

FATCA Glossary

Private Banking



US person (USP)

The term "United States person" under FATCA means:

- A citizen or resident of the United States
- A domestic partnership (partnership organized in the US)
- A domestic corporation (corporation incorporated in the US)
- Any estate other than a foreign estate
- Any trust if: a court within the United States is able to exercise primary supervision over the administration of the trust, and one or more United States persons have the authority to control all substantial decisions of the trust
- The United States government, a State or the District of Columbia (including any agency, instrumentality or political subdivision thereof).

A client could be considered a US resident for tax purposes by virtue of the time spent in the US according to the substantial presence test.

The test must be applied each year that the individual is in the US.

- Students (F1, OPT, J1, Q Visas) are considered Non Resident Aliens for up to five years, and are exempted from the Substantial Presence Test for a period of five years.

- Teacher, Researchers (J1, Q Visas) are considered Non Resident Aliens for up to two years, and are exempted from the Substantial Presence Test for a period of two years.
- For the other H1B, L1, and other Visa holders; To meet the Substantial Presence Test, a foreign person must:
- Be physically present in the US for at least 31 days during the current year, and
- Be physically present 183 days during the 3 year period that includes the current year and the 2 years immediately before that, counting:
 - (i) All the days the individual was present in the current year, and
 - (ii) 1/3 of the days the individual was present in the year before the current year, and
 - (iii) 1/6 of the days the individual was present in the year before last.
- F and J student visa holders are to exclude 5 calendar years of presence for purposes of the substantial presence test. J non-student visa holders are to exclude 2 years.

US Citizen

The term "United States Citizen" means:

- An individual born in the United States,
- 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.

Specified US person (Specified USP)

A USP that is in scope for FATCA Reporting. Broadly speaking, can include any US individual (e.g. US citizen, resident, green card holder, etc.) and/or US entity (e.g. US corporation, partnership, etc.)

Non-US Person

The term 'Non-United States person' means all clients that do not fall under the formal definition of "United States person" under FATCA.

Financial Institution

A "financial institution" means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.

Foreign Financial Institution (FFI)

A Foreign Financial Institution (FFI) is defined as a non-US entity that:

- Accepts deposits in the ordinary course of business of a banking or similar institution;
- Holds financial assets for the accounts of others as a substantial portion of its business (e.g. custody);
- Is engaged primarily in the business of investing, reinvesting or trading in securities, commodities, partnership interests, derivatives, insurance or annuity contracts or any interests (including futures and forward contracts and options) therein; or
- Is an insurance company (or the holding company of an insurance company) that issues or is obligated to make payments with respect to a financial account.

Internal Revenue Service (IRS)

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

US Tax Forms (or Withholding Certificates/IRS forms/W-forms/W-series 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 enable 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

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.

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.