

## FATCA information sheet for corporate clients

### FATCA and your life insurance

In March 2010, new legal provisions under the "Foreign Account Tax Compliance Act" (FATCA) were adopted in the United States aimed at enforcing U.S. taxation around the world. The goal of the U.S. legislators is that all financial institutions throughout the world (e.g. banks and insurance companies) should directly provide the U.S. tax authorities with information on assets held by persons subject to U.S. taxation (so-called "U.S. persons"), irrespective of where they are based.

Switzerland has created a legal basis for enforcing the FATCA provisions.

### FATCA category

FATCA regulates the reporting requirement for corporate clients on the basis of a special categorisation. The category determines whether or not a life insurance contract is subject to FATCA reporting requirements.

FATCA identifies the following categories of corporate clients:

#### U.S. person

A corporate client is a "U.S. person" under US tax legislation

- if it is a partnership or corporation organised in the United States or under the laws of the United States or any State thereof
- if it concerns the estate of a U.S. citizen or resident of the United States
- if it is a trust in which 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 or if one or more "U.S. persons" have the authority to control all substantial decisions of the trust

#### Specified U.S. person

A "specified U.S. person" means a "U.S. person" who is **not** one of the following:

- A corporation, the stock of which is regularly traded on one or more established securities markets
- A corporation that is a member of the same expanded affiliated group, as defined in section 1471(e)(2) of the U.S. Internal Revenue Code, as a corporation, the stock of which is regularly traded on one or more established securities markets
- The United States or any wholly owned agency or instrumentality thereof
- The states of the United States and the U.S. territories, as well as political subdivisions of any of the foregoing, or any wholly owned agency or instrumentality of any of the foregoing
- Organisations exempt from taxation under section 501(a) of the U.S. Internal Revenue Code or any individual retirement plans as defined in section 7701(a)(37) of the U.S. Internal Revenue Code
- A bank as defined in section 581 of the U.S. Internal Revenue Code
- A real estate investment trust as defined in section 856 of the U.S. Internal Revenue Code
- A regulated investment company as defined in section 851 of the U.S. Internal Revenue Code
- An entity registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-64)
- A common trust fund as defined in section 584(a) of the U.S. Internal Revenue Code
- A trust that is exempt from tax under section 664(c) of the U.S. Internal Revenue Code
- A trust that is described in section 4947(a)(1) of the U.S. Internal Revenue Code
- A securities or commodities dealer
- A dealer in derivative financial instruments (including notional principal contracts, futures, forwards and options)
- A broker as defined in section 6045(c) of the U.S. Internal Revenue Code

### **NFFE (Non-Financial Foreign Entity)**

Means a non-U.S. entity that is not a foreign financial institution as defined in relevant U.S. Treasury regulations, and also includes any non U.S. entity that is organised under the laws of Switzerland or another partner jurisdiction and that is not a financial institution.

### **Active NFFE (Non-Financial Foreign Entity)**

An "Active NFFE" means any NFFE that meets one of the following criteria:

- a. Less than 50% of the NFFE's gross income for the preceding calendar year or other appropriate reporting period is passive income, and less than 50% 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 passive income;
- b. The stock of the NFFE is regularly traded on an established securities market or the NFFE is a related entity of an entity, the stock of which is traded on an established securities market;
- c. The NFFE is organised in a U.S. territory and all of the owners of the payee are bona fide residents of that U.S. territory;
- d. The NFFE is a non-U.S. government, a government of a U.S. Territory, an international organisation, a non-U.S. central bank of issue, or an entity wholly owned by one or more of the foregoing;
- e. Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, and providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a financial institution. An NFFE shall not qualify for this status if the NFFE functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buy-out fund or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- f. The NFFE was not a financial institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a financial institution;
- g. The NFFE primarily engages in financing and hedging transactions with or for related entities that are not financial institutions, and does not provide financing or hedging services to any entity that is not a related entity, provided that the group of any such related entities is primarily engaged in a business other than that of a financial institution;
- h. The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a financial institution; provided, that the NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFFE; **or**
- i. The NFFE meets all of the following requirements: (i) It is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes; (ii) It is exempt from income tax in its country of residence; (iii) It has no shareholders or members who have a proprietary or beneficial interest in its income or assets; (iv) The applicable laws of the entity's country of residence or the entity's formation documents do not permit any income or assets of the entity to be distributed to, or applied for the benefit of, a private person or non-charitable entity other than pursuant to the conduct of the entity's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the entity has purchased; **and** (v) The applicable laws of the entity's country of residence or the entity's formation documents require that, upon the entity's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organisation, or escheat to the government of the entity's country of residence or any political subdivision thereof.

### **Passive NFFE (Non-Financial Foreign Entity)**

Means any Non-Financial Foreign Entity (NFFE) that is neither an active NFFE, nor a withholding foreign partnership or withholding foreign trust pursuant to relevant U.S. Treasury Regulations.

Consideration should be given as to whether one or more of the "controlling persons" has "U.S. person" status.\*

The controlling persons are the natural persons who exercise control over an entity. In the case of a trust such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust. In the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions.

\* "U.S. person":

A natural person is deemed a "U.S. person" if it is subject to U.S. tax legislation for any reason. This may be the case, for example, for the following reasons:

- The person is a citizen of the United States (including dual or multiple citizenship)
- The person holds a U.S. permanent residence permit ("green card")
- The person is physically present in the United States for a substantial number of days, that is
  - at least 183 days in the current year or, if less,
  - at least 31 days in the current year and at least 183 days in a three-year period which includes the current year and the two years immediately prior to the current year according to the following formula: number of days in the current year x 1 plus number of days in the first year preceding the current year x 1/3 plus number of days in the second year preceding the current year x 1/6
- The natural person is someone who is subject to U.S. tax laws for any other reason (including but not limited to dual residency, joint filing of tax return with a "U.S. person" – spouse for example – and relinquishing of U.S. citizenship or "green card")

### **Exempt beneficial owners**

Exempt beneficial owners include

- Swiss governmental entities
- International organisations
- Retirement funds such as
  - vested benefits institutions
  - BVG contingency fund
  - BVG security fund
  - institutions for recognised forms of pension provision under Article 82 BVG (pillar 3a)

### **Swiss financial institution**

Means a financial institution organised under the laws of Switzerland, but excluding any branch or head office of such financial institution that is located outside Switzerland, and any branch or head office of a financial institution not organised under the laws of Switzerland, if such branch or head office is located in Switzerland.

### **Financial institution of another partner jurisdiction<sup>1</sup>**

Means any financial institution organised under the laws of a partner jurisdiction, but excluding any branch or head office of such financial institution that is located outside the partner jurisdiction, and any branch or head office of a financial institution not organised under the laws of the partner jurisdiction, if such branch or head office is located in the partner jurisdiction.

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<sup>1</sup> Partner jurisdiction means a jurisdiction that has in effect an agreement with the United States to facilitate the implementation of FATCA. The U.S. Internal Revenue Service shall publish a list identifying all partner jurisdictions. The current list can be found on the internet or obtained from the Swiss Life head office.

**Participating foreign financial institution**

Means a foreign financial institution which participates in FATCA as defined in the US Treasury Regulations.

**Excepted foreign financial institution**

Relates to foreign financial institutions which are allocated to this category under applicable foreign legislation.

**Deemed FATCA-compliant foreign financial institution**

**Nonparticipating Swiss or foreign financial institution**

A financial institution which is not deemed FATCA compliant

Swiss Life