

FATCA - Foreign Account Tax Compliance Act

FATCA stands for the Foreign Account Tax Compliance Act (FATCA) enacted with the main objective to reduce tax evasion by U.S. persons holding investments in offshore accounts.

FATCA requires non-U.S. financial institutions to report, directly or through the tax authorities in their country of residence, information about financial accounts held by U.S. citizens or residents, both individuals and entities (legal persons and other legal arrangements).

Scope

FATCA was enacted in US legislation in 2010, entering into effect as of 01.07.2014.

FATCA requires non-U.S. financial institutions (foreign financial institutions, including Romania) where U.S. accounts are opened to report, directly or through the tax authorities in their country of residence, information about financial accounts held by U.S. citizens or residents, on an automatic basis.

Following the entry into force of Law no. 233/08.10.2015 *enacting the Agreement between the United States of America and Romania to Improve International Tax Compliance and to Implement FATCA, signed in Bucharest on 28.05.2015*, and Law no. 207/2015 *on the Tax Procedure Code* into effect as of 01.01.2016, Bank Leumi Romania SA (hereinafter referred to as the “Bank”), much the same as all the other banks in Romania, is required to report to the National Agency for Fiscal Administration (A.N.A.F.) information concerning accounts held by Bank Clients which meet the criteria required by local legislation.

In accordance with the provisions laid down in Romanian laws, the financial account information reported by the Bank to the local tax authority (A.N.A.F.) will be subject to a further exchange of information with the U.S. Internal Revenue Service (IRS).

According to local legislation, the first FATCA reporting will occur no later than 31.08.2016, with subsequent reporting on an annual basis.

Non-compliance will be sanctioned by applying a 30% withholding tax on any payment of interest, dividends, rents, salaries, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, if such payment is from sources within the United States.

The impact of FATCA on Bank Clients

New individual accounts which are U.S. reportable accounts following identification of certain U.S. indicia will require as part of the account opening procedure:

- i) a self-certification to determine whether the account holder is a U.S. citizen or resident in the United States for tax purposes.
- ii) IRS Form W-9 including the account holder’s U.S. Taxpayer Identification Number (TIN) for each U.S. citizen or resident in the United States for tax purposes.

If there is a change of circumstances with respect to a new individual account that establishes whether the account holder is a U.S. citizen or resident for U.S. tax purposes, the account holder should report the said change of circumstances.

Clients who fail to provide information for the purposes of FATCA will be classified as “recalcitrant account holders” within the meaning of FATCA and will be reported to the Romanian tax authority (A.N.A.F.) which will further report the information to the IRS.

Preexisting individual accounts will be reviewed to identify U.S. reportable accounts.

The Bank will use a set of standardized forms to determine U.S. reportable accounts:

Form W-9: Request for Taxpayer Identification Number and Certification. The purpose of this form is to request the taxpayer’s TIN, the taxpayer being identified as a U.S. person (individuals and entities).

Form W-9 instructions can be found on the IRS website: www.irs.gov/pub/irs-pdf/iw9.pdf .

Form W-8BEN: The purpose of this form is to identify foreign beneficial owners of U.S. accounts and transactions and it is used for individuals only.

Form W-8BEN instructions can be found on the IRS website: www.irs.gov/pub/irs-pdf/iw8ben.pdf .

Form W-8BEN- E: The purpose of this form is to identify foreign entities (legal persons/legal arrangements) or Foreign Financial Institutions (FFIs) who are the beneficial owners of U.S. accounts or transactions. It is used only by entities (legal persons/legal arrangements) or Foreign Financial Institutions.

Form W-8BEN-E instructions can be found on the IRS website: www.irs.gov/pub/irs-pdf/iw8bene.pdf .

U.S. Indicia

The following indicia show that an individual or entity (legal person or another legal arrangement) may be identified as a U.S. person:

- U.S. citizen or resident (including Green Card holders), U.S. place of incorporation (in the case of entities);
- U.S. place of birth;
- current U.S. (home, residence, mailing) address;
- U.S. telephone number;
- standing instructions other than in relation to a depository account to transfer funds to an account maintained in the United States;
- currently effective power of attorney or signatory authority granted to a person with a U.S. address;
- a U.S. “in-care-of” or “hold mail” address;
- the entity (legal person or another legal arrangement) is a Passive NFFE with one or more controlling persons/beneficial owners who are U.S. reportable persons.

For details, see www.irs.gov and make inquiries at the territorial unit where your bank account is opened or at any other Bank Leumi Romania SA territorial unit.

The impact of FATCA on the Bank

The Bank is required to comply with the provision of FATCA, including:

- the identification of U.S. reportable persons showing U.S. indicia by requesting the Taxpayer Identification Number (TIN);
- the request of a self-certification from new accounts to determine U.S. persons status;
- reporting information concerning accounts opened by individuals or entities (legal persons or other legal arrangements) to the Romanian tax authority (A.N.A.F.), including recalcitrant accounts.

Data subject to reporting by the Bank

In the case of an individual that is an account holder:

- (a) name, address, Taxpayer Identification Number(s) (TIN), date and place of birth name;
- (b) account number and value.

In the case of an entity (legal person/other legal arrangements) that is an account holder:

- (a) name, address of principal office, jurisdiction of residence (U.S.) and Taxpayer Identification Number(s) (TIN) of the entity;
- (b) names, current home/residence/ mailing addresses, jurisdiction of residence (U.S.), Taxpayer Identification Numbers (TIN), date and place of birth of each controlling person that is a reportable person;
- (c) the account number, the account balance or value, including, in the case of a cash value insurance contract or annuity contract, the cash value or surrender value as of the end of the relevant calendar year/reporting year or other appropriate reporting period or, if the account was closed during such year, immediately before closure;
- (d) in the case of any custodial account:
 - (i) the total gross amount of interest;
 - (ii) the total gross amount of dividends;
 - (iii) the total gross amount of other income generated with respect to the assets held in the account;
 - (iv) the total gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year/other appropriate reporting period with respect to which the Reporting Romanian Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the account holder;
- e) in the case of any depository account, the total gross amount of interest paid or credited to the account during the reporting year;
- f) in the case of any other account except the above mentioned, the total gross amount paid or credited to the account holder with respect to the account during the reporting year with respect to which the Reporting Romanian Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the account holder during the reporting year.

Specific terms:

Account holder: the person listed or identified as the holder of a financial account by the financial institution that maintains the account. In the case of a cash value insurance contract or an annuity contract, the account holder is any person entitled to access the cash value or change the beneficiary of the contract. If no person can access the cash value or change the beneficiary, the account holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract;

Reportable account: financial account held by one or more reportable persons and maintained by a Reporting financial institution;

Financial institution: a custodial institution, a depository institution, an investment entity, or a specified insurance company;

Reporting financial institution: any Reporting financial institution in Romania or another Participating jurisdiction; Bank Leumi Romania SA is a Reporting Romanian financial institution;

U.S. person: a U.S. 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 judgments concerning substantially all issues regarding administration of the trust, and (ii) one or more U.S. 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;

Reportable person: a person showing US Indicia who holds Reportable accounts;

Entity: a legal person/legal arrangement such as a trust;

The term "**Controlling persons**" is the equivalent of the "beneficial owner", as defined in art. 4 of Law no. 656/2002 for the prevention and sanctioning of money laundering and the implementation of some measures to prevent and control terrorist financing, recast, as further amended, namely: any natural person who ultimately owns or controls the customer and/or the natural person on whose behalf or interest a transaction or activity is being conducted, directly or indirectly;

Financial account: an account maintained by a financial institution including depository accounts, custodial accounts, equity or debt interest in the case of an investment entity, cash value insurance contracts or annuity contracts;

Depository account: any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a financial Institution in the ordinary course of a banking or similar business;

Custodial account: an account (other than an insurance contract or annuity contract) for the benefit of another person that holds any financial instrument or contract held for investment, including, but not limited to, a share or stock in a corporation, a note, bond, debenture, or other evidence of indebtedness, a currency or commodity transaction, a credit default swap, a swap based upon a nonfinancial index, a notional principal contract, an insurance contract or annuity contract, and any option or other derivative instrument;

Annuity contract: a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals;

Cash value insurance contract: an insurance contract other than an indemnity reinsurance contract between two insurance companies that has a cash value;

Insurance contract: means a contract (other than an annuity contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk;

Cash value: the greater of:

- a) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and
- b) the amount the policyholder can borrow under or with regard to the contract (by setting up the cash value as collateral, for example).

Financial assets: the value of financial instruments as defined in Law no. 297/2004 on the capital market, as amended and supplemented, and cash values in relation to financial instruments. Financial assets include a security, partnership interest, commodity, swap, insurance contract or annuity contract, or any interest in a security, partnership interest, commodity, swap, insurance contract, or annuity contract;

TIN: Taxpayer Identification Number (a U.S. federal taxpayer identifying number);

Participating jurisdiction: U.S.A.

NFFE (Non-Financial Foreign Entity): non-US legal entity that is a non-financial institution;

Passive NFFE: any NFFE that is not (i) an Active NFFE, or (ii) a withholding foreign partnership or withholding foreign trust pursuant to relevant U.S. Treasury Regulations;

Active NFFE: means any NFFE that meets any of the following criteria:

- a) less than 50 percent of the NFFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 percent 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 regularly traded on an established securities market;
- c) The NFFE is organized 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 government (other than the U.S. government), a political subdivision of such government (which, for the avoidance of doubt, includes a state, province, county, or municipality), or a public body performing a function of such government or a political subdivision thereof, a government of a U.S. Territory, an international organization, 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, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an entity shall not qualify for NFFE status if the entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout 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 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 organization of the NFFE;
- g) The NFFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- h) 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;
- i) The NFFE is an "excepted NFFE" as described in relevant U.S. Treasury Regulations; or
- j) The NFFE meets all of the following requirements:
 - (i.) It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organization, business league, chamber of commerce, labor organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare;
 - (ii) It is exempt from income tax in its jurisdiction 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 NFFE's jurisdiction of residence or the NFFE's formation documents do not permit any income or assets of the NFFE 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 NFFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFFE has purchased; and
 - (v) The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents require that, upon the NFFE's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organization, or escheat to the government of the NFFE's jurisdiction of residence or any political subdivision thereof.

NOTE: *the information in this document is an abbreviated version of the legal provisions concerning FATCA and does not comprise the relevant legal provisions in their entirety.*

For further information, please refer to the relevant national laws (i.e. Law no. 207/2015 on the Tax Procedure Code and Order no. 1939/2016 issued by the Minister of Public Finance) and access www.irs.gov.