

# Foreign Account Tax Compliance Act ("FATCA")

## 1. What is FATCA?

- FATCA is a new piece of legislation to help counter tax evasion in the United States of America ("US").
- Introduced by the US' Department of Treasury and the US' Internal Revenue Service ("IRS").
- The purpose of FATCA is to encourage better tax compliance by preventing US persons from using banks and other financial organisations, to avoid US taxation on their income and assets.
- This FATCA is applicable worldwide and Malaysia (via the Ministry of Finance) is currently pursuing the Inter-governmental Agreement with the US, to facilitate the implementation of FATCA.
- The FATCA legislation is become effective since 1 July 2014.

## 2. What is the impact of FATCA?

Bank Muamalat Malaysia Berhad ("BMMB") is required to report information on financial accounts (e.g. current accounts, savings accounts, deposit accounts, custodial account, certain takaful policies and return in investment funds) held directly or indirectly by US person on an annual basis.

## 3. Who will be affected?

- FATCA legislation will affect both personal and business customers, who are treated as a 'US person' for US tax purposes.
- The FATCA legislation will also affect certain types of businesses with US owners.
- The term US person includes the following (but is not limited to):
  - A citizen of the US, including an individual born in the US but resident in another country (who has not given up their US citizenship).
  - A person residing in the US, including US Green Card holders.
  - Certain persons, who spend a significant number of days in the US each year.
  - US corporations, US partnerships, US estates and US trusts.

## 4. Is BMMB the only bank to be affected by FATCA?

No, all banks and other financial organizations are affected by FATCA; however, their approach to adopting FATCA may differ.

## 5. What does BMMB have to do to comply with FATCA?

To comply with FATCA, BMMB will:

- Conduct a review of new and existing customers to identify those that are reportable under FATCA. Business customers will be classified according to the FATCA legislation (For example, as US persons, foreign financial institutions or non-financial foreign entities).
- Report information to the IRS or local tax authority on all accounts held directly or indirectly by US persons. In addition, BMMB may also need to report information about customers who do not provide the required documentation to us.
- In certain circumstances and where customers fail to provide the appropriate documentation or when doing business with non-compliant entities, BMMB may be required to apply 30% US withholding tax on certain types of US income paid to such customers.

## 6. Is FATCA applicable to Personal or Business customers?

FATCA legislation will impact both Personal and Business customers, who have a relationship with BMMB (e.g. current accounts, savings accounts, deposit accounts, custodial account, certain takaful policies and return in investment funds).

## 7. What is the information requested to determine US Person?

- Customer need to fill up US Person Declaration Form to determine their US status. If they declare that they are a US Person, then they required to fill up Form W-9 (refer to Attachment 1).
- BMMB cannot offer any advice relating to FATCA, and BMMB recommend customer to contact a professional tax adviser to discuss on tax situation.

## 8. What happens if a joint account is held by a US person and a non-US person?

A joint account, which has one US owner, is treated as a US account and therefore, the entire account is subject to the FATCA legislation.

For more information regarding FATCA, please visit the IRS website at <https://www.irs.gov/businesses/corporations/foreign-account-tax-compliance-act-fatca>

## 9. Enquiries

You may contact our Customer Service Department at the contact details below for any enquiries regarding your FATCA or to exercise any options provided to you under this Notice:

**Head, Customer Service Department  
Bank Muamalat Malaysia Berhad  
19th Floor, Menara Bumiputra  
No. 21, Jalan Melaka,  
50100 Kuala Lumpur.**

**Telephone: 1-300-88-8787 (Local) and 603-26005500 (International)  
Email: [feedback@muamalat.com.my](mailto:feedback@muamalat.com.my)**

*This Notice may be revised from time to time. If there is any revision to this Notice, it will be posted on our website, at our branches or communicated to you by other suitable means.*

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# Glossary

## Foreign Financial Institution (“FFI”)

FFI is the abbreviation for foreign financial institution. It refers to a non-US financial institution. The FATCA legislation contains an extensive definition of FFI and includes entities such as banks, custodian institutions, investment funds and certain types of insurance companies.

## IRS 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-US status. The form establishes that one is a non-resident alien or foreign corporation, to avoid or reduce tax withholding from US source income.
- These forms will permit 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, or
  - To the local tax authority of the resident country.

## Internal Revenue Service (“IRS”)

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

## Non-financial Foreign Entity (“NFFE”)

A NFFE is a non-US incorporated/established entity that does not meet the definition of Foreign Financial Institution (FFI) and includes:

- Listed or privately held operating or trading businesses.
- Professional service firms.
- Certain entities with a passive (i.e. not an operating/trading business).
- Charitable organisations.

## Tax Identification Number (“TIN”)

For an individual, this would be their US social security number; for an entity, their employer identification number.

## Specified United States Person (“USP”)

The term specified United States person means any United States person other than:

- A corporation the stock of which is regularly traded on one or more established securities markets for a calendar year.
- Any corporation which is a member of the same expanded affiliated group as a corporation the stock of which is regularly traded on one or more established securities markets for the calendar year.
- Any organisation exempt from taxation under US federal tax law or an individual retirement plan.
- The United States or any wholly owned agency or instrumentality thereof.
- Any state, the District of Columbia, any US territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing.
- Any bank incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia) or of any state thereof.
- Any real estate investment trust.
- Any regulated investment company, or any entity registered with the Securities Exchange Commission under the Investment Company Act of 1940.

- Any common trust fund.
- Any trust that is exempt from tax or is deemed a charitable trust.
- A dealer in securities, commodities, or derivative financial instruments that is registered as such under the laws of the United States or any state.
- A broker, and
- Any tax exempt trust under a tax exempt or public school annuity plan or governmental plan.

### **US Person (“USP”)**

The term ‘United States person’ means:

- A citizen or resident of the United States.
- A partnership created or organized in the United States or under the law of the United States or of any state, or the District of Columbia.
- A corporation created or organized in the United States or under the law of the United States or of any state, or the District of Columbia.
- Any estate or trust other than a foreign estate or foreign trust. (See Internal Revenue Code section 7701(a)(31) for the definition of a foreign estate and a foreign trust).
- A person that meets the substantial presence test.
- Any other person that is not a foreign person.

### **US Citizen**

The term ‘United States Citizen’ means:

- An individual born in the United States.
- An individual, whose parent is a US citizen.
- A former alien, who has been naturalized as a US citizen.
- An individual born in Puerto Rico.
- An individual born in Guam, or
- An individual born in the US Virgin Island.

### **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 income, if such payment is from sources within the US - this will include any payment of interest and dividends from sources within the US. 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.