corporations) and 61 (returns and records) of the Internal Revenue Code, as well as to its status under FATCA as either a payee or as an account holder of a foreign financial institution.
<b>Form W-8ECI</b>	Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States
<b>Form W-8EXP</b>	Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding
<b>Form W-8IMY</b>	Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain US Branches for United States Tax Withholding

### Form W-9

Means the IRS form Request for Taxpayer Identification Number and Certification, used by a US Person (individual or entity) to certify their taxpayer identification number (TIN) to a payor of income, such as a QI or FATCA FFI. Also used to certify that the payee is not subject to backup withholding or used to claim exemption from backup withholding.



### **Global Intermediary Identification Number (GIIN)**

Means the number issued by the IRS to a participating FFI or registered deemed-compliant FFI on registration and used by such FFIs for reporting purposes under FATCA and to identify the FFI's status to withholding agents.

### **Gross proceeds**

Means the total gross proceeds from the sale or redemption of property paid or credited to a Financial Account during the calendar year with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder.

### **Individual account**

Means a Financial Account held by one or more individuals.

### **Intergovernmental Agreement (IGA)**

Means an agreement between the United States and governments under which the provisions of FATCA are modified to eliminate potential conflict of law issues and to reduce administrative burdens. There are two forms of intergovernmental agreement (see definition of Model 1 IGA and Model 2 IGA, below) and:

- all contemplate that a partner government will require all foreign financial institutions (FFIs) located in its jurisdiction (that are not otherwise exempt) to identify US accounts and report information about US accounts;
- both forms can be implemented without having in effect a double tax convention or tax information exchange agreement with the United States;
- facilitate the effective and efficient implementation of FATCA; and
- remove domestic legal impediments to compliance.

### **Model 1 IGA**

Means an IGA in which the partner jurisdiction agrees to enact FATCA legislation into local law and therefore FFIs located in such jurisdiction are not required to sign FFI agreements with the IRS.

- FFIs report specified information about their US accounts to the partner jurisdiction;
- the partner jurisdiction, in turn, reports such information to the IRS on an automatic basis; and
- the exchange of information under a Model 1 IGA may be on a reciprocal basis.

### **Model 2 IGA**

Means an IGA in which the partner jurisdiction agrees to direct and enable all relevant FFIs located in the jurisdiction to report specified information about their US accounts directly to the IRS.

- FFIs report specified information about their US accounts to the IRS; and
- FFIs also report to the IRS aggregate information with respect to holders of pre-existing accounts who do not consent to have their account information reported, on the basis of which the IRS may make a "group request" to the partner jurisdiction for more specific information.

### **Non-Financial Foreign Entity (NFFE)**

Means a non-US entity that is not a financial institution.

**Non-participating FFI (NPFFI)**

Means an FFI (other than a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner (e.g. foreign government, international organization, and certain pension plans) which has not complied with its FATCA obligations.

**Participating FFI (PFFI)**

Means an FFI which has entered into or in the case of a Model 2 IGA has agreed to comply with an FFI agreement.

**Passive non-financial foreign entity (Passive NFFE)**

Means an NFFE which is not an Active NFFE or Excepted NFFE.

**Recalcitrant account holder**

Means:

- any person who refuses or fails to supply identifying information relevant to their FATCA status (for example, failing to comply with reasonable requests for information necessary to determine if the account is a US account or not providing details of US owners of US owned foreign entities); or
- any identified US Person that does not waive any local legal restrictions (i.e. foreign law) on reporting relevant information required under FATCA to the IRS.

**Registered deemed-compliant FFI (RDCFFI)**

Means either:

- a. a reporting Model 1 FFI; or
- b. qualifies as a registered deemed-compliant FFI under a Model 2 IGA; or
- c. for an FFI which is in a non-IGA country it falls within one of the categories of registered deemed-compliant FFIs:
  - Local FFIs;
  - Non-reporting members of participating FFI groups;
  - Qualified collected investment vehicles;
  - Restricted funds;
  - Qualified credit card issuers; and
  - Sponsored investment entities and controlled foreign corporations.

**US Controlling Persons**

Means

1. in relation to a corporation, any US individual that owns directly or indirectly stock in that corporation in excess of a threshold (usually established by local KYC rules);
2. in relation to partnership, any US individual that owns directly or indirectly profits, interest or capital interest of the partnership in excess of a threshold (usually established by local KYC rules);
3. in the case of a trust, any US individual being the settlor, trustee, protector, beneficiary or member of a class of beneficiaries, and any other natural person exercising ultimate effective control over the trust .



### **US Back-Up or NRA Withholding**

Applies to certain US source income under current rules

### **US Taxpayer Identification Number (TIN)**

Means:

- a social security number (SSN);
- an employer identification number (EIN);
- an IRS individual taxpayer identification number (ITIN).

### **US account**

Means a financial account maintained by an FFI that is held by one or more specified US Persons or US-owned foreign entities.

### **US Person**

Means:

1. a citizen or resident of the US;
2. a US domestic partnership;
3. a US domestic corporation;
4. a US domestic estate;
5. a trust over which a US court has jurisdiction and over which one or more US Persons has the authority to control all substantial decisions;
6. the United States government (including an agency or instrumentality thereof); and
7. a State (including an agency or instrumentality thereof) or the District of Columbia (including an agency or instrumentality thereof).

Certain categories of US companies are excluded from reporting. These include; companies whose shares are regularly traded on an established securities market and certain tax exempt organizations and retirement plans, US banks and US government agencies.

### **US securities**

Means securities that generate, or could generate, US source income, such as US Treasury bonds or US corporate stock. Investment in a non-US investment fund that is non-transparent (e.g. SICAV) generally does not generate US source income and is not considered a US security for QI purposes.

### **Withholdable payment**

Means a payment of either:

- US source income that is FDAP income.



### **Withholding agent**

Means any person, US or non-US, that has control, receipt or custody of an amount subject to withholding or who can disburse or make payments of an amount subject to withholding is a withholding agent. The withholding agent may be an individual, corporation, partnership, trust, association or any other entity, including (but not limited to) any non-US intermediary, non-US partnership and US branches of certain non-US banks and insurance companies. Generally, the person who pays (or causes to be paid) the amount subject to withholding to the non-US Person (or to its agent) must withhold

### **Withholding tax**

Means tax required to be withheld under US federal income tax law on payments of US FDAP income, gross proceeds or foreign passthru payments to US Persons.