

IRAS FAQs on the Foreign Account Tax Compliance Act (FATCA)

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A. FATCA Overview

A.1 What is the Foreign Account Tax Compliance Act (FATCA)?

FATCA is a U.S. law which requires all financial institutions (FIs) outside of the U.S. (also known as Foreign Financial Institutions, or FFIs) to regularly submit information on financial accounts held by U.S. persons to the U.S. Internal Revenue Service (U.S. IRS). The U.S.' intent of FATCA is to deter and detect U.S. tax evasion through the use of foreign financial accounts. Failure to comply with the reporting obligations under FATCA will result in the U.S. Government imposing a 30% withholding tax on certain gross payments made from the U.S. to non-compliant FFIs. More information on FATCA can be found on the [IRS FATCA webpage](#).

Updated: 12 Nov 2015

A.2 Who is affected by FATCA?

The reporting obligations under FATCA primarily affect FFIs, which can include banks, insurance companies, investment managers and custodians.

Under U.S. FATCA Regulations, a FFI refers to any non-U.S. entity that:

- (a) Accepts deposits in the ordinary course of a banking or similar business;
- (b) As a substantial portion of its business, holds financial assets for the account of others;
- (c) Conducts as a business (or is managed by an entity that 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 currency; foreign exchange, interest rate and index instruments; transferable securities; or commodity futures;
 - (ii) individual or collective portfolio management; or
 - (iii) otherwise investing, administering, or managing funds, money or financial assets on behalf of other persons; or
- (d) Is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

A.3 Who is considered as a U.S. Person?

For the purpose of FATCA, a U.S. Person means:

- (a) A citizen or lawful permanent resident (including U.S. green card holder) of the U.S.; or
- (b) A partnership or corporation organised in the U.S. or under the laws of the U.S. or any State thereof, or a trust if: (i) a court within the U.S. would have authority under the applicable law to render orders or judgments concerning substantially all issues regarding the 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 U.S..

The definitions above are to be interpreted in accordance with the provisions of the U.S. Internal Revenue Code.

Updated: 06 Feb 2015

A.4 Why is Singapore entering into a FATCA Intergovernmental Agreement (IGA) with the U.S.?

In response to industry feedback, Singapore agreed to enter into a FATCA IGA with the U.S. to help Singapore-based FIs (SGFIs) manage their FATCA compliance burden. Without the FATCA IGA, individual FIs outside the U.S. will have to enter into individual FFI agreements with the U.S. to avoid FATCA-related withholding tax. With the IGA, SGFIs will benefit from simplified compliance procedures with regard to identifying and reporting on financial accounts held by U.S. persons. SGFIs will also avoid FATCA-related withholding tax on relevant payments that they receive from the U.S.

A.5 What are Singapore-based FIs (SGFIs)?

A Singapore-based FI (SGFI), for the purpose of FATCA, is a FI which is:

- (a) Tax resident in or organised under the laws of Singapore, but excluding any branch of such FI that is located outside Singapore; or
- (b) Any branch of a FI not tax resident in or organised under the laws of Singapore, if such branch is located in Singapore.

A.6 What are the FATCA obligations applicable to a SGFI?

SGFIs will need to perform due diligence checks to identify financial accounts held by U.S. persons. Thereafter, the SGFIs will need to report information pertaining to such accounts to IRAS, which will in turn transmit the information to the U.S. IRS.

A.7 What is a FATCA Model 1 IGA? What is a FATCA Model 2 IGA?

The U.S. has developed two Model IGAs to simplify and overcome legal issues relating to the implementation of FATCA. Model 1 establishes a framework for FIs outside the U.S. to report account information of U.S. persons to the relevant domestic authority (IRAS in Singapore's case) which in turn provides the information to the U.S. IRS. Model 2 establishes a framework for FIs outside the U.S. to directly report account information of U.S. persons to the U.S. IRS, which is supplemented by information exchange upon request between the U.S. IRS and its relevant government counterpart.

A.8 Does my organisation need to register with the US IRS for FATCA?

All SGFIs must register with the U.S. IRS, unless they are exempt (refer to FAQ #A.10 below). SGFIs that require advice on their FATCA obligations should seek professional tax/legal advice.

Added: 06 Feb 2015

A.9 Which are the SGFIs that are exempt from FATCA?

Annex II to the Singapore-U.S. IGA lists the Non-Reporting SGFIs that are treated as Exempt Beneficial Owners (which are exempt from FATCA obligations) or Deemed-Compliant FFIs (which have reduced compliance obligations under FATCA). Please seek professional tax/legal advice if you are unclear whether you qualify for exemption under Annex II.

Added: 06 Feb 2015

B. Identification and Reporting Obligations

B.1 A pre-existing individual customer, with no U.S. indicia identified as of 31 July 2014 after the account was reviewed by a Reporting SGFI, changed his address to a U.S. address on 15 December 2014. Should the account be reported to IRAS in Year 2015?

Given that the account has already been reviewed by the Reporting SGFI as of 31 July 2014, the change to a U.S. address on 15 December 2014 will be regarded as a change in circumstances which results in an U.S. indicia being associated with the account. The account shall be treated as a U.S. Reportable Account and reported to IRAS in Year 2015 unless the Reporting SGFI obtains documentary evidence establishing the account holder's non-U.S. status.

Added: 06 Feb 2015

B.2 Should all accounts that are held by sole-proprietors be treated as Individual Accounts?

A sole-proprietorship is a business owned by an individual or a company. For FATCA, only accounts held by sole-proprietorships that are owned by individuals should be treated as individual accounts.

Added: 11 Aug 2015

B.3 Can a new account which is opened and closed within a short time span (e.g. 14 days) be exempt from FATCA reporting?

No, there is no exclusion from FATCA reporting based on the duration an account is opened.

Added: 06 Feb 2015

B.4 How should a Reporting SGFI report a pre-existing account that is a U.S. Reportable Account if the FI is unable to obtain and report the U.S. Taxpayer Identification Number (“TIN”) of the Account Holder and/or Controlling Person of the pre-existing account for Reporting Year 2017?

The Singapore-US IGA (“the IGA”) and the Income Tax (international Tax Compliance Agreements) (United States of America) Regulations (“FATCA Regulations”) require Reporting SGFIs to obtain and report the U.S. TINs of U.S. Persons that are Account Holders and Controlling Persons of U.S. Reportable Accounts. In the case of a pre-existing account, a Reporting SGFI is not required to report the U.S. TINs of the U.S. Persons if such U.S. TINs are not in the records for Reporting Years 2014 to 2016. However, starting from Reporting Year 2017, it is mandatory to report the U.S. TINs of U.S. Persons and a Reporting SGFI which fails to report the required U.S. TINs would be considered to be non-compliant with the requirements of the IGA and the FATCA Regulations.

The Revised Guidance Related to Obtaining and Reporting Taxpayer Identification Numbers and Dates of Birth by Financial Institutions (“Notice 2017-46”), issued by the U.S. Internal Revenue Service (“U.S. IRS”) on 25 September 2017, provides that a Reporting SGFI that fails to obtain and report each required U.S. TIN with respect to reporting of pre-existing accounts that are U.S. Reportable Accounts for Years 2017, 2018 and 2019 will not be regarded by the U.S. IRS to be in significant non-compliance with the IGA if the Reporting SGFI:

1. Obtains and reports the date of birth of each account holder and controlling person whose U.S. TIN is not reported;
2. Requests annually from each account holder any missing required U.S. TIN; and
3. Before reporting information that relates to Calendar Year 2017 to IRAS, searches electronically searchable data maintained by the Reporting SGFI for any missing required U.S. TINs.

Where Reporting SGFIs maintain pre-existing accounts that are U.S. Reportable Accounts with missing required U.S. TINs and fulfil the 3 conditions stated above, they should insert 9 consecutive “A”s (i.e. “AAAAAAAAAA”) in the TIN field for each relevant Account Holder and/or Controlling whose U.S. TIN is missing when reporting such accounts to IRAS for Reporting Years 2017 to 2019.

Added: 05 Jan 2018

B.5 IRAS FAQ B.4 clarifies the transition relief provided under Notice 2017-46 issued by the U.S. IRS on 25 September 2017, for Reporting SGFIs to obtain U.S. TINs with respect to the reporting of preexisting accounts that are U.S. Reportable Accounts for Reporting Years 2017, 2018 and 2019.

The relief will not be applicable for Year 2020 onwards.

- **Will a Reporting SGFI be required to close or withhold on the account?**
- **How should a Reporting SGFI report a preexisting account that is a U.S. Reportable Account if the SGFI is still unable to obtain and report the U.S. TIN of the Account Holder and/or Controlling Person of the preexisting account for Reporting Year 2020 and subsequent reporting years?**

A Reporting SGFI is not required to immediately close or withhold on preexisting accounts in instances where the SGFI is still unable to obtain and report the U.S. TIN of the Account Holders and/or Controlling Persons of the preexisting accounts beginning 1 January 2020. The Reporting SGFI may continue to report a U.S. Reportable Account without the required U.S. TIN of U.S. Persons by inserting the following in the TIN field for each relevant Account Holder and/or Controlling Person whose U.S. TIN is not available.

| | |
|--|-----------|
| Preexisting individual account (and controlling persons of passive NFFEs) with only U.S. indicia being a U.S. place of birth. | 222222222 |
| Preexisting individual account (and controlling persons of passive NFFEs) and entity account that (1) has U.S, indicia other than a U.S. place of birth, and (2) either: (a) has a change in circumstances, causing the self-certification or other documentation originally obtained to be incorrect or unreliable, and a new self-certification or other documentation has not been obtained, or (b) was below the threshold for documenting and reporting the account at the time of account opening and subsequently exceeded the threshold, and a self- | 444444444 |

| | |
|--|-----------|
| certification or other documentation has not been obtained. | |
| Preexisting accounts which are “dormant accounts” with account balance above the reporting threshold (refer to paragraph 9.3 and paragraph 9.13 of the FATCA e-Tax Guide issued by IRAS for preexisting individual accounts and preexisting entity accounts respectively). For reference, “dormant account” is defined in paragraph 8.16 of the FATCA e-Tax Guide issued by IRAS. | 77777777 |
| All other scenarios under Notice 2017-46 | AAAAAAAAA |

However, in the above instances, the U.S. IRS will automatically issue an error notice that will provide the Reporting SGFI 120 days to correct the issue. This error notice will be sent to IRAS which will onward transmit the notice to the Reporting SGFI. If the Reporting SGFI does not correct the issue and provide a U.S. TIN within the 120-day period, the U.S. will evaluate the data received and determine through a consideration of facts and circumstances if there is significant potential non-compliance under the Singapore-U.S. FATCA Intergovernmental Agreement. In reviewing the facts and circumstances leading to the non-reporting of U.S. TINs, the U.S. IRS may request for further information from the Reporting SGFI through IRAS, such as the reasons why the U.S. TINs could not be obtained, whether the Reporting SGFI has adequate procedures in place to obtain the U.S. TINs, the efforts made by the Reporting SGFI to obtain the U.S. TINs and other documentation.

For the above purpose, Reporting SGFIs are expected to have adequate and robust procedures in place to obtain U.S. TINs, such as conducting an annual outreach to the account holders. Reporting SGFIs are also expected to document the actions taken to obtain U.S. TINs and reasons why U.S. TINs could not be obtained.

More information is available on the [IRS FATCA webpage](#).

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B.6 How should a Reporting SGFI report U.S. Reportable Accounts that are outside the scope of Notice 2017-46 issued by the U.S. IRS, and where the Reporting SGFI is still unable to obtain the U.S. TINs?

A Reporting SGFI is not required to immediately close or withhold on accounts in instances where the SGFI is still unable to obtain and report the U.S. TIN of the Account Holders and/or Controlling Persons of the accounts. The Reporting SGFI may continue

to report a U.S. Reportable Account without the required U.S. TIN of U.S. Persons by inserting the following in the TIN field for each relevant Account Holder and/or Controlling Person whose U.S. TIN is not available:

| <u>Instances where the SGFI is still unable to obtain the U.S. TIN</u> | <u>TIN input where U.S. TIN has not been obtained</u> |
|---|--|
| <p>New individual account (and controlling persons of passive NFFEs) that (1) has indicia of a U.S. place of birth, and (2) either:</p> <p>(a) has a change in circumstances causing the self-certification originally obtained at account opening to be incorrect or unreliable, and a new self-certification has not been obtained, or</p> <p>(b) was below the threshold for documenting and reporting the account at the time of account opening and subsequently exceeded the threshold, and a self-certification has not been obtained.</p> | 333333333 |
| <p>New individual account (and controlling persons of passive NFFEs) and entity account that has a U.S. indicia other than a U.S. place of birth, and (2) either:</p> <p>(a) has a change in circumstances causing the self-certification or other documentation originally obtained to be incorrect or unreliable, and a new self-certification or other documentation has not been obtained, or</p> <p>(b) was below the threshold for documenting and reporting the account at the time of account opening and subsequently exceeded the threshold, and a self-certification or other documentation has not been obtained.</p> | 555555555 |
| <p>Preexisting entity account with account balance exceeding \$1,000,000 held by a passive NFFE with respect to which self-certifications have not been obtained, and no U.S. indicia have been identified in relation to its controlling persons.</p> | 666666666 |

Similar to FAQ B.5 above, the U.S. IRS will automatically issue an error notice that will provide the Reporting SGFI 120 days to correct the issue. This error notice will be sent

to IRAS which will onward transmit the notice to the Reporting SGFI. If the Reporting SGFI does not correct the issue and provide a U.S. TIN within the 120-day period, the U.S. will evaluate the data received and determine through a consideration of facts and circumstances if there is significant potential non-compliance under the Singapore-U.S. FATCA Intergovernmental Agreement. In reviewing the facts and circumstances leading to the non-reporting of U.S. TINs, the U.S. IRS may request for further information from the Reporting SGFI through IRAS, such as the reasons why the U.S. TINs could not be obtained, whether the Reporting SGFI has adequate procedures in place to obtain the U.S. TINs, the efforts made by the Reporting SGFI to obtain the U.S. TINs and other documentation.

For the above purpose, Reporting SGFIs are expected to have adequate and robust procedures in place to obtain U.S. TINs, such as conducting an annual outreach to the account holders. Reporting SGFIs are also expected to document the actions taken to obtain U.S. TINs and reasons why U.S. TINs could not be obtained.

More information is available on the [IRS FATCA webpage](#).

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