

FATCA TECHNICAL BRIEFING

WHAT IS FATCA ?

FATCA stands for **Foreign Account Tax Compliance Act** and targets all accounts held by US tax payers outside of the US. FATCA is a US law aimed at foreign financial institutions (FFIs) and other financial intermediaries to prevent tax evasion by US citizens and residents through use of offshore accounts.

FATCA has a global scope and requires that each FFI around the world reports accounts held by US tax payers. Financial institutions failing to report these accounts will be subject to a 30% withholding tax on payments from the US.

Most countries have negotiated intergovernmental agreements (“IGAs”) with the IRS (US Tax Authority) in order to facilitate information flows between entities, local tax authorities and the IRS and look to include local specifics into these agreements.

The majority of countries which have entered into an agreement with the IRS have opted for an IGA model 1.

WHY COMPLY ?

TO RESPECT THE LAW

Many governments have signed an IGA with the IRS in order to implement FATCA into their domestic law. FATCA is not just a legal Act within the US.

TO AVOID TAX SANCTIONS

30% withholding tax is imposed upon certain “U.S. source” income and principal of an FFI that does not participate / comply with FATCA.

TO MEET BANKS REQUIREMENTS

For their own FATCA compliance purposes, institutions such as banks will systematically request FATCA documentation for all their client's investors.

WHAT DO YOU HAVE TO DO TO BE COMPLIANT ?

In order to be FATCA compliant and avoid being subject to a withholding tax of 30% on US payments, **each legal entity** around the world will have to meet the FATCA requirements following the steps below :

- First Step: **the FATCA status** determination to understand further obligations.
- Second Step: fulfilling its status related obligations.
(please refer to the point on FATCA obligations on the following page)

WHAT ARE THE POSSIBLE FATCA STATUS ?

The two main status are :

FFI: FOREIGN FINANCIAL INSTITUTIONS

Entities which perform the following activities **on behalf of a client** and/or function or purports to be **an investment vehicle** :

In the scope of Alter Domus clients:

- “Individual and collective portfolio management”
or
- “Otherwise investing, administering, or managing funds or money on behalf of other persons”.

NFFE: NON-FINANCIAL FOREIGN ENTITIES:

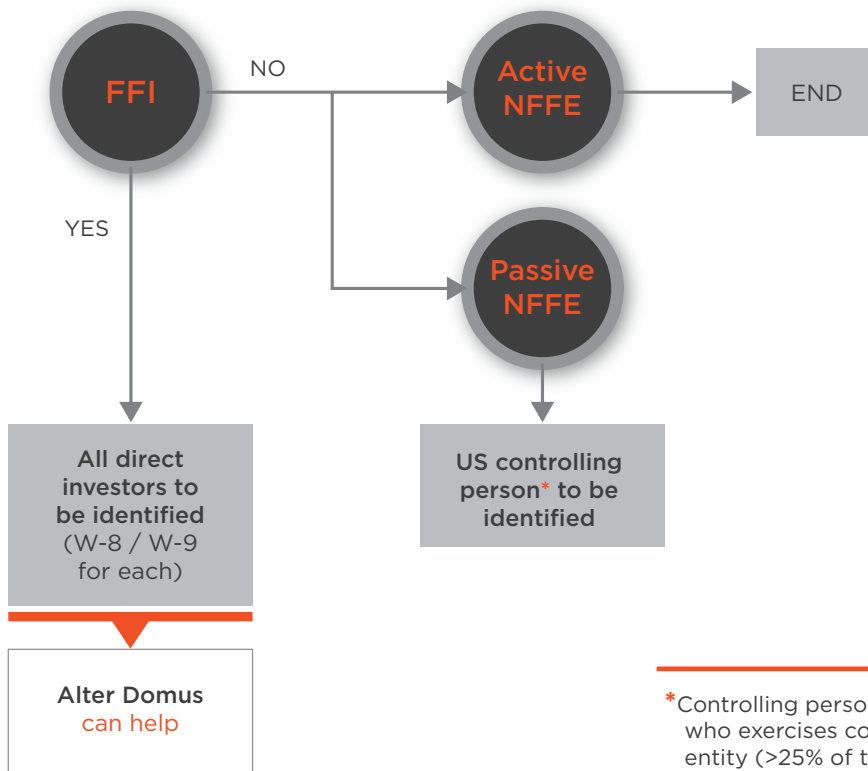
Entities that are not FFIs:

• Passive NFFE:

The main criteria is: **Less than 50 percent** of the NFFE's gross income for the preceding calendar year or other appropriate reporting period is **active income** (generated by an operational activity) 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 **active income**.

- **Excepted NFFE:** Active NFFE is the most common exception.

FATCA OBLIGATIONS



*Controlling person: A person who exercises control over an entity (>25% of the control)

HOW CAN ALTER DOMUS ASSIST YOU ?



ENTITY LEVEL

FATCA REQUIREMENT

SERVICES PROVIDED

STATUS DETERMINATION

Alter Domus can assist the Board of Directors by providing an analysis and a memo related to status determination

REGISTRATION (depending on the status)

For FFIs, Alter Domus can register the entity via the IRS website and provide the GIIN number once issued

INVESTOR IDENTIFICATION

New investors: **providing self certification** by using Thomson Reuters Identity (TRI)



Existing investors: threshold analysis to determine the identification process to follow
For high value accounts, use of the tool TRI
Alter Domus can also undertake an ongoing monitoring of investor identification

REPORTING

The first reporting deadline in certain countries is **30/04/2015**
However, the deadline for most countries is **30/06/2015**



INVESTOR LEVEL

WHAT IS A SELF-CERTIFICATION ?

A self-certification is the document an entity must complete and sign in order to certify its FATCA status. The official documents issued by the IRS are:



W-8 : Specific forms to complete for foreign (non US) individuals or legal entities
The most common are:

- W-8BEN-E for foreign companies (with some exceptions)
- W-8BEN for foreign individuals



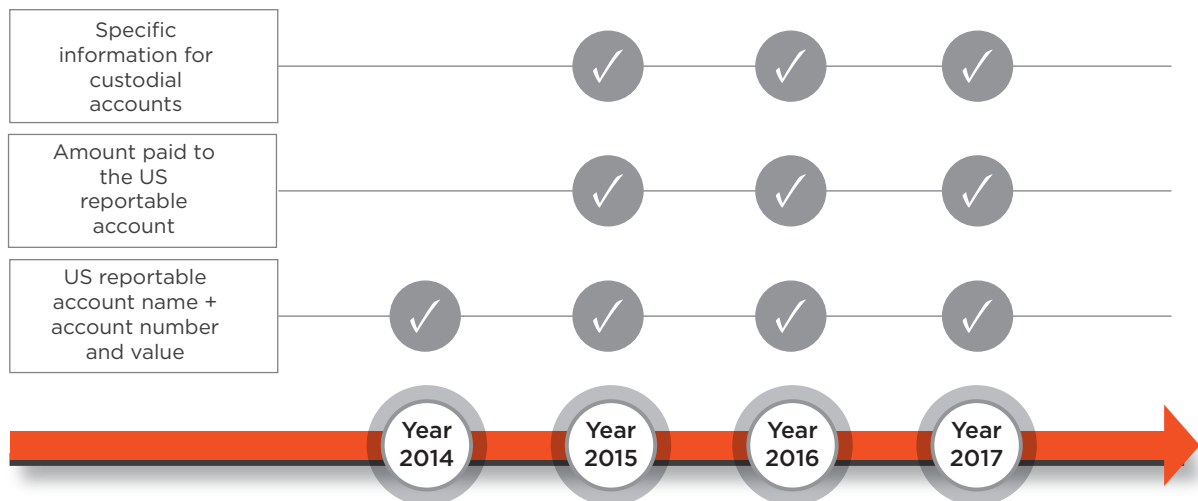
W-9 : Specific forms to complete for US individuals or US legal entities

WHICH ENTITIES ARE OBLIGED TO REPORT ?

In countries in which an IGA model 1 was signed, reporting must be transmitted to the local Tax Authorities. This Authority will in turn be responsible for reporting to the IRS.

In the other cases, reporting has to be sent directly to the IRS.

THE CONTENT OF FFI REPORTING IS AS FOLLOWS :



YOUR FATCA TECHNICAL BRIEFING TEAM



MAIN CONTACT

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Alter Domus is a fully integrated Fund and Corporate services provider, dedicated to international private equity & infrastructure houses, real estate firms, private debt managers, multinationals, capital markets issuers and private clients. Our vertically integrated approach offers tailor-made administration solutions across the entire value chain of investment structures, from fund level down to local Special Purpose Vehicles.

Founded in Luxembourg in 2003, Alter Domus has continually expanded its global service offer and today counts 40 offices and desks across five continents. This international network enables clients to benefit globally from the expertise of more than 2,000 experienced professionals active in fund administration, corporate secretarial, accounting, consolidation, tax and legal compliance, depositary services and debt administration services.

We are proud to serve 17 of the 20 largest private equity houses, 15 of the 20 largest real estate firms and 17 of the 20 largest private debt managers in the world.

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