



FATCA - A FACT YOU CANNOT AFFORD TO IGNORE.

FATCA

Q & A

What is FATCA?

FATCA is an acronym for the Foreign Account Tax Compliance Act which was enacted in the US as part of the Hiring Incentives to Restore Employment Act on March 18, 2010. FATCA creates a new information reporting requirement on US persons and withholding regime for payments made to certain foreign financial institutions and other non-conforming US persons/entities. The FATCA rules generally become effective on 1 July 2014.

What is the objective of FATCA?

FATCA is intended to increase transparency for the Internal Revenue Service (IRS) with respect to US persons who may be investing and earning income through non-US institutions. While the primary goal of FATCA is to gain information about US persons, FATCA imposes a punitive tax withholding where the applicable documentation and reporting requirements are not met.

Who does FATCA impact?

FATCA is far reaching and can impact any person, US or foreign, to the extent that such person is involved in making or receiving payments that fall within the scope of FATCA. FATCA may apply to both financial and non-financial operating companies. Due to this, FATCA impacts virtually all non-US entities, directly or indirectly, receiving most types of US sources of income, including gross proceeds from the sale or disposition of US property which can produce interest or dividends. In the instance where the country is not an IGA country – withholding does not apply in an IGA country with the exception of cross-border payments made to other Non-Participating Foreign Financial Institutions (FFIs) of which will be subject to withholding.

What does the term “United States person” mean?

- A US citizen (including dual citizen)
- A US resident alien for tax purposes
- A domestic partnership
- A domestic corporation
- Any estate other than a foreign estate
- Any trust if:
 1. A court within the United States is able to exercise primary supervision over the administration of the trust
 2. One or more United States persons who have the authority to control all substantial decisions of the trust

What is an Intergovernmental Agreement (IGA)

The IGA provides for a partnership agreement between the US and a FATCA Partnership jurisdiction, such as South Africa, as well as other countries such as France, Germany, United Kingdom, India, Spain etc. Under this agreement, FFIs in partner jurisdictions will be able to report information on US account holders directly to their national tax authorities, who in turn will report to the IRS.

What are the withholding requirements for non-compliance?

In general for a Non-IGA country (A country that has not signed an Intergovernmental agreement with the US), 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 addition, an FFI must withhold 30% on any pass-through payment it makes to a “recalcitrant account holder”, as well as on payments it makes to another FFI unless that FFI meets certain requirements.

What is the definition of a “Withholding Agent or Intermediary”?

An individual, corporation, partnership, trust, association, or any other entity, including any foreign intermediary, foreign partnership, or US branch of certain foreign banks and insurance companies that have control, receipt, custody, disposal or payment of any withholdable payment.

Q & A

What type of payments does FATCA apply to?

FATCA generally applies to two defined payment types:

- 1) Withholdable payments
- 2) Pass-through payments

What is a withholdable payment?

A withholdable payment is a payment of either: A US source of income that is fixed or determinable, annual or periodical (FDAP) income; or gross proceeds from the sale or other disposition (including redemption) of property that can produce US source interest or dividend income.

What is the definition of a Foreign Financial Institution (FFI)?

The definition is very broad and is expected to encompass a number of entities, generally not considered to be financial institutions. An FFI is any foreign entity that:

- 1) Accepts deposits in the ordinary course of a banking or similar business, custodial institutions, as well as insurance companies
- 2) As a substantial portion of its business, holds financial assets for the account of others
- 3) (As an investment entity) is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, or any interest (including a futures or forward contract or option) in such securities, partnership interests, or commodities

Generally non-US entities such as banks, broker/dealers, insurance companies, hedge funds, securitisation vehicles, and private equity funds will be considered FFIs. There is currently no de minimis threshold for investment vehicles and insurance companies.

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." An FFI that does not enter into an agreement with the IRS is referred to as a "Non-Participating Foreign Financial Institution," and is subject to withholding under FATCA.

What is expected of an FFI?

In the context where a country has signed an IGA, the participating FFI agrees to:

- 1) Obtain information on account holders that is necessary to determine if accounts are US accounts
- 2) Comply with any required due diligence/verification procedures
- 3) Annually report information on US accounts
- 4) Deduct and withhold a 30% tax on pass-through payments paid to account holders who:
 - do not supply the required information (recalcitrant account holders), or
 - make payments to a non-participating FFI, or
 - attempt to obtain from US accounts a waiver of applicable bank secrecy or other information disclosure limitations, and
 - close the US accounts if a waiver is not obtained within a reasonable period of time.

What is a FFI GIIN?

Each participating and deemed compliant FFI will be issued a Global Intermediary Identification Number (GIIN) once they have registered with the IRS, which will be used to identify the entity.

What will an FFI Report on?

- 1) The name, address and US Tax Identification Number (TIN) of each account holder that is a specified US person
- 2) In the case of any account holder that is a US entity with one or more US owners, the name, address and TIN of each substantial US owner of such entity
- 3) The account number
- 4) The year-end account balance or value
- 5) Gross receipts and gross withdrawals or payments from the account

Who is Exempt from FATCA?

Certain categories of FFIs and other entities may be exempt from FATCA regulations. Being exempt from FATCA regulations means that these types of entities may not have to register, and no reporting will be required from them. Depending on circumstances and type of entity, although exempt from registration and reporting, they may still be required to complete the relevant IRS documentation.



Who is Exempt from FATCA? (continued)

The types of entities that may be exempt from FATCA regulations are:

- Most government entities
- Most non-profit organisations
- Certain small, local financial institutions
- Certain retirement funds



Indication criteria for individuals and entities:

Should any of the below indication for a client exists, it does not mean that the account owner is a US citizen, it merely means that we have to contact the client and request for further relevant documentation as indicated in the table below:

If the below US Indicia exists:	The following documentation is required if the individual is not a US person:
1. US place of birth or US nationality 2. US telephone number 3. US address 4. Mailing address ie. in-care-of or hold-mail address	Non US Passport Copy or Copy of foreign government-issued ID and any one of the following: i. Copy of the individual's Certificate of Loss of Nationality of the United States ii. Reasonable written explanation of the account holder's renunciation of US citizenship iii. The reason the account holder did not obtain US citizenship at birth iv. Form I-407 for abandonment of LPR
5. Country of residence or citizenship	Following documents establishing non-US or foreign status: i. Most recent Income tax return ii. Any ID issued by authorised government body
6. Settlement Instructions to pay to US address/ account maintained in US	Power of attorney or signature authority forms currently in effect and the following documents from customer establishing his non-US or foreign status: i. Most recent Income tax return ii. Any ID issued by authorised government body
7. A power of attorney or signatory authority granted to a person with a US address	Documents establishing non-U.S. or foreign status: i. Most recent Income tax return ii. Any ID issued by authorised government body

If the below US Indicia exists:	The following documentation is required:
1. If country of incorporation or organisation is US	1. Listed company – Information on Public domain 2. Unlisted Company – Certificate of Incorporation 3. Trust – Copy of Trust deed 4. Partnership – Partnership agreement 5. Close Corporation – Most recent of Founding Statement or latest Amended Founding Statement 6. Other legal person- Founding document that gives rise to the establishment/formation of the entit
2. If country of operation is US 3. If US business address 4. Settlement Instructions to pay to US address /Account maintained in US 5. If US telephone number(s) 6. If "in-care-of" address or "hold mail" address for the account holder or US PO Box	1. Listed Company-Public Domain 2. Most recent Income tax return 3. Any official documentation issued by an authorised government body
7. A power of attorney or signatory authority granted to a person with a US address	4. Power of attorney or signature authority forms currently in effect 5. Following documents from customer establishing his non-US or foreign status 6. Most recent Income tax return 7. Any official documentation issued by an authorised government body

