

# *Manual for the Form for Individuals*

NVB FATCA Form

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### History Log

Version	Date	Author	Description of changes
1.0	April 2014	NVB	Based on the “similar agreed” forms with the Ministry of Finance version March 2014.

## 1. Introduction

The Foreign Account Tax Compliance Act (“FATCA”) will enter into force on 1 July 2014. Financial institutions are obliged to classify their clients on the basis of this act. Determination of the FATCA status of clients and verification of whether these clients are designated as a U.S. Person are part of this process.

Several countries, including the Netherlands, have concluded a bilateral agreement with the United States concerning the FATCA, a so-called Intergovernmental Agreement (“IGA”). Financial institutions are required to request a self-certification from the client pursuant to this agreement. Clients can indicate both their FATCA status with this self-certification and whether they are a U.S. Person.

### *Purpose of the form*

The NVB FATCA Steering Group has developed self-certification form that can be used by Dutch financial institutions to request the FATCA status of individuals and entities. The self-certification form was created in consultation with the Ministry of Finance and other financial sector associations. This form can be used as an alternative to the U.S. W-8 and W-9 forms.

The objective of the NVB FATCA Steering Group was to develop a form that is as simple to understand as possible. The U.S. W-8 and W-9 forms are drafted in the English language and contain many technical FATCA terms. By creating a standard form for the Dutch financial sector, we hope to standardize elements of the process for financial institutions and in turn reduce the impact of FATCA on clients.

The following rules were applied when the form was drafted:

1. All possibilities offered by the IGA must be included in the form;
2. The Dutch text in the forms must comply exactly with the terms included in the IGA;
3. The questions in the form must be unambiguous, and were therefore divided into sub-questions where necessary in order to avoid words such as 'or' and 'and';
4. It must be possible for these questions to be answered by someone:
  - a. Of average intelligence
  - b. Without knowledge of U.S. tax law or FATCA .
5. The person who completes the form should have to answer the fewest questions possible.

Requirements 1-3 must be complied with 100%, requirements 4-5 as much as possible. Requirements 4-5 were applied in reverse order in some instances for pragmatic reasons.

This manual was developed to ensure that not just the form is uniform, but that the application and processing of the form are also uniform. A uniform manual and form ensure that:

1. All clients of Dutch financial institutions receive the same form and that they are not confronted with a multitude of different forms;
2. The forms are processed in a uniform manner, which means that the client receives the same FATCA status at various financial institutions provided the client completes the forms in the same manner.

The NVB recommends that this manual be followed closely in order to achieve uniformity. Please note the manual cannot be used as a replacement for guidance about relevant underlying legislation.<sup>1</sup> Financial institutions must be acquainted with the statutory framework described in the various acts and are responsible for correct implementation thereof.

### *Structure and framework of the manual*

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<sup>1</sup> This includes for example the FATCA Final Regulations, the IGA agreement between the Netherlands and the United States, and the Dutch Financial Supervision Act.

This manual provides a more detailed explanation of the form for individuals. A separate form and manual are available for corporate clients. All forms and manuals can be downloaded from the NVB member site (<https://ledennet.nvb.nl>).

This manual has been drawn up exclusively for NVB members. The manual should not be provided to clients themselves. Clients can find more detailed information about FATCA on the NVB's public website ([www.nvb.nl](http://www.nvb.nl)).

This manual is structured as follows:

- Section 2 deals with the purpose of the form and explains to whom the form should be sent
- Section 3 describes the structure of the form
- Section 4 then explains how a financial institution should process the form and how it should classify its clients on the basis of this form
- Section 5 explains how communication with clients may take place

This manual is meant to be applied to a specific form. The relevant financial institution is free to determine the method used to request self-certification of FATCA status from its clients. This can be done, for example, by means of forms sent by post or electronically (using dialogue screens). The financial institution must be able to reproduce the client's declaration when / if requested to do so by the Dutch tax authorities or the Internal Revenue Service (IRS).

Several sections contain references to specific articles of the U.S.-Netherlands IGA or the FATCA Financial Regulations. These are described in the footnotes. Manual version 1.0 is based on the signed IGA dated 18 December 2013.

## ***2. Purpose of the Form for individuals***

### **Purpose**

The purpose of this form is to request a self-certification from the client regarding his/her status as a U.S. Person. A financial institution is required to request this certification from existing and new clients in several situations. This form and the chosen method are suitable for all individuals and sole proprietorships.

### **U.S. Person**

The definition of a U.S. Person included in the form is not exhaustive. The FATCA U.S. Person definition is complex, so it was decided to include only the most frequent occurrences of the definition.

Several banks already use the term “U.S. Person” internally. In these cases it can be possible to make reference to a 'FATCA U.S. Person' internally if 'U.S. Person' has been indicated in this form. The distinction between the two terms can be important because the definition of a U.S. Person as applied by the U.S. Securities and Exchange Commission (“SEC”) differs from the FATCA definition. According to SEC laws, a bank is required to hold a SEC license if the bank offers a securities account to U.S. Persons who are resident in the United States. FATCA looking for U.S. Persons who reside outside the United States According to SEC law, a bank is allowed to offer a securities account to United States Citizens who reside outside the United States without holding a SEC license.

### **Starting principles and target group**

This manual was written for financial institutions that will implement the US-Netherlands IGA. It will be possible in some cases to follow the steps from the Final Regulations instead of those of the IGA, see for example the 'new clients' section below.

This form focuses exclusively on classification for FATCA purposes. This form is not suitable for determining the Chapter 3 Internal Revenue Code status, as required pursuant to the Qualified Intermediary regime.

The certification must be tested for reasonableness in all cases.

### **New clients<sup>2</sup>**

Pursuant to the IGA, new clients must always be asked to submit a self-certification. Pursuant to the FATCA final regulations this is only necessary if there are U.S. indicators present with respect to a particular client.<sup>3</sup>

### **Existing clients<sup>4</sup>**

Existing clients must be asked to submit a self-certification if any U.S. indicators are found.

Clients must be asked to submit a new self-certification if indicia are found that the client may have a tax obligation in the United States, i.e. the client is a U.S. Person. The IGA defines U.S. indicia as follows:

1. The client has been identified by the financial institution as a United States citizen or resident
2. Indicator that the client was born in the United States
3. The client has a residential or postal address in the United States
4. The client has a United States telephone number
5. The client has standing instructions (such as regular transfer orders) to transfer funds into an account in the United States
6. The client has a valid power of attorney or signatory authority granted to a person with an address in the United States

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<sup>2</sup> See section III of Annex I IGA.

<sup>3</sup> Note: the FATCA Final Regulations require documentary evidence [§1.1471-3(c)(5)] for all clients.

<sup>4</sup> The FATCA legislation and the IGA assume an account-based approach. Dutch banks generally apply an approach at account holder level. This manual assumes that the account holder approach is allowed on the basis of Article 4, paragraph 7, of the IGA combined with the terms in the FATCA Final Regulations 'consolidated obligations' (1471-1(b)(20)) and 'preexisting obligation' (1471-1(b)(98)).

- The client has a PO Box address in the United States as the client's sole address

An additional aspect to consider is within the context of a relationship manager model. If the relationship manager has actual knowledge that the client is a U.S. Person, then the client must be treated as a U.S. person.

### Changes in circumstances

The FATCA status must be re-confirmed if changes to the client's information have occurred that could have an impact on the client's FATCA status.

### Optional: Decision to apply a capital threshold

The IGA provides the option to apply a capital threshold<sup>5</sup>. Holders of accounts that do not exceed this threshold do not have to be identified and reported within the context of FATCA. Financial institutions are free to apply the threshold or opt not to.

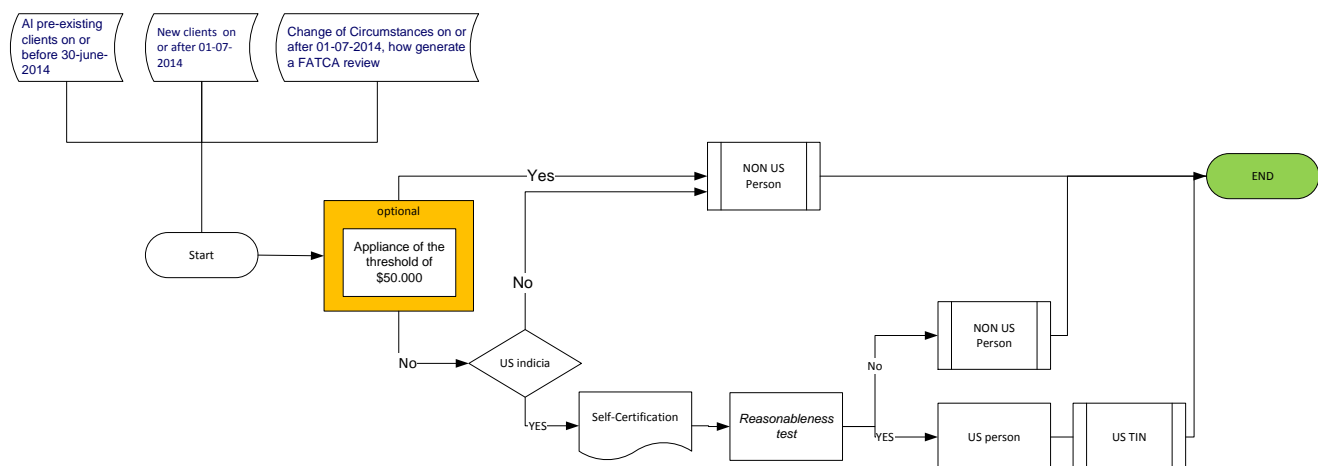
**Table: When should a Self-Certification Form be requested?**

For accounts exceeding the threshold	Final Regulations	IGA <sup>6</sup>
<b>Existing accounts</b>	When U.S. indicators are present	When U.S. indicators are present
<b>New accounts</b>	When U.S. indicators are present	For all accounts
<b>Change in circumstances</b>	When U.S. indicators are present	When U.S. indicators are present

A financial institution is required to check whether a certification is reasonable when processing a form. The certification may not be relied upon if the financial institution does not trust the certification or the suspicion exists that the form and/or the related documents are unreliable or incorrect or if the information provided is not consistent with other information that has been collected.<sup>7</sup>

### Flowchart – Final regulations (*cherry picking*)

The following charts compare sample due diligence processes between the FATCA Final Regulations and the FATCA IGA. It may be possible to incorporate elements of both approaches.

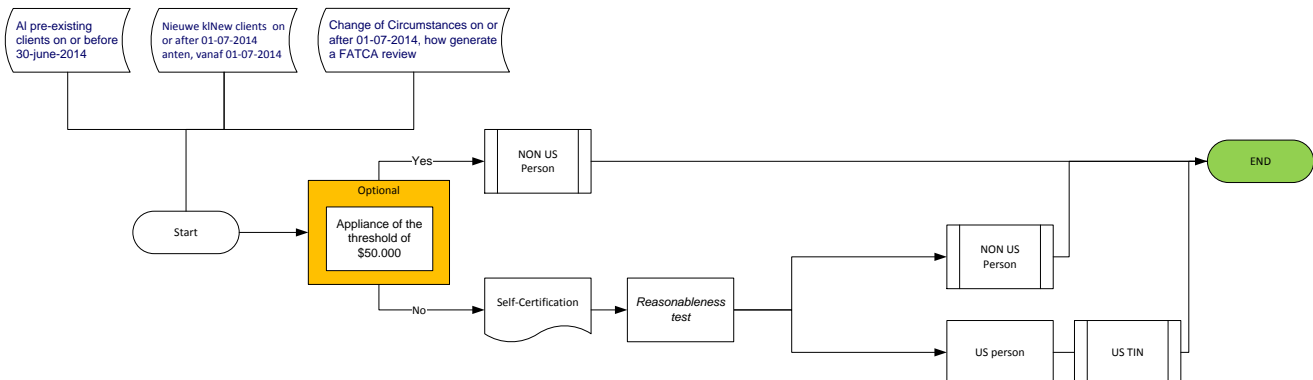


<sup>5</sup> IGA Annex I, Section II.A

<sup>6</sup> The possibility to only request self-certification in the case of U.S. indicia hits is provided for under the "Cherry picking" provision of Annex I, section I.C of the IGA

<sup>7</sup> This provision has been or will be included in the International Assistance (Levying of Taxes) Act Implementation Decree (UB WIB). This provision can also be found in the IGA Model I agreement Annex I section VI.A.

## Flowchart - IGA



## 3. Explanation of the form

### Structure

The form for individuals consists of four sections. These are explained below.

#### **Section 1: General information**

*Purpose: Identification of the client*

The client's personal information is requested in this section. This client data can be used to link the client's certification to other client information and records in the financial institution's files and systems.

#### **Section 2: Tax obligation in the United States?**

*Purpose: Determining FATCA Status*

The client is asked in this block whether he/she is a U.S. Person. If so, the U.S. Person is requested to state his/her United States tax identification number.

#### **Section 3: Declaration and signature**

*Purpose: Client's certification of information provided*

The client signs his/her certification in this section. When this is completed, the client can submit the form to the relevant financial institution.

#### **Section 4: Glossary**

*Purpose: Explanation of terms used*

The glossary provides further explanation of the terms used in the form. Some of the terms introduced by FATCA will be unfamiliar to the average client. It is important that the client understands the form and the terms used therein to complete the form correctly.

### What can be changed?

Only the first section concerning the personal data of the form for individuals may be changed by an individual financial institution. The form may be presented to clients in a different format as long as the order of the form is not altered.

## 4. Processing of the form

Once the form has been received, the financial institution may determine the FATCA classification of the client based on the answers provided in Section 2 (Determining FATCA Status).

### Important points per section

#### Section 1: General information

This block must be fully completed with the exception of 'Prefix'.

#### Section 2: Tax obligation in the United States?

Section 2 includes questions to derive the FATCA status of the client based on the answers provided. It is therefore important that the client answers the questions in the correct order. It will not be allowed to change the structure or the order of the questions on the form.

Question	Type of answer	Follow-up question	Documentation to be collected from client	Classification Result
<b>2a: 'Are you a U.S. Person?'</b>	Yes	2b	None	<b>Classification as a U.S. Person</b>
	No	2c	?	N/A
<b>2b: 'Please provide your US Tin'</b>	Nine digit number	n/a	?	<b>Classification as a U.S. Person</b>
	No number	?	?	<b>Classification as a U.S. Person</b> <b>Note:</b> financial institutions are allowed to use the client's date of birth when providing information if the client has not provided a number. This will be allowed until 1 January 2017.
<b>2c: 'Is your place of birth located in the United States?'</b> <sup>8</sup>	Yes	n/a	Copy of a valid passport (not a driver's license). <sup>9</sup> Enclose 'Certificate of Loss of Nationality' or Reasonable explanation (see paragraph below)	<b>Not a U.S. Person provided the related documentation is correct and complete</b>
	No	n/a	Copy valid proof of identity	<b>Not a U.S. Person provided the related documentation is correct and complete proof of identity</b>

Table 1: Classification questions

#### Not a U.S. Person if the required documentation is complete

The US indicators may show that a client could be a U.S. Person. A client can use this certification to indicate whether this is correct. If the client answers "no", a financial institution is allowed in principle to rely on this answer as long as there are no grounds for doubting this. However, the client is required, to send a copy of valid identification, for example a passport or an ID card.

<sup>8</sup> Someone who was born in the United States is a U.S. Person by definition. It may be the case that a client has renounced his nationality or that there are special reasons why this person did not acquire United States nationality when he was born.

<sup>9</sup> An identity card is allowed. This may be sent instead of a passport copy if the client calls.



If the client was born in the United States but is no longer a U.S. Person, the client will be required to enclose a Certificate of Loss of Nationality or a reasonable explanation<sup>10</sup> why the client does not have a Certificate of Loss of Nationality or why the client did not acquire United States citizenship when he/she was born. The financial institution is required to assess the reasonableness of this certification and determine whether the certification is acceptable. The client is also required to enclose a copy of a valid passport or identity card that shows their non-U.S. affiliation.

U.S. law provides for various ways in which a United States citizen can renounce his/her citizenship. The form includes a reference to the website <http://travel.state.gov/law/cizitenship> of the U.S. State Department. This website describes what conditions apply, however it is advisable for a client to consult with an immigration lawyer to discuss the particulars of their situation. A list with examples based on the information on this website at the end of 2013, has been provided below:

A United States citizen (by birth or following naturalization) can renounce or lose American nationality by:

- 1) acquiring a nationality other than the American nationality after having reached the age of 18; or
- 2) making an oath, promise or other formal declaration of loyalty to another state (or part thereof) after having reached the age of 18; or
- 3) joining or serving in the army of another state if:
  - a) these armed forces are involved in hostilities towards the United States; or
  - b) these persons serve as commissioned or non-commissioned officers; or
- 4)
  - a) accepting employment of and being employed by the government of another state (or part thereof) after having reached the age of 18 and thereby acquiring now or in the future the nationality of the other state; or
  - b) accepting employment of and being employed by the government of another state (or part thereof) after having reached the age of 18 and while this office, post or this employment requires an oath, promise or another declaration of loyalty; or
- 5) formally renouncing nationality before a diplomatic or consular official of the United States in a different state; or
- 6) submitting a formal deed renouncing nationality in the United States; or
- 7) convicted of committing high treason against or of an armed attempt to overthrow or of armed resistance against the United States.

If none of the above reasons or circumstances can be demonstrated by the client (reasonable explanation), this means that the client has not renounced his/her citizenship and the client must be designated as a U.S. Person.

Note: For more and comprehensive information please visit the U.S. State Department's website <http://travel.state.gov/law/cizitenship>.

As a financial institution you are responsible for monitoring whether this statutory framework still applies at the time you wish to check a written declaration containing a reasonable explanation from your client. We cannot exclude the possibility that there may be other reasons why someone who was born in the United States may nevertheless not be a U.S. Person. Again, it would be advisable for clients to consult with an immigration attorney if they have any questions about their citizenship status.

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<sup>10</sup> Annex I, section II.B.4.a.3. The glossary of the form provides that the reasonable explanation must be provided by means of a written declaration in connection with the bank's provision of evidence.

### ***Section 3: Declaration and signature***

The client's certification signature must be completed fully and accurately on the basis of the existing client data, date and place name. It is also recommended to check the signature by means of the proof of identity that has been obtained.

## 5. Communication with clients

### How can the client be approached?

Clients can be approached in several different ways. Each financial institution is free to decide how it wishes to communicate with its clients.

### Framework for accompanying communication

It is important to inform the client why the certification is requested when the client is provided with the form.

It is advisable to include the following points in a cover letter:

1. *Purpose of the form;*
2. *How the financial institution will use the information;*
3. *Why the client is receiving the form;*
4. *Statutory context/framework;*
5. *Time lines (when do you expect something back from the client).*

As a financial institution you are allowed to issue advice to the client, but you are not allowed to issue tax advice to the client. This means that you are not allowed to indicate how the form should be completed in your communication with the client. The client may consult additional sources of information such as the NVB brochure on FATCA. However, it would be best to refer the client to a tax consultant or advisor if they are unsure about any aspects.

### Framework for confirmation

The financial institution can send a confirmation to the client following receipt of a form that has been fully and correctly completed. It is up to each institution to determine whether it will send confirmation and/or how it wishes to do so. If confirmation is sent, it would be advisable to inform the client:

1. *That the form has been received;*
2. *What happens to the client's information when it is reported;*
3. *What the client can do if there are still questions.*

You will be required to request a new, complete certification from the client if the form is incomplete or incorrect.

In addition, the NVB recommends that you indicate in the confirmation the answers provided by the client in the form. An example is provided below:

Classification	Explanation	Proposal for feedback
<b>Not a U.S. Person</b>	Concerns a client who has demonstrated that he/she is not a U.S. Person.	You have indicated that: <ul style="list-style-type: none"> <li>- you are not a U.S. Person.</li> <li>- You have provided your financial institution with the correct information for this purpose.</li> </ul>
<b>U.S. Person</b>	Concerns a client who has indicated that he/she is a U.S. Person and who has submitted a TIN number.	You have indicated that: <ul style="list-style-type: none"> <li>- you are a U.S. Person.</li> <li>- Your data are reported to the Dutch tax authorities. The Dutch tax authorities then forward these data to the United States tax authorities.</li> </ul>

There may also be cases in which the financial institution is unable to determine that the client is not a U.S. Person on the basis of the information that has been provided. If the terms set have expired, the financial institution will be required to report this client until the financial institution receives information on the basis of which it is able to demonstrate that the client is not a U.S. Person.

Classification	Explanation	Proposal for feedback
<b>Recalcitrant account holders with U.S. Indicia</b>	Concerns a client who has indicated that he/she is not a U.S. Person, but who has not provided sufficient information.	You have indicated that: <ul style="list-style-type: none"> <li>- you are not a U.S. Person.</li> <li>- However, as a financial institution we are unable to determine sufficiently that you are not a U.S. Person on the basis of the information you have provided.</li> <li>- (optional) Please provide the following information as yet within [term X].</li> </ul>

### Framework for communication if the client does not respond

The situation may arise that the client does not respond to the financial institution's request. If the client has been approached several times, you are required as a financial institution to report this client to the tax authorities. It is assumed in this case the client is a U.S. Person and does not wish to cooperate in completing the form.

We recommend that you inform the client thereof if this situation arises.

1. *Response to not receiving the form;*
2. *The obligations on the part of a financial institution if the client does not respond, namely having to report the client to the Dutch tax authorities.*

Classification	Explanation	Proposal for feedback
<b>Recalcitrant account holders with U.S. Indicia</b>	Concerns a client who has not provided any data and the client is therefore reported as a U.S. Person.	You have not provided any information to your financial institution: <ul style="list-style-type: none"> <li>- We have not received any response from you. We are therefore required by law to forward your details to the Dutch tax authorities. The Dutch tax authorities will forward this information to the United States tax authorities.</li> </ul>

As a financial institution, you may still choose to have the client fill in the form. This depends on the specific situation and the client's reasons for not returning the form. As indicated above, a financial institution is not allowed to rely on this form if the suspicion exists that the form and/or the related documents received from the client are unreliable or incorrect.