

Lloyd’s FATCA Frequently Asked Questions

Disclaimer

The questions and answer below are intended to be of assistance on the general application of FATCA. They are not a comprehensive guide to the application of FATCA. All readers should take their own advice based on their own circumstances. Lloyd’s will not accept any liability for any reliance placed on the commentary on this page.

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1 Why is Lloyd's providing a W-8IMY not a W-8BEN-E?

Lloyd's has agreed with IRS that it is a Qualified Intermediary and the W-8IMY is the right Form for an intermediary to use. The instructions for the W-8BEN-E say it should not be used by an intermediary.

2 I am an aligned syndicate. Surely I can provide the Member's own W-8BEN-E to brokers etc?

Consistent with other US tax arrangements, Lloyd's manages FATCA centrally on behalf of syndicates and Members. The potential problem with FATCA was that each Member would need to provide a W-8 for each placement. This would have caused administrative chaos and almost certainly mean that the market lost business.

Lloyd's has negotiated central arrangements to avoid this situation. Lloyd's has agreed that it will do all the reporting necessary to IRS about insurance premium placed at Lloyd's. Members should not provide their own W-8BEN-E as this could undermine the central arrangements and change the reporting responsibilities (i.e. mean that the Member needs to do the reporting).

3 What insurance premiums does Lloyd's W-8IMY cover?

The Lloyd's W-8IMY covers payments of insurance premium made by brokers etc to any and all Lloyd's syndicates. No split of the premium (known as an "allocation" or a "withholding" statement) is needed. One Form covers all Lloyd's syndicates so brokers will not need to get a copy of the W-8IMY from each syndicate they visit.

4 Does the Lloyd's W-8IMY cover premium received by Coverholders or Service Companies?

No. Coverholders and Service Companies will not be covered by the Lloyd's W-8IMY in their own right. They should provide their own Form W-8 (or W-9 if a US person) and, if necessary, the Lloyd's Form W-8IMY to withholding agents.

5 What premiums trust fund assets does Lloyd's W-8IMY cover?

The Lloyd's W-8IMY covers all the syndicate-level premium trust fund assets, including Funds in Syndicate (FIS). For these assets the Form W-8IMY will need to be tailored to the syndicate concerned. Managing Agents should use the same procedures as before FATCA (see Market Bulletin Y3021 for more details) to obtain a tailored W-8IMY.

6 Does the Lloyd's W-8IMY cover Managing Agent's bank and investment accounts?

No, the Lloyd's W-8IMY covers only syndicate-level premium trust fund assets. Other accounts held or operated by a Managing Agent are not covered. Managing Agents will need their own W-8 / W-9 Form.

7 Does the Lloyd’s W-8IMY cover Member-level bank and investment accounts?

Lloyd’s Market Services manages assets held in Funds at Lloyd’s and will supply any Forms that are required direct to banks and custodians. (For Funds in Syndicate (FIS), see question 5 above.)

Any other asset or bank account held by a Member outside their Funds at Lloyd’s will not be covered by these arrangements. Members will need their own W-8 or W-9 Form.

8 Why does the Lloyd’s W-8IMY have a statement on it? Can’t Lloyd’s just tick a standard box on the Form?

The IRS did not include a box on the Form for an “excepted NFFE” to tick. Lloyd’s has included the statement on the W-8IMY to explain the position following discussions with IRS and at their suggestion.

9 How long is the W-8IMY valid?

The W-8IMY is “evergreen”, that is it only needs to be updated if circumstances change. If they do change, Lloyd’s will update the Form and give an explanation of how a Managing Agent should decide whether to provide the old one or the new one.

10 Why is there no Global Intermediary Identification Number (“GIIN”) on the Lloyd’s W-8IMY?

Lloyd’s was told by IRS that one is not needed.

(Note that Lloyd’s did apply for a GIIN before it became apparent that one was not needed. The GIIN might therefore appear on IRS lists until the number is rescinded).

11 Will Lloyd’s make its W-8IMY available on a broker repository?

Lloyd’s would rather not do so. Although the Form does not need renewing at annual intervals and there is no expectation that it will need to be changed or updated, placing it on external websites means Lloyd’s has responsibility for that external content.

Lloyd’s preference therefore is to only place the W-8IMY on its own website. Other organisations are welcome to include a link to the Lloyd’s FATCA webpage on their own website (but not direct to the W-8IMY in case the form is ever substituted).

12 The syndicate only writes UK business. Why does it need the Lloyd's W-8IMY at all?

Strictly, in terms of insurance premium, FATCA applies only to premium covering US risk* (and, until 2017, paid from the US – see question 14). Even where a policy doesn't cover US risk a broker might request a W-8 to ensure that they are fully FATCA compliant. The Lloyd's W-8IMY is easily available and there is no problem if it is provided in circumstances where it is not strictly necessary.

** "US risk" is defined in the US Code and includes underwriting income in connection with any property in, liability arising out of an activity in, or in connection with the lives or health of US residents.*

13 Will any syndicate have to report any information to the IRS / Lloyd's?

Syndicates (and Members) should not have to do any reporting to IRS.

Lloyd's has agreed that it will do all the reporting necessary. Lloyd's expectation is that this will be limited to a list of US individual Members and those US persons entitled to 10% or more of the votes or value of a corporate Member.

Lloyd's has already asked all Members for their own W-8s or W-9s. Properly completed these forms should have all the information Lloyd's will need. If any other information is needed Lloyd's will ask for it.

14 Do Managing Agents need to collect any documentation from entities with which the syndicate places reinsurance? Do members need to collect any documentation from entities with which the Member places reinsurance?

They might do. IRS corrected regulations on 30 June 2014 to confirm that a "foreign-to-foreign" payment – one between two non-US parties covering US risk* – is not subject to FATCA requirements until at least 1 January 2017.

There may be some doubt as to what exactly this means in certain circumstances, for example where a reinsurance premium covers the US permanent establishment of a Member and particularly where a company has elected under the US Code to be treated as a US corporation for tax purposes (a 953d election).

The safest course is to take advice and / or obtain FATCA documentation. All reinsurers (including intra-group reinsurers) should have prepared their own W-8 or W-9 Form and should be willing to provide it on request. Do not forget to get documentation for any intermediary (e.g. reinsurance broker) used and an "allocation" or "withholding" statement if the risk is placed with a panel of reinsurers.

** "US risk" is defined in the US Code and includes underwriting income in connection with any property in, liability arising out of an activity in, or in connection with the lives or health of US residents.*