

Foreign Account Tax Compliance Act (FATCA) Frequently Asked Questions

For Momentum Retail (excluding Momentum Wealth International)

General FATCA questions

1. What is FATCA?

FATCA is the acronym for the Foreign Account Tax Compliance Act (FATCA), which is an American law passed in March 2010. FATCA requires reporting of specified United States (US) persons or entities controlled by specified US persons by certain foreign financial institutions (FFIs – see definition of an FFI under question 3 of the FATCA for entities section) and possible withholding tax on US source income. Its aim is to identify US persons who may be using offshore accounts to avoid US taxation on their income and assets.

The South African Government has signed an intergovernmental agreement (IGA) with the Internal Revenue Service (IRS) agreeing to exchange information provided by financial institutions in South Africa. The IGA has been agreed in substance as if it is enacted. It is expected to be gazetted shortly.

2. When does FATCA become effective?

FATCA has been effective since 1 July 2014.

3. What is an Intergovernmental Agreement or IGA?

An IGA is a bilateral agreement between a country's government and the US government that facilitates compliance with FATCA. The model agreements enable FFIs in the designated jurisdictions to comply with FATCA, especially where privacy laws exist. There are currently two types of IGAs, Model I and Model II.

A Model I agreement allows FFIs in the country to report to the local country tax authority (in South Africa this is the South African Revenue Service or SARS), who will then provide the information to the IRS. Each country's tax authority has a separate Model I agreement with the IRS, which includes country-specific provisions in addition to simplified due diligence and withholding requirements. Under a Model II agreement, the FFI would report information directly to the IRS. South Africa has signed a Model 1 agreement with the IRS.

4. What does FATCA require of Momentum?

Affected South African financial institutions are required to submit an annual report to SARS on all financial accounts held directly or indirectly by US persons, which SARS will submit to the IRS.

Momentum has made a commitment to being FATCA compliant and will therefore be reviewing our affected existing client base to confirm the FATCA status of our clients. Where necessary we may have to contact our clients to obtain further information and documentation.

Our new account opening processes for affected products will also be changing. In some instances they may have been changed already to ensure that we identify potential specified US persons or entities controlled by specified US persons.

All affected companies within Momentum have registered with the IRS and have obtained global intermediary identification numbers (GIINs).

5. What are the compliance requirements under the IGA?

To comply with the IGA all financial institutions must identify and classify their account holders and report on affected accounts (products and services) directly or indirectly owned by specified US taxpayers and non-financial foreign entities (NFFEs – see definition of an NFFE under question 7 of the FATCA for entities section) with controlling specified US persons, non-participating FFIs and undocumented accounts as required.

FATCA compliance requires FFIs, including foreign subsidiaries of US-based organisations, to take the following steps:

- Identify US reportable accounts and report these annually to the revenue authorities.
- Identify non-participating financial institutions and report these to revenue authorities from 2016.
- Register with the IRS to obtain a GIIN.
- FFIs will not be required to withhold tax from recalcitrant account holders or non-participating FFIs, provided they have given sufficient information regarding the account holder to an upstream withholding agent that enables the upstream withholding agent to perform the necessary withholding.

6. Who will be impacted by FATCA?

FATCA will impact individual clients in affected products who may be identified as a specified US person for US tax purposes. The legislation will also impact certain types of businesses, trusts or legal entities (invested in affected products) that are incorporated in the US or have specified US owners who are regarded as controlling persons.

7. What products are affected by FATCA?

Clients invested in the following products will be impacted by FATCA:

- Endowment policies.
- Voluntary purchased annuities.
- Other similar voluntary investment products such as units in collective investment schemes or units held in a product provided by a linked investment service provider.

General FATCA questions (continued)

7. What products are affected by FATCA? (continued)

Products not affected by FATCA generally include but are not limited to the following:

- Certain retirement funds, ie preservation and retirement annuity funds.
- Annuities (except voluntary purchased annuities that are in scope).
- Life insurance policies that are pure risk policies with no cash value.

8. How will clients in an IGA country be affected?

In terms of the IGA signed between the IRS and the South African Government, Momentum is required to collect additional information from clients to determine whether they are specified US persons. The additional information includes:

- certification of tax status (completion of self-certification forms or self-certification sections in new business application forms);
- a tax identification number (TIN); and
- certain information that could indicate that the client or the controlling persons of the client are specified US persons.

The burden to prove the tax status of the account holders or clients is placed with the client but financial institutions must apply reasonability tests on the certifications provided. In respect of clients who are FFIs Momentum is required to obtain their GIIN and verify this to the IRS list or obtain the reason from the client as to why the FFI doesn't have a GIIN.

9. What information will Momentum be reporting to the revenue authorities?

In terms of the IGA signed between the IRS and the South African Government, Momentum is required to report the following information with respect to all US accounts:

- The name and address of each of the account holders.
- A TIN for each account holder that is a US person.
- An account number.
- The name and identifying number of the reporting financial institution.
- An account balance or value from 2015.
- Income flows and account balance from 2016.
- Gross proceeds on disposal, income flows and account balance from 2017.
- All payments made to non-participating financial institutions.
- Payments made to accounts which are undocumented.

10. What is a US person?

The term US person includes, but is not limited to:

- a US citizen (including dual citizens);
- an individual born in the US but resident in another country and who hasn't given up his or her US citizenship;
- a person whose parents have permanent domicile and residence in the US;
- a person residing in the US (resident alien);
- a green-card holder;
- certain persons who spend more than 183 days in the US each year; and
- US corporations, US partnerships, US estates and US trusts.

11. What is a specified US person?

A specified US person includes a US citizen, resident or green-card holder, corporations, partnerships, estates and trusts formed or incorporated under US law, other than:

- a US corporation of which the stock is regularly traded on an established securities market;
- a US company forming part of the same group of companies as a listed corporation;
- any US bank under US laws;
- any state, the district of Columbia, any US territory, any political subdivision of any of the foregoing or any wholly owned agency or instrumentality of the foregoing;
- any US real estate investment trust;
- any US common trust fund, US securities brokers and US securities dealers;
- any US organisation exempt from tax under section 501(a) or a US individual retirement plan; and
- certain US retirement trusts.

The listed excluded entities are regarded as US persons, but not specified US persons, which means that FFIs will not be required to perform any reporting or withholding on them.

General FATCA questions (continued)

12. What is a recalcitrant account holder?

A recalcitrant account holder is any account holder who:

- fails to comply with reasonable requests for information necessary to determine if the account is a US account, including self-certification of their tax status;
- fails to provide the name, address and TIN of each specified US person or owner of a US owned legal entity or business; or
- fails to provide a waiver of any foreign law that would prevent an FFI from reporting the information required under FATCA.

Recalcitrant account holders will be reported as part of the FATCA reporting to SARS.

13. What is the definition of a controlling person in terms of the IGA?

The definition of a controlling person in the IGA refers to the financial action task force (FATF) definition of a controlling person, hence an interest by means of voting rights or profit share or participation rights of more than 25% in any arrangement other than a trust.

In the case of a trust the controlling person is defined as the settlor or founder, trustees, protector (if any), beneficiaries or other persons exercising effective control over the trust.

14. What is a withholdable payment?

A withholdable payment includes dividends, interest, any other income and gross proceeds from sale or redemption of property from a US source.

15. What are the withholding requirements under FATCA?

In general a withholding agent is required to withhold 30% on a withholdable payment made to a foreign financial institution (FFI) or to a non-financial foreign entity (NFFE), unless the FFI or NFFE meets certain requirements.

In terms of the IGA South African financial institutions are required to report all specified US persons to SARS, but are not currently required to withhold on any payments of a US source to account holders, provided they supply the necessary information regarding the account holder to the upstream withholding agent.

16. How often is the information required from account holders?

FATCA compliance is an ongoing process. FATCA information and certification of the tax status of clients are obtained at new business stage for the affected products for new clients taken on. In respect of existing clients of Momentum who were clients prior to the FATCA effective date, certification of their tax status will be requested in cases where certain information indicating that they may be a US person or have US controlling owners is found (US indicia). If account information changes or if US indicia are identified by Momentum, we are required to validate and possibly recertify client details to ensure compliance in terms of the FATCA legislation.

17. What does it mean to self-certify?

To self-certify is to confirm in writing that the account holder:

- is either a specified US person or not; or
- is a passive NFFE that is controlled by specified US persons or not; or
- is an FFI that has a GIIN or a reason why it has no GIIN.

The self-certification can be obtained in the following ways:

- Included as part of the new business application form for affected products from 1 July 2014.
 - The IRS's W-8BEN (non-US individuals), W-8BEN-E (non-US entities) or W9 (US persons only) forms may be used.
 - Momentum's own self-certification forms, which contain substantially similar questions and declarations to that of the abovementioned IRS forms, can be used.
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18. Who is permitted to sign a self-certification form?

For account holders who are individuals:

The self-certification form must be signed by the client who is the account holder of an FFI. The self-certification form can also be signed by an agent with legal authority to act on the person's behalf. If the self-certification form is completed by an agent acting under a duly authorized power of attorney for the beneficial owner or account holder, the form must be accompanied by the power of attorney in proper form or a copy thereof specifically authorizing the agent to represent the principal in making, executing, and presenting the form. The self-certification form cannot be signed by a client's financial adviser unless the financial adviser has the necessary power of attorney.

For account holders who are an entities:

The self-certification form must be signed and dated by an authorized representative or officer of the account holder of an FFI requesting this form. An authorized representative must have the legal capacity to sign for the entity that is the beneficial owner of the income.

19. Are only original copies of self-certification forms accepted by Momentum?

No. Completed and signed self-certification forms that are scanned and attached to an email which is sent to us at fatca@momentum.co.za will be accepted by Momentum.

20. What happens if I don't complete the self-certification form and return it to Momentum or provide Momentum with the additional FATCA information in the new business application or other forms?

In this case Momentum will have insufficient information to determine whether or not the account holder is a US person as defined or in the case of a foreign entity that is an account holder, whether the entity has controlling US owners. Momentum will therefore need to report the client to SARS for onward reporting to the IRS.

General FATCA questions (continued)

21. What happens if you fail to complete and return the self-certification form to us by the cut-off date and provide it to us at a later date?

Should we not receive the self-certification form by the date stipulated by us or your financial adviser, we will not have sufficient information to determine whether the account holder is a US person and will have to report the account holder to SARS for onward reporting to the US. If the self-certification is then provided to us at a later date, there are two possible outcomes:

- If it is provided to us after the cut-off date but before we have drawn our client data to report to SARS, there may still be time to amend the account holder's FATCA status and the client then may not be reported to SARS; or
- we receive the self-certification form after we have reported or drawn the data for reporting to SARS. In this case we will have to report the account holder even if the account holder and the controlling persons are not reportable. For the next round of reporting, if there has not been a change in circumstances, we will inform SARS that the account holder is no longer reportable.

22. Are only the contract owners or account holders subject to FACTA?

No, the definition of an account holder in the IGA may include persons other than the account holder, such as beneficiaries and annuitants, depending on the nature and rules of the affected product and to whom payments are made.

FATCA for individual clients

1. How are US reportable accounts held by individuals identified by Momentum?

New individual accounts opened on or after 1 July 2014:

For all new business in affected products* that was obtained by Momentum from 1 July 2014, upon account opening, Momentum must obtain a self-certification, which may be part of the account opening documentation (ie application form) or a separate self-certification form, which allows Momentum to determine whether the account holder is a resident in the United States (US) for tax purposes (for these purposes, a US citizen is considered to be resident in the USA for tax purposes, even if the account holder is also a tax resident of another jurisdiction). Momentum also needs to confirm the reasonableness of the self-certification based on the information it obtained in connection with the opening of the account. The Internal Revenue Service (IRS) has issued a list of seven criteria (US indicia) that may require Momentum to request further information to determine whether you are a US person under FATCA. These are the following:

- US citizenship or residence
- US place of birth
- US address, including US postal boxes
- US telephone number
- Repeat payment instructions to pay amounts to a US address or account
- Current power of attorney or signatory authority granted to a person with a US address
- *In care of or Hold mail* address, which is the sole address for the account holder

In determining whether an individual's self-certification of his tax residency is reasonable, Momentum will need to check whether any of the above US indicia are present in the information obtained from the client at account opening and compare this to the client's tax residency certification. Should conflicting data exist, ie the client certifies in his or her application form that he or she is not tax resident in the US, but has a US place of birth, the client will need to complete another self-certification form and/or provide Momentum with supporting documentation to prove to Momentum that he or she is not tax resident in the US.

Momentum has updated its new business application forms to obtain the self-certification from clients as well as the US indicia in the application forms. In cases where application forms were not updated from 1 July 2014, or where old application forms were used or new application forms were used but the necessary information was not completed, Momentum will be contacting financial advisers and/or clients and requesting the clients to complete the self-certification form. Should Momentum not receive the completed self-certification form back from a client, the client will unfortunately be reported to the South African Revenue Service (SARS) as a recalcitrant account holder for onward reporting to the IRS. Clients who identify themselves as US persons on the self-certification or application forms, will be reported to SARS as US reportable accounts for onward reporting to the IRS. Clients who identify themselves as non-US persons will not be reported to SARS.

Momentum has an obligation to monitor the tax residency and US indicia of clients for changes in circumstances and should circumstances of the client change, for example a change in address from South Africa to the US, the client will be asked to self-certify again.

*Affected products for new individuals include the following:

- Endowment policies above \$50 000.
- Voluntary purchased annuities.
- Other similar voluntary investment products such as units in collective investment schemes or units held in a product provided by a linked investment service provider.

Existing individual accounts held as of 30 June 2014:

Individual accounts in the affected products that exceed \$50 000 as of 30 June 2014 or endowment policies that exceed \$250 000 but don't exceed \$1 000 000 are defined as low-value accounts. No review is required for accounts below the \$50 000 or \$250 000 threshold.

For low-value accounts Momentum is required to perform an electronic record search. If US indicia are found in the electronic record search, then Momentum is required to obtain a self-certification from that client to confirm whether or not the client is a US person or not. Supporting documentation may be required to be provided by the client.

For high-value accounts in the affected products that exceed \$1 000 000 Momentum is required to perform an electronic record search and possibly also a paper record search and relationship manager enquiry. If no US indicia are found as a result of these enquiries and searches, then no further action is required from either Momentum or the client. If US indicia are found, then Momentum is required to obtain a self-certification from the client to determine whether or not the client is a US person. Supporting documentation may also be required from the client.

FATCA for individual clients (continued)

1. How are US reportable accounts held by individuals identified by Momentum? (continued)

Momentum is also required to monitor change in circumstances with respect to existing clients, and where US indicia are found by Momentum, we are required to obtain a self-certification from the client and may also be required to obtain supporting documentation.

2. I am not a US citizen, why am I required to provide the additional information?

The rules require FFIs to search for a number of US indicia that may indicate that the account holder is a potential US person. If any of these indicia are present, Momentum has an obligation to request further information from the client to clarify his or her FATCA status. In addition, the ensuing Automatic Exchange of Information will require Organisation for Economic Co-operation and Development (OECD) countries to obtain similar information about the tax residency status of all their clients.

3. I am a US person, how does FATCA affect me?

If you are a US person, you will be required to provide Momentum with additional information and documentation. You will need to provide Momentum with a self-certification that you are a US person and you will need to provide your US TIN.

Momentum is required to report your account information to SARS on an annual basis, which will be passed on to the IRS.

4. As a US person, why should I provide my tax information to another revenue authority?

As a US green-card holder or citizen or resident, you are a US taxpayer and, by US law, you are already required to disclose the same and more information directly to the IRS by filing in a Form 8938 (Statement of Specified Foreign Financial Assets) and a Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts). FATCA is a supplemental way for the IRS to obtain the same information about you.

5. What happens if a joint account is held by a US person and a non-US person?

A joint account that has one US owner is treated as a US account and the entire account balance is attributable to each joint owner. For example, if your account has a balance of \$500 000 and you have a South African and specified US person holding the account, then the US person is reportable with a balance of \$500 000.

6. I am a citizen and resident of South Africa, I have no connections to the US whatsoever, I have an investment account with Momentum, am I subject to FATCA?

No. Only specified US persons are subject to FATCA. However, Momentum may request additional information from you to determine whether or not you are a specified US person as defined.

7. I am a citizen and resident of South Africa, I hold a US green card, and I have an investment account with Momentum, will I be subject to FATCA?

Yes, your account will be subject to the rules of FATCA if the balance exceeds a certain amount.

FATCA for entities

1. What is an entity?

The term entity for the purposes of FATCA means anything other than a natural person.

2. When is an entity a US person?

For persons other than individuals, a US person includes among others a company, corporation, trust or association organised in the US or under the laws of the US.

3. What is an FFI?

An FFI is a foreign financial institution. That is, any non-US entity that is a depository institution, custodial institution, investment institution or specified insurance company. These are entities that, broadly speaking, provide the following services to clients:

- Accepts deposits from banking or similar business;
 - holds financial assets for the account of others;
 - is engaged in the business of investing, reinvesting, or trades in securities or commodities; or
 - issues or is obligated to make payments with respect to cash value insurance contracts or annuity contracts.
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4. What is a participating FFI?

An FFI that enters into an FFI agreement with the IRS is referred to as a participating foreign financial institution (PFFI). An FFI that doesn't enter into an agreement with the IRS is referred to as a non-participating foreign financial institution (NPFFI), and is subject to withholding under FATCA.

5. What is an FFI agreement?

In order to comply with FATCA, an FFI will enter into an FFI agreement with the IRS to determine which accounts are US accounts, and conducts annual reporting of those accounts.

FATCA for entities (continued)

6. What does an FFI Agreement require an FFI to do?

An FFI agreement is an agreement between the IRS and a participating FFI. The IGA includes the following obligations:

- Obtain information on account holders that is necessary to determine if accounts are US accounts.
 - Comply with any required due diligence or verification procedures.
 - Report information on US accounts to the IRS on an annual basis.
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7. What is a NFFE?

A foreign entity that is not a financial institution is a non-foreign financial entity (NFFE).

There are two types of NFFEs – active NFFEs and passive NFFEs. If your entity is classified as a passive NFFE, you have to certify whether any of your controlling persons are specified US persons or not.

An NFFE that conducts an active trade (active NFFE) and earns income mainly from business activities as opposed to earning income only from investment income such as dividends and interest is an active NFFE.

An active NFFE is a category of an excepted NFFE that only needs to certify that it is an excepted NFFE. It doesn't need to report on any substantial US owners it may have and there will not be any withholding upon such an entity.

A passive NFFE is an NFFE that earns more than 50% of its income from passive investments and more than 50% of its assets for the last financial year consist of passive investments.

Passive investment income includes the following types of income:

The portion of gross income that consists of:

- dividends, including substitute dividend amounts;
 - interest;
 - income equivalent to interest;
 - rents and royalties, other than rents and royalties derived in the active conduct of a trade or business conducted, at least in part, by employees of the NFFE;
 - annuities;
 - excess of gains over losses from the sale or exchange of property that gives rise to passive income as described in this definition;
 - the excess of gains over losses from transactions (including futures, forwards, and similar transactions) but not including:
 - any commodity hedging transaction; or
 - active business gains or losses from the sale of commodities;
 - the excess of foreign currency gains over foreign currency losses;
 - net income from notional principal contracts;
 - amounts received under a cash value insurance contract ; or
 - amounts received by insurance companies in connection with its reserves for insurance and annuity contracts.
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8. What entities are US reportable accounts?

An entity will be a US reportable account if:

- the entity itself was incorporated or organised in the US;
 - the entity is a passive NFFE with one or more controlling US persons (owners);
 - the entity is a non-participating FFI; or
 - the entity is undocumented.
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9. How are US reportable accounts held by entities identified by Momentum?

The process for the identification of US reportable accounts held by entities differs in respect of new clients taken on from 1 July 2014 and existing clients that were on Momentum's books as at 30 June 2014.

In respect of new entities taken on from 1 July 2014:

For new entities taken on from 1 July 2014 in the affected products* upon account opening, Momentum must obtain a self-certification, which may be part of the account opening documentation (ie application form) or a separate self-certification form that allows Momentum to determine whether the account holder is a resident in the US for tax purposes or in the case of a non-US entity whether the entity is an FFI or a passive NFFE with controlling persons who are US persons.

Momentum also needs to confirm the reasonableness of the self-certification based on the information obtained by Momentum in connection with the opening of the account. The IRS has noted two US indicia for entities that may require Momentum to request further information to determine whether the entity is a US person under FATCA. These are:

- the place of incorporation of the entity; and
 - the physical address of the entity.
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FATCA for entities (continued)

9. How are US reportable accounts held by entities identified by Momentum? (continued)

The self-certification from the account holder must determine the following:

1. Whether the entity itself is a US person or not. If the entity is a US person, the entity is a US reportable account.
2. If the entity itself is not a US person, Momentum needs to determine whether the entity is an NFFE or FFI.
3. If the entity is an FFI, the entity must provide Momentum with its GIIN. If the entity has no GIIN, the entity must provide the reason it has no GIIN. If the reason that the entity has no GIIN is due to the fact that it isn't registered with the IRS and is a non-participating FFI, Momentum will need to report the payments it makes to this FFI to SARS for onward reporting to the IRS.
4. If the entity is an NFFE, Momentum must determine whether the entity is an active or passive NFFE. If the entity is an active NFFE, the entity is not a US reportable account. If the entity is a passive entity, Momentum must determine whether the entity has one or more US controlling persons. If the entity is a passive entity with one or more controlling US persons, then both the entity and the controlling US persons are reportable to SARS for onward reporting to the IRS. If the passive NFFE has no US controlling persons, the entity and the owners are not reportable.

Momentum is also required to monitor any change in circumstances from the take-on of the new business client, and where US indicia are subsequently found, Momentum is then required to obtain a self-certification form from the client and the client may need to provide supporting documentation.

Affected products for new entities include the following:

- Endowment policies above \$50 000.
- Voluntary purchased annuities.
- Other similar voluntary investment products such as units in collective investment schemes or units held in a product provided by a linked investment service provider.

Pre-existing entity accounts as at 30 June 2014:

Pre-existing entity accounts that are **not** subject to review:

Accounts in affected products that don't exceed \$250 000 are not required to be reviewed until they exceed \$1 000 000.

Pre-existing entity accounts subject to review (low-value accounts):

Entity accounts in affected products with a balance that exceeds \$250 000 as of 30 June 2014 and accounts that don't exceed \$250 000 at 30 June 2014 but exceeds \$1 000 000 at 31 Dec 2015 must be reviewed.

The review process for pre-existing entity accounts that are subject to review is as follows:

1. Momentum is required to review information available on our electronic records to identify any US indicia that would suggest that the entity is a US person. If US indicia are identified, a self-certification form will need to be completed in respect of the entity or Momentum must look at information that is publicly available to determine whether the entity is a US person or not. If the entity is a US person, then the entity is a reportable US account.
2. If the entity itself is not a US person, Momentum needs to determine whether the entity is an NFFE or FFI.
3. Momentum will review information available on electronic record that may suggest that the entity is an FFI or registered deemed compliant FFI and must then verify the entity's GIIN on the IRS list. If the entity is an FFI with a GIIN, the entity is not reportable. If Momentum cannot verify the GIIN, then Momentum must ask the FFI to complete a self-certification form that specifies the type of FFI and the reason it is not registered with the IRS. In this case the payments to the entity may or may not be reportable.
4. If the information on our system suggests that the entity is an NFFE, Momentum must determine whether the entity is an active or passive NFFE. If the entity is an active NFFE, the entity is not a US reportable account. If the entity is a passive entity, Momentum must determine whether the entity has one or more US controlling persons. If the entity is a passive entity with one or more controlling US persons, then both the entity and the controlling US persons are reportable to SARS for onward reporting to the IRS. If the passive NFFE has no US controlling persons, the entity and the owners are not reportable. If Momentum has insufficient information to determine whether the entity is an active NFFE or a passive NFFE with one or more controlling US persons, we must obtain a self-certification form from the client.

The review of the above low-value accounts must be completed by 30 June 2016.

If any financial account doesn't exceed \$250 000 at 30 June 2014 but exceeds \$250 000 by 31 December 2015 or any subsequent year, it must be completed within six months after the end of the calendar year in which it exceeds \$1 000 00.

10. Is the entity only affected if it is a US legal entity?

No. Any entity that is controlled by specified US persons, even if not a US entity, is affected by FATCA. If your entity is a passive NFFE you have to certify whether you have any substantial US owners who control the entity. The objective is to identify specified US persons who exercise control over particular non-US entities. Your entity may be contacted to provide additional information to assist in determining the FATCA status of your entity and whether any reporting is required on your controlling persons who are specified US persons. In addition, if the entity is a non-US entity that is an FFI, we require your GIIN or the reason why the entity doesn't have a GIIN.

11. This is not a US entity, why am I required to provide the additional information?

The rules require FFIs to search for a number of US indicia, which may indicate that the account holder is a potential US person. If any of these indicia are present, Momentum has an obligation to request further information from the client to clarify their FATCA status.

For non-US entities we are also required to determine whether the entity is an FFI or NFFE. In the case of a passive NFFE legislation requires us to establish whether any of the shareholders or controlling persons are specified US persons, in which case the account is considered to be a reportable account. If the entity is an FFI, we are required to obtain the GIIN of the entity or the reason it has no GIIN.

12. The entity is a US legal entity and/or has US shareholding, how does FATCA affect the entity?

If you are a legal entity that is classified as a specified US person, you will be required to provide Momentum with a self-certification and/or additional information and documentation.

Momentum is required to report your account information to the revenue authorities (SARS) on an annual basis, which will be passed on to the IRS.

FATCA for entities (continued)

13. A South African company that is 100% held by South African and non-US persons only has an account with Momentum. Is it subject to FATCA?

No. However, Momentum may be required to obtain a self-certification from the entity and/or additional information on the entity's or controlling person's tax status to ensure that the entity is not subject to FATCA.

14. A shareholder or controlling person of an entity is a South African citizen and resident, but has a US green card, and owns less than 10% of the legal entity that has an account with Momentum. Is it subject to FATCA?

No, because a controlling person in terms of South African law means an interest of 25% or more in the relevant entity.

15. A shareholder or controlling person of an entity is a South African citizen and resident, but has a US green card, and owns 100% of an entity that has an account with Momentum. Is it subject to FATCA?

If the entity is a passive NFFE, the entity and the controlling persons will be subject to FATCA and additional information will be required and the account will be reportable.

16. The entity is a non-US stock brokerage company, is the entity subject to FATCA?

Yes, you are likely required to register with the IRS as a registered deemed-compliant foreign financial institution. In this case you will need to provide Momentum with your GIIN.

17. The entity is a non-US insurance company, is the entity subject to FATCA?

You may be subject to FATCA if you issue cash value insurance contracts (ie endowment policies) or annuities. We suggest that you contact your tax advisor to establish whether you are regarded as an FFI for FATCA purposes.

18. The entity is a non-US investment fund/asset manager, is the entity subject to FATCA?

Yes, but the compliance burden may be significantly reduced if you meet certain criteria such as:

- investor-type restrictions (certain qualified institutional investors only);
- distribution restrictions (only institutional distributors can sell interests in the fund and cannot sell to US investors); or
- you are "owner documented".

In other cases the investment funds may be sponsored entities where reporting to the revenue authorities is performed by the sponsoring entity who could be the management company.

19. The entity is a non-US pension plan, is the entity subject to FATCA?

Certain types of pension plans are exempt from FATCA provided they meet the required criteria.
