

GUIDELINE
for the completion of a self-certification form
for the customers of legal entities (other than credit institutions) for FATCA purposes
(Foreign Account Tax Compliance Act)

1. INTRODUCTION.

The information contained in a self-certification form for the customers of legal entities (other than credit institutions) for FATCA purposes (hereinafter referred to as – “Self-Certification Form for FATCA purposes”) shall be requested for the purposes of compliance with Foreign Account Tax Compliance Act (FATCA) aimed at preventing US persons from tax evasion in USA.

This Form is intended for the identification of a legal entity for FATCA purposes and is compiled as per § 1.1471-3(c)(6)(v) U.S. Treasury Regulations (hereinafter referred to as – U.S. Treasury Regulations).

In connection with the abovementioned regulations, all financial institutions (no matter where they are incorporated or operating) shall identify among their customers US persons and report them to Internal Revenue Service (IRS). In case of a FATCA recalcitrant customer (e.g. he/she does not provide the full information required by FATCA for identifying whether such person is a US person), FATCA requires that the financial institution should withhold 30% of his/her US-source income (interest, dividends, royalties and etc.) and forward such withheld sums to IRS.

A customer shall within 5 (five) business days inform the Bank about a change in his/her tax status in USA. A misrepresentation in the Self-Certification Form for FATCA purposes shall entail a liability to the extent permitted by the Russian and/or US law.

A more complete and detailed information about the obligations to be performed by a US person is available at the website of IRS: www.irs.gov.

Please note that the below provisions hereof, including all the terms and definitions provided herein, are for information only and not an official translation or explanation of FATCA guidelines and U.S. Treasury Regulations and other US bylaws. Should you have any queries as to the completion of Self-Certification Form for FATCA purposes and the status of your participation in FATCA, please address the legal department of your organization or legal or tax advisors for explanation.

TERMS, DEFINITIONS AND ABBREVIATIONS

FFI – a foreign financial institution incorporated in a country other than USA.

IGA – an intergovernmental agreement signed between USA and a relevant country for the purposes of compliance with FATCA requirements.

Model 1 IGA – an IGA according to which FFIs located in a signatory state shall submit FATCA required reports to their local authorities, who shall in turn forward same to IRS.

Model 2 IGA – an IGA according to which FFIs located in a signatory state shall submit FATCA required reports directly to IRS.

FI – Financial institutions.

2. INFORMATION FOR THE COMPLETION OF A SELF-CERTIFICATION FORM FOR FATCA PURPOSES.

Information for the completion of clause 2.1 “The company is a financial institution (hereinafter referred to as – FI)” of Self-Certification Form for FATCA purposes.

For FATCA purposes, **FFIs** are organizations carrying out the following types of activities:

- I. Deposit-taking in the ordinary course of banking (or another similar) business (banks, *depository institutions*) – **Banking or another similar business (*Depository Institutions*)**.

Specified Depository Institutions:

1. A company accepts funds from customers for a certain period (including deposit taking, note issuance, current account maintenance);
2. A company also carries out one of the following types of operations:
 - lending (loans);
 - buying, selling and discounting receivables, loan indebtedness, debt obligations (notes), bills, cheques, accepted bills and other debt instruments;
 - issuing letters of credit and negotiating bills;
 - providing fiduciary or asset management services;
 - financing FX deals, or
 - concluding financial lease agreements, buying and selling financially leased property.

Examples: banks and microfinance organizations.

Exceptions: A company is not deemed as doing banking or another similar business in the following case:

- A company takes deposits (advances and other similar amounts) exclusively as collateral or security for the performance of any obligations by a depositor (an advance or another similar instrument provider) under purchase-sale, lease or other similar agreements conclude between the company and the depositor (advance provider).
- If a company carries out one of the activities mentioned in clause 2 above except deposit-taking, then it is not enough to deem the company as doing banking business in the context of FATCA.

II. They hold financial assets in the interests of one or several persons as one of the core businesses (*custodial institutions*) – *Custodial Institution*.

Specified Custodial Institution:

A company accepts financial assets¹ from customers for a certain period, in particular:

- accounts financial assets,
- maintains financial assets on special accounts;
- sells financial assets upon customer request;
- finances the purchase of financial assets;
- provides advisory services in connection with financial assets held by the company;
- clears or settles the obligations related to financial assets.

Examples: custodial institutions.

Exception:

- A company is not deemed as FI if its custodial revenue is less than 20% of its total turnover either for a 3-year period ending on December 31 and preceeding the year when the company's status was determined, or for the period since its inception (based on which period is the shorter).
- There is a special rule for calculating a threshold for start-up companies;
- If a company is a FI on other grounds, then even though its custodial revenue is less than 20% the accounts for maintaining financial assets (custodial accounts) shall be deemed as financial accounts.

III. *Investment Entities*.

Specified Investment Entity:

- As one of its core businesses, a company for or on behalf of a customer carries out **one of** the following types of operations:
 - trading in money market instruments (cheques, debt obligations, saving certificates, derivatives and etc.), foreign currency; the instruments based on FX

¹ *Financial assets* are securities, partnership shares, commodities, notional principal contracts, insurance contracts, annuity insurance contracts or any other type of interest and title (including futures, forwards and options) in respect of the instruments listed above.

rates, interest rates and other indecies; trading in securities or commodity futures;

- providing asset management services on an individual basis or managing collective investment vehicles; or
- rendering other services related to investment, administration or management of cash funds or financial assets (see the footnote above) for and on behalf of third parties.
- A company is run by another company which is a FI and this FI directly or through third parties in respect of the company carries out the activity referred to in this section III above.
- A company is a collective investment vehicle, mutual fund, exchange-traded fund, private equity fund, hedge fund, venture capital fund, leveraged buy-out fund or another silimar vehicle cretated as part of a certain investment strategy aimed at trading, investing or reinvesting in financial assets.

Example: investment funds, private pension funds, brokerage firms providing forex services.

Execeptions:

- A company is not deemed as a FI if its investment revenue is less than 50% of its total turnover either for a 3-year period ending on December 31 and preceeding the year when the company's status was determined, or for the period since its inception (based on which period is the shorter).
- There is a special rule for start-up companies;
- The collective investment vehicles which invest directly into real estate may be excluded from FI category.

IV. An insurance/holding company which is a member of an expanded affiliated group (hereinafter referred to as – EAG) where the insurance company is a member, provided that such insurance/holding company concludes cash-value or annuity insurance contracts or is obligated to make payments under such products

Specified Insurance Company:

- The activities of an insurance company are regulated in at least one of the jurisdictions where the company is operating;
- A company offers insurance products which provide for the payment of a cash value or annuities;
- The revenue (e.g. the income generated from premiums and investments) from insurance, reinsurance and annuity contracts for the last calendar year exceeds 50% of the total turnover during such year;
- The total amount of assets used for carrying out the activities related to insurance, reinsurance and annuity contracts for the last calendar year exceeds 50% of the total amount of assets during such year at any moment thereof.

Example: life insurance companies.

V. A holding company or Treasury Center), provided that:

- An entity is a holding company or treasury center of EAG which includes a bank, custodial institution, insurance or investment company; or
- A holding company or treasury center are created in connection with using collective investment vehicles, mutual fund, exchange-traded fund, private equity fund, hedge fund, venture capital fund, leveraged buy-out fund or another similar vehicle set up for the purposes of implementing a certain investment strategy.

Specified Holding Company:

- Its core business involves owning (direct or indirect) all or some shares of one or more EAG members;
- A partnership (and another non-corporate entity) are deemed as a holding company if its core business involves owning over 50% of voting power and the value of a parent company of any EAG (common parent corporation);
- A company is part of EAG which comprises one or more FI;
- A company is created in connection with using collective investment vehicles, mutual fund, exchange-traded fund, private equity fund, hedge fund, venture capital fund, leveraged buy-out fund or another similar vehicle set up for the purposes of implementing a certain investment strategy.

Example: holding companies, special purpose vehicles (SPV)

Exceptions: A holding company is not deemed as a FI if it is incorporated in an IGA signatory state (unless otherwise is provided for therein).

Specified Treasury Center:

- Its core business involves investing, hedging and financing the deals participated by EAG members of such company or the deals concluded for and on behalf of EG members for the purposes of:
 - managing the risks of changing prices or FX rates for the property of an EAG or any member thereof;
 - managing the risks of changing interest rates, prices or FX rates for the borrowings of an EAG (or any member thereof) received or to be received in future;
 - managing the risks of changing interest rates or FX rates for the assets or liabilities which are to be recognized in the financial statements of an EAG or any member thereof;
 - managing the working capital of an EAG or any member thereof by way of cash pooling, investing or trading in financial assets on behalf and for the account of a treasury center or a relevant member of the EAG; or
 - financing any company part of an EAG (financing vehicle for the EAG).
- A company is part of an EAG which includes one or more FI;
- A company is created in connection with using collective investment vehicles, mutual fund, exchange-traded fund, private equity fund, hedge fund, venture capital fund, leveraged buy-out fund or another similar vehicle set up for the purposes of implementing a certain investment strategy.

Example: financial companies, special vehicle companies (SPV).

Exceptions:

- A company is not deemed as a FI if incorporated in an IGA signatory state (unless otherwise is provided for therein);
- A company is not deemed as a treasury center if its shares (stakes) are owned by a person that is not a member of an EAG. The amounts which may be paid to such owner in connection with the retirement of such shares (stakes) or in a similar case:
 - depend primarily on the investment, hedging and financing activity of a treasury center which it carries out outside of EAG;
 - are calculated with the reference to an EAG member which is an investment company or Passive NFFE.

Among **participating** entities there are the following **financial institutions**:

- Financial institutions – US residents (US FI);
- Financial institutions – residents of controlled territories (Territory FI);
- Foreign financial institutions participating in FATCA (Participating FFI, PFFI)
- Foreign financial institutions – Registered Deemed-Compliant FFI;
- Foreign financial institutions – Certified Deemed Compliant FFI;
- Foreign financial institutions – Model 1 IGA signatory state residents (Model 1 Reporting FFI);
- Foreign financial institutions – Model 2 IGA signatory state residents (Model 2 Reporting FFI);
- Foreign financial institutions exempted from FATCA (Exempted FFI);
- Foreign financial institutions exempted from FATCA under Model 1 IGA (Nonreporting IGA FFI).

Nonparticipating foreign financial institution (NPFFI) is a foreign (non-US) financial institution refusing to comply with FATCA or unable to do so due to legal restrictions.

Information for the completion of clause 2.2 “Whether an entity is one of the Exempted FFIs” in Self-Certification Form for FATCA purposes.

Foreign non-financial companies exempted from FATCA:

- Publicly Traded Entity.
- An affiliate of Publicly Traded Entity.
- Non-profit organizations meeting certain requirements
- New companies created for carrying out a new non-financial activity.
- Companies under liquidation or bankruptcy
- Others.

Publicly Traded Entity

A legal entity shall be deemed as a publicly traded entity if:

1. Its shares are deemed as “**regularly traded**”. This condition shall be met if during a calendar year:

- One or more class of its shares, which constitutes more than 50% of all voting shares (including all classes of shares issued) and the value of which exceeds 50% of that of all shares, is listed at an organized stock exchange (listing requirements);
- For each class of shares which meets listing requirements the following conditions shall be met:
 - the shares were traded at an organized stock exchange for at least 60 days during a previous year (unless the number of such deals is minimal);
 - the total number of shares traded at an organized stock exchange during a previous year is at least 10% of the average number of shares issued in a given class.

FATCA also sets the following special requirements as to the criteria for deeming shares as “regularly traded”:

- The shares of companies which have implemented an IPO at one or more stock exchanges shall be deemed as “regularly traded” if there deals with them during:
 - at least a 1/6 part of all the days remaining after an IPO until the end of a calendar quarter when such IPO was implemented; and
 - at least 15 days during each of the subsequent calendar quarters remaining until the end of a year after an IPO.

If a company implements an IPO in Q4 of a calendar year, then such class of shares will be deemed as meeting the “regularly traded” criteria in the year when such IPO was implemented, if there were deals with such shares during the longer of the two periods, i.e.:

- a 1/6 part of the days remaining until the end of a quarter after an IPO; or
 - 5 days after an IPO.
2. A class of shares is deemed as **regularly traded during a calendar year**, if:
 - the shares are traded during such year at a stock exchange in USA;
 - a dealer playing the role of a market-maker for such shares regularly quote same. A dealer shall be deemed as a market-maker if he/she regularly and actively sells and buys shares from unrelated owners.
 3. If the main purpose of trading shares is the meeting of above criteria, then such deals shall not be considered for analysis.

Thus, a class of shares may be deemed as a not regularly traded one, if there are reasons to believe that as the main purpose of trading such shares was the meeting of above criteria in order for the shares to be deemed as regularly traded. Likewise, the shares issued as part of an IPO may be deemed as not meeting the “regularly traded” criteria, if one of the purposes of such IPO was an intention to meet the simplified criteria in order for the newly issued shared be deemed as listed.

An organized stock exchange means:

- A foreign stock exchange officially recognized, approved and regulated by the relevant supervisory authority of a country where it is located. The value of shares traded therein exceeds 1 bln. USD during each of three years preceding the year when the assessment is performed. Among such exchanges are, for example, MICEX, LSE.
- A national stock exchange registered with Securities and Exchange Commission (SEC) in accordance with section 6 of the Securities Act dated 1934 (15 USC 78f);
- Any bourse which is an officially recognized exchange for the purposes of applying the provisions of clause “Restriction of Benefits” in Double Taxation Avoidance Agreement signed between the country, in the jurisdiction of which is such bourse, and USA;
- Any stock exchange which may be named by US Treasury from time to time in its further explanations.

An affiliate of a publicly traded entity for the purposes of FATCA

An entity is deemed to be an affiliate of another entity if one of them controls the other or both entities are under common control. In this case the control involves direct or indirect owning more than 50% of votes or capital thereof.

Pursuant to clause 1.1471-1(c)(1)(ii) of U.S. Treasury Regulations, an entity **affiliated to a publicly traded entity** is a company that is a member of one and the same EAG where the publicly traded entity referred to in clause 1.1471-1(c)(1)(i) thereof is a member.

EAG, which stands for Expanded Affiliated Group, is one or more chains of includible corporations related through the ownership of shares (stakes, units and other instruments (hereinafter referred to as – shares) and having a common parent shareholder, provided that:

- such parent shareholder directly owns the shares of at least one includable corporation; and
- the shares of each includable corporation (other than the parent shareholder) are owned by one or several other includable corporations.

Whereby, the ownership of shares shall meet the following **criteria**:

- the volume of voting powers vested by such shares is more than 50% of all voting shares; and
- the value of shares exceeds 50% of that of all the shares of a relevant company.

Non-profit organization is a foreign (non-US) entity incorporated and operating in the country where it has its registered office solely for religious, charitable, scientific, artistic, cultural and educational purposes, provided that it meets all the criteria listed below:

- it is excepted from income tax in the country where it has its registered office;
- it has no shareholders or members with an equity or beneficiary interest in its incomes or assets;

- neither the laws of such country, nor its constituent documents preclude that any of its incomes or assets be allocated and used for the benefit of a physical entity or not-charitable organization other than for the purposes of holding charity events of the organization in question or as the payment of a sufficient compensation for the services rendered or for using a property, or as a payment representing the fair market value of a property purchased by such organization;
- the laws of the country, where it has its registered office, or its constituent documents require that after its liquidation or winding-up all its assets be handed over to a state authority (fully directly or indirectly owned by the relevant government) or another Non-profit organization, or be transferred to the government of the country where such organization is a resident.

Start-up company is a foreign (non-US) entity which is not operating yet and does not have a prior business history, but investing its capital into assets with the intention of carrying out a business activity, other than that of a Financial Institution or Passive NFFE, provided that a start-up company is not subject to such exception after 24 months since its inception.

Other excepted organizations (the list is not exhaustive):

- ***Excepted Nonfinancial entities in liquidation or bankruptcy*** is a foreign (non-US) company which has NOT been either a Financial Institution or Passive NFFE at any time over the past five years and which is in the process of a liquidation of its assets or reorganization aimed at continuing or resuming its operations as a nonfinancial entity.
- ***Excepted nonfinancial group entity*** is a foreign (non-US) company which is a member of a *Nonfinancial group* meeting all the criteria as follows: (a) the entity does not carry out banking or another similar activity (i.e. it is not a *Depository institution*) or custody operations (i.e. it is not a *Custodial institution*) (unless carried out for the members of its EAG (Expanded Affiliated Group)), (b) the entity is a Holding Company, Treasury Center or Captive Finance Company whose core business is respectively holding, treasury or finance operations as per US Treasury Regulations, (c) the entity is not (nor created in connection with or as) an arrangement or investment vehicle which is a Private equity fund, Venture capital fund, Leveraged buyout fund or another similar vehicle created for the purposes of investing, purchasing or financing companies and owning such companies as capital assets for investment purposes.

However:

- ***Expanded affiliated group (EAG)*** is, as a general rule, one or several chains of companies owned by a common parent corporation to the tune of more than 50% of voting/total shares of one of the companies of such group and each company of a chain owns/holds over 50% of voting shares of another company of the chain;
- ***Nonfinancial group*** is, as a general rule, an Expanded Affiliated Group (EAG) meeting all the criteria listed below: (a) max. 25% of its gross income (except for that generated by its member that is a Start-up company or Excepted Nonfinancial entities in liquidation or bankruptcy) is Passive income, (b) max. 5% of its gross income is generated by its

members that are foreign (non-US) financial institutions (unless such income is generated from the deals concluded between its members or by any member thereof which is Certified deemed-compliant FFI; (c) max. 25% of the market price of assets held by it (except for those held by its members that are Start-up companies or Excepted Nonfinancial entities in liquidation or bankruptcy, and those received from deals between its related members) - these are assets which generate a Passive income or which are withheld for generating same, and (d) any of its members is a foreign (non-US) financial institution with the status of a Participating FFI or Deemed-compliant FFI.

- **Excepted inter-affiliate FFI** is a foreign (non-US) entity which is a member of *Participating FFI* group that meets all the criteria listed below: (a) the entity does not maintain financial accounts, as defined by FATCA (except for those of the members of an EAG), (b) the entity has no accounts (except for a deposit account in the country where it is operating and such account is intended for making payments in that country) with a tax agent and does not receive payments from the tax agent that is not a member of the EAG, (c) the entity does not make payments, which according to FATCA are subject to withholding, to the persons that are not members of an EAG (except for *Limited FFIs* and *Limited branches*), and (d) the entity has not assumed an obligation to submit reports pursuant to clause §1.1471-4(d)(2)(ii)(C) of US Treasury Regulations or to perform other actions as an agent (for the purposes of chapter 4 of the US Internal Revenue Code) of any financial institutions, including the members of the entity's EAG.
- **A special company created pursuant to section 501(c) of US Internal Revenue Code (Section 501(c) company)** – as a general rule, an US non-profit organization expected from taxes (the list of such organizations is available at: <http://www.irs.gov/Charities-&-Non-Profits/Exempt-Organizations-Select-Check>).

Information for the completion of clause 2.3 “The company is a nonfinancial foreign financial entity (NFFE)” of Self-Certification Form for FATCA purposes.

Active NFFE is a company (non-US) is deemed as such for the purposes of FATCA if less than 50% of its total income for a previous year (whether calendar or tax one) is a Passive income, while the assets generating same account for less than 50% of the weighted average of its assets (as of the end of a quarter).

The value of a company's assets is calculated based on the balance sheet.

“Passive” income includes the following types of income:

- Dividends;
- Interest;
- Interest equivalent income and an income generated from the pool of insurance contracts, provided that such sums fully or partly depend on the profitability of such pool;
- Rent and royalties (unless received in the course of an active operating activity);
- Annuities;

- Revenue exceeding the cost of sale or exchange of a property generating the income specified in the paragraphs above;
- Revenue exceeding the expenses associated with commodity deals (including futures, forwards and similar deals) except for those (i) if such deals are hedging ones and (ii) trading in such commodities is the company's core business;
- FX transactions income (FX gain) exceeding the expenses incurred in connection with such transactions (FX loss);
- The contracts whose value is pegged to an underlying asset (par value), for example, derivatives (e.g. FX swap, interest rate swap, options);
- The cash value under an insurance contract (or the amount of a loan secured by such contract);
- The amounts received by an insurance company from the reserves created for carrying out insurance operations and annuities.

According to FATCA, the category of "passive" incomes does not include the following types of incomes:

- Interest, dividends, rent or royalties received from an affiliate if such income may be attributed to that of such affiliate and is not a passive one (i.e. an active income).
- If a foreign company regularly carries out dealing activity which includes performing transactions with properties, concluding forward contracts, options and other similar instruments:
 - Any income or gain (except for interest and dividends) generated from dealing operations (including hedging deals);
 - If a dealer performs transactions with securities, then any income generated from such transactions in the ordinary course of its business.

Passive NFFE is a foreign (non-US) nonfinancial company which is not an Active NFFE.

Substantial U.S. owner is:

- In a foreign corporation – any Specified U.S. person who directly or indirectly owns over 10% of the shares of such corporation (in terms of the number of votes or value)
- In a foreign partnership – any Specified U.S. person who directly or indirectly owns over 10% shares in such partnership
- In a trust fund – any Specified U.S. person who is deemed as its co-owner, pursuant to clauses of 671-679 of US Internal Revenue Code, or who directly or indirectly owns over 10% of its shares (being its beneficiary owner).

A person shall be deemed as a beneficiary owner of a share in a trust fund if such person may receive mandatory distributions from the trust fund whether directly, indirectly or via a nominal recipient, i.e. distributions the size of which is determined on the basis of a trust fund agreement, as well as discretionary distributions from the trust fund, i.e. those effected in the discretion of a manager.

FATCA sets special requirements for calculating the share in a trust fund.

In respect of trust funds, a 10% share shall be calculated as follows:

- For discretionary distributions – if the fair market value of a distribution (money or property) exceeds 10% of the value of all distributions made during a current year, or the value of all assets owned by a trust fund as of the end of a year when the relevant distribution was effected;
- For mandatory distributions – if the amount of a distribution exceeds 10% of the value of a trust fund's assets.

According to FATCA, a Specified U.S. person is a Substantial U.S. owner if:

- The fair market value of money or another property, which is distributed directly or indirectly from a trust fund to the benefit of a Specified U.S. person during a previous year, is more than 5 000 USD, and
- If a Specified U.S. person is entitled to mandatory distributions, then the value of his/her share in a trust fund is 5 000 USD or less.
- If all the beneficiaries of a trust fund are Specified U.S. persons, then they should not be deemed as Substantial U.S. owners.

If a foreign company is an investment entity, then all its shareholders are analyzed regardless of the share of 10%.

The share of an indirect ownership is determined according to the following rules:

- For indirect ownership of shares (stakes), i.e. if the shares (stakes) of a foreign company is owned by another entity (partnership or trust fund), then the shareholders (owners) of such entity shall be deemed as owners of the foreign company on a pro rata basis
- For indirect ownership of shares in a partnership or trust fund, i.e. a share in a partnership or trust fund is owned by other entity (partnership or trust fund), then the shareholders (owners) of such entity shall be deemed as those of the former on a pro rata basis
- For ownership through options, i.e. if a Specified U.S. person directly or indirectly owns (whereby, indirect ownership is determined as in the previous paragraph) a call option for purchasing a foreign company (a share in a partnership or trust fund), then such person shall be deemed as the owner of shares (stakes) in such foreign company (partnership/trust fund) to the extent stated in the call option.

When determining a person's share in a foreign corporation/partnership/trust fund, one should take into account all the facts and circumstances of consequence. However, any instruments created for concealing (understating) the ownership ratio shall be disregarded during analysis as it is done in respect of US accounts. When determining a person's share in a foreign corporation/partnership/trust fund, one should consolidate his/her share with that owned by his related persons (including spouses and other family members).