



FATCA BRIEFING DOCUMENT FOR ENTITY CUSTOMERS			
FINANCIAL ACCOUNT INFORMATION			
Purpose	To open :	<input type="checkbox"/> Current Account	<input type="checkbox"/> USD
	<input type="checkbox"/> Entity account	<input type="checkbox"/> Current Account Plus	<input type="checkbox"/> VND
	<input type="checkbox"/> Others	<input type="checkbox"/> Joint Account	<input type="checkbox"/> Others

THINGS YOU NEED TO KNOW ABOUT FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA)

Please tick to indicate this section that has been briefed

1. What is FATCA?

The Foreign Account Tax Compliance Act (**FATCA**) was enacted on 18 March 2010 and was designed to report and collect tax from United States (U.S.) persons (i.e. U.S. citizens/greencard holders/tax resident) on their offshore financial accounts including investments in countries like Vietnam through non-U.S. financial institutions and offshore investment vehicles. The FATCA is effective on 01 July 2014. The intergovernmental agreement (IGA) between Vietnam and the United States for implementing the FATCA regime was signed on 01 April 2016 and generally requires foreign financial institutions such as us, Public Bank Vietnam to provide information on U.S. persons to the Vietnamese Competent Authority, which will then submit the information to the U.S. Internal Revenue Service (IRS).

2. What is a U.S. Person with regard to an Entity?

A partnership or corporation organized in the U.S or under the laws of the U.S. or any state thereof.

A trust if (i) a court within the U.S. would have authority under applicable law to render orders or judgments concerning a substantially all issues regarding 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 deceased that is a citizen or resident of U.S.

3. What is a Specified U.S. Person for an Entity?

A Specified U.S. Person is any U.S. Person, **other than:**

- i. A corporation the stock of which is regularly traded on one or more established securities markets;
- ii. Any corporation that is a member of the same expanded affiliated group as defined in the U.S. Internal Revenue Code (IRC);
- iii. The U.S. or any wholly owned agency or instrumentality thereof;
- iv. Any State of the U.S., the District of Columbia, any U.S. Territory, any political



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subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one of the foregoing;

- v. Any organization exempt from taxation or an individual retirement plan as defined in IRC;
- vi. Any bank as defined in IRC;
- vii. Any real estate investment trust as defined in IRC;
- viii. Any regulated investment company as defined in IRC or any entity registered with the Securities Exchange Commission under Investment Company Act of 1940;
- ix. Any common trust as defined in IRC;
- x. Any trust that is exempt from tax as defined in IRC;
- xi. A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the U.S. or any state;
- xii. A broker as defined in IRC.

4. What is an Active Entity?

Less than 50 percent of the NFFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 percent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income.

5. What is Passive Income?

Passive Income means non-trading income and would include:

- i. Dividend;
- ii. Interest;
- iii. Income equivalent to interest, including substitute interest and amounts received from or with respect to a pool of insurance contracts if the amount received depends in whole or part upon the performance of the pool;
- iv. Rents and royalties, other than rents and royalties derived in the active conduct of a trade or business conducted, at least in part, by employees of the NFFE;
- v. Annuities;
- vi. Net gains from the sale or exchange of property that gives rise to passive income described under the above items; and
- vii. Foreign currency gains.



6. What is Not-for-profit organization as compliance with FATCA?

The NFFE meets all of the following requirements:

- i. It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organization, business league, chamber of commerce, labor organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare;
- ii. It is exempt from income tax in its jurisdiction of residence;
- iii. It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- iv. The applicable laws of the NFFE’s jurisdiction of residence or the NFFE’s formation documents do not permit any income or assets of the NFFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFFE’s charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFFE has purchased; *and*
- v. The applicable laws of the NFFE’s jurisdiction of residence or the NFFE’s formation documents require that, upon the NFFE’s liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organization, or escheat to the government of the NFFE’s jurisdiction of residence or any political subdivision thereof.

7. What is Controlling Persons?

The natural persons who exercise control over an Entity. In the case of a trust, such term means the settler, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions.

8. What happens if our company has been identified as a U.S. Person or Specified U.S. Person incorporated in the U.S.?

For a U.S. Person who opens any of the financial accounts listed above, your information, including account balances and interest and dividend income payment amounts will be reported annually by the Bank to IRS via the Vietnamese Competent Authority. To the extent possible within our systems, FATCA requires the Bank to aggregate the account balances of all accounts under the first party name, if you have two or more financial accounts maintained with the Bank in order to determine whether the minimum threshold limit is reached whereby reporting is then required.



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If you are a U.S. Person, you are also required to furnish a valid withholding certificate using Form W -9 which will include your U.S. Taxpayer Identification Number. In addition, you will be required to give your consent to the Bank to waive the prohibition the ultimate disclosure of your information to the IRS via the Vietnamese Competent Authority.

You may also consult your U.S. tax advisor to determine if your organization qualifies for exempt, deemed compliant or excepted status under FATCA, and then furnish the Bank with the correct and valid documentation of your entity's FATCA classification..

Nevertheless, the account application requires the prior review and interim approval from the Bank as part of the Bank's FATCA due diligence (FDD) process. After the interim approval, the authorised representative(s) of the entity is/are to submit the correct and valid documentation, for example the relevant and valid Form W-8/W-9 or any valid self-certification and documentation, within the 90 days period from the date of application. If the FDD is fully compliant, final approval will be granted by the Bank to open the U.S. entity account.

Please take note that FATCA grants 90 days from the date of the application for the applicant to furnish the required documentation and related consent. If, however, you are unable to do so, the Bank has the right to reject your application.

9. What happens if our company is a domestic entity or a Non-U.S. entity with one or more of its directors/partners/shareholder(s) who are U.S. Persons that have more than 25% shareholding?

The above entity is termed as a U.S. Owned Foreign Entity under FATCA. FDD is required to be performed on each U.S. Person holding more than a 25% ownership interest and that party will be required to furnish a valid withholding certificate using Form W-9 if the entity is a Passive Non-Financial Foreign Entity. In addition, the authorised representative of the organisation and the U.S. shareholder(s) are to give consent to the Bank to waive the prohibition to disclose information to IRS with respect to the entity and the shareholder respectively and to authorise the Bank to withhold any payments made to the entity's account, if applicable.

If your entity account is a U.S. reportable account under FATCA, then the name of the entity account, together with the particulars of the substantial owner(s) who is/are U.S. Persons will be reported annually by the Bank to the Vietnamese Competent Authority, which will then submit it to the IRS.

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10. What if we do not submit the required documentation as requested by the Bank within the required 90-day timeframe?

FATCA provisions allow 90 days from the date of the application to furnish the required documentation and Consent. If the entity is unable to furnish the correct and valid FATCA documentation to the Bank, the account is treated as recalcitrant and would be subject to withholding. In such an instance, the Bank has the right to reject the application to open a new entity account.

11. What types of transactions are subject to FATCA regulations on withholding and should withholding be applicable to recalcitrant account?

From 1 July 2014, FATCA withholding is applicable to fixed, determinable, annual or periodic (FDAP) income derived from sources within the U.S., such as interest or dividend income from U.S. securities. Beginning in 2017, gross proceeds from the sale or disposition of U.S. assets will also likely be subject to withholding. Withholding only applies to recalcitrant individual and entity account holders or entity account holders that are non-participating foreign financial institutions.

12. What if there is a change in circumstances on the entity and/or the director(s)/partner(s)/business owner(s)' particulars?

You are to inform the Bank within 30 days of the change in circumstances. For example, change of one of the more than 25% company shareholders who has been classified as a U.S. Person to another director who is of Malaysian nationality etc. In addition, documentation as requested by the Bank, where applicable to support the change, is to be provided to the Bank within 90 days from the date requested by the Bank.

13. Where do we obtain a blank copy of the Withholding Certificate that is the relevant and valid Form W-8 or Form W-9?

The Bank will furnish you with a series of Form W -8 or Form W-9 taken from the IRS website for the customer to determine the appropriate form to use. However, we also recommend that you obtain appropriate tax advice to correctly complete the proper form.

14. If we have queries regarding FATCA, to whom should I get in touch?

If you have any queries on FATCA, it is recommended that you contact your tax advisor or liaise with the IRS at their online portal or contact the Vietnamese Competent Authority.



15. What are the role and responsibilities of the Bank on FATCA?

The Bank's responsibilities as a participating foreign financial institution are to conduct due diligence, reporting and withholding, as determined in the IGA between Vietnam and the U.S.

Briefing Confirmation

I/We confirm that I/we have been briefed on the key requirements of Foreign Account Tax Compliance Act (FATCA) with regards to the opening of the new account and I/we confirm that I/we have fully understood and agree to be bound by the aforesaid provisions should the Bank approve the application for the opening of the account/continue account transactions. Furthermore, if we are an entity under Application for opening account, I/we acknowledge that I/we are to furnish the required valid FATCA documentation and consent together with the completed FATCA account opening form within 90 days from the date of the application as stated hereunder, failing which the Bank has the right to reject my/our application/cease account transactions with me/us without assigning any reason whatsoever.