

FATCA FAQs

What is FATCA?

FATCA stands for The Foreign Account Tax Compliance Act (FATCA) which was enacted as part of the Hiring Incentives to Restore Employment (HIRE) Act on March 18, 2010. FATCA creates a new information reporting and withholding regime for payments made to certain foreign financial institutions and other foreign entities. The FATCA rules generally become effective with respect to certain payments made on or after July 1, 2014.

What is the intent of FATCA?

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

Who does it impact?

While FATCA certainly affects U.S. withholding agents and U.S. multinational companies, the greatest impact will likely be to Foreign Financial Institutions (FFIs).

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 addition, an FFI must withhold 30% on any passthru payment it makes to a recalcitrant account holder, as well as to payments it makes to another FFI unless that FFI meets certain requirements.

What is a withholding agent / intermediary?

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

What type of payments does FATCA apply to?

FATCA generally applies to two defined payment types:

- 1) Withholdable Payments and
- 2) Passthru Payments.

What is a withholdable payment?

A withholdable payment is a payment of either: U.S. source 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 U.S. source interest or dividend income.

What is a passthru payment?

The definition of a passthru payment includes any withholdable payment and any other payment to the extent it is attributable to a withholdable payment.

What is FDAP income?

FDAP income is fixed or determinable annual or periodical U.S. source interest, dividends and other similar passive income such as royalties or rent.

What is a U.S. person?

The term "United States person" means:

- A U.S. citizen (including dual citizen)
- A U.S. 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, and
 2. One or more United States persons have the authority to control all substantial decisions of the trust
 3. Any other person that is not a foreign person.

What is a recalcitrant account holder?

Generally, a recalcitrant account holder is any account holder that (1) fails to comply with reasonable requests for information necessary to determine if the account is a United States account; (2) fails to provide the name, address, and TIN of each “specified United States person” and each substantial United States owner of a United States owned foreign entity; or (3) fails to provide a waiver of any foreign law that would prevent a foreign financial institution from reporting information required under FATCA.

What is an FFI?

The definition of an FFI 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:

- Accepts deposits in the ordinary course of a banking or similar business;
- As a substantial portion of its business holds financial assets for the account of others; or
- 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.

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 does not 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.

What does an FFI Agreement require an FFI to do?

An FFI Agreement is an agreement between the IRS and a participating FFI and when regulations are finalized is expected to include:

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

What is an FFI EIN?

Each participating and deemed compliant FFI will be issued an employer identification number (FFI EIN) which will be used to identify the entity.

What types of insurance are covered by FATCA? If we do not sell these types, are we still required to sign an FFI Agreement?

Currently, most insurance companies are subject to FATCA. U.S. Treasury has confirmed in preliminary guidance that non-U.S. insurance companies are FFIs. The U.S. Treasury has also indicated that they only intend to carve out those insurance companies that issue contracts with no cash value such as term life and property and casualty policies. Annuity payments and proceeds from life insurance contracts received by non-U.S. persons from a policy or contract issued by a U.S. insurer, or its foreign branch, are currently treated as FDAP and considered “withholdable payments” under FATCA.

What is a NFFE?

A foreign entity that is not a financial institution.

What information will a FFI report to the IRS regarding U.S. accounts?

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