

# FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA)

## GLOSSARY

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### ➤ **Foreign Financial Institution (FFI)**

FFI is the abbreviation for Foreign Financial Institution. It refers to a non-US Financial Institution. The FATCA legislation contains an extensive definition of FFI and includes entities such as banks, custodian institutions, investment funds and certain types of insurance companies.

### ➤ **IRS Forms**

Withholding certificates, also referred to as W-forms, are US IRS tax forms.

Form W-9 is a Request for Taxpayer Identification Number and Certification. This US Tax Form is provided by an account holder to confirm and certify their US status.

The W-8 series forms are currently used by foreign persons (including corporations) to certify their non-U.S. status. The form establishes that one is a non-resident alien or foreign corporation, to avoid or reduce tax withholding from U.S. source income. These forms will permit a non-US customer to self-certify their status under FATCA.

### ➤ **Inter-governmental agreement (IGA)**

An IGA is an agreement between the US and specific countries to build FATCA compliance into the country's legal framework so that the country can implement FATCA. An IGA will require financial institutions to provide the information on US accounts which they hold either:

- directly to the IRS
- to the local tax authority of the resident country

### ➤ **Internal Revenue Service (IRS)**

The IRS is the United States government agency responsible for tax collection and tax law enforcement.

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

A NFFE (Non-Financial Foreign Entity) is a non-US incorporated / established entity that does not meet the definition of an FFI and includes:

- Listed or privately held operating or trading businesses
- Professional service firms
- Certain entities with a passive trade (i.e. not an operating/trading business)
- Charitable organizations

### ➤ **Tax Identification Number (TIN)**

A US IRS specific term: Tax Identification Number.

For an individual this would be their US social security number, for an entity their employer identification number.

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### ➤ Specified United States (US) Person

The term specified United States person means any United States person other than:

- a corporation the stock of which is regularly traded on one or more established securities markets for a calendar year;
- any corporation which is a member of the same expanded affiliated group as a corporation the stock of which is regularly traded on one or more established securities markets for the calendar year;
- any organisation exempt from taxation under U.S. federal tax law or an individual retirement plan;
- the United States or any wholly owned agency or instrumentality thereof;
- any State, the District of Columbia, any U.S. territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing;
- any bank incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia) or of any state thereof;
- any real estate investment trust;
- any regulated investment company, or any entity registered with the Securities Exchange Commission under the Investment Company Act of 1940,
- any common trust fund;
- any trust that is exempt from tax or is deemed a charitable trust;
- a dealer in securities, commodities, or derivative financial instruments that is registered as such under the laws of the United States or any State;
- a broker, and
- any tax exempt trust under a tax exempt or public school annuity plan or governmental plan.

### ➤ US Person (USP)

The term "United States person" means:

- A citizen or resident of the United States,
- A partnership created or organized in the United States or under the law of the United States or of any State, or the District of Columbia,
- A corporation created or organized in the United States or under the law of the United States or of any State, or the District of Columbia,
- Any estate or trust other than a foreign estate or foreign trust. (See Internal Revenue Code section 7701(a)(31) for the definition of a foreign estate and a foreign trust.),
- A person that meets the substantial presence test, or
- Any other person that is not a foreign person.

### ➤ US Citizen

The term "United States Citizen" means:

- An individual born in the United States,

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- An individual whose parent is a U.S. citizen,
- A former alien who has been naturalized as a U.S. citizen,
- An individual born in Puerto Rico,
- An individual born in Guam, or
- An individual born in the U.S. Virgin Islands.

➤ **Withholding tax**

A 30% withholding tax applies under FATCA on 'withholdable payments' in respect of financial institutions that do not comply with the FATCA requirements and/or customers who do not provide the requisite FATCA documentation.

The term withholdable payment means:

- Fixed or determinable, annual or periodical (FDAP) income, if such payment is from sources within the US – this will include any payment of interest and dividends. This will apply from 1 July 2014.
- Any gross proceeds from the sale or other disposition of any property of a type which can produce interest or dividends from sources within the US. This will apply from 1 January 2017.

Various exceptions apply, including for income connected with a US business.