



## **FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA) FREQUENTLY ASKED QUESTIONS (FAQs)**

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### **WHAT IS FATCA?**

The Foreign Account Tax Compliance Act (FATCA) is a United States (US) tax law.

It was signed into US law on March 18, 2010, became effective July 1, 2014 and requires foreign financial institutions (FFIs) to provide information on US Reportable Accounts held with the FFI to the US Internal Revenue Service (IRS). FATCA seeks to promote cross border compliance with US tax requirements by implementing an international standard for the automatic exchange of information related to US taxpayers.

Non-compliance with FATCA imposes, *inter alia*, a 30% withholding tax on FFIs and US persons and has the potential to compromise correspondent banking relationships with US banks.

### **WHAT IS THE PURPOSE OF FATCA?**

FATCA is aimed at ensuring that US persons with financial assets (such as but not limited to bank accounts, insurance policies, investment instruments) outside of the United States of America (USA) meet their obligations to pay US tax under US law.

### **WHAT IS GUARDIAN GROUP'S RESPONSIBILITY?**

On the 19<sup>th</sup> August 2016 Trinidad and Tobago entered into a Model 1A Inter-Governmental Agreement (IGA) with the US and brought it into our law by the passage of the Tax Information Exchange Agreement (United States of America) Act, 2017 (TIEAA).

TIEAA requires that all financial institutions within Trinidad and Tobago provide the competent authority with the required account information on US persons for the purpose of FATCA reporting. The Board of Inland Revenue (BIR) has been designated the competent authority. The BIR as the competent authority forwards information from the Group on the reportable US Accounts to the US IRS.

Information on US Reportable accounts must be reported to the competent authority on an annual basis. For Trinidad, this is within 9 months from the year end.

### **HOW ARE CUSTOMER AFFECTED?**

All customers are required to declare whether they are US Persons. This is done through a declaration at the inception of the relationship with the Group.

Customers are also required to notify immediately of any changes which may affect their status.



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### **WHO IS A US PERSON FOR FATCA PURPOSES?**

A US person is:

- A citizen of the United States;
- A resident of the United States (including a green card holder);
- A corporation, partnership or trust incorporated or created under US law (US incorporated entity)
- A non-US incorporated entity in which 10% or more of the shares are held by:-
  - An individual who is born in the US or is a US citizen or a US resident (including a green card holder) or has a US residential address, US mailing address or a US telephone number or who has on record an “in-care of” or “hold mail” address as the sole address.
  - A US incorporated entity as noted above.

### **WHAT DETERMINES WHETHER ONE IS A US PERSON?**

There are specific indicators that determine whether one is a US Person. ***This is referred to as US Indicia.***

These are:

- A US place of birth (excluding US Territories, i.e. American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico or the US Virgin Islands)
- US Citizens
- US Residents including US Green card Holders
- A US residential or mailing address
- A US “in care of” or “hold mail” address as the sole address
- A US telephone number

### **INFORMATION THAT IS CONSIDERED FATCA DATA/INDICIA**

- Born in the USA
- Citizen of the USA
- Permanent Resident of the USA
- Residential or mailing Address in the USA
- US Telephone Number
- Company Incorporated in the USA
- Company with a Major Place of Business in the USA
- Company, not Formed in the USA with an Individual Shareholder who qualifies as a US person owning 10% or more of the shares in the Company
- Company, not Formed in the USA with a Shareholder which is either a Corporation or Partnership incorporated or formed in the USA owning 10% or more of the shares in the Company
- Partnership Formed in the USA



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### **WHAT IS THE CONSEQUENCE OF FAILURE TO DECLARE STATUS AS A US PERSON?**

Where an existing customer fails to declare their/its status as a US Person, Guardian will be obliged to report such customer as “Recalcitrant” to the US via the BIR.

A recalcitrant account holder is someone who does not consent to providing information or does not comply with the reasonable request for information that is necessary to determine whether their account is a reportable account.

### **THRESHOLD AMOUNT FOR REPORTING**

The current reporting threshold is US\$50,000.00 (or its equivalent in other currencies). This is however, subject to change.

### **WHERE CAN I GO FOR MORE INFO?**

Further information can be found at [www.irs.gov/FATCA](http://www.irs.gov/FATCA)