



## NOTICE

**Pursuant to the Business Rules of the corporate division, for corporate clients of OTP Bank Plc on the "FATCA (Foreign Account Tax Compliance Act)" agreement concluded between Hungary and the United States of America and promulgated in Act XIX of 2014**

**Effective from: 4 June 2015**

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Pursuant to the agreement concluded between the governments of Hungary and the United States of America (hereinafter: USA) on 4 February 2014 and promulgated on 15 May 2014 (hereinafter: "Agreement"), both countries commit to ensure that the financial institutions (banks, investment service providers, insurers etc.) registered in each country supply data each year on their clients and their accounts that are tax residents of the other country under its own laws.

It is the purpose of FATCA to reduce tax evasion of US citizens and to be able to levy taxes on their savings kept abroad and the yield thereof. Hungary has undertaken to implement the FATCA Regulation.

As a result of non-compliance with the FATCA, the USA is entitled to deduct 30% withholding tax levied on the amounts from US sources falling under the scope of the withholding tax. As a consequence, our clients may only receive 70 Ft out of 100 Ft in a given case.

For the purposes of this notice, "Withholdable Payment" means any fixed or determinable annual or periodical gains, profits and income that is from sources within the United States, including but not limited to the following payments: interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments.

### **US tax resident account holders**

Pursuant to the above, in Hungary such a Legal Entity or other organisation is considered a US tax resident, which:

- was established in the United States, has a registered seat in the United States, has a US TIN (Taxpayer Identifying Number) (Specified US Person), or
- was established in Hungary or abroad, but whose beneficial owner is a US Tax Resident natural person (any natural person is considered a US Tax Resident who is a citizen or a resident of the United States).

### **Documents to be submitted to certify non-US tax residence**

If the account holder does not dispose of data suggesting US Tax Residence by the above or is a non-US tax resident, no document other than the declaration on tax residence needs to be submitted

If the account holder is registered in the USA and is considered a Specified US Person or its beneficial owner is a US Tax Resident and conducts passive activity, their declaration may only be reportable or declining until they prove the opposite by providing documents.

Non-US Tax Residence may be certified with official documents issued by any nominated state authority (such a government, office, self-government) containing the client's name and either the address of their registered seat in a jurisdiction (or the Dependent Territories of the United States) where – according to the information of the client – they are resident, or a jurisdiction (or the Dependent Territories of the United States), where the client was established or incorporated.

In the case of US Tax Residence of the beneficial owner the submission of the documents as contained in the notice "For private individuals (natural persons, individual entrepreneurs, prime producers) on the "FATCA (Foreign Account Tax Compliance Act)" agreement concluded between Hungary and the United States of America and promulgated in Act XIX of 2014" is required.

### **Formal requirements regarding documents**

The declaration of the client as a private document providing conclusive evidence may be submitted to the bank by post (regardless of whether the client is staying in Hungary or abroad):

Pertaining to the formal requirements of the documents regarding US Tax Residence of the beneficial owner, the rules as set forth in the notice **“For private individuals (natural persons, individual entrepreneurs, prime producers) on the "FATCA (Foreign Account Tax Compliance Act)" agreement concluded between Hungary and the United States of America and promulgated in Act XIX of 2014”** shall be observed.

At the submission of any other document serving as proof of non-US residence of the client, the system of requirements as set forth in the General Business Rules of the Bank shall be observed.

In the case of clients staying outside the territory of Hungary, the Bank may require the client to submit a public document, a document endorsed with an Apostille clause or an authentic document certified by a notary public or the authority of the Embassy of Hungary.

### **Making the declaration**

As a new client

Our client who did not have an active bank (payment or savings) or securities account at the bank on 30 June, 2014, but following this date opens a bank (payment or savings) or securities account, shall - as new clients - in all cases make a written declaration whether they are US tax residents by the given aspects or not.

As an existing client

OTP Bank Plc performs due diligence on its corporate clients holding active bank (payment, savings) or securities accounts on June 30, 2014 until June 30, 2016 based on the available data if the balance on their accounts exceeded 250.000 USD on June 30, 2014. OTP Bank Plc performs due diligence on its corporate clients holding active bank (payment, savings) or securities accounts on June 30, 2014 – if the balance on their accounts on June 30, 2014 does not exceed 250.000 USD but

the balance or value of which exceeds 1.000.000 USD on the last day of 2015 or any consecutive calendar year – in the six months following the year on the last day of which the balance or value of the account exceeds 1.000.000 USD.

The Bank registers clients obliged to make a declaration but not making a declaration as uncooperative and forwards their data to the IRS.

In the case of individual entrepreneur and prime producer clients the declaration issued as a private individual shall be observed. For further information see the notice entitled "For private individuals (natural persons, individual entrepreneurs, prime producers) on the "FATCA" agreement concluded between Hungary and the United States of America and promulgated in Act XIX of 2014".

OTP Bank Plc sends an annual report to the National Tax and Customs Administration of Hungary (hereinafter NAV) following June 30, 2015 on the balance of the accounts of reportable corporate clients and interest, dividends and other principal profit paid to the corporate client pursuant to the "Agreement".

### **Reporting to the NAV and the IRS**

OTP Bank Plc reports those clients to the IRS who are Specified US Persons or Passive Non-Financial Foreign Entities one of the beneficial owners of which is a US citizen or and/or a non-US citizen holding US Residence.

Clients refusing to declare US tax residence or those whose US tax residence cannot, according to the data kept in the register of the Bank, be definitely excluded, shall be regarded by the Bank as US tax residents and shall provide the relevant data to the NAV.

OTP Bank Plc sends the data of the reportable accounts until June 30 each year (of clients' registered as new clients first in 2015 while of clients' registered as existing clients first in 2016 according to the FATCA) to the NAV. The NAV forwards the data provided by the Bank to the IRS until September 30 of the given year.

The Bank shall notify the account holder of the reporting in writing within 30 days following the data provision to the NAV.

If the account holder certifies with authenticity that she or he is not a US tax resident within the deadline specified in the notice sent by the Bank, the Bank will record this fact among the client's data and shall modify the data provision sent to the NAV. The Bank cannot suspend the data transfer regarding declarations submitted beyond deadline

If the account holder or the beneficial owner used to qualify as a US tax resident but the circumstances on the basis of which it qualified as a US tax resident no longer exist, this fact must be notified by the client within 5 working days by submitting the relevant documents to the Bank.

The following clients are not subject to the reporting obligation according to the FATCA:

1. Enterprises listed on the Stock Exchange and their affiliated undertakings;
2. US state administration bodies, administrative subdivisions;
3. US non-profit organisations (tax-exempt non-profit organisations according to paragraph (a), Section 501 of the US Tax Code)
4. US pension funds (those covered by item 37, paragraph (a), Section 7701 of the US Tax Code);
5. US enterprises engaged in financial operations:
  - a.) banks (covered by Section 581 of the US Tax Code)
  - b.) real estate investment funds (covered by Section 856 of the US Tax Code);
  - c.) investment companies (those covered by Section 851 of the US Tax Code, or those having SEC registration pursuant to the act on Investment Enterprises (15 USC item 64, paragraph (a), Section 80);
  - d.) tax exempt trusts (those covered by paragraph (c), Sections 663 and item (1), paragraph (a), Section 4947 of the US Tax Code)
  - e.) enterprises incorporated in the United States of America, engaged in trading in securities, commodities, instruments stemming from derivative transactions (including speculative transactions, futures and option positions);
  - f.) brokerage firms (those covered by Section paragraph (c), Section 6045 of the US Tax Code).

If on the basis of its contractual legal relationship with the Bank the client used to qualify as a US tax resident but the circumstances on the basis of which it qualified as such no longer exist, this fact must be notified by the client within 5 working days by submitting the relevant documents to the Bank.

## **Definition of the terms used in the Notice:**

### **"US Person":**

- A "US Person" is one with US citizenship or one qualifying as a resident private individual in the United States of America, and
- a business undertaking or association established in the territory of the USA in accordance with its law or the law of any of its states,
- and any US court is authorised to issue orders or pass judgements concerning such person,
- along with a legal person in relation to whose activities one or more US tax resident citizens or US resident private individual(s) is or are authorised to control all material decisions taken by such person.

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- Pursuant to the Agreement, a "Specified US Person" is a US person as specified above, with the exceptions listed in Act XIX 2014 (FATCA Act):
  - o companies listed on the Exchange,
  - o the United States of America, any of its fully owned agencies and bodies,
  - o the states making up the US, its political subdivisions and the agencies and organisations owned by them,
  - o tax exempt organisations according to the US statutory regulations,
  - o pension plans,
  - o trusts that are tax exempt by law,
  - o along with entities specified in Section 1 ff) of the Act.

### **"Passive Non-Financial Foreign Entity":**

- an entity at least 50 % of whose annual net sales revenue comes from interests, dividends or other capital gains. The client has to declare this circumstance.

### **"Active Non-Financial Foreign Entity":**

- an entity less than 50 % of whose annual net sales revenue comes from interests, dividends or other capital gains. The client has to declare this circumstance.
- the enterprise whose shares are traded in a regulated securities market, which entity was established in U.S. Territories of the United States of America and all of whose beneficial owners actually live there,
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- governments of countries other than the US, political subdivisions of such countries, e.g. provinces, counties, towns etc., international organisations, central banks and legal entities fully owned by such (e.g. enterprises, service provider facilities etc.),
- entities not operating as investment funds, providing services relating to the management and financing of the capital of subsidiaries,
- entities not yet engaged in such operations but investing capital in equity elements, with the exceptions specified by the Agreement,
- entities performing financing and hedging transactions as a non-financial enterprise for affiliated non-financial institutions, not providing such activities for non-affiliated organisations,
- entities qualifying as "exempted non-financial foreign entities",
- and entities qualifying as active pursuant to Chapter VI. 4. j) of Annex I to the Agreement.

**Categories of financial institutions for the purposes of the FATCA:**

- a.) Hungarian / Partner Jurisdiction Financial Institution: cooperating reporting financial institution (with FATCA identification GIIN – Global Intermediary Identification Number)
- b.) Participant: participating but not reporting financial institution (with FATCA identification GIIN)
- c.) Exempt beneficial owner: partly cooperating financial institution, not reporting (registered by the US IRS but without GIIN)
- d.) Deemed compliant: institution not affected by the FATCA (A declaration on this quality must be made to the national tax authority and the related financial institution.)
- e.) Non-participant: financial institution refusing to cooperate.

**Exempt beneficial owner (in the case of a non-financial foreign entity):**

The following legal entities may be regarded as exempt beneficiaries depending on the case:

**A. Governmental Entity:**

The government of Hungary, any political subdivision of Hungary (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of Hungary or any one or more of the foregoing (each, a “Hungarian Governmental Entity”). This category is comprised of the integral parts, controlled entities, and political subdivisions of Hungary.

1. An integral part of Hungary means any person, organization, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of Hungary. The net earnings of the governing authority must be credited to its own account or to other accounts of Hungary, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.

2. A controlled entity means an Entity that is separate in form from Hungary or that otherwise constitutes a separate juridical entity, provided that:

a)The Entity is wholly owned and controlled by one or more Hungarian Governmental Entities directly or through one or more controlled entities;

b) The Entity's net earnings are credited to its own account or to the accounts of one or more Hungarian Governmental Entities, with no portion of its income inuring to the benefit of any private person; and

c)The Entity's assets vest in one or more Hungarian Governmental Entities upon dissolution.

3. Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental program, and the program activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a governmental entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.

## B. International Organization

Any international organization or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organization (including a supranational organization) (1) that is comprised primarily of non-U.S. governments; (2) that has in effect a headquarters agreement with Hungary; and (3) the income of which does not inure to the benefit of private persons.

## C. Central Bank

An institution that is by law or government sanction the principal authority, other than the government of Hungary itself, issuing instruments intended to circulate as

currency. Such an institution may include an instrumentality that is separate from the government of Hungary, whether or not owned in whole or in part by Hungary.

#### D. Treaty-Qualified Retirement Fund.

A fund established in Hungary, provided that the fund is entitled to benefits under an income tax treaty between Hungary and the United States on income that it derives from sources within the United States (or would be entitled to such benefits if it derived any such income) as a resident of Hungary that satisfies any applicable limitation on benefits requirement, and is operated principally to administer or provide pension or retirement benefits.

#### E. Broad Participation Retirement Fund.

A fund established in Hungary to provide retirement, disability, or death benefits, or any combination thereof, to individuals who are members of the funds (or persons designated by such fund members) in consideration for services rendered, provided that the fund:

1. Does not have a single fund member with a right to more than five percent of the fund's assets;
2. Is subject to government regulation and provides annual information reporting about its fund members to the relevant pension supervisory authorities and tax authorities in Hungary; and
3. Satisfies at least one of the following requirements:
  - a) The fund is generally exempt from tax in Hungary on investment income under the laws of Hungary due to its status as a retirement or pension plan;
  - b) The fund receives at least 50 percent of its total contributions (other than transfers of assets from other plans described in paragraphs A through D of this section or from retirement and pension accounts described in subparagraph A(1) of section V of this Annex II) from the sponsoring employers;
  - c) Distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to other retirement funds described in paragraphs A through D of this section or retirement and pension accounts described in subparagraph A(1) of section V of this Annex II),

or penalties apply to distributions or withdrawals made before such specified events; or

d) Contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed \$50,000 annually, applying the rules set forth in Annex I for account aggregation and currency translation.

#### C. Narrow Participation Retirement Fund.

A fund established in Hungary to provide retirement, disability, or death benefits to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that:

1. The fund has fewer than 50 participants;
2. The fund is sponsored by one or more employers that are not Investment Entities or Passive NFFEs;
3. The employee and employer contributions to the fund (other than transfers of assets from treaty-qualified retirement funds described in paragraph A of this section or retirement and pension accounts described in subparagraph A(1) of section V of this Annex II) are limited by reference to earned income and compensation of the employee, respectively;
4. Participants that are not residents of Hungary are not entitled to more than 20 percent of the fund's assets; and
5. The fund is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in Hungary.

#### D. Pension Fund of an Exempt Beneficial Owner.

A fund established in Hungary by an exempt beneficial owner to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees of the exempt beneficial owner (or persons designated by such employees), or that are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the exempt beneficial owner.

E. Investment Entity Wholly Owned by Exempt Beneficial Owners.

An Entity that is a Hungarian Financial Institution solely because it is an Investment Entity, provided that each direct holder of an Equity Interest in the Entity is an exempt beneficial owner, and each direct holder of a debt interest in such Entity is either a Depository Institution (with respect to a loan made to such Entity) or an exempt beneficial owner.