

The distinctions of carrying out financial transactions with persons, in respect to whom/which the USA foreign accounts tax legislation acts

In compliance with the requirements of the Federal law No. 173-FZ of the 28th of June, 2014 ‘On the particulars of carrying out financial transactions with foreign citizens and legal entities, on amendments to the Code of administrative offences of the Russian Federation and invalidation of individual provisions of legislative acts of the Russian Federation’ (hereinafter referred to as ‘the Law’) AO Raiffeisenbank (hereinafter referred to as ‘the Bank’) takes well-grounded and affordable in the prevailing circumstances measures for detecting among the persons being serviced or being accepted for servicing the persons with respect to whom/which the foreign accounts tax legislation acts (hereinafter referred to as ‘the client-foreign taxpayer’).

For the purposes of the Law **the following persons should not be referred to the category of the client - foreign taxpayer:**

1. Natural persons being RF citizens, except the following private individuals:
 - a) simultaneously having the nationality of a foreign state along with the RF citizenship (save for the citizenship of the state - the member of the Custom union¹);
 - b) having residence permit of the foreign state;
2. Legal entities founded under the RF legislation, more than 90% of stocks (shares) in the authorized capital of which are directly or indirectly controlled by the Russian Federation and (or) the RF citizens, inter alia having the nationality of the state-the member of the Custom union (save for the natural persons, listed in subparagraphs a) and b) of paragraph 1.

1. The criteria of rating clients to the category of the client - foreign taxpayer for the purposes of the USA foreign accounts tax legislation.

1.1. As stipulated in the United States of America (USA) foreign accounts tax legislation (Foreign Account Tax Compliance Act) (hereinafter referred to as ‘FATCA’) the criteria of referring the client being a **Private individual**² to the category of the client - USA taxpayer are the following:

- Private individual is a citizen of United States of America³;
- Private individual has United States of America permanent resident card (Form I-551 (Green Card));
- Private individual matches “a long term stay criteria”: resides in the United States of America no fewer than 31 days during the current calendar year and no fewer than 183 days during 3 years, including current year and two immediately preceding years. Upon that the sum of days, during which private individual has resided in the territory of United

¹ Information regarding **Custom union** is published on <http://www.eurasiancommission.org/ru>.

² For the purposes of FATCA the clients being individual entrepreneurs are subject to the provisions acting with respect to clients – private individuals unless otherwise expressly provided by FATCA requirements.

³ The term ‘**citizen of United States of America**’ means:

- a) Citizen of USA, gotten citizenship by birth or by naturalization notwithstanding foreign land citizenship existence;
- b) Individual without formalized United States of America citizenship but born in the United State of America and not officially renounced United States of America citizenship.

States of America current year and two immediately preceding years, multiplies by fixed coefficient:

- ✓ coefficient of current year is 1 (all days of current year residency are considered)
- ✓ coefficient of preceding year is 1/3 and
- ✓ coefficient of the year before last – 1/6

Example: You resided in the USA in 2016 - 130 days, in 2015 – 120 days, in 2014 – 120 days. Consequently: $130 + 120 \cdot \frac{1}{3} + 120 \cdot \frac{1}{6} = 190$. Considering that total number of days exceeds 183, and in current year (2016) you resided in the USA more than 31 days, you are considered to be a USA taxpayer.

Please, note! Teachers, students, probationers, temporarily present in the territory of the USA are not referred to USA taxpayers (if long term stay criteria are not fulfilled).

1.2. As stipulated in the United States of America (USA) foreign accounts tax legislation (Foreign Account Tax Compliance Act) (hereinafter referred to as ‘FATCA’) the criteria of referring the client being a **Legal Entity** to the category of the client - USA taxpayer are the following:

- The country of registration or tax residency – the United States of America, herewith legal entity is not belong to any of the following categories of legal entities that are excluded from specified US persons definition:
 - ✓ USA publicly traded corporation;
 - ✓ USA Affiliate of a Publicly Traded Corporation;
 - ✓ USA tax-exempt entity, identified in Part I is a 501(a) of U.S. Internal Revenue Code as well as retirement funds identified in section 7701(a)(37) of U.S. Internal Revenue Code;
 - ✓ USA Public office or agency and their affiliates;
 - ✓ Any of USA States, District of Columbia, the US-controlled territories (American Samoa, Territory of GUAM, Northern Mariana Islands, Puerto Rico, U.S. virgin Islands), any of their political offices of any agencies or other entities created by them or wholly belong to them;
 - ✓ USA Bank identified in section 581 of U.S. Internal Revenue Code;
 - ✓ USA Real estate investment trust, identified in section 856 of U.S. Internal Revenue Code;
 - ✓ USA Regulated Investment Company, identified in section 851 of U.S. Internal Revenue Code or any other entity, registered in Securities & Exchange Commission;
 - ✓ USA Common trust fund, identified in section 584 of U.S. Internal Revenue Code;
 - ✓ USA tax-exempt trust, identified in section 664 (c) of U.S. Internal Revenue Code (provisions of this section are relevant for charitable trusts);
 - ✓ USA dealer engaged primarily in the business of trade in securities, exchange trade, derivatives (including a futures or forward contracts or options), registered as a dealer in accordance with the requirements of US Legislation;
 - ✓ USA broker with respective license;
 - ✓ USA tax-exempt trust, identified in section 403(b) and section 457 (g) of U.S. Internal Revenue Code.
- The presence of USA taxpayers among beneficial owners⁴ of a legal entity being the passive company⁵

⁴ The term ‘beneficial owner’ for the purposes of FATCA means a natural person or a legal entity who/which directly or indirectly (through third persons) owns (has a predominant stake of over 10 per cent in the capital of) a client or has the possibility of controlling the actions of a client, that is a natural person or a legal entity, possessing at least one of the following qualificatory indicators:

a) owns over 10 % of (voting) shares in the authorized capital of a client;

b) indirectly (through third persons) owns over 10 % of (voting) shares in the authorized capital of a client;

c) has the possibility to influence on client’s decisions, inter alia on carrying out transactions holding credit risk, financial transactions, to affect the client’s profit value.

2. The ways of obtaining due information from clients for the purposes of FATCA

Beginning with 01.07.2014, for the purposes of detecting the USA taxpayer, the Bank conducts questionnaire of private individuals and legal entities, being serviced or being accepted for servicing by the Bank, who have US indicia.

2.1. US indicia of **private individuals** are the following:

- the citizenship – USA;
- the address of the place of registration/residence, the postal address – USA;
- standing instructions to pay amounts from the account to an account maintained in USA;
- the country of birth – USA;
- the power of attorney granted to the person registered/domiciled in USA;
- the telephone number includes the USA international dialing code;
- the post office box – USA.

2.2. US indicia of **legal entities** are the following:

- the country of registration or tax residency – USA;
- the address of location or the postal address – USA;
- the presence of USA taxpayers among beneficial owners of a legal entity being the passive company;
- type of activity – financial institutions⁶ for the purposes of FATCA.

⁵ The company is deemed to be **Passive**, if more than 50% of its gross income is passive income and more than 50% of the assets held by the company during the appropriate reporting period (as at the end of quarter) are assets that produce or are held for the production of passive income. The passive income means the portion of gross income that consists of: dividends, interest; income received from or with respect to a pool of insurance contracts if the amounts received depend in whole or part upon the performance of the pool; rents and royalties, other than rents and royalties derived in the active conduct of a trade or business conducted; annuities; the excess of gains over losses from the sale or exchange of property that gives rise to passive income described above; the excess of gains over losses from transactions (including futures, forwards and similar transactions) in any commodities, but not including any commodity hedging transactions if transactions with such commodities are the entity's main activity; the excess of foreign currency gains over foreign currency losses; net income from notional principal contracts, ex. derivatives (foreign exchange swap, interest rate swap, options, etc.); amounts received under cash value insurance contracts or the amount of the loan secured by the insurance agreement; amounts earned by an insurance company in connection with its reserves for insurance and annuity contracts.

Rating of clients as Passive non-financial entity is performed based on the core business activity of the company.

⁶ **Financial institution** for the purposes of FATCA is any legal entity that belongs to one of the following types of organizations:

- **Depository institution** – any entity, that accepts deposits in the ordinary course of a banking or similar business;
- **Custodial institution** – any entity, that holds, as a substantial portion of its business, financial assets for the account of others (an entity holds financial assets for the account of others as a substantial portion of its business if the entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20% of the entity's gross income during the shorter of: a) the three-year period ending on December 31 of the year (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or b) the period during which the entity has been in existence.
- **Investment entity** – The term investment entity means any entity that includes any of the following organizations:
 - a) The entity primarily conducts as a business one or more of the following activities or operations for or on behalf of a client:
 - trading in money market instruments (checks, bills, certificates of deposit, derivatives, etc.); foreign currency; foreign exchange, interest rate, and index instruments; transferable securities; or commodity futures;
 - individual or collective portfolio management; or
 - otherwise investing, administering, or managing funds, money, or financial assets on behalf of other persons.
 - b) The entity's gross income is primarily attributable to investing, reinvesting, or trading in financial assets and the entity is managed by another entity. An entity is managed by another entity if the managing entity performs, either directly or through another third-party service provider, any of the activities on behalf of the managed entity.
 - c) The entity functions or holds itself out as a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in financial assets.
 - d) investment managers and investment advisers.
- **Specified Insurance company** – an insurance company (or the holding company of an insurance company) that issues or is obligated to make payments with respect to a cash value insurance or annuity contract. For these purposes, cash value insurance contract is defined as an insurance contract (other than an indemnity reinsurance contract between two insurance companies and most term life insurance contracts) that has an aggregate cash value greater than \$50,000 at any time during the calendar year. Annuity payments and

2.3. For the purposes of verifying or denying the presumption of the client referring to the status of the USA taxpayer, the Bank delivers the written request with the attached tax forms and the consent to transfer information to the Internal Revenue Service of the United States of America (hereinafter referred to as ‘the foreign tax body’) for filing by a client. The consent to transfer information to the foreign tax body is due to be completed by the client referring to the category of the USA taxpayer.

2.4. The term for furnishing the Bank with the information identifying the client as the USA taxpayer under the corresponding inquiry as well as the consent (waiver from consent submission) to transfer information to the foreign tax body (if applicable) is 15 (fifteen) working days from the date of relevant request dispatch by the Bank.

2.5. The consent to transfer information to the foreign tax body is deemed to be the consent to transfer due information to the Central bank of the Russian Federation, the federal executive power body, fulfilling functions involved in counteracting the legalizing (laundering) of incomes derived through crime, and the financing of terrorism as well as to the federal body of executive power performing the functions of control and supervision over taxes and fees.

2.6. In the event of non-provision of documents verifying or denying the status of the client USA taxpayer and the consent (waiver from consent submission) to transfer information to the foreign tax body by a (potential client) (in case of referring to the category of the client - USA taxpayer) within 15 (fifteen) working days from the date of relevant request dispatch by the Bank, the Bank is entitled pursuant to the Law:

- to refuse to conclude a contract of bank account (deposit) or alternative agreement of rendering other financial services with a client;
- to refuse to carry out transactions on behalf of the client/to the client’s benefit under the agreement of rendering financial services;
- to unilaterally terminate the agreement of rendering financial services, giving minimum one day prior notice following the date of relevant decision to the client.

proceeds from life insurance contracts received by non-U.S. persons from a policy or contract issued by a U.S. insurer, or its foreign branch, are currently treated as FDAP and considered “withholdable payments” under FATCA.

- **Holding company or treasury center** – the entity that:
 - a) is part of an expanded affiliate group (EAG) that includes other financial institutions, or
 - b) if formed in connection with investment vehicles such as private equity funds, mutual funds, hedge funds, etc.

Rating of clients as Financial Institutions is performed based on the core business activity of the company.