

## Switzerland

### Swiss non-financial entities and new bank forms – everyone must tick a box



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The Foreign Account Tax Compliance Act (FATCA), effective since July 1 2014, is a US tax law aimed at addressing perceived tax abuse by US persons through the use of offshore accounts. Its broad impact extends to most Swiss entities, including those outside the financial services industry, regardless of any connection with the US. Every Swiss entity will have a FATCA status and will likely receive one or more requests for new FATCA relevant documentation in the next 12-18 months and some preparation is needed.

Swiss financial institutions are complying with FATCA to ensure effective business operations (that is, to avoid the 30% FATCA withholding). To comply, they must review and properly document all account holders, including Swiss companies.

Generally, an account holder is required to provide a certification by ticking the relevant box on the form provided by the bank. The US Form W-8BEN-E includes more than 30 boxes to choose from, which requires a Swiss entity to analyse and determine its FATCA classification under the applicable intergovernmental agreement (IGA) or the FATCA Regulations.

Swiss companies are receiving FATCA certification requests as part of routine record maintenance and time sensitive transactions. For example, in situations when:

- an entity holds (or intends to open) an account with a Swiss bank or insurance company;
- an entity intends to borrow funds (or guarantee the funds) from a Swiss bank; and
- a Swiss entity receives payments of relevant US source income such as interest, dividends, capital gains, rents or royalties (including payments received from related parties).

A company's failure to certify its FATCA classification may lead to the closure of its accounts with financial institutions, limited (or denied) access to funding, and/or 30% FATCA withholding on certain payments.

We recommend that Swiss companies determine their FATCA classification and related compliance obligations to ensure they can comply with bank requests and avoid the potential negative implications

of non-compliance on efficient business operations.

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