

MARKET BULLETIN

REF: Y5049

Title	Foreign Account Tax Compliance Act ("FATCA") update
Purpose	To update the Lloyd's Market and members on changes to the FATCA rules with effect from 1 January 2017, affecting certain foreign to foreign transactions. The bulletin also includes an update on the newly issued Form W-8IMY.
Type	Event
From	Misty Carter, Head of Tax Lloyd's America misty.carter@lloyds.com +44 20 7327 7284 or +1 212 382 4084
Date	20 December 2016
Deadline	Action required from 1 January 2017 until further notice
Related links	Lloyd's 2014 W8IMY Bulletin Y4806

Introduction:

Market Bulletin Y4806, dated 27 June 2014, explained the steps Lloyd's was taking to meet FATCA requirements; these procedures still apply.

Foreign to Foreign Transactions

From 1 January 2017, payments of premium between two non-US parties covering US risk, so called "foreign-to-foreign" payments, are within the scope of FATCA. These payments were originally exempted from FATCA by a transitional provision which the Internal

Revenue Service (“IRS”) and the US Treasury department have not extended. If there is an extension, this Market Bulletin will likely be withdrawn.

Lloyd’s syndicates and members paying reinsurance premiums on or after 1 January 2017, which include any US source risk, need to treat those payments as a ‘withholdable payment’ for the purposes of FATCA unless the reinsurer is FATCA compliant and provides the appropriate FATCA documentation. The definition of income for FATCA purposes includes premiums, and US source rules define US risk as relating to US property, liability arising out of an activity that takes place in the US, or in connection with the life or health of US residents. If there is any uncertainty as to what the premium is insuring or the location of those risks, the premium should be treated as US sourced, as the US source rules may treat the risk as being US sourced if the premium has any connection to US. Therefore, premium should only be treated as outside the scope of these rules if it can be wholly identified as non-US sourced.

It is important to note that the requirements set out below are those under the US Treasury Regulations and **not** the Intergovernmental Agreement between the UK and the US, so consequently any interpretation in HMRC guidance is not applicable.

Action required where a Lloyd’s syndicate or member is paying reinsurance premium

Syndicates and members will need to collect the appropriate IRS W-8 series forms when they pay a reinsurance premium on or after 1 January 2017 which includes any US source risk.

Unless the reinsurer has provided the appropriate FATCA documentation and is FATCA compliant, syndicates and members paying reinsurance premiums must treat those payments as a ‘withholdable payment’ for the purposes of FATCA. This means that 30% of the premium would need to be withheld by the reinsured and paid to the IRS.

In practice, for any reinsurance placed with a non FATCA-compliant insurer, it may be difficult to withhold from premium and therefore syndicates (or members) may wish to take advice before placing business with such a reinsurer.

Such a placement would additionally trigger Form 1042/1042-S reporting as the non-compliant insurer is presumed to be, under US Treasury Regulations, a Non-Participating Foreign Financial Institution.

From a practical perspective therefore, syndicates and members may wish to consider only placing reinsurance business with FATCA compliant reinsurers (and collecting the appropriate documentation) to ensure that there is no reporting required.

Lloyd’s is not able to manage the collection of FATCA forms from reinsurers, or any withholding and reporting, centrally because the placing of reinsurance business is not standard. The documentation obligations will differ depending on the detail of each syndicate's (and each member's) reinsurance programme(s), whether or not there is an

intermediary involved and whether that intermediary has agreed to manage the FATCA obligations that arise from the placements.

Although, in the longer term, we expect that the collection of W-8 forms when placing insurance and reinsurance business will become common place, we recognise that there are a number of questions about which forms are appropriate and whether supporting documentation (such as a withholding statement) is needed. A basic rule of thumb is that Forms W-8BEN/BEN-E (or W9 where it is US individual or company) are required from the final beneficiary in the chain along with Forms W-8IMY from any intermediate persons together with a withholding statement. If there is a substantial US owner of a non-US company then the W8-BEN-E must include details of the substantial US owner including their name, address and US Tax Identification number. An example has been included as part of the FAQ's.

Action required where a Lloyd's syndicate is receiving reinsurance premium

The Lloyd's Form W-8IMY remains the appropriate form to provide in these circumstances.

The Lloyd's Form W-8IMY

The IRS issued a new Form W-8IMY in September 2016 but the 2014 Form W-8IMY remains valid until the end of March 2017. Lloyd's is in the process of updating the Form W-8IMY in the same manner as the 2014 Form W-8IMY with Lloyd's FATCA status, ("Chapter 4 status") as an Excepted NFFE as well as the same statement as we now use on page 8. When updated, the new Form W-8IMY will be available on the Lloyd's FATCA webpage. Syndicates and brokers can continue to use the 2014 W-8IMY until the end of March 2017.

Frequently asked questions

Lloyd's Tax Team has updated the set of frequently asked questions to reflect the above information. It will also be available on the Lloyd's FATCA webpage.

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