

BASIC INFORMATION FOR CLIENTS CONCERNING THEIR COMPLIANCE WITH FATCA

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BASIC INFORMATION FOR CLIENTS CONCERNING THEIR COMPLIANCE WITH FATCA

1. INTRODUCTION - WHAT IS FATCA?

A. BRIEF OVERVIEW OF THE FOREIGN ACCOUNT TAX COMPLIANCE ACT (“FATCA”)

- 1.1. On 2 December 2014 the Cyprus finance minister and the American ambassador to Cyprus formally signed the intergovernmental agreement between Cyprus and the USA under the “*Foreign Account Tax Compliance Act*” (“*FATCA*”), an American tax measure enacted in 2010 with the purpose of implementing mechanisms designed to prevent and detect US tax evasion on income derived by US persons (citizens or residents) from sources outside the US and to improve taxpayer compliance and create greater transparency by strengthening information reporting and compliance with respect to US accounts and assets held overseas.
- 1.2. FATCA was enacted by the US government as a result of the government’s efforts to combat tax evasion by US persons holding investments in offshore accounts. Essentially, FATCA provides for an obligation of certain US taxpayers holding financial assets outside the United States to report those assets to the Internal Revenue Service (“IRS”). As such, FATCA targets tax non-compliance by US taxpayers with foreign accounts.
- 1.3. In addition, FATCA requires foreign financial institutions to report directly to the IRS certain information about financial accounts ultimately held by US taxpayers. Non-compliance with FATCA provisions will result in the withholding of a 30% tax on any US-sourced income payment to non-compliant account holders or non-participating foreign financial institutions (“*FFIs*”) effective from 2017 onwards.
- 1.4. In the course of the implementation of FATCA, the US government has concluded Intergovernmental Agreements with a number of governments worldwide aiming to streamline compliance with new legislation. There are two types of IGAs, Model 1, under which FFIs in partner jurisdictions will be able to report information on U.S. account holders directly to their national tax authorities, who in turn will report to the IRS, and Model 2, under which FFIs will report information directly to the IRS rather than their local jurisdictions. Cyprus has concluded a Model 1 IGA with the US on 2nd December 2014 (hereinafter the “*IGA*”).

B. KEY FATCA PROVISIONS AND CLARIFICATIONS

- 1.5. The following considerations arise in the context of complying with FATCA:
 - a) Determine whether there is an obligation to register with the IRS and report accordingly;
 - b) Identify “US accounts” of US persons;
 - c) Report on these accounts.

1.6. More information regarding FATCA can be found on the relevant IRS website.

a) Obligation to register

1.7. Entities which are classified as Foreign Financial Institutions (“**FFIs**”), as defined in the IGA, have an obligation to register with the IRS. The definition of FFIs covers the following types of entities:

- a) Depository institutions (entities that accept deposits in the ordinary course of business);
- b) Custodial Institutions (entities of which 20% or more of their gross income is attributable to holding of financial assets);
- c) Investment Entities (entities that conduct business in trading in (i) money market instruments and other foreign exchange, interest rate and index instruments, transferable securities or commodity futures, or (ii) in individual and collective portfolio management, or (iii) otherwise investing, administering or managing funds or money on behalf of other persons.
- d) Specified insurance company (insurance companies which issue or are obligated to make payments on a cash value insurance or annuity contracts.

b) Reporting Obligations

1.8. Once an entity has registered with the IRS, it should proceed to identify the accounts of U.S. persons. U.S. person is defined in the IGA as follows:

“The term “US person” means a US citizen or resident individual, a partnership or corporation organized in the United States, or under the laws of the United States or any State thereof, a trust if (i) a court within the United States would have authority under applicable law to render orders or judgements concerning substantially all issues regarding administration of the trust and (ii) one or more persons have the authority to control all substantial decisions of the trust or an estate of a decedent that is a citizen or resident of the United States.”

1.9. The below U.S. indicia are provided by the IGA which assist in determining whether a client is a U.S. person:

- a) Identification of the Account Holder as a U.S. citizen or resident;
- b) Unambiguous indication of a U.S. place of birth;
- c) Current U.S. mailing or residence address (including a U.S. post office box);
- d) Current U.S. telephone number;
- e) Standing instructions to transfer funds to an account maintained in the United States;
- f) Currently effective power of attorney or signatory authority granted to a person with a U.S. address;
or
- g) An “*in-care-of*” or “*hold mail*” address that is the sole address the Reporting Cyprus Financial Institution has on file for the Account Holder. In the case of a Pre-existing Individual Account that is a

Lower Value Account, an “*in-care-of*” address outside the United States or “*hold mail*” address shall not be treated as U.S. indicia.”

- 1.10. Foreign financial institutions (“**FFIs**”) as defined in FATCA are required to report specified information annually to the American Internal Revenue Service (“**IRS**”) regarding direct and indirect US account holders.
- 1.11. FFIs must also report annually to the IRS on any accountholders that are foreign entities in which a US person owns more than 10% of the shares of a corporation (in vote or value) or of a partnership or of a trust. For foreign investment vehicles, any percentage of ownership is reportable.

c) Reportable Accounts

- 1.12. Once an FFI has identified its US clients, an obligation to obtain and exchange information on ‘reportable accounts’ of such persons arises. ‘Reportable accounts’ as well as the information to be exchanged are also defined in the IGA.
- 1.13. Since Cyprus has concluded a *Model 1 IGA*, reporting by Cyprus FFIs will be made to the Cyprus tax authorities. Guidelines as to the reporting procedure are expected to be issued by the Cyprus Tax Department.

d) Classification of non-US clients

- 1.14. FFIs are obliged to classify their non-US clients as well, by completing Form W-8BEN-E based on the income received by the respective client. The available categories are defined in the IGA and various guidelines have been issued by financial institutions assisting with the completion of the form.

e) Penalties for non-compliance

- 1.15. The penalties for non-compliance are significant. A 30% withholding tax may be imposed on transactions with overseas financial institutions and other entities that fall within the scope of FATCA unless the institution concerned has concluded an agreement with the IRS defining its reporting obligations, or the institution's home country has concluded an IGA with the USA.
- 1.16. In addition, failure to comply with FATCA may involve legal and reputational issues which could disrupt business relationships with other financial institutions which are FATCA compliant and lead to loss of business. The rules apply to all FFIs even if they do not have US clients.

2. WHAT IS THE PURPOSE OF THE CYPRUS-US IGA?

- 2.1. As previously indicated, there are two principal forms of IGA, known as “**Model 1**” and “**Model 2**”.
- Under the Model 1, IGA institutions subject to FATCA report information to their own tax authorities for onward transmission to the US authorities.
 - Under Model 2, IGA institutions provide information direct to the American authorities.
- 2.2. In common with other EU members, in 2013 Cyprus undertook to enter into a **Model 1 IGA** and prior to the signature of the formal agreement Cyprus was treated as having an agreement “in - effect” from 22 April 2014, which allowed Cyprus–resident FFIs to register on the IRS FATCA website.
- 2.3. Under the **Model 1 IGA** signed between Cyprus and the USA (the “**IGA**”), all participating Cyprus financial institutions are required to report all FATCA related information to the Tax Department in Cyprus.
- 2.4. FATCA obligations require Cyprus financial institutions to identify financial accounts held by US residents or US citizens, or by entities that are organized in the US or controlled by one or more US persons and to report that information to the IRS of the United States. Under the IGA, this reporting will take place through the Tax Department in Cyprus (formerly “**Inland Revenue Department**”). The US will provide Cyprus with enhanced and increased information on certain accounts of Cyprus residents held at US financial institutions.
- 2.5. The Cyprus Inland Revenue Department, as the reporting authority under the IGA, will issue guidelines for the interpretation of the IGA in due course. In addition, the Assessment and Collection of Taxes Law is to be amended to include the collection and automatic exchange of information in line with FATCA.

3. SINCE WHEN HAS FATCA COME INTO EFFECT?

- 3.1. All participating Cyprus financial institutions will have to report information on their existing and new US account holders to the Tax Department of Cyprus (“**Tax Department**”) in 2015.
- 3.2. Thereafter, accounts will be reported annually for the previous year.

4. WHY DOES THE CYPRUS TAX DEPARTMENT EXCHANGE INFORMATION WITH OTHER COUNTRIES?

- 4.1. Exchanging information with other countries gives the Tax Department and other tax authorities the right to access all relevant information held by other countries for tax administration purposes.
- 4.2. The information helps tax administrators prevent tax evasion and ensure that everyone pays fairly their share of taxes.

5. WHAT DOES THE IGA MEAN FOR FINANCIAL INSTITUTIONS IN CYPRUS?

- 5.1. Under the IGA, how will financial institutions identify accounts held by US residents and US citizens? What will the financial institutions do with this information?
- 5.2. Participating Cyprus financial institutions will be required to identify account holders that are US persons, including US residents and US citizens, by following the due diligence procedures of the IGA. The due diligence procedures vary depending on whether the account holder is an individual or an entity and whether the account was opened on or before, or after, June 30, 2014. In certain circumstances, the due diligence procedures are more intensive for accounts with a value of more than US\$1,000,000.
- 5.3. Participating Cyprus financial institutions will report information on their US account holders to the Cyprus Tax Department annually starting in 2015. Cyprus financial institutions will also be required to report on account holders that fail to respond to their financial institution when contacted with a request for documentation to clarify whether they are a US resident or US citizen, in a manner similar to the reporting on US account holders.

6. WHAT TYPES OF FINANCIAL INSTITUTIONS ARE DEEMED COMPLIANT?

- 6.1. The IGA generally applies to all types of financial institutions, including deposit-taking institutions, custodial institutions, insurance companies, and investment entities. Guidance will also be provided in the near future for participating Cyprus financial institutions.
- 6.2. For certain types of financial institutions, exemptions from some or all of the due diligence and reporting obligations under the IGA will be available. For example, smaller deposit-taking institutions can be exempt from reporting.
- 6.3. A partial exemption is available for a participating Cyprus financial institution if it is not part of a multinational group (i.e., it is not related to any entities organized outside of Cyprus), at least 98 percent of its financial accounts are held by Cyprus or European Union residents and it meets a number of other conditions. These financial institutions will not be obliged to apply due diligence or report on accounts held by individuals who are Cyprus residents.

7. HOW WILL CYPRUS AND THE US ENFORCE THE REPORTING OF INFORMATION BY THEIR RESPECTIVE FINANCIAL INSTITUTIONS?

- 7.1. In Cyprus, the due diligence and reporting requirements imposed on Cyprus financial institutions by the IGA will need to be implemented through new legislation that will ratify the IGA. The Tax Department, as the administrator of Cyprus's tax laws, will be responsible for monitoring and enforcing the due diligence and reporting requirements in Cyprus for participating Cyprus financial institutions under the IGA.

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7.2. In the US, the IRS will be responsible for enforcing the reporting of the information required under the IGA by US financial institutions. The US will rely on its existing laws to require US financial institutions to report to the IRS the information that US financial institutions are required to obtain under the IGA on accounts held by Cyprus residents.

8. WHAT DOES FATCA MEAN FOR INDIVIDUALS THAT MAINTAIN FINANCIAL ACCOUNTS IN CYPRUS?

8.1. As previously indicated, FATCA obligations require Cyprus financial institutions to identify financial accounts held by US residents or US citizens, or by entities that are organized in the US or controlled by one or more US persons and to report that information to the IRS of the United States. Under the IGA, this reporting will take place through the Tax Department in Cyprus (formerly "*Inland Revenue Department*").

A. WHAT INFORMATION WILL MY FINANCIAL INSTITUTION USE TO IDENTIFY WHETHER I COULD BE SUBJECT TO REPORTING?

8.2. As previously indicated, you may be contacted by your financial institution if one or more of the following indicia apply to you:

- You have U.S citizenship or lawful permanent resident (green card) status;
- You have a U.S birthplace;
- You have a U.S residence address or a US correspondence address (including a US P.O. box);
- You have a telephone number in the US;
- You repeat payment instructions to pay amounts to a U.S address or an account maintained in the US;
- You have granted a power of attorney to a person with a US address;
- You have an In-Care-Of or Hold-Mail address in the United States that is your sole address.

B. WILL I BE REQUIRED TO PROVIDE ANY ADDITIONAL INFORMATION TO MY CYPRUS FINANCIAL INSTITUTION IN ORDER TO COMPLY WITH FATCA PROVISIONS?

8.3. You might be asked about your tax residency status in connection with your existing accounts (if there is information associated with your account that suggests you may be a US person) or when you open a new account.

8.4. You might also be asked by your financial institution to provide certain evidence to support a claim that you are not a US person if information associated with your account otherwise suggests that you may be a US person.

8.5. Financial institutions will need this information to satisfy their obligations under Cyprus law and to determine whether they have certain tax reporting obligations to the Tax Department.

C. WHAT PROCESSES MAY THE FINANCIAL INSTITUTIONS FOLLOW IN ORDER TO IDENTIFY U.S. ACCOUNT HOLDERS?

8.6. The participating financial institutions will need to follow one or more processes for identification of account holders such as the indicia search and the self- certification process. The participating financial institutions may obtain a self- certification from an account holder where applicable.

8.7. The Tax Department will issue a self-certification form that financial institutions may use. Therefore, you might be asked by your participating financial institution to fill out a self-certification form for this purpose or the participating financial institution might have proceeded to a new comprehensive form of its account opening documents or to the preparation of an additional document in respect of FATCA provisions.

D. WHAT TYPES OF ACCOUNTS WILL BE REPORTED?

8.8. Participating Cyprus financial institutions will have to report accounts which include most bank accounts, mutual funds, brokerage accounts, custodial accounts, annuity contracts (including segregated fund contracts), and some life insurance policies with a cash value.

8.9. An account shall not be reportable if it falls within an exempt category in the IGA.

E. HOW DOES MY CITIZENSHIP AFFECT MY TAX RESIDENCY?

8.10. Cyprus and virtually all other countries do not tax on the basis of citizenship. The citizenship you hold is generally not relevant in determining your residency for tax purposes.

8.11. The US tax system is different from most countries in that it treats all US citizens as US residents for tax purposes no matter where in the world they reside. Therefore, if you are a US citizen, you are a resident of the US for tax purposes even if you hold another citizenship or reside in Cyprus or any other country.

F. AM I OBLIGED TO PROVIDE THE INFORMATION?

8.12. Cyprus financial institutions are committed to become fully FATCA compliant and hence your financial institution is entitled to ask you to provide the required documentation.

8.13. In cases where customers fail to provide the appropriate documentation your participating financial institution must treat your account as a US reportable account and report the account to the Tax Department.

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G. WHAT TYPE OF INFORMATION WILL BE REPORTED TO THE US?

8.14. Participating Cyprus financial institutions will generally have to report the following type of information:

- identifying information about the account holder (e.g. name, address, tax identification number)
- account number
- account balance or value at end of the year
- certain amounts paid or credited to the account

H. DO I HAVE TO PROVIDE MY US TAXPAYER IDENTIFICATION NUMBER?

8.15. Yes. Cyprus financial institutions will be obliged to ask for your US TIN in connection with certain accounts. If you are a US resident or US citizen, you have to provide your US TIN to your financial institution when asked.

I. I AM NOT A US PERSON, BUT I HAVE A JOINT ACCOUNT WITH A US PERSON. HOW DOES FATCA AFFECT ME?

8.16. A joint account which has one U.S owner shall be treated as a U.S account by a participating Cyprus financial institution. The participating financial institution will then report the full value of the account to the Tax Department.

8.17. Identifying information (e.g. name, address, Taxpayer Identification Number) associated with US owner will be reported. No information will be reported for the non U.S joint account holder.

J. I AM A CYPRUS RESIDENT AND I HOLD ACCOUNTS IN THE US HOW DOES THE IGA AFFECT ME?

8.18. If your account is identified as a reportable account by your US financial institution, then the account will be reported by the U.S financial institution to the IRS, which will transmit the information to the Cyprus Tax Department.

K. IF I MAINTAIN SEVERAL FINANCIAL ACCOUNTS IN A FINANCIAL INSTITUTION, HOW WILL THEY BE REPORTED?

8.19. If you are identified as a US person, your Cyprus financial institution will report each of your accounts individually to the Tax Department.

L. COULD FINANCIAL INSTITUTIONS BE EXEMPTED FROM FATCA PROVISIONS?

- 8.20. Under the IGA, a number of Cyprus financial institutions could be partially or fully exempted from the requirements to undertake due diligence and to report on US account holders. For instance, smaller Cyprus deposit-taking institutions, such as credit unions, with assets under \$175 million, may be exempted.
- 8.21. A partial exemption is available for a Cyprus financial institution if it is not part of a multinational group (i.e., it is not related to any entities organized outside of Cyprus) and at least 98 percent of its financial accounts are held by residents of Cyprus or other EU member states. These financial institutions will not be obliged to apply due diligence or report on accounts held by individuals who are Cyprus residents.
- 8.22. If you would like to know the status and obligations of a particular financial institution under the IGA, please contact the financial institution directly.

M. I AM A US CITIZEN LIVING IN CYPRUS AND I WAS NOT AWARE THAT THE US WANTS ME TO FILE TAX RETURNS. DOES THE SIGNING OF THE IGA MEAN THAT I NOW HAVE TO PAY US TAX?

- 8.23. The IGA is strictly an information-sharing agreement and does not involve any new or higher taxes.
- 8.24. FATCA does not replace the existing US tax regimes, as imposed to U.S citizens Unlike Cyprus, the US taxes its citizens who reside in other countries on their worldwide income.
- 8.25. The US citizenship-based tax regime has been in place for many years and is not altered by the IGA. For more information, please refer to your tax consultants and the US IRS Instructions for New Streamlined Filing Compliance Procedures for Non-Resident, Non-Filer US Taxpayers.

N. DOES THE IGA REQUIRE CYPRUS FINANCIAL INSTITUTIONS TO REPORT TO THE TAX DEPARTMENT THE ACCOUNTS OF INDIVIDUALS WHO RELINQUISHED THEIR US CITIZENSHIP WHEN THEY BECAME CYPRUS CITIZENS?

- 8.26. The IGA does not require Cyprus financial institutions to report on any individuals who have relinquished their US citizenship and are no longer considered as citizens of the US
- 8.27. Individuals who have relinquished their US citizenship may be asked by their financial institution for documentation to support their claim.

9. WHAT DOES FATCA MEAN FOR INDIVIDUALS THAT MAINTAIN FINANCIAL ACCOUNTS WITH TTCM

- 9.1. 'TTCM Traders Trust Capital Markets Limited' (hereinafter "**TTCM**") complies fully with the law in force in the USA regarding the "Foreign Account Tax Compliance Act", which is known by the English acronym "FATCA".
- 9.2. The specific law aims at fighting the tax evasion of persons, who are tax liable in USA and use bank accounts and investments in securities held outside of the USA. On the 2nd of December 2014 the Republic of Cyprus has signed the FATCA Intergovernmental Agreement with the United States of America.

10. OBLIGATIONS OF TTCM

- 10.1. Within the framework of the above-mentioned, TTCM must:
- a. Identify its clients, individuals and legal entities, falling within the scope of implementation of FATCA;
 - b. Send, on an annual basis, a file of reports to the Cyprus Inland Revenue Department, which, in the context of the above-mentioned intergovernmental agreement, will forward it to the tax administration of the USA.

11. DATA, WHICH MAY BE REQUESTED AND MAINTAINED FROM EXISTING CLIENTS-INDIVIDUALS

- 11.1. In particular, the following data may be requested and maintained from existing clients-**individuals**, for the purposes of compliance with FATCA:
- a. the completion and provision of the specific documents of the Internal Revenue Service (IRS) of USA to TTCM (*W-8BEN* and *W-9*);
 - b. certificate issued by the tax authorities of USA, confirming that the individual is exempted from the scope of implementation of FATCA;
 - c. true copy of the certificate of loss of nationality of the USA;
 - d. documentation in case of declaration of address in the USA or declaration of country of birth in the USA and at the same time, non-inclusion in FATCA;
 - e. documentation as a proof of the permanent establishment address or indication of the country of establishment, citizenship or nationality.

11.2. In addition, new clients-**individuals** will be requested to inform TTCM whether:

- a. They have a citizenship or permanent residence in the USA;
- b. They have a passport issued by the USA;
- c. They are considered to be citizens of USA for tax purposes;
- d. They are holders of a green card;
- e. They are born in USA;
- f. They intend to give a standing order for money transfer to an account held in the USA;
- g. They have designated a proxy or have provided a signature authorization to an individual with address in the USA;
- h. They have:
 - any postal address / mailbox or residence address in the USA;
 - telephone number in the USA;
 - an account held in the USA;

12. DATA, WHICH MAY BE REQUESTED AND MAINTAINED FROM EXISTING CLIENTS-LEGAL ENTITIES

12.1. For clients-**legal entities**, the following may be requested:

- a. the completion and provision of the specific documents of the Internal Revenue Service (IRS) of the USA to TTCM (**W-8BEN-E** and **W-9**);
- b. the completion of specific documents of TTCM, according to the category of the client legal entity;
- c. the above-mentioned data for the individuals - beneficial owners of the client legal entity.

13. USE OF DAT COLLECTED FOR THE PURPOSE OF COMPLYING WITH FATCA

13.1. All the above-mentioned data and information:

- a. shall be kept safely for the time period that is dictated by the relevant law;
- b. shall be used exclusively for the above-mentioned purpose of their collection, and, at the same time, full access rights to such data shall be provided to the client, according to the law in force.

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14. ADDITIONAL INFORMATION

14.1. More information regarding FATCA can be found on the following websites:

- Cyprus – Tax Department:
http://www.mof.gov.cy/mof/taxdep.nsf/page28_en/page28_en?OpenDocument
- ☒ US – Internal Revenue Service (IRS): <https://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-FATCA>
- ☒ US – Internal Revenue Service (IRS) - FATCA Frequently Asked Questions (FAQs): <http://www.irs.gov/Businesses/Corporations/FATCAFAQs>
- US – Internal Revenue Service (IRS) – Forms:

IRS Form	Title
W-9	Request for Taxpayer Identification Number and Certification
W-8BEN	Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding
W-8BEN-E	Certificate of Entities Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)
W-8CE	Notice of Expatriation and Waiver of Treaty Benefits
W-8ECI	Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States
W-8EXP	Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting
W-8IMY	Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting