

Lloyd's FATCA Frequently Asked Questions

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

The FAQs have been grouped based on whether the premium is being received by or paid to the syndicate. There is also a separate section for trust fund assets.

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Receipt of Premiums

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 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.

Premium trust funds

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 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 forms should have all the information Lloyd's will need. If any other information is needed, Lloyd's will ask for it.

General information regarding Lloyd's W-8IMY

9 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.

10 How long is the W-8IMY valid?

The W-8IMY is "evergreen," that is, it only needs to be updated if circumstances change.

IRS issued a new version of the Form in September 2016 which Lloyd's will prepare and issue in 2017. The W-8IMY prepared by Lloyd's in 2014 remains valid until the end of March 2017.

11 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).

12 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, 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 directly to the W-8IMY, in case the form is ever substituted).

13 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*. 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.

Payment of Premium and “foreign to foreign” reinsurance

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?

Under IRS regulations, “foreign-to-foreign payments” are subject to FATCA from 1 January 2017. There may be some doubt as to what exactly this means in certain circumstances, for example where a reinsurance premium is attributable to the US permanent establishment of a Member.

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 obtain 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. Failure to do so may mean that the syndicate/member is liable to pay a 30% withholding tax on the premium.

15 What sections on the W-8BEN-E should be completed

Syndicates and managing agents unfamiliar with FATCA should obtain professional guidance regarding whether the documentation that has been provided has been correctly completed. Any W8 series form provided will need to be validated and a certain amount of due diligence undertaken to ensure that the forms can be relied upon.

For these purposes, only those sections that related to FATCA need to be completed consequently the part III Claim of Tax Treaty Benefits does not require completion.

16 What documentation do I need?

You require a W-8IMY from each ‘intermediary in the chain’ and the relevant W8 Series document from the reinsurer who received the premium. If this is a US corporation then the correct form will be a W9, for all non-US entities the correct form will be a W-8BEN-E. In cases where the recipient of the premium is an individual then the correct documentation will be a W-8BEN or W9 (if the individual is a US citizen).

A withholding statement must accompany the W-8IMY which will indicate what percentage of the premium has been paid to the reinsurer. So for example if the risk has been placed with 2 reinsurers via 1 broker (the intermediary) then you should receive a W8IMY from the broker which will have the brokers details, a withholding statement that shows what share of the premium each reinsurer has received and the relevant W8 forms from each reinsurer.

Where there is more than one broker in the chain you would expect to receive a W-8IMY from each broker in the chain as well as a withholding statement and relevant W8 forms from each reinsurer.

The above applies equally to Lloyd’s syndicates and members placing member level reinsurance.

17 What reporting will I have to complete?

If you withhold 30% withholding tax from a premium because the recipient has not provided correct documentation you will need to complete form 1042-s 1042-t and a 1042 and submit it to the IRS. In addition you will need to make arrangements to pay the tax withheld to the IRS. For further details please visit <https://www.irs.gov/uac/about-form-1042s>.

18 Will I need to complete form 8966 for substantial US owners if they are shown on a W-8BEN-E?

There is no need to report premiums on Form 8966 for 2016. There is uncertainty regarding how US source premiums will be reported, given Form 8966 instructions and proposed legislation, which may or may not be resolved in 2017. We will update this section of this FAQ when more information is available.