



FATCA for
non-financial companies
What you don't know
may hurt you

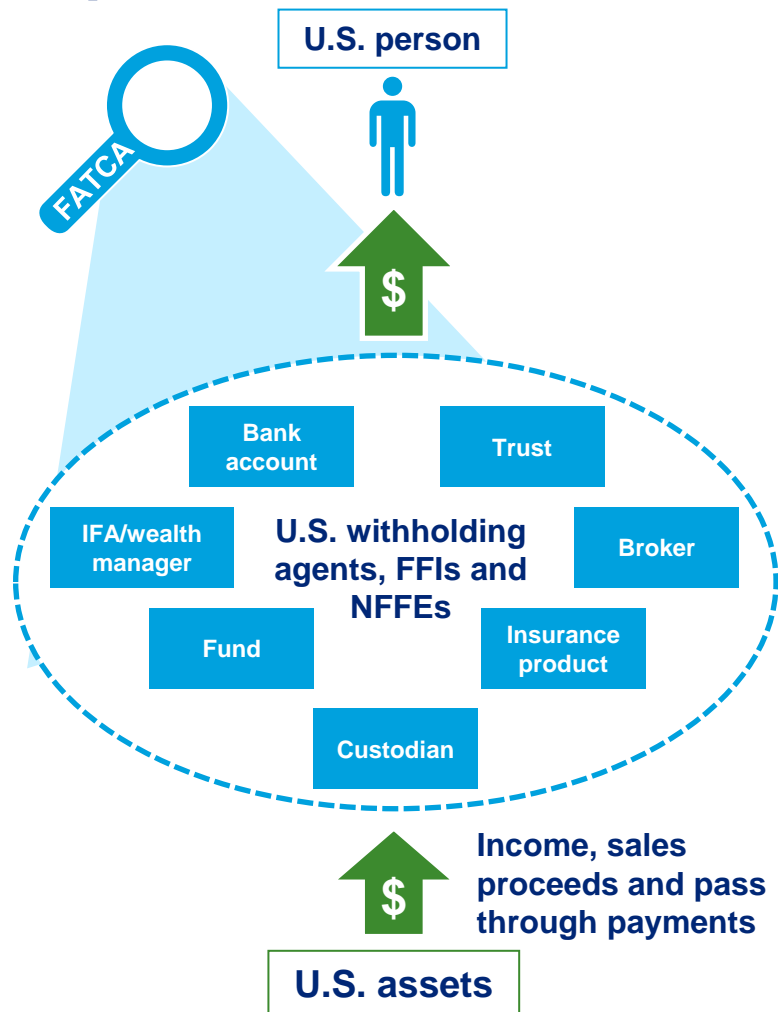
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FATCA overview

FATCA aims to identify U.S. persons trying to avoid U.S. tax obligations by holding assets in non-U.S. structures and products



What does FATCA involve?

- Foreign Financial Institutions (FFIs) are required to enter agreements with U.S. Treasury to ascertain and report U.S. accounts annually
- Non-Financial Foreign Entities (NFFEs) are required to report substantial U.S. owners or certify no U.S. ownership
- U.S. withholding agents and participating FFIs are required to withhold 30% of withholdable payments made to recalcitrant account holders or non-participating FFIs.
- Participating FFIs are required to select FFI Officers who certify that the FFI is in compliance with the obligations set forth under the agreement.

Who must meet the FATCA requirements?

- Foreign Financial Institutions
- Non-Foreign Financial Entities and Affiliates
- U.S. Withholding Agents

Who are the targets?

- U.S. individuals
- U.S. entities (including privately held corporations, partnerships and trusts)
- Non-U.S. Financial Entities with substantial U.S. ownership

Who needs to comply with FATCA?

U.S. withholding agents	<p>U.S. entity that has control, receipt, custody disposal or payment of any withholdable payment</p> <ul style="list-style-type: none">• Does not make any difference what industry they are in
Foreign Financial Institutions (FFIs)	<p>Non-U.S. entity that accepts deposits, holds financial assets for the account of others as a substantial part of its business, or engages primarily in the business of investing or trading securities, commodities, partnerships or any interests in such positions.</p> <ul style="list-style-type: none">• May include holding companies, hedging and financing centers
Non Financial Foreign Entities (NFFEs)	<p>Includes any foreign entity that is not a FFI or is not one of the following specifically EXCEPTED entities:</p> <ul style="list-style-type: none">• Any publicly traded corporation and its corporate affiliates (more than 50% of vote and value)• Any entity organized under the laws of a possession of the U.S.• Any foreign government, or any wholly owned agency of• Any international organization or any wholly owned agency or instrumentality of such• Any foreign central bank (unless acting as intermediary for clients)• Any other class of persons identified by the Secretary as posing a low risk of tax evasion
U.S. persons	<p>U.S. citizens, U.S. residents, nonresident aliens who meet the substantial presence test, partnerships, trusts, estates and non-publicly traded corporations</p>

Who is a Foreign Financial Institution

The term is very broadly defined:

- Accepts deposits in the ordinary course of a banking or similar business;
- Holds, as a substantial portion of its business, financial assets for the account of others;
- Is engaged primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, insurance or annuity contracts, or any interest (including a futures or forward contract or option) in such security, partnership interest, commodity, notional principal contract, insurance contract, or annuity contract; or
- Is one of certain insurance companies

Who is a Financial Institution

- An entity is considered to be engaged in a banking or similar business if it engages in one or more of the following activities —
 - Accepts deposits of funds;
 - Makes personal, mortgage, industrial, or other loans;
 - Purchases, sells, discounts, or negotiates accounts receivable, installment obligations, notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness;
 - Issues letters of credit and negotiates drafts drawn thereunder;
 - Provides trust or fiduciary services;
 - Finances foreign exchange transactions;
 - Enters into, purchases, or disposes of finance leases or leased assets;
Provides charge and credit card services
- An entity is engaged primarily in the business of investing, reinvesting, or trading if the entity's gross income from those activities is at least 50 percent of its total gross income over the testing period (generally, shorter of 3 years or its period of existence).

Potential FATCA exceptions for foreign entities in a non-financial group that would otherwise qualify as FFIs (“Excepted FFIs”)

- Non financial holding companies:
 - A foreign entity substantially all of the activities of which is to own (in whole or in part) the outstanding stock of one or more subsidiaries that engage in trades or businesses, provided that no such subsidiary is a financial institution
- Hedging/Financing center
 - A foreign entity that primarily engages in financing and hedging transactions with or for members of its expanded affiliated group that are not financial institutions and does not provide financing or hedging services to non-affiliates
- Non-financial entities that are liquidating or emerging from bankruptcy
- Certain start-up companies

What happens if you meet the definition

- If you fall into the definition of a financial institution you must comply with FATCA or you will be subject to negative impacts
 - 30% withholding tax which will apply to payments of U.S. source income and gross proceeds
 - Applies regardless of treaties or statutory exceptions
 - May not be reclaimable or creditable
 - 30% withholding on certain foreign source payments
 - Foreign pass thru withholding may apply even when there is no direct investment in U.S. assets
 - Market pressure from counterparties and clients
- The rules apply to all foreign financial institutions even if they do not have accounts

Traps for the unwary

FATCA considerations

The reach of the Foreign Account Tax Compliance Act (FATCA) will require nearly every business with an international footprint or doing business globally to confront new compliance realities.

Though the obvious impact of the new FATCA regime will be on businesses in the financial services industry, global non-financial services institutions will also be required to implement document due diligence and tax information reporting processes.

All payors of amounts to foreign persons will need to determine obligations existing on January 1, 2013 for grandfathering purposes.

The risk of non-compliance could be costly. The phase-in of FATCA withholding begins on January 1, 2014 and could result in the application of a 30% withholding tax on certain U.S. source income, extending to certain gross proceeds in 2017.

Traps for the unwary: Activities that may be subject to FATCA

A foreign entity that does any of the following activities may be an FFI (note below list is not all inclusive):

- Hold financial assets for the account of others;
- Provide intercompany loans or advances (including back-to-back loans)
- Engage in swaps, futures and other hedging activities including currency, oil, and gas hedging;
- Engage in internal “financing” operations located outside the U.S. (e.g., cash pooling);
- Make financial services type payments to non-US payees (e.g., making interest payments to non-U.S. lenders)
- Act as a holding company

Traps for the unwary: Activities that may be subject to FATCA (cont.)

- Engage in banking or similar businesses:
 - Accept deposits of funds;
 - Make personal, mortgage, industrial, or other loans;
 - Purchase, sell, discount, or negotiate accounts receivable, installment obligations, notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness;
 - Issue letters of credit and negotiate drafts drawn thereunder;
 - Provide trust or fiduciary services;
 - Finance foreign exchange transactions;
 - Enter into, purchase, or dispose of finance leases or leased assets;
 - Provide charge and credit card services.
- Make a purchase of “goods” (e.g., raw materials)
- Acquire or sell a subsidiary

Traps for the unwary: Activities that may be subject to FATCA (cont.)

- Provide financing to customers
- Borrow money from, loaning money to or purchasing securities from other members of the affiliated group;
- Raising funds from related or unrelated parties and transferring to other members of the affiliated group;
- Netting intercompany receivables and payables;
- Process stock/bond redemptions and dividend payments (e.g., U.S. parent making dividend payments to shareholders);
- Setting up non-U.S. pension or retirement plans.

FATCA's impact on USWAs

FATCA's impact on U.S. withholding agents

U.S. withholding agent

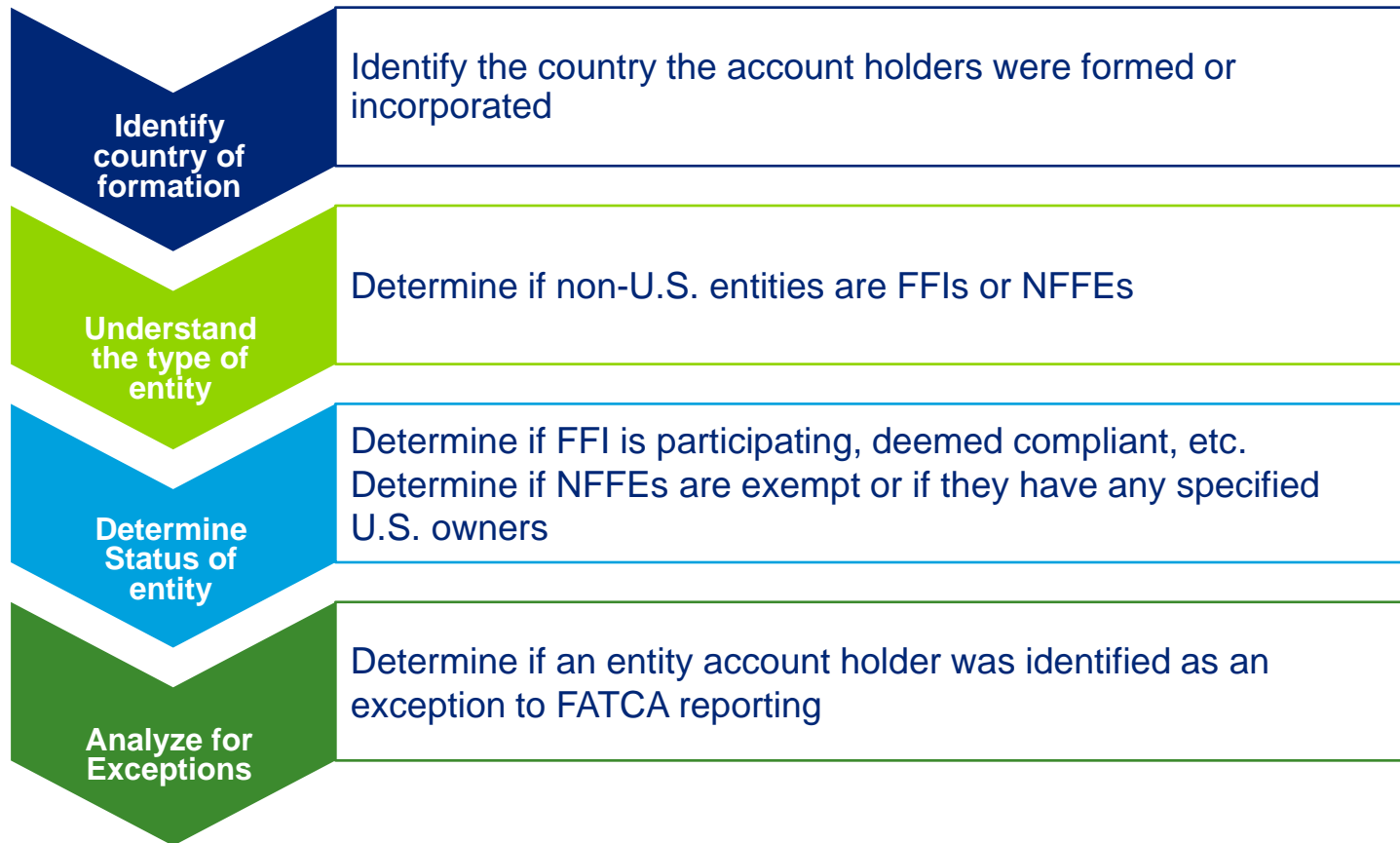
Any U.S. person that has control, receipt, custody, disposal, or payment of a withholdable payment

General requirements for USWAs

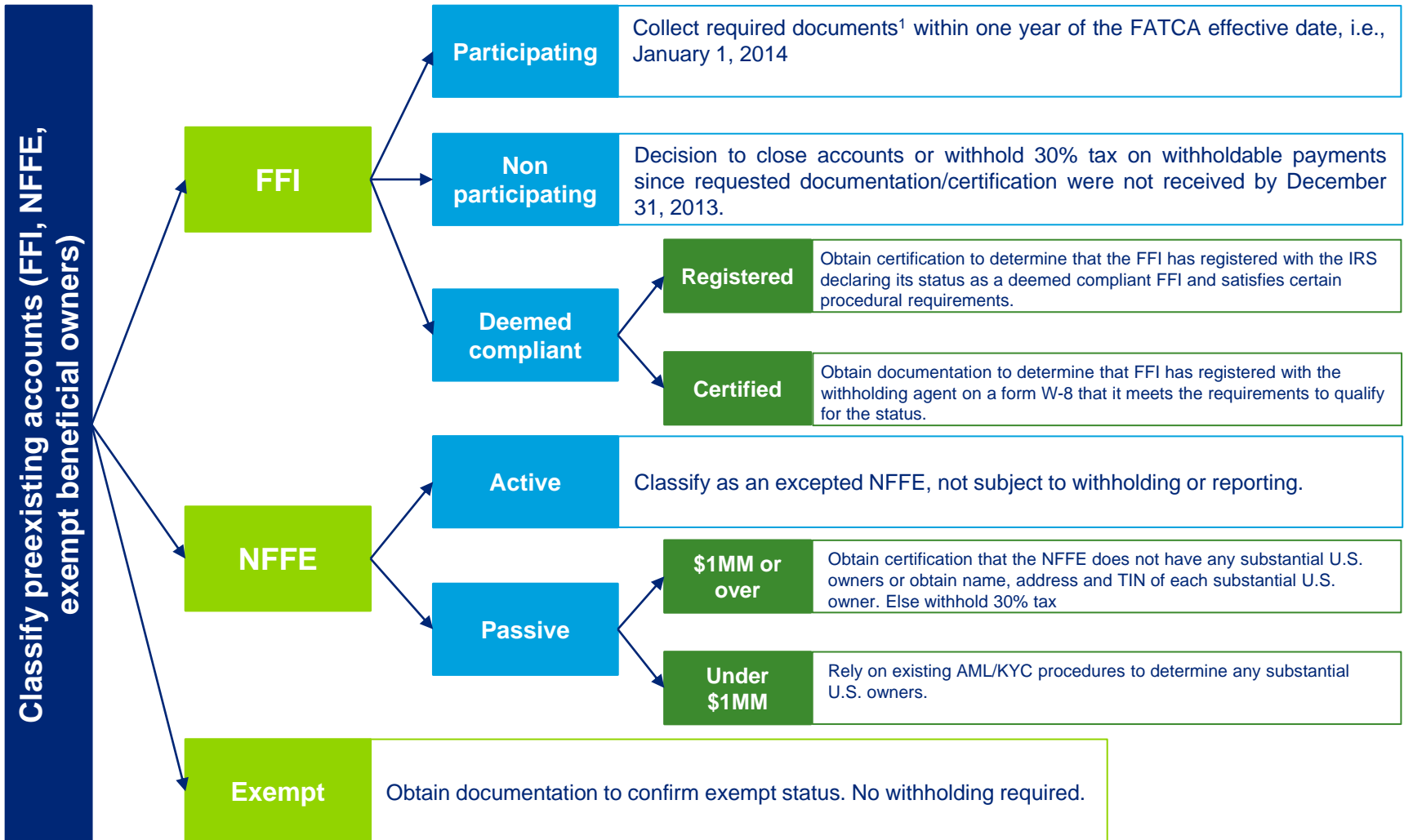
- Determine foreign account holders and financial payment recipients
 - Determine FATCA taxonomy (e.g., FFI, NFFE, Participating FFI (“PFFI”), etc.) of account holders and financial payment recipients
 - Obtain required documentations and certifications from foreign account holders and financial payment recipients
 - Establish a process for tracking and retaining correspondence with the account holders and financial payment recipients
 - Maintain scanned documents associated with each account to support the decisions and information with each account holder and financial payment recipient
 - Establish a process for FATCA withholding and reporting on non-participating FFIs and NFFEs that do not provide appropriate certification
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FATCA's impact on U.S. withholding agents (cont.)

Requirements for entity accounts



Due diligence obligations of USWAs



Note 1: Documentation to show that the FFI has entered into an agreement "FFI agreement" with the IRS and been assigned a FFI-EIN number

Withholding and depositing obligations of USWAs

Withholding for non-participating FFIs	Any FFI determined/presumed to be 'Non Participating' is subject to a 30% withholding rate on any withholdable payment made to that FFI
Withholding for recalcitrant passive NFFEs	Any passive NFFE that does not provide the withholding agent with either certification that the entity does not have any substantial U.S. owners or the name, address and TIN of each substantial U.S. owner, is subject to a 30% withholding rate on any withholdable payment made to that NFFE
Withholding on vendor payments	Generally, vendor payments made in the ordinary course of the withholding agent's business for nonfinancial services, goods and the use of property are excluded from withholding
Depositing payments	Payments withheld under FATCA must be deposited to the IRS. Withholding tax must be deposited with an authorized financial institution

“Withholdable Payment” means:

- Any U.S. source payment of interest (including long term original issue discount), dividends, annuities and other FDAP income, gains and profits, if such payment is from sources within the U.S.
- Any Gross Proceeds from the sale or disposition of U.S. property of a type that can produce interest or dividends
- Interest paid by foreign branches of U.S. Bank

Reporting obligations of USWAs

Filing requirements	<ul style="list-style-type: none">• Must report aggregate amount of payments from the prior year that are FATCA reportable (Form 1042), and must report FATCA reportable amounts paid to each entity during the preceding calendar year (Form 1042-S (revised))
Reportable payments	<ul style="list-style-type: none">• Payment to Non-Participating FFI — if an FFI does not have an FFI agreement with the IRS, a USWA must report payments• Passive NFFE — a USWA must report the substantial U.S. owners (name, address, TIN) of passive NFFEs• Recalcitrant NFFE — a USWA must report payments to recalcitrant NFFEs annually
Amounts to be reported	<ul style="list-style-type: none">• FATCA reportable U.S. source FDAP income paid to an entity on or after January 1, 2014• Reporting still required under current Chapter 3 regulations• FATCA reportable gross proceeds paid to an entity on or after January 1, 2015

Form comparison: W-8BEN vs. W-8BEN-E

Form W-8BEN
(Rev. February 2009)
Department of the Treasury
Internal Revenue Service

Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding
Section references are to the Internal Revenue Code. Give this form to the withholding agent or payer. Do not send to the IRS.

OMB No. 1545-1021

Do not use this form for:
 • A U.S. citizen or other U.S. person, including a resident alien individual
 • A person claiming that income is effectively connected with the conduct of a trade or business in the United States
 • A foreign partnership, a foreign simple trust, or a foreign grantor trust (see instructions for exceptions)
 • A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession that received effectively connected income or that is claiming the applicability of section(s) 115(2), 501(c), 892, 895, or 1443(b) (see instructions)
 Note: These entities should use Form W-8BEN-E if they are claiming treaty benefits or are providing the form only to claim they are a foreign person exempt from backup withholding.
 • A person acting as an intermediary
 Note: See instructions for additional exceptions.

Instead, use Form:
 W-9
 W-8ECI
 W-8BECI or W-8BIMY
 W-8BECI or W-8BXP
 W-8BIMY

Part I Identification of Beneficial Owner (See instructions.)

1 Name of individual or organization that is the beneficial owner

2 Country of incorporation or organization

3 Type of beneficial owner:
 Individual Corporation Disregarded entity Partnership Simple trust
 Grantor trust Complex trust Estate Government International organization
 Central bank of issue Tax-exempt organization Private foundation

4 Permanent residence address (street, apt. or suite no., or rural route). Do not use a P.O. box or in-care-of address.
 City or town, state or province. Include postal code where appropriate. Country (do not abbreviate)

5 Mailing address (if different from above)
 City or town, state or province. Include postal code where appropriate. Country (do not abbreviate)

6 U.S. taxpayer identification number, if required (see instructions)
 SSN or ITIN EIN

7 Foreign tax identifying number, if any (optional)

8 Reference number(s) (see instructions)

Part II Claim of Tax Treaty Benefits (if applicable)

9 I certify that (check all that apply):
 a. The beneficial owner is a resident of _____ within the meaning of the income tax treaty between the United States and that country.
 b. If required, the U.S. taxpayer identification number is stated on line 6 (see instructions).
 c. The beneficial owner is not an individual, derives the item (or items) of income for which the treaty benefits are claimed, and, if applicable, meets the requirements of the treaty provision dealing with limitation on benefits (see instructions).
 d. The beneficial owner is not an individual, is claiming treaty benefits for dividends received from a foreign corporation or interest from a U.S. trade or business of a foreign corporation, and meets qualified resident status (see instructions).
 e. The beneficial owner is related to the person obligated to pay the income within the meaning of section 267(b) or 707(b), and will file Form 8893 if the amount subject to withholding received during a calendar year exceeds, in the aggregate, \$500,000.

10 Special rates and conditions (if applicable—see instructions): The beneficial owner is claiming the provisions of Article _____ of the treaty identified on line 9a above to claim a _____% rate of withholding on (specify type of income): _____
 Explain the reasons the beneficial owner meets the terms of the treaty article: _____

Part III Notional Principal Contracts

11 I have provided or will provide a statement that identifies those notional principal contracts from which the income is not effectively connected with the conduct of a trade or business in the United States. I agree to update this statement as required.

Part IV Certification

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:
 1 I am the beneficial owner (or am authorized to sign for the beneficial owner) of all the income to which this form relates,
 2 The beneficial owner is not a U.S. person,
 3 The income to which this form relates is (a) not effectively connected with the conduct of a trade or business in the United States, (b) effectively connected but is not subject to tax under an income tax treaty, or (c) the partner's share of a partnership's effectively connected income, and
 4 For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions.
 Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income of which I am the beneficial owner or any withholding agent that can disburse or make payments of the income of which I am the beneficial owner.

Sign Here
 Signature of beneficial owner (or individual authorized to sign for beneficial owner) Date (MM-DD-YYYY) Capacity in which acting

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 25047Z Form **W-8BEN** (Rev. 2-2009)

Form W-8BEN-E
(Rev. December 2012)
Department of the Treasury
Internal Revenue Service

Certificate of Status of Beneficial Owner for United States Tax Withholding (Entities)
For use by entities. Individuals must use Form W-8BEN. Section references are to the Internal Revenue Code. Give this form to the withholding agent or payer. Do not send to the IRS.

OMB No. 1545-300X

Do NOT use this form for:
 • U.S. entity or U.S. citizen or resident
 • Any foreign individual
 • A foreign individual or entity claiming that income is effectively connected with the conduct of trade or business within the U.S.
 • A foreign partnership, a foreign simple trust, or a foreign grantor trust (see instructions for exceptions)
 • A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession that received effectively connected U.S. income or that is claiming the applicability of section(s) 115(2), 501(c), 892, 895, or 1443(b) (see instructions)
 Note: These entities should use Form W-8BEN-E if they are claiming treaty benefits.
 • Any person acting as an intermediary

Instead use Form:
 W-9
W-8BEN (individual)
 W-8ECI
 W-8BIMY
 W-8BECI or W-8BXP
 W-8BIMY

Part I Identification of Beneficial Owner (see instructions)

1 Name of organization that is the beneficial owner

2 Country of Incorporation or organization (do not abbreviate)

3 Chapter 3 Status (Must check one box only):
 Simple Trust Grantor trust Complex trust Estate Government
 Central Bank of Issue Tax-exempt organization Private foundation
 If you entered disregarded entity, partnership, simple trust, or grantor trust above, is the entity a hybrid making a treaty claim? Yes No

4 Chapter 4 Status (Must check one box only unless otherwise indicated) (see instructions for details)
 Nonparticipating FFI (including limited branch or affiliate of participating FFI) Excepted start-up company. Complete Part XIV.
 Participating FFI. Complete Part IV. Excepted nonfinancial entity in liquidation or bankruptcy. Complete Part XV.
 Registered deemed-compliant FFI. Complete Part IV. Excepted hedging/financing center of non-financial group. Complete Part XVI.
 Owner-documented FFI. Complete Part V. Restricted distributor. Complete Part XVII.
 Certified deemed-compliant nonregistering local bank. Complete Part VI. Territory financial institution. Complete Part XVIII.
 Certified deemed-compliant non-profit organization. Complete Part VIII. Publicly traded NFFE. Complete Part XIX.
 Certified deemed-compliant FFI with only low-value accounts. Complete Part IX. Affiliate of publicly traded NFFE. Complete Part XX.
 Foreign government or government of U.S. possession. Excepted Territory NFFE. Complete Part XXI.
 Foreign central bank of issue. Complete Part X. Active NFFE. Complete Part XXII.
 Entity wholly owned by exempt beneficial owners. Complete Part XII. Passive NFFE. Complete Part XXIII.
 Excepted nonfinancial holding company. Complete Part XIII. Not applicable (resistant submitting this form solely for purposes of Section 6050J)

May check one or both of the following:
 Certified deemed-compliant retirement plan. Complete Part VII. Exempt retirement funds. Complete Part XI.

5 Permanent residence address (street, apt. or suite no., or rural route). Do not use a P.O. box or in-care-of address.
 City or town, state or province. Include postal code where appropriate. Country (do not abbreviate)

6 Mailing address (if different from above)
 City or town, state or province. Include postal code where appropriate. Country (do not abbreviate)

7 U.S. taxpayer identification number, if required (see instructions)
 FFI-EIN CI-EIN EIN

8 Foreign tax identifying number (see instructions)

9 Reference number(s) (see instructions)

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 59689N Form **W-8BEN-E** (Rev. 12-2012)

Form comparison: W-8IMY

Form W-8IMY
(Rev. February 2006)

Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding

OMB No. 1545-1021

Department of the Treasury
Internal Revenue Service

Section references are to the Internal Revenue Code. See separate instructions.
Give this form to the withholding agent or payer. Do not send to the IRS.

Do not use this form for:

- A beneficial owner solely claiming foreign status or treaty benefits W-BEN
- A hybrid entity claiming treaty benefits on its own behalf W-BEN
- A person claiming that income is effectively connected with the conduct of a trade or business in the United States W-BECl
- A disregarded entity. Instead, the single foreign owner should use W-BEN or W-BECl
- A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession claiming the applicability of section(s) 110(a), 501(c), 892, 895, or 1443(b) W-BEXP

Instead, use Form:

Part I Identification of Entity

1 Name of individual or organization that is acting as intermediary

2 Country of incorporation or organization

3 Type of entity—check the appropriate box:

Qualified intermediary. Complete Part II. Withholding foreign trust. Complete Part V.

Nonqualified intermediary. Complete Part III. Nonwithholding foreign partnership. Complete Part VI.

U.S. branch. Complete Part IV. Nonwithholding foreign simple trust. Complete Part VI.

Withholding foreign partnership. Complete Part V. Nonwithholding foreign grantor trust. Complete Part VI.

4 Permanent residence address (street, apt. or suite no., or rural route). Do not use a P.O. box.

City or town, state or province. Include postal code where appropriate. Country (do not abbreviate)

5 Mailing address (if different from above)

City or town, state or province. Include postal code where appropriate. Country (do not abbreviate)

6 U.S. taxpayer identification number (if required, see instructions) ▶

SSN or ITIN EIN QI-EIN

7 Foreign tax identifying number, if any (optional)

8 Reference number(s) (see instructions)

Part II Qualified Intermediary

9a (All qualified intermediaries check here) I certify that the entity identified in Part I:

- Is a qualified intermediary and is not acting for its own account with respect to the account(s) identified on line 8 or in a withholding statement associated with this form **and**
- Has provided or will provide a withholding statement, as required.

b (If applicable) I certify that the entity identified in Part I has assumed primary withholding responsibility under Chapter 3 of the Code with respect to the account(s) identified on this line 9b or in a withholding statement associated with this form ▶

c (If applicable) I certify that the entity identified in Part I has assumed primary Form 1099 reporting and backup withholding responsibility as authorized in its withholding agreement with the IRS with respect to the account(s) identified on this line 9c or in a withholding statement associated with this form ▶

Part III Nonqualified Intermediary

10a (All nonqualified intermediaries check here) I certify that the entity identified in Part I is not a qualified intermediary and is not acting for its own account.

b (If applicable) I certify that the entity identified in Part I is using this form to transmit withholding certificates and/or other documentary evidence and has provided or will provide a withholding statement, as required.

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 25402Q Form **W-8IMY** (Rev. 2-2006)

Form W-8IMY
(Rev. December 2012)

Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding

OMB No. 1545-1021

Department of the Treasury
Internal Revenue Service

Section references are to the Internal Revenue Code.
Information about Form W-8IMY and its separate instructions is at www.irs.gov/formw8imy.
Give this form to the withholding agent or payer. Do not send to the IRS.

Do not use this form for:

- A beneficial owner solely claiming foreign status or treaty benefits W-BEN
- A hybrid entity claiming treaty benefits on its own behalf W-BEN
- A person claiming that income is effectively connected with the conduct of a trade or business in the United States W-BECl
- A disregarded entity. Instead, the single foreign owner should use W-BEN or W-BECl
- A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession claiming the applicability of section(s) 110(a), 501(c), 892, 895, or 1443(b) W-BEXP
- U.S. entity or U.S. citizen or resident W-9

Instead, use Form:

Part I Identification of Entity

1 Name of individual or organization that is acting as intermediary

2 Country of incorporation or organization (do not abbreviate)

3 Chapter 3 Status (entity type)—Must check one box only:

Qualified intermediary. Complete Part II. Withholding foreign trust. Complete Part V.

Nonqualified intermediary. Complete Part III. Nonwithholding foreign partnership. Complete Part VI.

U.S. branch. Complete Part IV. Nonwithholding foreign simple trust. Complete Part VI.

Withholding foreign partnership. Complete Part V. Nonwithholding foreign grantor trust. Complete Part VI.

Territory financial institution. Complete Part XX.

4 Chapter 4 Status (FATCA status)—Must check one box only unless otherwise indicated:

Nonparticipating FFI (including limited branch of participating FFI or limited FFI). Excepted nonfinancial holding company. Complete Part XVI.

Nonparticipating FFI with exempt beneficial owners. Complete Part VII. Excepted start-up company. Complete Part XVII.

Participating FFI. Complete Part VIII. Excepted nonfinancial entity in liquidation or bankruptcy. Complete Part XVIII.

Registered deemed-compliant FFI. Complete Part VIII. Excepted hedging / financing center of nonfinancial group. Complete Part XXII.

Owner-documented FFI. Complete Part IX. Territory financial institution. Complete Part XX.

Certified deemed-compliant nonregistering local bank. Complete Part X. Excepted Territory NFFE. Complete Part XXII.

Certified deemed-compliant retirement plan. Complete Part XI. Active NFFE. Complete Part XXIII.

Certified deemed-compliant non-profit organization. Complete Part XII. Passive NFFE. Complete Part XXIII.

Certified deemed-compliant FFI with only low-value accounts. Complete Part XIII. QI branch of a U.S. financial institution. Other. Must Enter Code: _____

Restricted Distributor. Complete Part XIV. Entity wholly owned by exempt beneficial owners. Complete Part XV.

5 Permanent residence address (street, apt. or suite no., or rural route). Do not use a P.O. box or in-care-of address.

City or town, state or province. Include postal code where appropriate. Country (do not abbreviate)

6 Mailing address (if different from above)

City or town, state or province. Include postal code where appropriate. Country (do not abbreviate)

7 U.S. taxpayer identification number, if required (see instructions)

FFI-EIN QI-EIN EIN WP or WT EIN SSN or ITIN

8 Foreign tax identifying number (see instructions)

9 Reference number(s) (see instructions)

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 25402Q Form **W-8IMY** (Rev. 12-2012)

FATCA's impact on FFIs

Types of FFIs

Foreign Financial Institutions (FFIs)

Non-U.S. entity that accepts deposits, holds financial assets for the account of others as a substantial part of its business, or engages primarily in the business of investing or trading securities, commodities, partnerships or any interests in such positions. Broadly, all offshore Funds, including Luxembourg-based Funds, Hedge Funds and Private Equity Funds will be FFIs

Participating FFI

FFI with respect to which an FFI agreement is in full force and effect

Nonparticipating FFI

FFI other than a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner

Deemed-compliant FFI

Registered deemed-compliant FFI
Certified deemed compliant FFI
Owner-documented FFI

Excepted FFI

Certain nonfinancial holding companies
Certain start-up companies
Nonfinancial entities liquidating or emerging from bankruptcy or reorganization
Hedging or financing centers of nonfinancial group
501(c) organizations

The six actions that an FFI must do as a part of the FFI agreement

1	Determine U.S. accounts	Obtain information regarding each account holder to determine which (if any) of such accounts are U.S. accounts
2	Comply with due diligence procedures	Comply with verification and due diligence procedures required by the IRS/Treasury with respect to the determination of U.S. accounts
3	Report annually for U.S. accounts	If the FFI maintains U.S. accounts, it must report on an annual basis certain account information to the IRS
4	Withhold on pass through payments	The FFI must deduct and withhold a tax equal to 30 percent on certain payments to recalcitrant account holders (account holder that doesn't provide valid documentation) and non-participating FFIs
5	Provide further information on request	An FFI must comply with requests by the IRS/Treasury for additional information with respect to any U.S. account
6	Obtain a waiver when necessary	If foreign law prevents the reporting of any information the FFI must attempt to obtain a waiver from relevant investors in a reasonable period of time or exit the account

FATCA's impact on NFFEs

NFFE defined

Non Financial Foreign Entities (NFFEs)

Includes any foreign entity that is not a FFI or is not one of the following specifically EXCEPTED entities:

- Any publicly traded corporation and its corporate affiliates (more than 50% of vote and value)
- Any entity organized under the laws of a possession of the U.S.
- Any foreign government, or any wholly owned agency of
- Any international organization or any wholly owned agency or instrumentality of such
- Any foreign central bank (unless acting as intermediary for clients)
- Any other class of persons identified by the Secretary as posing a low risk of tax evasion

Active NFFE

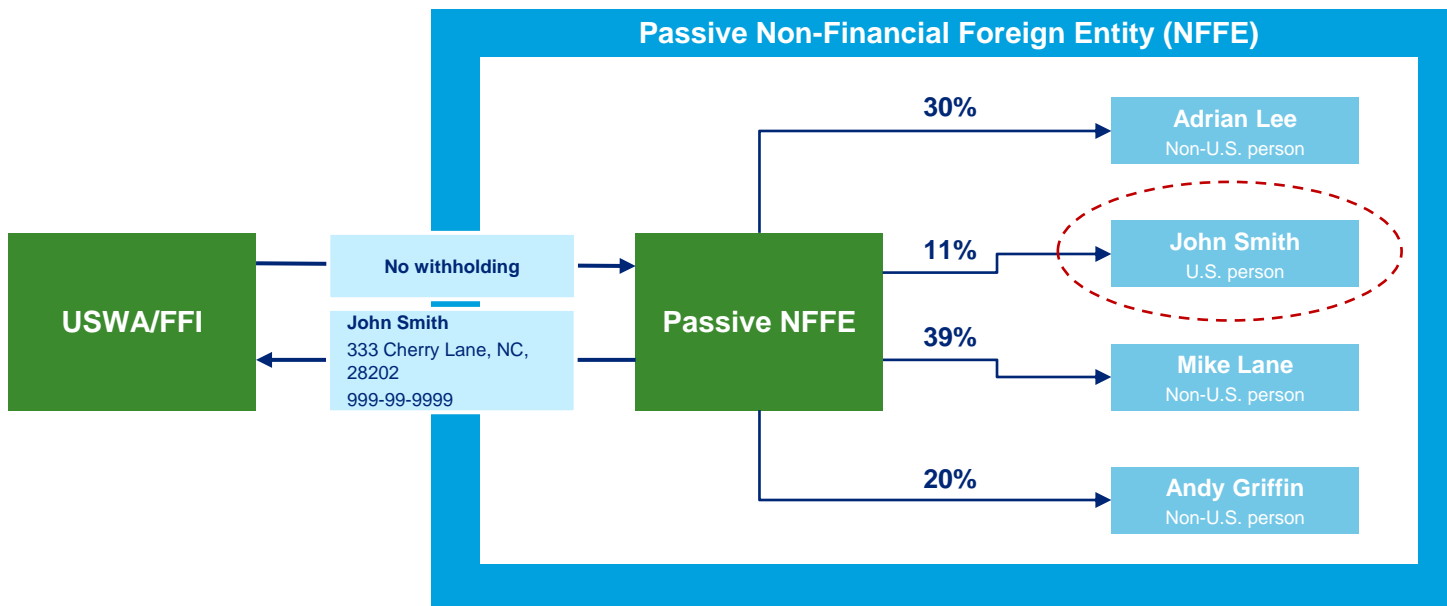
An NFFE if less than 50 percent of its gross income for the preceding calendar year is passive income or less than 50 percent of the assets held by the NFFE at any time during the preceding calendar year are assets that produce or are held for the production of passive income

Passive NFFE

An NFFE other than an active or excepted NFFE

FATCA's impact on NFFEs

Active and excepted NFFE	Exempt from FATCA's requirements
Passive NFFE	Fulfills FATCA obligations by providing the name, address, and TIN of the substantial U.S. owners to FFIs and USWA, and no withholding is required. However, failure to report on substantial U.S owners will result in a 30% withholding on all withholdable payments made to the NFFE by the FFIs and the USWAs



Timing

New FATCA deadlines post IRS announcement 2012–42

FATCA compliance action items		2013				2014				2015				2016				2017				2018																				
General Compliance	Grandfathered obligation issuance/modification cutoff	◆ Dec 31																																								
	Effective date of FFI Agreement if entered into by December 31, 2013	◆ Jan 1																																								
	Transition period for affiliated group rule	◆ Jan 1																																								
New/Preexisting Accounts	USWA begin new account onboarding	◆ Jan 1																																								
	USWA complete preexisting accounts	◆ Jun 30 Prima Facie FFIs														◆ Dec 31 All other entity accounts																										
	FFI begin new account onboarding	◆ Jan 1																																								
	FFI complete preexisting accounts	◆ Jun 30 Prima Facie FFIs														◆ Dec 31 High Value Individuals														◆ Dec 31 All other accounts												
Withholding	Begin income withholding	◆ Jan 1																																								
	Begin gross proceeds withholding	◆ Jan 1																																								
	Begin foreign pass-thru payments withholding	◆ Jan 1																																								
Reporting	FFI begin U.S. Account information and balance reporting	◆ Mar 31																																								
	FFI begin U.S. Account income reporting	◆ Mar 31																																								
	FFI begin U.S. Account gross proceeds reporting	◆ Mar 31																																								
	FFI begin aggregate reporting on NPFFI payments (only for 2015 and 2016)	◆ Mar 15														◆ Mar 15																										
	USWA begin U.S. Owner reporting	◆ Mar 15																																								
	Begin reporting on withholdable income payments (1042-S)	◆ Mar 15																																								
	Begin reporting on gross proceeds (1042-S)	◆ Mar 15																																								

◆ Announcement 2012–42 date ◆ Unchanged

What's next?

- Draft FFI Agreement is expected by end of 2012
- Forms that will be used for reporting should be out by end of the year
- Government hopes to finalize regulations by early next year
- New Form W-8 should be in place by the end of 2012
- FFIs are expected to sign up before January 1, 2014
- Treasury has issued a model intergovernmental agreements (“IGA”)
 - It is expected that there will be two different models
 - The UK/U.S. have signed the first one
 - Approximately 48 countries may be in the first wave of IGAs

What non-financial groups
need to do

Impact on operations

- FATCA impacts the organization from documenting counterparties to ongoing payment flow and transaction management
- FATCA impacts domestic and foreign operations across systems and processes

U.S. operations

- U.S. company has responsibilities as a withholding agent
- Must collect new documentation from new and existing counterparties and other entities they are making payments to
- New systems and procedures may be required to report and withhold under FATCA

Foreign operations

- Controlled foreign corporations that are subsidiaries of U.S. companies are considered to be withholding agents
- Certain foreign subsidiaries of U.S. companies may be considered FFIs
- New systems and procedures may be required to report and withhold under FATCA
- Impact on FFI, NFFE, and individual payees during due diligence process

Other considerations

- Classify entities within expanded affiliated group under FATCA
- Review accounts payable and other departments-defining “financial services payments” not in the ordinary course of business
- Review current documentation and reporting functions-capturing and reporting any documentation changes required by FATCA

A number of steps are required to confirm FATCA compliance for U.S. and non-U.S. businesses

U.S. businesses

Consider existing tax withholding posture, determine if business is a withholding agent or makes withholdable payments under FATCA

Enhance existing customer/investor onboarding processes to collect new documentation establishing FATCA status for certain foreign entities

Communicate applicable FATCA exemptions, documentation requirements, withholding potential and other FATCA impacts to foreign customers/investors to ease transition

Enhance existing U.S. tax withholding processes to withhold on certain payments to foreign entities that have not certified their status under FATCA

Enhance existing U.S. tax information reporting processes to report FATCA withholding and U.S. asset holder information provided by foreign customers

Non-U.S. businesses

Analyze FATCA exemptions, business operations, customer base, and other strategic considerations to determine necessity of participating in FATCA compliance activities

Execute due diligence searches of existing customer/investor information to determine account holders and investors with “U.S. indicia,” benefiting from electronic searches and existing AML/KYC processes where possible, but conducting more extensive diligence for holders of assets larger than \$1 million

Communicate FATCA impacts and compliance plans to customers and investors to ease FATCA transition, and where necessary, creating communication channels to facilitate resolution of issues raised by discoveries of U.S. indicia in account documentation

Enhance new customer/investor onboarding processes to gather information establishing FATCA classifications and to manage receipt of customer/investor data containing U.S. indicia

Develop procedures to share information on U.S. account holders with IRS or, alternatively with foreign jurisdictional governments where possible

Develop procedures to withhold on payments of U.S. source income to recalcitrant account holders and remit payments to U.S. Treasury

Q&A

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