

Frequently Asked Questions

These frequently asked questions (“FAQs”) have been prepared to assist Reporting United Arab Emirates Financial Institutions (“RFIs”) in completing their annual reporting obligations for Foreign Account Tax Compliance Act (“FATCA”). In preparing the FAQs, the Financial and Cyber Crime Prevention Department (“FCCP”) has considered real-life scenarios and issues previously raised and addressed concerns where additional clarification may be helpful.

These FAQs do not constitute legal advice and should not be treated as a substitute for specific advice concerning any individual situation. Any action taken upon the information in these FAQs is strictly at your own risk.

The Abu Dhabi Global Market (“ADGM”) Financial Services Regulatory Authority (“FSRA”) will not be liable for any losses and damages in connection with the use of, or reliance on, the information provided in these FAQs. Where there is any inconsistency between any statements made in this document and any relevant Laws, Rules or Guidance, the Laws, Rules, and Guidance will prevail. This document will be amended, as appropriate, as we become aware of any new or changing issues.

We recommend that all entities seek appropriate tax and legal advice, including where they need assistance in understanding their obligations under FATCA and the Common Reporting Standard (“CRS”), respectively.

Please note that while FATCA and CRS regimes and classifications might be similar, there are significant differences.

Please read the entity definitions mentioned throughout this document and avoid assuming that if you have one classification under FATCA, you can use the same classification under CRS.

You may refer to the CRS FAQ for CRS-related information.

1. What is FATCA?

FATCA was enacted in 2010 by the United States (“US”) Congress to target non-compliance by US taxpayers using foreign accounts. FATCA requires RFIs to report information indirectly to the US Internal Revenue Service (“IRS”) about financial accounts held by US taxpayers or by foreign entities in which US taxpayers hold a substantial ownership interest. The United Arab Emirates (“UAE”) signed the Model 1B Agreement with the US (“UAE IGA”) covering reporting under FATCA by UAE-based RFIs on 17th June 2015.

- A copy of the UAE IGA is available here [UAE IGA](#)
- The UAE FATCA Guidance Notes can be found here [FATCA Guidance](#)
- A copy of the ADGM FATCA Regulations is available here [ADGM FATCA Regulations 2022](#)
- A Copy of the Cabinet Resolution 63 of 2022 is available here [Cabinet of Ministers Resolution no 63 of 2022 FATCA](#)

Capitalised terms used in these FAQs will bear the meaning given to them in the UAE IGA unless otherwise defined.

2. How is FATCA different to CRS?

The Organization for Economic Cooperation and Development (“OECD”) led the initiative for global tax transparency known as CRS, which targets offshore tax evasion and requires all financial institutions resident in a participating jurisdiction to identify and report any reportable accounts (typically persons tax resident in a CRS participating jurisdiction). Over 100 jurisdictions have signed up for CRS.

FATCA is a piece of US legislation which aims to combat tax evasion specifically by US persons. Broadly speaking, it requires Reporting United Arab Emirates Financial Institutions to identify and report any US persons that hold assets abroad to the IRS indirectly via the relevant regulator here in the UAE.

3. How to determine if an entity is an RFI?

The definition of a Financial Institution (“FI”) under the UAE IGA is an entity that meets the definition(s) of a Custodial Institution, Depository Institution, Investment Entity, or Specified Insurance Company. These terms are defined entirely in the UAE IGA; we summarise them below. You must consider these definitions fully to establish whether an entity is an RFI. It may be possible for an entity to meet the definition of more than one entity type falling within the definition of an FI – in summary:

1. **Custodial Institution:** Any entity that holds, as a substantial portion of its business, financial assets for the account of others.
2. **Depository Institution:** Any entity that accepts deposits in the ordinary course of a banking or similar business.
3. **Specified Insurance Company:** Any entity that is an insurance company (or the holding company of an insurance company) that issues or is obligated to make payments concerning a Cash Value Insurance Contract or an Annuity Contract.

4. **Investment Entity:** Any entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:
- Trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading.
 - Individual and collective portfolio management.
 - Otherwise, investing, administering, or managing Financial Assets or money on behalf of other persons.

For the purposes of FATCA, an entity should be a 'United Arab Emirates Financial Institution' as that term is defined in the UAE IGA ("UAEFI"). This is, in summary, an FI that is incorporated under the laws of the UAE, or the branch of a non-UAE incorporated FI that is based in the UAE.

Please also refer to the FATCA Guidance issued by MOF for assistance in assessing whether an entity is an FI that has reporting obligations under FATCA – a "Reporting UAE Financial Institution" as that term is defined in the UAE IGA: [Flowchart-for-FATCA.pdf \(mof.gov.ae\)](#). In these FAQs we will refer to these as "RFIs". RFIs will generally have due diligence and reporting obligations under FATCA.

4. What entities fall within the definition of Non-Reporting United Arab Emirates Financial Institutions ("NRFIs")?

NRFIs are UAEFIs that are considered non-reporting under FATCA, because they either fall within the scope of Annex II of the UAE IGA or otherwise qualify as a 'deemed-compliant' RFI or an 'exempt beneficial owner' under relevant US Treasury Regulations. Entities may need specialist US tax advice on these categorisations.

5. What is a Non-Financial Foreign Entity ("NFFE")?

Any entity that is not an FI will be an NFFE. NFFEs are classified as "Active" or "Passive" NFFEs and do not have to file reports on customer accounts or undertake due diligence pursuant to FATCA. However, RFI's will have to consider (among other things) whether the holders of Financial Accounts are Active or Passive NFFEs in order to determine which Financial Accounts they need to report.

Note: Please refer to the UAE IGA and relevant guidance issued by MOF as the Competent Authority for FATCA implementation in the UAE, together with specialist advice if necessary, to ensure a complete understanding of the definitions relevant to determining whether an entity has reporting and due diligence obligations under FATCA.

6. What are the due diligence requirements for an RFI under FATCA?

RFIs must apply due diligence procedures and collect documentation to identify whether their Financial Accounts are reportable pursuant to FATCA. This means that all RFIs must request Account Holders (and, where relevant, Controlling Person(s)) to provide a completed Self Certification Form ("SCF") or similar document, together with other necessary evidence to support adequate due diligence, before account opening in order to enable the RFI to establish if the relevant Financial Account is a US Reportable Account.

7. What is a Financial Account?

A Financial Account is generally an account maintained by a Financial Institution. The type of FI the RFI is will usually determine the type(s) of Financial Account the RFI holds and may need to report upon under FATCA. Please refer to the UAE IGA for the definitions, and the Guidance Notes issued by MOF for further guidance.

8. What is a US Reportable Account?

A “US Reportable Account” is defined in the UAE IGA as a Financial Account maintained by an RFI and held by:

- one or more Specified US Persons;
- by a Non-US Entity that is controlled by one or more Specified US Persons.

A Financial Account will not be a US Reportable Account if it is not identified as a US Reportable Account after the RFI applies the required due diligence procedures set out in Annexure I of the UAE IGA.

9. What is a US Person?

US citizen or resident individual;

- partnership or corporation organised in the US, or under the laws of the US (or any of its States); or
- trust, if, in general terms:
 - (i) a US court has jurisdiction over it; and
 - (ii) it is controlled by one or more US persons.

Accounts held by any one or more “US Persons” will generally be Reportable Accounts under FATCA.

10. What is a Specified US Person?

A Specified US Person is a subset of all US Person. See the definition set out in the UAE IGA to identify US Persons that do not fall within the definition of a Specified US Person.

11. What format should an RFI use for the SCF required under FATCA?

No standard format is prescribed for the SCF. Each RFI is responsible for developing its own SCF.

For further information, the [IRS](#) website has some FATCA-related information that may assist. The purpose of the FATCA SCF is to enable an RFI to establish if it has US Reportable Accounts.

12. What are the requirements for an RFI applying for cancellation of a Financial Services Permission (“FSP”) granted by the FSRA?

If the RFI holds a Global Intermediary Identification Number (“GIIN”) and it intends to cease operating, it may be required by the FSRA to provide a copy of the GIIN cancellation request approved by the IRS before the FSRA will cancel the relevant FSP. If the RFI proposes to continue operating but leave ADGM, it may be required to provide evidence to the FSRA that it has withdrawn the current GIIN and applied for a new one through the IRS. The RFI must continue to fulfill their obligations to report either NIL or Accounts for each year it was operational, including the year of cancellation or withdrawal.

13. Should the RFI still submit reports if they do not have any US Reportable Accounts?

Yes, all RFIs must submit an annual return under FATCA. However, if no US Reportable Accounts exist, a 'Nil Return' can be filed in the designated system.

14. Do all RFIs have to report under FATCA?

All RFIs must comply with the due diligence requirements and file a return under FATCA.

15. Are entities with a GIIN required to submit FATCA reports for the year?

Per the FATCA Compliance Program of the MOF, entities with a GIIN will generally need to report. This can be a complex area; entities should seek appropriate tax advice.

16. Frequency of FATCA reporting?

FATCA reporting is required annually, covering the period of 1st January to 31st December of the preceding year. As MOF prescribes, reporting is due six months after the end of the relevant reporting year.

17. Which entities are required to register with the IRS?

Refer to the FATCA Guidance published by MOF¹ and your tax advisor.

18. Which entities are not required to register with the IRS?

Refer to the FATCA Guidance published by MOF² and your tax advisor.

19. Where can I find the fines applicable for not adhering to the FATCA Regulations?

All fines are listed in [Cabinet of Ministers Resolution No. 63 of 2022](#).

¹ Guidance For The Implementation Of The Provisions Of Cabinet Decision No. (63) Of 2022 Concerning The Implementation Of Agreement Between The Government Of The United Arab Emirates And The Government Of The United States Of America Concerning The Foreign Account Tax Compliance Act December 2022.

² Guidance For The Implementation Of The Provisions Of Cabinet Decision No. (63) Of 2022 Concerning The Implementation Of Agreement Between The Government Of The United Arab Emirates And The Government Of The United States Of America Concerning The Foreign Account Tax Compliance Act December 2022.