

A. General

1. What is FATCA and how is it applied in the UAE?

FATCA is US legislation which requires all Foreign Financial Institutions (“FFIs”) to regularly submit information on financial accounts held by US persons to the US IRS.

On 17 June 2015, the UAE signed a Model 1B Intergovernmental Agreement with the US (“UAE-US IGA”) to improve international tax compliance and to implement FATCA. The UAE –US IGA was ratified pursuant to Federal Decree 9 of 2016. Accordingly, the UAE has agreed to adopt the rules to identify and report information about US accounts that meet the standards as set out in the UAE-US IGA.

Businesses must assess whether they are considered Reporting UAE FIs and comply with their reporting obligations as stipulated under the UAE-US IGA.

Should a business require any additional information on their position and compliance requirements, they should consult with a professional advisor.

2. Who is impacted by FATCA?

Reporting UAE FIs are required to identify financial accounts that are held by either Specified US Persons or Passive NFFEs with one or more Controlling Persons who are Specified US Persons, and report certain financial account information to their Regulatory Authority

3. Who is considered an Unregulated Entity?

An Unregulated Entity is any Reporting UAE FI that does not otherwise report (including nil reports/returns) to the Central Bank of the UAE, the Securities and Commodities Authority, ADGM or DIFC for FATCA purposes. Such entities are required to report to the Ministry of Finance

4. How does FATCA affect UAE Unregulated Entities?

Unregulated entities that are Reporting UAE FIs are required to register using the FATCA Registration Form for unregulated entities. Once completed, the form must be submitted to the concerned department at UAE MoF using the email address:

Once registered, UAE MoF will provide the unregulated entity with a user name and password to report reportable information using the

5. What types of entities are UAE FIs under FATCA and the UAE-US IGA?

The UAE – US IGA will apply to FIs that are:

- a. UAE FIs that are incorporated or registered in the UAE;
- b. branches of non-UAE FIs registered in the UAE

It does not apply to branches of UAE FIs located outside the UAE.

UAE FIs can be classified as either Reporting UAE FIs or Non-Reporting UAE FIs.

- a. Custodial Institutions
- b. Depository Institutions
- c. Investment Entities
- d. Specified Insurance Companies

These include, amongst others, banks, custodians, investment traders, asset/wealth managers, funds and life insurance companies.

Please refer to UAE-US IGA for further description on the criteria for classification of the above enumerated forms of Reporting UAE FIs.

6. What are the obligations of UAE FIs under FATCA?

Reporting UAE FIs are required to comply with the UAE-US IGA. Broadly, Reporting UAE FIs must:

- a. Comply with registration requirements (i.e. register with the IRS on the IRS FATCA FFI registration system and with their respective regulatory authority).
- b. Perform due diligence on financial accounts that it maintains;
- c. Annually report all US reportable accounts that it maintains or file a nil return if it does not maintain any US reportable accounts;
- d. Annually report any payments made to Non-Participating FIs; and
- e. Continuously monitor for changes in circumstances that results in the change of an account holder's FATCA status.

The above is not an exhaustive list of the obligations of Reporting UAE FI. Please consult the UAE-US IGA for the full set of requirements or seek the advice of a professional consultant.

7. Which UAE FIs are exempt from reporting under FATCA?

The UAE-US IGA defines categories of UAE FIs that are Non-Reporting FIs under FATCA. The criteria for assessing whether a UAE FI is a Non-Reporting FIs are outlined in Annex II of the UAE-US IGA. These categories broadly include:.,/p>

- a. Exempt Beneficial Owners (i.e. the Government of the UAE, an international organization and Central Bank);
- b. Funds that Qualify as Exempt Beneficial Owners (i.e. certain retirement or pension funds, etc)
- c. Small or Limited Scope FIs that Qualify as Deemed-Compliant FFIs (i.e. certain small and/or local FIs, etc.); or
- d. Investment Entities that Qualify as Deemed-Compliant FFIs (i.e. Trustee-documented trusts, sponsored investment entities, etc.).

Please refer to Annex II of the UAE-US IGA for a full overview of the Non-Reporting FIs under FATCA.

8. What is a Non-Financial Foreign Entity (“NFFE”)?

An NFFE is defined as any foreign non-US entity that does not meet the definition of an FI. NFFEs are classified as either Active or Passive NFFEs and do not have to report pursuant to the UAE-US IGA.

See Section 9 and Section 10 of the Ministry of Finance Guidance on further information on the classification of Active and Passive NFFEs.

9. Do UAE FIs need to register with the US IRS and obtain a Global Intermediary Identification Number (“GIIN”)?

All UAE FIs must register with the US IRS, unless they are exempt.

Exempt Beneficial Owners and most Non-Reporting UAE FIs will not need to register with the US IRS. Some Non-Reporting UAE FIs, referred to as Registered Deemed Compliant, will be obliged to register with the US IRS.

You must determine if you are a Reporting UAE FI or a Non-Reporting UAE FI with registration requirements.

[The US Internal Revenue Service \(“IRS”\) FATCA FFI Registration System can be accessed here:](#)

Upon FATCA registration on the IRS portal, each registering FFI will be issued a GIIN and will be identified on the published IRS FFI List.

B. Due Diligence

10. What are the general due diligence requirements under FATCA and is this an ongoing requirement?

Reporting UAE FIs are required to perform certain due diligence requirements, such as collecting information (i.e. via FATCA self-certification forms) and/or

reviewing information in their possession to determine whether the Reporting UAE FI maintains any US reportable accounts. For certain pre-existing accounts, these requirements result in a Reporting UAE FI having to search for certain defined US indicia linked to an account holder to identify Financial Accounts held by:

- a. Specified US Persons
- b. Passive NFFEs with one or more Controlling Persons who are Specified US Persons
- c. Non-Participating FIs.

For certain accounts, if none of the defined US indicia are discovered, then no further action is required until there is a change in circumstances (see Q11) that results in one or more US indicia being associated with respect to the account (or the account becomes a High Value Account in the case of an individual lower value account) or with respect to the controlling person(s) of a Passive NFFE.

11. What constitutes a change in circumstances?

Reporting UAE FIs must monitor for a change in circumstance.

A change in circumstance includes any change to or addition of information in relation to the account holder's account (including the addition, substitution or other change of account holder) or any change to or addition of information to any account associated with such account. Associated accounts are those accounts that are associated through the aggregation rules or where a new account is treated as a pre-existing obligation.

Example: Account Holder P holds an account with I, a bank that is a UAE FI. There was no US indicia previously associated with the account. Five years later, P communicates to I that he/she has a new residence address in the US. The Reporting UAE FI must treat the new address as a change in circumstances and will be required to retain a record of the appropriate documentation from the account holder. I obtains from P a new self-certification and documentary evidence confirming that he/she is neither a US citizen nor a US resident for tax purposes. The Reporting UAE FI will treat the account holder as a non-US reportable account.

C. Reporting

12. Are Reporting UAE FIs required to submit nil returns?

If a Reporting UAE FI has carried out its due diligence and identified that it does not maintain any US reportable accounts, the Reporting UAE FI is required to submit a nil return(s). This must be completed by the Reporting UAE FI by the reporting deadline.

13. How do Reporting UAE FIs obtain access to the reporting portal?

Reporting UAE FIs may contact their relevant regulatory authority to obtain a username and password to access the reporting portal that will be used to submit returns during the reporting period.

14. Are Active NFFEs reportable for Reporting UAE FIs under FATCA?

The term Active NFFE generally refers to an entity that operates an active trade or business other than that of a financial business.

Reporting UAE FIs are not required to report information on Active NFFEs or their Controlling Persons under FATCA.

15. What if a Reporting UAE FI is unable to obtain the US TIN of a pre-existing individual or entity US reportable account?

Reporting UAE FIs were given transitional relief to obtain U.S. TINs which extended over a period ending on December 31, 2019, expiring with reporting for calendar year 2019. The first year a U.S. TIN will be required to be reported concerning a US reportable account in respect to calendar year 2020, which is due to be reported by Reporting UAE FIs by 30 June 2021.

- As of 1 January 2020, a Reporting UAE FI is no longer required to immediately close or withhold on pre-existing accounts that do not contain a U.S. TIN. In the IRS' efforts to better understand the issues that Reporting UAE FIs face in obtaining a U.S. TIN, the IRS has developed a series of codes that may be used by a Reporting UAE FI to populate the U.S. TIN field. The use of these codes is not mandatory and does not mean that a Reporting UAE FI will not be at risk for being found significantly non-compliant due to a failure to report each required U.S. TIN. The IRS will take into account the facts and circumstances leading to the absence of the U.S. TIN, such as the reasons why the U.S. TIN could not be obtained, whether the Reporting UAE FI has adequate procedures in place to obtain U.S. TINs, and the efforts made by the Reporting UAE FI to obtain U.S. TINs.
- For example, whether the Reporting UAE FI is contacting account holders annually to request any missing U.S. TINs. The expectation is that the use of these codes will allow our tax administrations to better understand the facts and circumstances behind the missing U.S. TINs, both in general and with respect to a specific Reporting UAE FI. The TIN field code and related scenarios are as follows:

TIN code to be reported in absence of U.S. TIN	Scenario description
22222222	Preexisting individual account with only U.S. indicia being a U.S. place of birth.
33333333	<p>New individual account that:</p> <ol style="list-style-type: none"> 1. has indicia of a U.S. place of birth, and 2. either: <ul style="list-style-type: none"> has a change in circumstances causing the self-certification originally obtained at account opening to be incorrect or unreliable, and a new self-certification has not been obtained, or was below the threshold for documenting and reporting the account at the time of account opening and subsequently exceeded the threshold, and a self-certification has not been obtained.
44444444	<p>Preexisting individual and entity account that:</p> <ol style="list-style-type: none"> 1. has U.S, indicia other than a U.S. place of birth, and 2. either: <ul style="list-style-type: none"> has a change in circumstances, causing the self-certification or other documentation originally obtained to be incorrect or unreliable, and a new self-certification or other documentation has not been obtained, or b. was below the threshold for documenting and reporting the account at the time of account opening and subsequently exceeded the threshold, and a self-certification or other documentation has not been obtained.
55555555	<p>New individual and entity account that:</p> <ol style="list-style-type: none"> 1. has a U.S, indicia other than a U.S. place of birth; and 2. either <ul style="list-style-type: none"> has a change in circumstances causing the self-certification or other documentation originally obtained to be incorrect or unreliable, and a new self-certification or other documentation has not been obtained, or was below the threshold for documenting and reporting the account at the time of account opening and subsequently exceeded the threshold, and a self-certification or other documentation has not been obtained.
66666666	Preexisting entity account with account balance exceeding \$1,000,000 held by a passive NFFE with respect to which no self-certifications have not been obtained, and no U.S. indicia have been identified in relation to its controlling persons.
77777777	For pre-existing accounts where there is no U.S. TIN available and the account has been dormant or inactive, but remains above the reporting threshold, also known as a “dormant account”. For reference, the U.S. defines “dormant account” in U.S. Treasury Regulations §1.1471-4(d)(6)(ii).

It is recommended that US TINs are obtained for all US reportable accounts as Reporting UAE FIs must continue to attempt to obtain this information from the Account Holder and evidence the efforts involved in attempting to obtain the US TIN for all US reportable accounts.

16. How are joint account holders treated for FATCA reporting purposes?

With respect to a jointly held account, each joint account holder is treated as an Account Holder for purposes of determining whether the account is a US Reportable Account.

Thus, an account is a US Reportable Account if any of the Account Holders is a Specified US Person or a Passive NFFE with one or more Controlling Persons who are Specified US Persons.

For reporting purposes, each Specified US person shall be reported and as such is attributed the entire balance or value of the jointly held Financial Account, including for purposes of applying the aggregation rules.

Example: Customer A is a non-US person and shares a joint deposit account with Customer B, a US Specified Person. Each customer has a separate deposit account maintained by the same UAE FI and have the following balances:

- Customer A: \$30,000
- Customer B: \$40,000
- Joint account between Customer A and Customer B: \$25,000

The Reporting UAE FI's computerized system links the Financial Accounts and allows account balances or values to be aggregated. The balance of the joint account is attributable in full to each of the account holders. The aggregate balance for Customer A is \$55,000 and for Customer B is \$65,000.

The joint account is a US Reportable Account and Customer B's aggregate balance shall be reportable (\$65,000).

17. How is information exchanged under FATCA?

Reporting UAE FIs must report the details of US Reportable Accounts by the requisite deadline. This information is transmitted to the UAE MoF which will in turn exchange the information with the US IRS on an automatic basis.

18. When is the reporting due date for FATCA in the UAE?

The FATCA reporting deadline for Reporting UAE FIs to report is 30 June of the year following each reporting period unless the reporting deadline has been extended as communicated by your regulatory authority.

Your regulatory authority will provide you with further information in case there is a change to yearly reporting deadlines.

19. Can a third-party service provider fulfil the FATCA due diligence and reporting obligations on behalf of UAE FIs?

The UAE-US IGA provides that Reporting UAE FIs may use third-party service providers to fulfill obligations under the IGA (e.g. fund managers on behalf of funds and trustees on behalf of trusts), but these obligations shall remain the responsibility of the Reporting UAE FI. Any failure by a third-party service provider would be regarded as a failure by the Reporting UAE FI.

It is not required that the service provider be within the same jurisdiction as the Reporting UAE FI or obtain approval from the relevant regulatory authority of the UAE FI to act as a service provider for the FI.

20. If an entity that is a Reporting UAE FI is liquidated on 31 March 2020, is the Reporting UAE FI still required to file a FATCA return for calendar year 2020 by 30 June 2021?

A Reporting UAE FI would be required to fulfill its reporting obligations until the date it ceases to be a Reporting UAE FI (e.g. due to liquidation or closure). Therefore, if the entity is a Reporting UAE FI in calendar year 2020 (i.e. between 1 January 2020 - 31 December 2020), it would be required to submit a FATCA return for calendar year 2020 by 30 June 2021 (or a nil return, if applicable).

Hence, if the entity was considered a Reporting UAE FI up to the point of liquidation on 31 March 2021 (and therefore a Reporting UAE FI at a point during calendar year 2020), the entity would be required to submit a FATCA return for calendar year 2020 by 30 June 2021 (or a nil return, if applicable).

21. If an entity that is a Reporting UAE FI is liquidated, what are the responsibilities of the Reporting UAE FI to ensure the FATCA account is closed?

It is the Reporting UAE FI's responsibility to notify the relevant regulatory authority that it has been liquidated and ensure that FATCA Financial Accounts are closed and subsequently that the Reporting UAE FI is deregistered from the regulatory authority's FATCA reporting portal.

Unregulated Entities which are Reporting UAE FIs must notify the UAE Ministry of Finance (in its capacity as a regulatory authority for Unregulated Entities) that it has been liquidated and ensure that the FATCA Financial Accounts are closed.

A Financial Account is treated as a Reportable Account as of the date it is identified as such pursuant to the due diligence procedures under the FATCA legislation. A Reportable Account remains reportable until the date it ceases to be a Reportable Account (e.g. due to the closure of the account). If a Reportable Account is closed due to the liquidation or winding up of the Reporting UAE FI, information with respect to such account remains annually reportable until the date of closure of the Financial Account by the Reporting UAE FI in the framework of the liquidation or the winding-up.

It is also the responsibility of the Reporting UAE FI to deregister from the US IRS FATCA portal.

22. Do Active Non-Financial Foreign Entities (“NFFEs”) or Passive NFFEs have reporting obligations under FATCA?

Under FATCA, a UAE FI includes any entity that:

- I. accepts deposits in the ordinary course of a banking or similar business (a Depository Institution);
- II. holds financial assets for the account of others as a substantial portion of its business (a Custodial Institution);
- III. is engaged primarily in the business of investing, reinvesting, trading securities, partnership interests, commodities or similar financial instruments (an Investment Entity); or
- IV. issues or makes payments in respect of insurance or annuity contracts (a Specified Insurance Company).

Entities which are not UAE FIs are considered NFFEs for the purposes of FATCA. This could be an Active NFFE or Passive NFFE as defined under the UAE-US FATCA Intergovernmental Agreement (“IGA”).

Active or Passive NFFEs do not have reporting (or nil return) filing obligations under the UAE-US FATCA Intergovernmental Agreement (“IGA”).

23. What is the process for submitting a nil return for FATCA purposes?

If you are a Reporting UAE FI, you must file annual returns (or a nil return, if applicable), to the applicable regulatory authority in the UAE (or the UAE Ministry of Finance if you are an Unregulated Entity) by the stipulated deadline.

The nil reporting requirement is a 'tick the box' exercise in the FATCA portal and no documentation is required to be submitted at the present time (although this may be subject to change in the future).

Key FATCA abbreviations and defined terms

Term	Refers to
FATCA	Foreign Account Tax Compliance Act
FFI	Foreign Financial Institution
GIIN	Global Intermediary Identification Number – A number assigned to financial institutions by the US Internal Revenue Service
IRS	US Internal Revenue Service
New Account	Any financial account opened at a UAE FI on or after 1 July 2014
NFFE	Non-Financial Foreign Entity
NPFI	Non-Participating Financial Institution
Pre-existing Account	Any financial account maintained at an UAE FI as at 30 June 2014
UAE-US IGA	Intergovernmental Agreement - The agreement concluded by the US and the UAE for FATCA
UAE MoF	UAE Ministry of Finance,/td>
US TIN	Tax Identification Number is an identification number used by the IRS to administer their tax laws.

For all other defined terms, refer to the UAE-US IGA