



FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA)

Frequently Asked Questions (FAQs)

Booklet for Domestic Branches and Overseas Territories

December 2018

S. No.	Frequently Asked Questions (FAQs)
1.	<p>Does FATCA only apply to New Customers?</p> <p>No. FATCA is applicable to new and pre-existing customers both.</p>
2.	<p>Who are “Pre-existing account holders”?</p> <p>Individual account holders that became customers of the bank before July 1, 2014 while entity customers that became customer of the bank before January 1, 2015.</p>
3.	<p>What products are in scope of FATCA?</p> <p>Products that are in-scope for FATCA are those considered to be financial accounts for FATCA purposes (financial account products) which are typically deposit or investment style products.</p>
4.	<p>Are all banks and financial institutions across the globe impacted by FATCA?</p> <p>Yes, all banks and financial institutions are affected by FATCA; however their approach to adopting FATCA may differ depending on their nature of business and geographical spread.</p>
5.	<p>Does HBL Bank UK have any plans to stop accepting U.S. customers due to FATCA?</p> <p>U.S. Persons are and will be welcoming by HBL Bank UK for account opening and/or other banking services as long as they are willing to comply with the FATCA obligations. However, HBL Bank UK will not open the new accounts of those persons who are not willing to comply with the FATCA Regulations.</p>
6.	<p>What are the U.S. Indicia?</p> <ol style="list-style-type: none">U.S. citizenship (i.e. U.S. passport)U.S. residency (i.e. green card holder or qualifies 183 days criterion)U.S. place of birth

- d. U.S. home/mailling/residence address (including P.O. Box)
- e. U.S. telephone number (residence/office/mobile)
- f. Standing instruction to transfer funds to an account maintained in the U.S.
- g. Power of attorney or signatory authority granted to a person with a US address.
- h. A U.S. 'in care of' or 'hold mail' address that is the sole address for the account holder as per Bank's records.

7. **What do “U.S. Person” and “Non U.S. Person” mean in terms of individual customers under the FATCA Regulations?**

Based upon the following criteria, the customer will either be classified as “U.S. Person” or “Non U.S. Person”

a. Identification of an Account Holder as a U.S. Person (i.e. Direct U.S. Links):

- i. U.S. citizen
- ii. Dual/multiple citizenships where one country of citizenship is U.S.
- iii. Non-U.S. citizen that is a U.S. permanent resident (i.e. Green Card Holder)
- iv. U.S. place of birth
- v. The individual is living/working in the U.S. and is liable for tax there

b. Identification of an Account Holder as a Non U.S. Person (i.e. Indirect or no U.S. Links - A person who does not meet any criteria mentioned in 7.a. above but may have all/any/none of the following U.S. Indicia in his/her documentation(s) or Account Opening Form):

- i. U.S. Resident Address or U.S. Mailing Address
- ii. U.S. Contact Number (Office/Residence/Mobile)
- iii. Power of Attorney / Mandate granted to a person with U.S. Address
- iv. Standing Instructions to pay amounts to an account maintained in U.S.
- v. An “in care of” or a “hold mail” U.S. address that is the sole address on file with respect to the account holder.

8. **Which Internal Revenue Service (IRS) Form is applicable to individual customers once the U.S. Indicia are identified?**

IRS Form W-9 is applicable in terms of the following:

- a. U.S. citizenship (i.e. U.S. passport)

- b. U.S. residency (i.e. green card holder or qualifies 183 days criterion)
- c. U.S. place of birth
- d. The individual is living/working in the U.S. and is liable for tax there

IRS Form W-8BEN is applicable in terms of the following:

- a. U.S. home/ mailing/ residence address (including P.O. Box);
- b. U.S. telephone number (residence/office/mobile);
- c. Standing instruction to transfer funds to an account maintained in the U.S.;
- d. Power of attorney or signatory authority granted to a person with a US address;
- e. An ‘in care of’ or ‘hold mail’ address that is the sole address for the account holder as per Bank’s records; and
- f. The individual was born in the U.S. but has a renunciation certificate/written explanation for U.S. citizenship.

9. What does “U.S. Person” mean in terms of Entity Customers under the FATCA Regulations?

- a. A partnership, corporation, company or association created or organized in the United States or under the law of United States;
- b. A U.S. estate (other than foreign estate); or
- c. A domestic U.S. Trust.

10. Who is an individual customer under FATCA Regulations?

Under the FATCA Regulations, an individual customer includes individual, joint, sole proprietor and single member private limited company.

11. Does the bank need to review the Account Opening and other related documents of all individual customers to establish their personal status?

Yes, it is essential for the bank to thoroughly and critically review the Account Opening and other related documents including the customer’s identification to ensure whether the customer is a “U.S. Person” or “Non U.S. Person”.

12. What if the customer is not willing to provide the IRS Form in case U.S. Indicia are identified?

As a policy matter, branches must not open the account of those customers who are not willing to submit the duly completed IRS Form

and customers should be politely refused in this regard.

13. **Is it essential for the bank staff to fill out the Individual Customers (FATCA Checklist) for Individual, Proprietorship Firm and Single Member Private Limited Company?**

No, Individual Customers (FATCA Checklist) will only be filled out if any U.S. Indicia are identified through Account Opening Form, Customer Identification Document and/or any other document(s) then branches should fill out the Individual Customers (FATCA Checklist).

14. **Does the bank need to check the U.S. Indicia for all joint account holders?**

Yes, it is essential for the bank to carry out the due diligence procedure for all joint applicants and in case any U.S. Indicia are identified then the relevant IRS Form (W-8BEN/W-9) should be provided to all joint account holders.

15. **Does the bank need to obtain any IRS Form in case the Minor is Non U.S. (e.g. Pakistani National/ Resident) while the Guardian is a U.S. citizen/resident?**

Yes, the IRS Form W-8BEN is applicable in this case and the Guardian will fill out on behalf of the Minor.

16. **Is it necessary for the bank to obtain any IRS Form from the customer who is not a U.S. citizen/resident but his/her Mandate Holder's U.S. Address stated on the Account Opening Form/ Additional Request Form(ARF)/ Third Party Mandate Form?**

Yes, the IRS Form W-8BEN is applicable and it should be filled out by the customer and not the Mandate Holder.

17. **Are branches allowed to open the account of those customers who are willing to submit the relevant IRS Form subsequent to account opening due to any reason thereof and the customer is well known to the bank?**

Yes under exceptional circumstances only, however, prior approval from Business Head and thereafter FATCA Compliance Officer must be obtained and if the approval is accorded then only branches should open the account of the customer in the system.

18. **Should the branch solicit pre-approval from Head Office in case any U.S. Indicia are identified?**

No, if U.S. Indicia are identified then it is essential for the branches to obtain the relevant IRS Form from the customer and open the account in the system as per the standard procedure of the bank.

19. **Is there a requirement for bank staff or Relationship Managers/Branch Managers to countersign any IRS Form?**

No, there is no requirement for any IRS Forms to be countersigned by any member of the bank.

20. **Is there any requirement under the FATCA Regulations to send the duly completed IRS Forms received from the customers to IRS or any other Government Authority?**

No, there is no requirement to submit any duly completed IRS Form received from the customers to IRS or any other Government Authority.

21. **What is a “recalcitrant accountholder”?**

A “Recalcitrant Accountholder” is any accountholder that:

- a. Fails to provide the relevant appropriate IRS Form;
- b. Fails to comply with reasonable requests for information necessary to determine if the account is a U.S account;
- c. Fails to provide the name, address and TIN of each U.S. person and each U.S. Substantial Business Owner; or
- d. Fails to provide a waiver of any foreign law that would prevent a foreign financial institution from reporting information required under FATCA.

22. **What are the consequences to customers for not disclosing the information required by FATCA?**

- a. The bank will not open new accounts or offer additional products / services to those customers who choose not to comply with bank’s request for documentation to establish the customer status under FATCA.
- b. The bank may exit the relationship with customers who decide not to provide the necessary information and documentation to HBL Bank UK within the required regulatory timeframe.
- c. The bank is required to report information about the customers who do not provide the required documentation.
- d. Existing customers who do not disclose the requisite information to the bank will have their accounts flagged as non-compliant.

Such accounts will eventually be closed if the information is not received within a specified period of time (i.e. 90 days).

23. **Does the required IRS Form have to be provided in original format?**

Yes, the IRS Form will need to be submitted in original.

24. **Is FATCA applicable to both personal accounts and business accounts?**

FATCA Regulations will affect both personal and business customers who are treated as 'U.S. Person' for U.S. tax purposes.

25. **What happens if one of the joint account holders is a U.S. Person?**

A joint account that has one U.S. Person is treated as a U.S. Account and the entire account is subject to reporting as U.S. Person.

26. **What happens if a joint account is held by a U.S. person and a non U.S. person?**

A joint account that has one U.S. owner is treated as a U.S. account and the entire account is subject to reporting as U.S. person. However, personal information related to the U.S. person ONLY will be reported.

27. **A customer was born in the U.S. but has never lived there. Will the customer be considered as a U.S. citizen?**

If a customer was born in the U.S., which means he/she has most likely acquired U.S. Citizenship at birth. In order to attest that the customer is not tax liable in U.S., he/she needs to provide us with a Certificate of Loss of Nationality of the U.S./written explanation to support the W-8BEN form.

28. **How often does the customer have to provide information for FATCA purposes?**

If an existing customer obtains U.S. citizenship / residency then the customer is expected to provide the updated personal information and account details to the bank as and when there is a change in their personal status. For this purpose, the customer will fill out the Additional Request Form (ARF) and will also submit the IRS Form W-9. However, if any other U.S. Indicia are present in the ARF then only the W-8BEN will be applicable.

29. What does FATCA mean for a customer if there are no U.S. Indicia?

If there is no U.S. Indicia, FATCA will have no impact on the customer relationship with the bank.

30. If the customer has surrendered/renounced his/her U.S. citizenship/residency then what are the documents required to be submitted by the customer?

A government issued identification document, certificate of Abandonment of Lawful Permanent Resident Status/ written explanation and W-8BEN should be obtained from the customer.

31. What does Non Financial Foreign Entity (NFFE) mean?

Under the FATCA Regulations, NFFE is any entity that is not a financial institution. The following are entities which will fall under the categories of NFFEs:

1. Unlisted Public Ltd
2. Listed Public Ltd
3. Public Multinational
4. Private Ltd Co
5. Partnership Firm
6. Private Multinational Co
7. Public Sector Cooperation/ Autonomous bodies
8. Club / Association/Trust/ NGO / NPO

32. What if the customer is unable to select any of the classification mentioned on the Non Financial Foreign Entity (NFFE) Form

If the customer is unable to select any of the FATCA classification then it is advisable for the customer to seek advice from a tax professional/advisor.

33. What is the purpose of NFFE Self Certification Form?

The NFFE Self Certification Form is designed by the bank and it must be provided to all non financial foreign entities (not to FFIs) at the time of account opening to declare their FATCA status on the said form. Moreover, this NFFE Self Certification Form will form the

basis whether the relevant IRS Form is applicable to such an entity or not depending upon the FATCA status. If the entity is incorporated in U.S. then IRS Form W-9 will be applicable. However, if the entity is incorporated in a country other than U.S. then IRS Form W-8BEN-E or W-8IMY may be applicable depending upon which FATCA Classification the NFFE selects itself.

34. **What does Active NFFE mean?**

Any NFFE which generates more than 50% of their gross income from core business (such as trading, manufacturing, construction, agriculture, retail, utilities, health services, educational services, social services, management consulting companies, architect offices etc.).

35. **What does Passive NFFE mean?**

Any NFFE which generates more than 50% of their gross income from other than core business (such as a interest, income equivalent to interest, including amounts received in lieu of interest, rents and royalties, annuities and foreign currency gains).

36. **What does Publicly Traded NFFE or NFFE affiliate of a Publicly Traded Corporation mean?**

The shares of any NFFE are regularly traded on one or more established securities market for the calendar year is termed as Publicly Traded NFFE or NFFE affiliate of a Publicly Traded Corporation. For example, an entity is listed on any of the stock markets of Pakistan (Karachi Stock Exchange / New York Stock Exchange) or any other stock exchange. A NFFE Affiliates with a Publicly Traded Corporation is any corporation that is a member of the same expanded affiliated group of a Publicly Traded NFFE.

37. **Does the bank/financial institution need to obtain the relevant IRS Form from such a Non Financial Foreign Entity (NFFE) where there are U.S. Directors, Partners and entity is engaged in trading/manufacturing/service business etc?**

No, there is no need to obtain any IRS Form from an entity which is engaged in trading/manufacturing/service business etc. The bank should provide the NFFE Self Certification Form to all NFFE customers for its completion and sign-off.

38. **What are the different IRS Forms for entities?**

There are different IRS 'W' Forms which have been released by IRS and these Forms are required to be filled out by all entity

customers. These IRS ‘W’ Forms are explained in the following table which will facilitate the concerned staff while dealing with customers:

S. No.	IRS Form	Description
1	W-9	This form is used for U.S. entities
2	W-8BEN-E	This form is used for foreign entities to document their status for the purposes of FATCA Regulations.
3	W-8IMY	This form is used for a person acting as an Intermediary for Non U.S. Partnership, Non U.S. Trust or a Non U.S. Grantor Trust.

39. **Which IRS Forms are applicable for Foreign Financial Institution(s)?**

Under the FATCA Regulations, those entities which are financial institution(s) by definition should fill out the IRS Form W-9 or W-8BEN-E or W-8IMY, as appropriate.

40. **Does the Bank need to provide the NFFE Self Certification Form to any Foreign Financial Institution?**

No, the NFFE Self Certification Form must not be provided to any Foreign Financial Institution (FFI) as all FFIs are required to fill out the relevant IRS Form, as appropriate.

41. **Who are Exempt Beneficial Owners under FATCA Regulations?**

Exempt Beneficial Owners are institutions, which according to IRS pose low risk of tax evasion and include the following at a minimum:

- a. Governmental Entity;
- b. International Organization;
- c. Foreign Mission;
- d. Central Bank;
- e. Pension Fund of an Exempt Beneficial Owner; and
- f. Investment Entity wholly owned by Exempt Beneficial Owners; etc.

42. Does the bank need to obtain IRS Form from any bank/financial institution?

In general, the banks/financial institutions should obtain the duly completed IRS Form (W-8BEN-E or W-8IMY) from banks/financial institutions. However, those countries which have signed the Intergovernmental Agreement (IGA) with U.S. and under the said agreement if some of the banks/financial institutions have been awarded exemption and the banks/financial institutions have also been informed by the local regulator/other competent authorities then in such cases the bank/financial institutions should comply the local regulatory requirements and the FATCA Regulations will not apply to them.

43. Does the branch need to send the duly completed IRS Form to any particular unit for review?

Branches will scan the duly completed IRS Form onto KYC Drive/Datastore for review by Compliance. The original form, unless otherwise requisitioned, will remain in customer's file held at the branch.

44. Is it possible for the bank to provide guidance to the customers in terms of IRS Form selection and/or completing the details thereon due to the fact that the IRS Forms are very complex to understand?

As a policy matter, the bank will not provide any guidance in terms of IRS Form selection and/or completing the details thereon. However, if the customer requires any guidance then the bank should advise the customer to seek guidance from the independent tax advisor or the customer may visit the IRS website (<http://www.irs.gov/>).