

## Informative material – US residents clients

### 1. What is FATCA?

FATCA (Foreign Account Tax Compliance Act) represents a set of measures imposed by the American tax authorities to combat tax evasion by American individuals and companies in relation to the accounts they hold outside the USA.

### 2. What is the purpose of FATCA?

FATCA (Foreign Account Tax Compliance Act) is the acronym for the U.S. law called the "Foreign Account Tax Compliance Act," which requires foreign financial institutions (registered in a country other than the U.S.) to report U.S. clients, including those living outside the U.S., to the U.S. tax authorities (IRS – Internal Revenue Service).

For this purpose, foreign financial institutions are requested to adhere to an agreement with the US Tax Authorities (IRS) under which they undertake to identify and obtain information regarding clients who could be classified as US clients, based on specific criteria, generically called "US indicia".

This information is necessary to determine who are reportable US clients.

### 3. Since when does FATCA apply?

Starting from July 1, 2014, the FATCA requirements became applicable.

- <https://mfinante.gov.ro/domenii/impozite/acordul-fatca>

### 4. What does FATCA entail?

FATCA requires foreign financial institutions to identify US persons both among clients with new contracts and among clients with pre-existing contracts and to fulfill certain notification and reporting obligations regarding these contracts.

In the context of FATCA, the IRS requires financial institutions from all over the world to register on its portal and provide information related to the accounts/contracts of American residents existing in their databases.

### 5. Which clients are subject to FATCA?

For the purposes of FATCA, both individuals and legal entities from the USA that earn taxable income outside their country of residence are included.

These individuals must be identified and reported for FATCA purposes and are referred to as U.S. persons.

### 6. Can a law from the USA be mandatory for Romania?

The main obligations established by FATCA were incorporated into the Agreement between Romania and the United States of America for improving international tax compliance and for implementing FATCA, which was concluded in

You can find more information at:

- [https://static.anaf.ro/static/10/Anaf/cod\\_procedura/Cod\\_Procedura\\_Fiscala\\_2023.htm#AN1](https://static.anaf.ro/static/10/Anaf/cod_procedura/Cod_Procedura_Fiscala_2023.htm#AN1)

### 7. What data is transmitted to the USA and how will the reporting be done?

Thus, clients identified as U.S. persons will be reported to ANAF and IRS starting from the year 2016.

Details about the data that will be reported to the IRS can be found in Law No. 233/2015 and in the secondary legislation issued by the Ministry of Public Finance.

Reporting to the USA will be done through the Romanian tax authority (ANAF).

### 8. What does the intergovernmental agreement represent?

Romania, like most European countries, has decided to conclude the Intergovernmental Agreement (IGA) with the USA to make FATCA applicable within our domestic legislation.

The intergovernmental agreement (IGA) represents a set of rules established by mutual consent between two countries - in this case, Romania and the USA - through which the terms of the Agreement are defined.

Within the agreement, the products that fall under the scope of FATCA, the exempted products, the conditions for identifying clients, the reporting conditions, etc., are defined.

#### **9. What does US, USA, or United States of America mean?**

- The United States
- The minor outlying islands of the United States
- Guam
- The Nordic Mariana Islands
- Puerto Rico
- The Virgin Islands
- American Samoa

#### **10. Who are the people of the USA? 12. What are the clues of the USA?**

- a person is considered a U.S. person if:
  - is a US resident or
  - US citizen\*, including dual citizenship (one of which is for the US)
- or
- has/had a Green Card or
  - was physically present in the USA for 31 days in the current year or 183 days over a 3-year period (which includes the current year and the two previous years)\*\*.

\* You are a U.S. citizen if:

- (i) you are born in the USA or
- (ii) you have been naturalized as a U.S. citizen or
- (iii) one of the parents is a U.S. citizen

\*\*Presence in the USA is calculated as follows:\*\*

- (i) all the days the person was present in the territory of the USA during the current year and
- (ii) 1/3 of the days the person was present in the territory of the USA during the past year and
- (iii) 1/6 of the days the person was present in the USA in the year prior to the last one.

#### **11. In the event that a person meets the conditions related to the status of a U.S. Person, they may be considered a U.S. Resident for tax purposes.**

The list of criteria mentioned above is not complete – the complete list can be found at [www.irs.gov](http://www.irs.gov).

US indicators are benchmark information that shows whether a natural or legal person can be considered a US person/entity.

#### **12. What are the U.S. indices?**

The clues by which a client can be identified as a U.S. person are:

- U.S. citizenship or U.S. residency;
- place of birth in the U.S.;
- the phone number from the USA;
- legal address and/or correspondence address in the U.S.;
- bank account from the USA;
- the legal representative who has the address in the USA

Having one or more of these indicators does not mean that an individual or legal entity is a U.S. person, but rather that a more detailed analysis is required to determine the FATCA status for this client.

### **13. What happens if a client refuses to provide all the necessary information to determine their FATCA status?**

First of all, it is the client's responsibility to provide all the necessary information for opening an investment account.

Existing clients who refuse to provide all identification data will be marked as recalcitrant clients and will be reported as such to the Romanian tax authority (ANAF) and the US tax authority (IRS).

### **14. What is meant by a "recalcitrant" client?**

"Recalcitrant" clients are those clients who refuse to provide the necessary information for identification purposes under FATCA or who do not provide this information in a timely manner (90 calendar days) from the date of the request.

### **15. What does TIN / SSN mean?**

The TIN represents the Tax Identification Number allocated to a person and is used by the IRS in the administration of tax laws.

The TIN is issued either by the IRS or by the Social Security Administration.

The SSN represents the Social Security Number and is issued only by the Social Security Administration.

### **16. I am a client and I was contacted by the company's representatives because there are US indications in my personal data. Am I required to provide the requested documents/information?**

In the event that, at the time of signing the contract or subsequently, during the course of the investment contract, you refuse to provide information, documents, or any FATCA-related waivers, the contractual relationship with you will be terminated and the refusal to provide the requested information will be reported to the tax authorities in Romania/USA.

In this situation, you will be considered a "recalcitrant" client in accordance with FATCA standards.

### **17. What does Non-Financial Foreign Entity ("NFFE") mean?**

NFFE is a legal entity outside the USA that is not a financial institution.

There are two categories of NFFE:

- Active NFFE are entities engaged in active transactions or businesses (manufacturing, industry, non-financial services, etc.) where less than 50% of the gross income from the previous calendar year is passive. This is a FATCA status.
- Passive NFFE are financial institutions that have passive income exceeding 50% of their gross income (such as dividends, interest, rents, royalties, annuities). This is a FATCA status.

### **18. What is a Passive NFFE (U.S.-owned)?**

Passive NFFE (U.S.-owned) is a foreign non-financial entity that has one or more persons who control the company considered a U.S. person.

A person who controls the company is a natural person who exercises control over an entity.

These are the entities that are exempt from complying with the FATCA rules.

#### **19. What does Exempt Beneficial Owner mean?**

The term Exempt Beneficial Owner means any of the following persons:

- any foreign government, any political subdivision of a foreign government, or any agency wholly owned or governmental agency (including local, regional, or municipal authorities) or
- any International Organization or any agency wholly owned or government agency thereof
- any foreign central bank in question or
- any Government of a US Territory or
- certain pension funds or
- entities fully owned by one or more Exempt Beneficial Owners.

#### **20. What does the W-9 form mean?**

The W-9 form is used for reporting the tax identification number.

The purpose of this is to request the taxpayer's identification number (TIN).

It is used exclusively by individuals or legal entities in the USA.

See the instructions for completing the W-9 form on the IRS website.

<https://www.irs.gov/pub/irs-pdf/fw9.pdf>

#### **21. What does the W-8BEN form mean?**

The W-8BEN form is intended to identify the real non-U.S. beneficiaries of accounts and transactions.

It is used exclusively by individuals.

<https://www.irs.gov/pub/irs-pdf/fw8ben.pdf>

#### **22. What does the W-8BEN-E form mean?**

Legal entities must use the W-8BEN-E form.

The W-8BEN-E form is intended to identify foreign entities or foreign financial institutions (FFIs) outside the U.S. that are the beneficial owners of accounts or transactions.

It is used exclusively by legal entities and foreign financial institutions (FFI).

See the instructions for completing Form W-8BEN on the IRS website.

<https://www.irs.gov/pub/irs-pdf/fw8bene.pdf>

Please also consult materials issued by the IRS regarding the benefits and obligations of U.S. citizens abroad at the following address:

- <https://www.irs.gov/individuals/international-taxpayers/relief-procedures-for-certain-former-citizens>
- <https://travel.state.gov/content/dam/NEWTravelAssets/pdfs/November%202022%20Joint%20Foreign%20Account%20Tax%20Compliance%20Act%20FAQ.pdf>
- <https://www.irs.gov/businesses/corporations/foreign-account-tax-compliance-act-fatca>
- <https://travel.state.gov/content/travel/en/international-travel/while-abroad/federal-benefits-and-obligations-abroad.html>