



# Foreign Account Tax Compliance Act (FATCA)

Information for Non-US Entity Clients

As a result of the Foreign Account Tax Compliance Act (FATCA) the documentation requirements for Non-US Entity clients have to be enhanced as of 1 January 2015. A Non-US Entity<sup>1</sup> is an entity incorporated outside the United States (US).

This client information is intended to assist you in understanding the FATCA documentation requirements. You may need to analyse the impact of FATCA on your business and, if necessary, to seek independent professional advice. The Bank does not provide legal or tax advice and this client information does not constitute such advice.

## **What is the purpose of FATCA?**

FATCA was enacted by the United States to prevent and detect tax evasion by US taxpayers who are holding financial accounts outside the US with so-called “Foreign Financial Institutions – FFIs”, which includes non-US banks such as F. van Lanschot Bankiers (Schweiz) AG. Like many other jurisdictions, the Swiss Government entered into an Intergovernmental Agreement on FATCA with the US. Through this Intergovernmental Agreement, and the subsequent Swiss legislation on FATCA, all Foreign Financial Institutions in Switzerland are required to become compliant with the FATCA requirements by performing due diligence, reporting and withholding<sup>2</sup>.

## **What is the impact of FATCA on Non-US Entity clients?**

Like any other FATCA compliant bank, F. van Lanschot Bankiers (Schweiz) AG has the due diligence obligation to document the FATCA status of all clients. The FATCA status determines for which clients FATCA reporting and withholding applies. The FATCA status of a Non-US Entity is mainly driven by the business activities of the entity. Additionally, US taxpayers who hold financial assets with certain Non-US Entities have to be reported as well to the US tax authority (directly or via local tax authority).

## **What is a self-certification of the FATCA status?**

A key element to determine the FATCA status is a self-certification of the client. The Bank has developed specific FATCA Self-certification Forms for this purpose. By signing the form, you certify that you meet the requirements and conditions for the applicable FATCA status.

## **What are the different Non-US Entity types and the related self-certification requirements?**

The status for Non-US Entities can be clustered into the following three main categories:

### **1) Operating financial business**

Typical examples of operating financial businesses are banks, life insurance companies, financial intermediaries, funds and pension plans. These entities have to certify their FATCA compliance by either providing the FATCA registration number (GIIN) or confirming that their business fulfills the requirements for a FATCA status without registration (e.g. “certified deemed-compliant FFI or non-reporting FFI”).

### **2) Non-operating financial business**

Under FATCA, all beneficial owners of a non-operating entity like a private investment company, trust or foundation have to be identified and documented. Any US Person beneficial owner has to be reported to the US tax authority.

Unless the entity chooses to register with the IRS, there are two ways to fulfil this requirement: (i) if the client has a FATCA Sponsor (e.g. the trust company), the FATCA Sponsor ensures FATCA compliance; (ii) otherwise, the client has to provide the Bank with comprehensive documentation on the beneficial owners of the non-operating entity.

### **3) Non-financial business**

Any entity outside the financial business must provide a certification that it operates as an active non-financial commercial or manufacturing business or that it is a nonprofit organization, governmental entity or international organization. FATCA imposes no additional obligations on these entities.

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<sup>1</sup> The term “entity” under FATCA encompasses all legal structures and legal entities, including general/limited partnerships and trusts. A sole proprietorship is treated as individual/natural person and not as an entity.

<sup>2</sup> FATCA Agreement between Switzerland and the United States of America, signed on 14 February 2013 (SR0.672.933.63)



The following table provides you with an overview of typical Non-US Entity client examples and the respective self-certification requirements:

Active in	Type of entity	You are required to certify on the Self-certification form that:
Operating financial business	<ul style="list-style-type: none"> <li>Bank, custodian, broker</li> <li>Life insurance company</li> </ul>	You certify that as a Foreign Financial Institution (FFI) you comply with FATCA and submit your FATCA registration number with the IRS (Global Intermediary Identification Number – GIIN).
	<ul style="list-style-type: none"> <li>Financial intermediary (FIM), asset manager, family office</li> <li>Pension fund/plan</li> </ul>	You certify that you assume one of the “certified deemed-compliant FFI or non-reporting FFI” status. Therefore, you do not need to provide a FATCA registration number (GIIN).
Non-Operating financial business	<ul style="list-style-type: none"> <li>Trust / Foundation</li> <li>Underlying company of a Trust / Foundation</li> </ul>	You certify that you have a FATCA Sponsor who is authorized and has agreed to perform all FATCA requirements. The sponsoring entity is usually the corporate trustee or corporate director. An FFI that will also act as FATCA Sponsor for one or more sponsored entities is required to submit a second registration with the IRS as sponsoring entity. You will be asked to provide the GIIN of your FATCA Sponsor. For trusts, foundations and underlying companies of such, the Bank expects that you have a FATCA Sponsor.
	<ul style="list-style-type: none"> <li>Personal Investment Company (PIC) E.g. BVI / Panama company</li> <li>Personal Holding Company (PHC)</li> <li>Client fund</li> </ul>	If you have a FATCA Sponsor, please refer to the certification above for Trusts / Foundations. Otherwise, you certify that you disclose all Beneficial Owners as defined by FATCA. If any reporting obligation would occur based on that, the Bank agrees to execute that on your behalf.
Non-financial business	<ul style="list-style-type: none"> <li>Operative commercial or manufacturing business (e.g. bakery, airline, construction company)</li> </ul>	You certify that you are a Non-Financial Foreign Entity. You operate an “active” business, which means your income is mainly generated by selling goods / services and not “passive income” (e.g. dividends, interests, rents and royalties or annuities).
	<ul style="list-style-type: none"> <li>Nonprofit organization</li> </ul>	You certify that you are a nonprofit organization, which is exempt from income tax in its country of residence. The nonprofit organization is for example maintained for religious, charitable, scientific, artistic, cultural or educational purposes.
	<ul style="list-style-type: none"> <li>Governmental entity (e.g. Swiss Federal Government, cantons and communes)</li> <li>International organization (e.g. United Nations, Red Cross, OECD)</li> </ul>	You certify that you are a non-US governmental entity or an international organization which is recognized as an intergovernmental or supranational organization.

**What is the consequence of not providing a FATCA self-certification?**

Absent a valid self-certification, any Non-US Entity is generally classified as a Nonparticipating Foreign Financial Institution. The Bank must notify the IRS of the total number of Nonparticipating Foreign Financial Institutions which did not consent to the transmission of their information, without disclosing the identity of the institutions. Based on this information and in accordance with the FATCA Agreement, the IRS may submit a group request for administrative assistance to the Swiss competent authority in order to receive account information, including the identity of the institutions.

If a Nonparticipating Foreign Financial Institution holds US Securities a 30 % withholding tax has to be applied on the US source income (e.g. dividend and interest payments).

**Where can you find further information on FATCA?**

For further information on FATCA, please visit the internet sites of the US Internal Revenue Service ([www.irs.gov/fatca](http://www.irs.gov/fatca)) or the Swiss State Secretariat for International Financial Matters ([www.sif.admin.ch/fatca](http://www.sif.admin.ch/fatca)).

**About this document**

F. van Lanschot Bankiers (Schweiz) AG (hereinafter “the Bank”) does not provide legal or tax advice and this publication does not constitute such advice. The Bank strongly recommends all persons considering the information described in this publication obtain appropriate independent legal, tax and other professional advice.