

# MARKET BULLETIN

REF: Y4813

<b>Title</b>	Non-UK Tax Resident Members
<b>Purpose</b>	To provide an update on the steps being taken to ensure that all members wishing to underwrite from 1 January 2015 are UK tax resident
<b>Type</b>	Event
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<b>Date</b>	15 July 2014
<b>Deadline</b>	27 November 2014
<b>Related links</b>	n/a

Market Bulletin Y4728 dated 10 October 2013 advised that, due to a change in the basis on which HMRC will issue certificates of tax residence, all members wishing to participate in the Lloyd's market from 1 January 2015 would need to be UK tax resident. The purpose of this Bulletin is to advise of the steps being taken by Lloyd's to ensure compliance with this requirement, in particular the action that members will need to take during the remainder of 2014.

## **Declaration of UK tax residence by members**

**All members intending to underwrite for the 2015 year of account will be required to complete a tax declaration in the appropriate form.** This will provide a robust audit trail to support the confirmation required by Lloyd's to HMRC.

*Forms of declaration*

Copies of the forms are attached to this Bulletin. Guidance notes for completion are included on the reverse of the forms. There is a separate form for each type of member: individual, company or SLP/LLP. Guidance on the relevant tests to be applied to determine residency is included in the form; the test varies depending on whether the person to whom it applies is an individual or a company.

In the case of the latter, it should be noted that a company which is incorporated in the United Kingdom may not necessarily be resident in the United Kingdom for tax purposes. A company's tax residence may also be determined by the place of its central management and control, and if this is in a country outside the United Kingdom it would be necessary to have regard to the terms of any double tax treaty between the United Kingdom and that country in order to determine in which of the countries the company was resident for tax purposes. Further guidance on this issue can be found in HMRC's International Manual at [www.hmrc.gov.uk](http://www.hmrc.gov.uk).

The form also requires a declaration of status of the beneficial owner for US tax purposes, which must be provided to ensure that Lloyd's remains compliant with the US Foreign Account Tax compliance Act ("FATCA") and is required even if the member does not underwrite US business.

*Partnership Members*

Because SLPs and LLPs are tax transparent the declaration will be required to be given on behalf of all of the partners and / or members of the SLP or LLP. The declaration need only be signed by one such partner or member, but the signatory will need to satisfy themselves that all partners or members will meet the tax residency test. All partners or members must therefore have confirmed their tax status to the SLP or LLP in writing in terms of the form of declaration, with evidence of this being retained in the records of the SLP or LLP.

*Deadline for submission of declaration*

For members with a members' agent, the declaration should be provided to the members' agent by 30 October 2014 to enable the members' agent to make a bulk return to Lloyd's by the Coming into Line deadline. Completed and signed declarations must be submitted to Lloyd's no later than the Coming into Line date, i.e. 27 November 2014, although earlier submission is encouraged.

Members' agents should collect the declarations on behalf of their members before submitting them to Lloyd's. Direct Corporate Participants should lodge their declaration directly with Lloyd's. Instructions on how to submit the declarations to Lloyd's are included on the reverse of the forms.

### *Consequences of not providing an affirmative declaration*

It is imperative that all members underwriting for the 2015 year of account are UK tax resident for the entire year of account. This requirement will be enforced strictly. Accordingly, any member which has failed to provide an affirmative declaration by the deadline (or provides one that is subsequently found to be invalid) and has not otherwise disposed of its capacity (e.g. by conversion or sale in the capacity auctions) will be required to cease underwriting at the end of the 2014 year of account. Provision of a tax declaration will be included as a requirement in the revised M&URs (FAL) to be issued in 2014, giving Lloyd's the authority to cease a member from underwriting if this requirement is not met.

**Given the above, any member that will not be able to provide an affirmative tax declaration should consider its position carefully.** In some cases individual members may have the option of converting to a corporate member for 2015 - although note that the deadline for conversion applications is 30 September. Alternatively it is recommended that the member dispose of its capacity via the capacity auctions. Failure to take such steps will mean that the member is at risk of losing its capacity for nil value.

For the avoidance of doubt, any member ceasing at the end of the 2014 year of account will not be required to complete a declaration.

### **Certificate of Tax Residence**

Since 2012, HMRC has been issuing certificates of tax residence (required for withholding tax purposes) on a per syndicate basis. For some syndicates this meant a certificate confirming that less than 100% of the participating members were UK tax resident. While this should no longer be the case for 2015, the precise form of certificate that will be issued for the 2015 year of account is still under discussion between HMRC and Lloyd's.

### **Update on matters referred to in MB Y4728**

#### *Capitalising the existing vehicle and the new vehicle*

The documentation that enables a SLP or LLP to make its FAL interavailable to a corporate member has been prepared by Lloyd's and made available to the members' agents.

In addition, Lloyd's has now approved a revised form of members' agreement for LLPs that allows greater flexibility in terms of how the FAL for that LLP is held. Specifically, the FAL provided by an individual partner can be used to support the participation of a corporate partner appointed to take over that individual partner's interest without the need for the corporate partner to put up FAL themselves.

#### *Costs of conversion*

As indicated in MB Y4728, Lloyd's will be waiving the up-front charges for conversions by non-UK tax residents. In addition, some of the ongoing charges which are within our remit

for the three-year natural interavailability period following conversion will also be waived. Specifically, allowing for small increases in the annual charges during the three year period Lloyd's will waive fees of around £3,500 for each converting unlimited member and £6,300 for each converting LLP or SLP (see Table 1).

**Table 1 - Charges to be waived by Lloyd's**

<b>Ceasing Member</b>	<b>Individual</b>	<b>LLP</b>
Market Services Base Service Charge	£235pa	£545pa
Marker Services Taxation Charge	£40pa	£221pa
Inter-Available Recipient Fee	£165pa	£165pa
Total Annual Charges Waived	£440pa	£931pa
Total Annual Charges for Three Years	£1,320	£2,793
Up-Front Charge	£2,155	£3,500
<b>Overall Total</b>	<b>£3,475</b>	<b>£6,293</b>

Note: The figures in this Table exclude any increases to the annual charges which may be made in future.

*Support for conversion*

Lloyd's continues to engage with HMRC in discussions over the availability of tax reliefs that would apply on the conversion of a SLP or LLP to a corporate member. Further updates will be provided in due course.

If members have any queries concerning this bulletin then they should contact their members' agent in the first instance. Queries from Direct Corporate Participants can be addressed to Philip Waghorne, Tax Operations ([philip.waghorne@lloyds.com](mailto:philip.waghorne@lloyds.com)).

# DECLARATION OF UK TAX RESIDENCY & STATUS OF BENEFICIAL OWNER FOR US TAX

## COMPANY MEMBERS

*For completion by members intending to underwrite for the 2015 Year of Account*

**Member's name:** .....

**Membership no:** .....

### *Declaration of UK Tax Residency*

*Tick*

**I, a director of the Member, declare that the Member will be resident in the United Kingdom for tax purposes\* for the 2014/15 tax year; and**

**I further declare that I fully expect the Member to be resident in the United Kingdom for tax purposes\* for the 2015/16 tax year.**

\* 'resident in the United Kingdom for tax purposes' means as determined in accordance with the provisions of the Corporation Tax Act 2009 and any applicable double taxation arrangements.

### *Declaration of Status of Beneficial Owner for US Tax*

*Tick*

**I, a director of the Member, declare that the information provided to Lloyd's on US tax form W-8BEN-E\*\* or W-9\*\* (as appropriate) has not changed and the form has not expired**

or

**I, a director of the Member, attach a new W-8BEN-E\*\* or W-9\*\* (where no form is in place, the existing form has expired or circumstances have changed).**

\*\* W-8 and W-9 forms are a Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting. If you are uncertain which is the correct form to use please consult the Lloyd's tax team or your tax advisers.

In the course of providing tax services to members Lloyd's provides information and market data to tax authorities in the UK and elsewhere in connection with filing tax returns, arranging for Certificates of Tax Residence, meeting broader legal and compliance obligations (e.g. "FATCA" and similar exchange of information requirements), negotiating tax arrangements and managing relationships with tax authorities.

The information provided may include, but is not limited to, information provided as part of a tax return filed on behalf of a member, CTA1 and CTA2 forms, auction transaction data, syndicate participation and tax-status under domestic tax legislation. Unless required to by law, Lloyd's will not discuss the detail of an individual member's tax affairs with any tax authority without express consent.

By signing this form I acknowledge and agree on behalf of the Member that Lloyd's may provide such information in the course of providing tax services to members.

Signed: .....  
a director of the Member

Date: .....

## **GUIDANCE NOTES FOR COMPLETION**

1. The purpose of this declaration is to obtain confirmation that the Member will be UK tax resident for the 2014/15 tax year (and fully expects to be for the following tax year), in order to comply with the requirement that all active members of Lloyd's are UK tax resident from 1 January 2015. Confirmation is also sought of the Member's beneficial owner status for US tax purposes.
2. In the section entitled *Declaration of UK Tax Residency*, **both boxes should be ticked**. For the section entitled *Declaration of Status of Beneficial Owner for US Tax*, **only one box should be ticked**.
3. Whether a member is resident in the UK for tax purposes is determined by applying the tests set out in the Corporation Tax Act 2009 and any applicable double tax treaty. Members are advised to consult their tax advisor or their members' agent (if they have one) if they are in any doubt as to how the test applies to them.
4. Only one director need sign the declaration on behalf of the Member. Once the declaration has been signed and dated, it should be returned:
  - (i) if the Member has a members' agent, to that members' agent no later than 30 October 2014;
  - (ii) if the Member is a Direct Corporate Participant, to Lloyd's Taxation no later than 27 November 2014:

Lloyd's Taxation  
Fidentia House  
Walter Burke Way  
Chatham  
Kent  
ME4 4RN

Email: [Lloyds-tax-operations@lloyds.com](mailto:Lloyds-tax-operations@lloyds.com)

The original declaration should be returned wherever possible, otherwise a copy sent electronically would be acceptable.

5. Lloyd's Taxation should be notified immediately in the event that the declarations given in this form cease in any way to be correct.

# DECLARATION OF UK TAX RESIDENCY & STATUS OF BENEFICIAL OWNER FOR US TAX

## INDIVIDUAL MEMBERS

*For completion by members intending to underwrite for the 2015 Year of Account*

**Member's name:** .....

**Membership no:** .....

### *Declaration of UK Tax Residency*

*Tick*

**I declare that I will be resident in the United Kingdom for tax purposes\* for the 2014/15 tax year; and**

**I further declare that I fully expect to be resident in the United Kingdom for tax purposes\* for the 2015/16 tax year.**

\* 'resident in the United Kingdom for tax purposes' means as determined in accordance with the provisions of the Finance Act 2013.

### *Declaration of Status of Beneficial Owner for US Tax*

*Tick*

**I declare that the information provided to Lloyd's on US tax form W-8BEN\*\* or W-9\*\* (as appropriate) has not changed and the form has not expired**

or

**I attach a new W-8BEN\*\* or W-9\*\* (where no form is in place, the existing form has expired or circumstances have changed).**

\*\* The W-8 and W-9 forms are a Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting. If you are uncertain which is the correct form to use please consult the Lloyd's tax team or your tax advisers.

In the course of providing tax services to members, Lloyd's provides information and market data to tax authorities in the UK and elsewhere in connection with filing tax returns, arranging for Certificates of Tax Residence, meeting broader legal and compliance obligations (e.g. "FATCA" and similar exchange of information requirements), negotiating tax arrangements and managing relationships with tax authorities.

The information provided may include, but is not limited to, information provided as part of a tax return filed on behalf of a member, CTA1 and CTA2 forms, auction transaction data, syndicate participation and tax-status under domestic tax legislation.

By signing this form I acknowledge and agree that Lloyd's may provide such information in the course of providing tax services to members.

Signed: .....  
the Member

Date: .....

## GUIDANCE NOTES FOR COMPLETION

1. The purpose of this declaration is to obtain confirmation that the Member will be UK tax resident for the 2014/15 tax year (and fully expects to be for the following tax year), in order to comply with the requirement that all active members of Lloyd's are UK tax resident from 1 January 2015. Confirmation is also sought that the Member's US tax documentation remains valid.
2. In the section entitled *Declaration of UK Tax Residency*, **both boxes should be ticked**. For the section entitled *Declaration of Status of Beneficial Owner for US Tax*, **only one box should be ticked**.
3. Whether a Member is resident in the UK for tax purposes is determined by applying the 'statutory residence test' contained in the Finance Act 2013. Members are advised to consult their tax advisor if they are in any doubt as to how the test applies to them.
4. Once the declaration has been signed and dated, it should be returned to the Member's members' agent no later than 30 October 2014. If it is necessary to submit a new W-8BEN or W-9 then a correctly completed version should be returned with the declaration. The original declaration should be returned wherever possible; otherwise a copy sent by fax or electronically would be acceptable.
5. A Member should notify his members' agent immediately if his circumstances change and the declarations in this form cease to be correct.



# DECLARATION OF UK TAX RESIDENCY & STATUS OF BENEFICIAL OWNER FOR US TAX

## SLP/LLP MEMBERS

*For completion by members intending to underwrite for the 2015 Year of Account*

**Member's name:** .....

**Membership no:** .....

*Declaration of UK Tax Residency*

*Tick*

**I, a partner<sup>1</sup> of the Member, declare that all of the partners of the Member for the 2015 Year of Account will be resident in the United Kingdom for tax purposes\* for the 2014/15 tax year;**

**AND**

**I further declare that I fully expect that all of the partners of the Member for the 2015 Year of Account to be resident in the United Kingdom for tax purposes\* for the 2015/16 tax year.**

\* 'resident in the United Kingdom for tax purposes' means as determined in accordance with the provisions of the Finance Act 2013 (individual partners) or the provisions of the Corporation Act 2009 and any applicable Double Taxation arrangements (company partners).

*Declaration of Status of Beneficial Owner for US Tax*

*Tick*

**I, a partner of the Member, declare that the information provided to Lloyd's on the US tax form W-8 IMY\* and withholding statement has not changed and the form has not expired. I also declare that the information provided to me by each partner of the Member on US tax forms W-8\*\* or W-9\*\* has not changed and the forms have not expired;**

**OR**

**I, a partner of the Member, attach a new W-8 IMY\*\* and withholding statement for the Member and new forms W-8\*\* or W-9\*\* (as appropriate) for the partners (where no forms are in place, the existing forms have expired or circumstances have changed).**

\*\* W-8 and W-9 forms are a Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting. A W-8 IMY is a form used by an intermediary which will usually include a partnership. If you are uncertain which is the correct form to use please consult the Lloyd's tax team or your tax advisers.

In the course of providing tax services to members Lloyd's provides information and market data to tax authorities in the UK and elsewhere in connection with filing tax returns, arranging for Certificates of Tax Residence, meeting broader legal and compliance obligations (e.g. "FATCA" and similar exchange of information requirements), negotiating tax arrangements and managing relationships with tax authorities.

The information provided may include, but is not limited to, information provided as part of a tax return filed on behalf of a member, CTA1 and CTA2 forms, auction transaction data, syndicate participation and tax-status under domestic tax legislation. Unless required to by law, Lloyd's will not discuss the detail of an individual member's tax affairs with any tax authority without express consent.

<sup>1</sup> For the purposes of this declaration, to include a member of a LLP.

By signing this form I acknowledge and agree on behalf of the Member that Lloyd's may provide such information in the course of providing tax services to members.

Signed: .....  
a partner of the Member

Date: .....

### GUIDANCE NOTES FOR COMPLETION

1. The purpose of this declaration is to obtain confirmation that all partners of the Member will be UK tax resident for the 2014/15 tax year (and fully expect to be for the following tax year), in order to comply with the requirement that all active members of Lloyd's are UK tax resident from 1 January 2015. For the purposes of this declaration, 'partner' means both the general partner and the limited partner(s) of a SLP, and the members of a LLP. Confirmation is also sought that the Member's US tax documentation remains valid.
2. In the section entitled *Declaration of UK Tax Residency*, **both boxes should be ticked**. For the section entitled *Declaration of Status of Beneficial Owner for US Tax*, **only one box should be ticked**.
3. Whether a partner of the Member is resident in the UK for tax purposes is determined by applying the tests set out in either the Finance Act 2013 (in the case of an individual) or the Corporation Tax Act 2009 and any applicable double tax treaty (in the case of a company). Partners are advised to consult the Member's members' agent (if it has one) or tax advisor if they are in any doubt as to how the test applies to them.
4. Only one partner need sign the declaration, although they will be making the declaration on behalf of all the Member's partners and so should be satisfied that those other partners will be resident in the United Kingdom for tax purposes for the relevant tax years. The Member should keep a written record of each partner's tax status on an annual basis, duly signed by or on behalf of that partner.

If new forms W-8 or W-9 are to be submitted they must be returned, correctly completed, with the declaration. Once the declaration has been signed and dated, it should be returned:

- (i) if the Member has a members' agent, to that members' agent no later than 30 October 2014;
- (ii) if the Member is a Direct Corporate Participant, to Lloyd's Taxation no later than 27 November 2014:

Lloyd's Taxation  
Fidentia House  
Walter Burke Way  
Chatham  
Kent  
ME4 4RN

Email: [Lloyds-tax-operations@lloyds.com](mailto:Lloyds-tax-operations@lloyds.com)

The original declaration should be returned wherever possible; otherwise a copy sent electronically would be acceptable.

5. Lloyd's Taxation should be notified immediately in the event that the declarations given in this form cease in any way to be correct.