
U.S. Tax Treatment of Partnerships and Certain Trusts: Joint Account Solution

Tax - Group | December 2014

Documentation requirements for tax-transparent entities under Qualified
Intermediary & FATCA rules

Entities concerned

The Qualified Intermediary (“QI”) Agreement, to which the Bank is subject, has been revised and aligned with the U.S. Foreign Account Tax Compliance Act (“FATCA”), which came into effect on 1 July 2014. This revision affects tax-transparent entities (so-called ‘flow-through’ entities) and the way they are documented for QI and FATCA purposes.

Under the provisions of the QI Agreement, the names of the beneficial owners of tax-transparent entities and entities acting in an intermediary capacity must be reported to the U.S. tax authorities (the Internal Revenue Services known as the “IRS”) (whether the beneficial owner is a U.S. Person or not) whenever they receive U.S. sourced income. The following non-U.S. flow-through entities are covered by this provision:

- Partnerships,
- Grantor trusts (e.g. revocable trusts or irrevocable trusts where the grantor/settlor is also the sole beneficiary),
- Simple trusts (i.e. trusts where all income earned during a year is distributed to the trust beneficiaries).

As these entities are flow-through entities under U.S. tax rules, the beneficial owner of a grantor trust will be the grantor, the beneficial owner of a simple trust will be the trust beneficiary(ies) and the beneficial owner of a partnership will be the partners.

☞ Beneficial owners are listed in the table under section 1 of the Withholding Statement form. Please refer to the notes at the end of the form for the definitions of the terms used in the table.

Joint account treatment

Effects of joint account treatment

Non-U.S. partnerships, non-U.S. simple trusts and non-U.S. grantor trusts may benefit from special treatment, known as “joint account treatment”, whereby the identity of the non-US beneficial owners are not reported to the IRS, on the condition that the Bank receives a specific set of documentation from the partnership or trust (as detailed below). If U.S. sourced income is paid to an account that qualifies for joint account treatment, the account will be included in the Bank’s pool reporting to the IRS, which is aggregated and anonymous. This, therefore, safeguards the confidentiality of the non-U.S. beneficial owners of those structures.

Conditions for joint account treatment

Based on the revised QI Agreement (of 26 June 2014 as supplemented by the IRS announcement of 23 September 2014), partnerships and simple/grantor trusts can claim joint account treatment only if they satisfy all the following conditions:

- The partnership or trust is a direct account holder of an account held at the Bank;
- The account holder qualifies as a certified deemed-compliant foreign financial institution (“FFI”) (other than a registered deemed-compliant FFI under a Model 1 Intergovernmental Agreement), an exempt beneficial owner, an owner-documented FFI or a non-financial foreign entity (other than a withholding partnership or trust), as defined under FATCA;
- None of the beneficial owners are U.S. persons;
- None of the beneficial owners are flow-through entities (i.e. tax transparent for U.S. tax purposes) or acting as intermediaries;
- None of the beneficial owners are subject to FATCA withholding or reporting; and
- The account holder agrees to make its records available to the Bank, upon request, for inspection by the Bank or the Bank’s auditors for compliance reviews.

☞ The relevant certifications are in section 4 of the Withholding Statement form.

Documentation requirements

Non-U.S. partnerships, non-U.S. simple trusts and non-U.S. grantor trusts will be requested to provide the following documents to the Bank:

- An IRS Form W-8IMY for the account holder, establishing its QI and FATCA statuses;
- A bank Withholding Statement form containing a written agreement to confirm its understanding and eligibility of the requirements pertaining to the joint account treatment (please refer to the Bank's form "Withholding Statement and Agreement for Foreign Partnerships, Grantor Trusts and Simple Trusts"); and
- A beneficial owner certification as to each individual beneficial owner's non-U.S./U.S. status (please refer to the Bank's form "Non-U.S./U.S. Status for Individual Beneficial Owners"), or a form W-8BEN-E for each beneficial owner which is a corporate entity.

Consequences

Reporting

Based on the above forms, the Bank will assess whether the entity or trust qualifies for joint account treatment.

1. **If the entity or trust qualifies for joint account treatment:** U.S. sourced income received by the entity or trust will be included in the Bank's pool reporting to the IRS and no information about the account holder or its beneficial owners will be disclosed to the IRS.
2. **If the entity or trust does not qualify for joint account treatment:** the Bank is obliged to report both U.S. and non-U.S. beneficial owners (as applicable) to the IRS, for each year U.S. sourced income is credited to the account, in the time and manner provided by the applicable QI and FATCA rules. Entities not qualifying for joint account treatment must, therefore, release the Bank from its duty to observe banking secrecy.

☞ *The banking secrecy waiver is contained within section 4 of the Withholding Statement form.*

U.S. withholding tax

Each time the entity receives U.S. sourced income, the Bank will determine whether a reduced withholding tax rate can be applied under an applicable tax treaty with the U.S. and the relevant QI rules. The application of the tax treaty will depend on the country(ies) of residence of the beneficial owner(s). In situations where the beneficial owners are residents of different countries, and thus different rates may apply, the Bank has to apply the highest withholding tax rate to all the U.S. sourced income received by the entity account.

☞ *See also section 2 of the Withholding Statement form.*

Conclusion

Due to the complexity of determining the FATCA status of an entity account, which is dependent both on U.S. tax regulations and on any applicable Intergovernmental Agreement, and considering the risks involved in the event of incorrect classification, we strongly recommend that account holders contact an independent tax advisor.

DISCLAIMER

PLEASE NOTE THAT THE BANK CANNOT PROVIDE ANY TAX ADVICE. ALL ACCOUNT HOLDERS, BEFORE COMPLETING ANY FORM AND MAKING ANY CERTIFICATION, SHOULD CONTACT A TAX ADVISOR. FOR THE AVOIDANCE OF DOUBT, THE EXPLANATIONS PROVIDED HEREIN ARE FOR GENERAL INFORMATION AND GUIDANCE PURPOSES ONLY AND DO NOT CONSTITUTE ANY FORM OF TAX ADVICE.