



Canada Life

Guide to the Foreign Account Tax Compliance Act (FATCA)



For professional adviser use only

This guide is based upon Canada Life International Limited's and CLI Institutional Limited's understanding of FATCA-related legislation as at February 2015; which is subject to change. Please note that we are not licensed to provide advice and therefore cannot comment on your clients' classifications or their need to register directly with the US Internal Revenue Service.

CONTENTS

	Page
Background – What is FATCA?	3
When did FATCA come in to force?	3
Impact on Canada Life International (CLI) and CLI Institutional (CLII)?	3
What’s the difference between US FATCA and UK FATCA?	3
What type of policyholder does FATCA apply to?	3
Who or what is a Controlling Person?	4
What additional obligations does FATCA place on CLI/CLII?	4
Who is reportable?	4
Those policies that commenced on or before 30 June 2014	4
Those policies that commenced on or after 1 July 2014	5
When will information be reported?	5
Key reporting dates	5
Where will the information be reported to?	5
What if the new client or pre-existing policyholder refuses to answer the questions?	5
How do I know the classification of the Entity that I am advising?	6
The majority of my clients are trustees, what impact does this have on them?	6
What information is generally required from a Controlling Person within a trust structure?	6
What are the requirements for professional trustees?	7
How will you collect the additional information?	7
What should someone do if they are unsure of their FATCA responsibilities?	7
As a Financial Adviser, what actions does my firm need to take to ensure it complies with FATCA?	7
Key points to note	7
Classification of clients under both FATCA agreements	8
What about the Common Reporting Standard (CRS)?	9
Contact us	9

Background – What is FATCA?

The Foreign Account Tax Compliance Act (FATCA) is an anti-tax evasion measure issued by the US Treasury and aimed at Foreign Financial Institutions (FFIs) like CLI/CLII and other financial intermediaries to prevent tax evasion by US citizens and residents through the use of offshore accounts.

The UK has implemented a similar regime with each of the Crown Dependencies (Jersey, Guernsey and the Isle of Man), which impacts UK and Isle of Man (IOM) residents.

In order to implement these regimes the Isle of Man government have signed Inter-Governmental Agreements (IGAs) with both the US and UK governments. These will be referred to as US and UK FATCA.

When did FATCA come in to force?

1 July 2014

Impact on CLI/CLII?

The implementation of FATCA meant that from 1 July 2014, CLI/CLII were legally required to capture additional information and report policies to the IOM Income Tax Division in respect of US, UK and IOM policyholders and/or certain Controlling Persons.

In order to comply with our obligations we have registered with the US Internal Revenue Service, please see details below:

Company	Classification	Global Intermediary Identification Number (GIIN)
Canada Life International Limited (CLI)	Registered Deemed Compliant Financial Institution	GIDU5A.00007.ME.833
CLI Institutional Limited (CLII)	Registered Deemed Compliant Financial Institution	GIDU5A.00011.ME.833

What's the difference between US FATCA and UK FATCA?

US FATCA – Applies to US Citizens, US Residents or other persons with a US tax liability. It is important to note that irrespective of where a US Citizen lives, they are still considered to be a US taxpayer under FATCA.

UK FATCA – Applies to UK residents or other persons with a UK tax liability.

What type of policyholder does FATCA apply to?

FATCA impacts on all types of policyholders:

- Individuals
- Companies*
- Corporate Trustees (including QROPS – Qualifying Recognised Overseas Pensions Schemes)*
- Trusts*

* Companies and other incorporated entities; and partnerships, Trusts and other legal arrangements; are all referred to as '**Entities**' under FATCA.

Additionally, the '**Controlling Persons**' of **Entity** policyholders may also be directly impacted by FATCA.

Who or what is a Controlling Person?

A '**Controlling Person**' is a natural person who exercises control over an **Entity**. In the case of a Trust, they will be; the settlor(s), the trustee(s), the protector (if any), the beneficiaries (where named) and any other natural person exercising ultimate effective control over the Trust.

Some types of Entity and their associated Controlling Persons are shown in the table below:

Type of Entity	The Controlling Persons
Trust	<ul style="list-style-type: none">• Settlor(s)• Trustee(s)• Protector(s)• Beneficiary(ies)
Company	<ul style="list-style-type: none">• Director(s)• Shareholder(s)
Partnership (general/ordinary, Limited or LLP)	<ul style="list-style-type: none">• Partners• Members
Foundation	<ul style="list-style-type: none">• Founder(s)/Dedicator(s)• Enforcer(s)• Council member(s)• Beneficiary(ies)

The term **Controlling Persons** will be interpreted in a manner consistent with the Financial Action Task Force (FATF) Recommendations, which can be found at www.fatf-gafi.org/topics/fatfrecommendations/documents/fatf-recommendations.html

What additional obligations does FATCA place on CLI/CLII?

In order to comply we are required to obtain a formal declaration/self-certification from all new policyholders and certain **Controlling Persons**, which confirms their tax residence, their associated tax numbers, and to obtain supporting information. For example, we are required to obtain the National Insurance number for all new policyholders who are tax resident in the UK. In certain circumstances this also extends to pre-existing clients.

Tax Reference Number Means

US	Tax Identification Number (TIN)
Isle of Man and the United Kingdom	National Insurance (NI) Number
Jersey, Guernsey and Gibraltar	Social Security Number
Elsewhere	Local equivalent issued by the relevant authority

Who is reportable?

Those policies that commenced on or before 30 June 2014

US FATCA – Pre-existing policies held by individuals or held in trust where all the trustees are individuals, are not reportable, unless the client decides to apply a top up or assigns a policy to someone who is a **Specified US Person**, or a **Specified US Person** becomes a **Controlling Person**. Someone changing their address to the US does not on its own make a policy reportable under FATCA if the policy commenced on or before 30 June 2014.

Pre-existing policies held by **Entities** (including those held in trust where any of the trustees are **Entities**) are subject to a further review where the aggregate value of policies held is greater than US\$250,000. This review could result in the need to request additional information/self-certification from the policyholder, in order to determine whether the policy is reportable.

Pre-existing policies are subject to further review and/or reporting where the aggregate value of policies held exceeds US\$1million or where the ownership is assigned in any subsequent year.

UK FATCA – Pre-existing policies are reportable if the policyholder(s) and/or **Controlling Persons** are UK resident (or have a correspondence address in the UK) and the aggregated policy value is US\$250,000 or more on 31 December each year.

Pre-existing policies held by **Entities** are subject to a further review where the aggregate value of policies held is greater than US\$250,000. This review could result in the need to request additional information from the policyholder, in order to determine whether the policy is reportable.

All pre-existing policies are subject to further review and/or reporting where the aggregated value of the policy exceeds US\$1million or where the ownership is assigned in any subsequent year.

Those policies that commenced on or after 1 July 2014

US FATCA – New policies are reportable if the policyholder(s) and/or **Controlling Person(s)** are Specified US Persons or Passive Non-Financial Foreign Entities (NFFE) and the aggregated policy value is \$50,000 or more on 31 December each year.

UK FATCA – New policies are reportable if the policyholder(s) and/or **Controlling Person(s)** are Specified UK Persons or Passive Non-Financial Foreign Entities (NFFE) and the aggregated policy value is US\$50,000 or more on 31 December each year.

When will information be reported?

Key reporting dates

- First US reporting: 30 June 2015 based on information held as at 31 December 2014.
- First UK reporting: 30 June 2016 based on information held as at 31 December 2014 and 2015.

Reports are then submitted on a rolling annual basis.

Where will the information be reported to?

In order to comply with local data protection legislation we will only provide policyholder information to the IOM Income Tax Division who will then pass the relevant details on to the US Internal Revenue Service (IRS) and Her Majesty's Revenue & Customs (HMRC) in the UK.

What if the new client or pre-existing policyholder refuses to answer the questions?

Under both US and UK FATCA the policyholder and any **Controlling Persons** would automatically be given a reportable status until we receive the outstanding information.

How do I know the classification of the Entity that I am advising?

Most **Entities** will fall into one of three classifications:

Financial Institution – This includes an **Entity** that conducts one or more of the following activities, for which they will usually be regulated:

- Custodial services
- Insurance services
- Investment activity
- Deposit taking

Active Non-Financial Foreign Entity (NFFE) – an Active NFFE would generally be an actively trading non-financial services business.

Passive NFFE – a Passive NFFE is an **Entity** that is not an Active NFFE, therefore does not actively trade. Typically a Passive NFFE would be set up to hold income or investments on behalf of another. This category would generally include a non-professionally managed or ‘family’ trust.

If you are unsure on the correct classification, you should refer to the relevant regulations and/or seek legal advice.

The majority of my clients are trustees, what impact does this have on them?

In certain circumstance a trust will be classed as a Financial Institution and need to register with the Internal Revenue Services (IRS) in the US to obtain a Global Intermediary Identification Number (GIIN). Typically this will be where a corporate trustee has been appointed to professionally manage the trust.

Where all trustees are individuals who are not acting in any professional capacity, the trust will generally be classified as a Passive Non-Financial Foreign Entity (NFFE) and not need to register with the IRS.

If you are a family trust with any **Controlling Person** that is tax resident outside of the UK you will normally be a Passive Non-Financial Foreign Entity (NFFE), also known as a Non-trading investment body. Passive NFFEs are not required to register with or report to the US IRS but must provide a self-certification including further details of any **Controlling Person**.

What information is generally required from a Controlling Person within a trust structure?

We continue to require the existing customer due diligence information (residential address and date of birth, for example), but now we must also request confirmation of tax residence and any associated tax reference numbers. These numbers can take different forms depending on the jurisdiction, please see the table on page 4 for further information.

What are the requirements for professional trustees?

The requirements for professional trustees will vary depending on the structure of the company. Therefore you should contact your tax adviser or seek legal advice.

How will you collect the additional information?

The information required to meet the regulatory requirements will be captured in application forms for new clients/those wishing to top up their policy or within the relevant self-certification form. There are specific self-certification forms available for individuals, family trusts and **Entities**.

In order to prevent any delays, further requests for information, or being classed as reportable, you should ensure that all forms are fully completed.

What should someone do if they are unsure of their FATCA responsibilities?

We are not licenced to provide advice therefore the policyholder should contact their professional adviser or tax adviser to make sure that they fully understand their obligations.

As a Financial Adviser, what actions does my firm need to take to ensure it complies with FATCA?

The regulations for both US and UK FATCA are complex and in certain circumstances you could be classed as a Foreign Financial Institution (FFI), which would bring additional responsibilities under the regulations. Therefore it is suggested that you obtain legal advice in order to ascertain your status under the regulations.

Key points to note

US FATCA – Impacts on policyholders, and the **Controlling Persons of Entity** policyholders classified as Passive NFFEs, when they are US citizens (regardless of where they live), or when they are otherwise considered to be **Specified US Persons** under US FATCA.

Specified US Persons are policyholders or **Controlling Persons** that hold any of the following:

- US citizenship
- US passport

But can also include:

- Individuals with a US birthplace
- **Entities** with a US place of incorporation or organisation
- Individuals or **Entities** with a US residential or correspondence address
- Individuals or **Entities** with a US telephone number (for example international telephone numbers that begin with +1 or 001)
- Individuals or **Entities** who have granted a power of attorney where one or more of the attorneys have a US residential address

- **Entities** who have an authorised signatory with a US address
- Those policyholders who provide us with an instruction to transfer funds to an account maintained in the US

UK FATCA – Impacts on policyholders, and the **Controlling Persons** of **Entity** policyholders classified as Passive NFFEs, when they are UK resident or when they are otherwise considered to be **Specified UK Persons** under UK FATCA.

Specified UK Persons are policyholders or **Controlling Persons** that are any of the following:

- **Entities** with a UK place of incorporation or organisation
- Individuals or **Entities** with a UK residential or correspondence address
- Individuals or **Entities** who have granted a power of attorney where one or more of the attorneys have a UK residential address

Classification of clients under both FATCA agreements

It is important to note that policyholders, and the **Controlling Persons** of **Entity** policyholders, will receive a classification under both US FATCA and UK FATCA. Consequently, the classification received by a particular client under each regime may be different.

For example, a policyholder that is a UK non-trading company, which itself has two shareholders, one resident in the US and one resident in the UK. Neither shareholder has a connection to any another country.

Under US FATCA:

- The policyholder would receive a classification of **Passive NFFE**.
- The US resident shareholder, as a **Controlling Person**, would receive a classification of **Specified US Person**.
- Having no US connections, the UK resident shareholder is not directly subject to US FATCA classification.

Both the policyholder's and the US resident shareholder's details would be reportable to the IOM Income Tax Division for onward reporting to the US Inland Revenue Service. The UK resident shareholder's details would not ultimately be reported to the IRS, as they would not be deemed to be a US taxpayer in this case.

Under UK FATCA:

- The policyholder would receive a classification of **Specified UK Person**.
- The UK resident shareholder, as a **Controlling Person**, would receive a classification of **Specified UK Person**.
- Having no UK connections, the US resident shareholder is not directly subject to UK FATCA classification.

The policyholder's details would be reportable to the IOM Income Tax Division for onward reporting to the HM Revenue & Customs in the UK. There would be no obligation to report the UK resident shareholder's details, as the policyholder is itself a **Specified UK Person**. The US resident shareholder's details would not ultimately be reported to HMRC, as they are would not be deemed to be a UK taxpayer in this case.

What about the Common Reporting Standard (CRS)?

The CRS is a similar piece of legislation that aims to implement a global standard for automatic exchange of financial account information between governments. Currently (as at February 2015) 93 jurisdictions have committed to adopting CRS, with 51 jurisdictions acting as 'early adopters' of CRS.

Although the 'indicia' are different, any reporting will still be made to the local tax authority for onward distribution.

The proposed start date is 1 January 2016, but this will be dependent on domestic legislation being implemented.

Contact us

If you require further information or assistance regarding FATCA, you can contact us at

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