# Basic FATCA Information

## What Is?

Foreign Account Tax Compliance Act, also known as FATCA, guides foreign financial institutions through the steps they must take to ensure any of their clients who are US taxpayers declare all earnings or profits from offshore assets on their tax returns.

The Foreign Account Tax Compliance Act is a 388-page rule book issued by the US Treasury outlining exactly what foreign financial institutions must do to maintain their obligations under law.

The responsibility for reporting lies with the financial institution or adviser managing the asset rather than the individual. In theory, the US Treasury has to control fewer financial institutions than taxpayers and the Treasury can impose penalties to make the institutions to comply far easier.

However the burden also falls on individual US expats and the concern over what will happen to their taxes is increasing.

## Who does FACTA affect?

FATCA is aimed at foreign financial institutions and US taxpayers with investments overseas.

A foreign financial institution (FFI) is any foreign bank, investment house, insurance company or other financial institution that holds cash, equities or other financial assets for US taxpayers or any organization in which a US taxpayer may have a 'substantial' interest, like an offshore company or trust.

An FFI has to identify which clients are US citizens and then relay a detailed report about their earnings or gains to the Internal Revenue Service (IRS) every year.

## What US taxpayers must do under FACTA

US taxpayers must file Form 8938 along with an annual tax return if they held assets worth $50,000 or more overseas after March 18, 2010. The taxpayer should list any offshore assets or income on the form and tax return.

Those failing to report foreign investments will suffer a $10,000 fine which can increase up to $50,000 for a continuing offence.

The IRS will also top up any underpaid tax from failing to notify with a 40% surcharge.

## What foreign financial institutions must do under FATCA

FFIs must report details of all accounts held directly or indirectly by US taxpayers.

To file this report, the FFI will have to sign up with the IRS by June 30, 2013 to:

1. **Carry out identity checks on account holders**
2. **File an annual report on any accounts held by US taxpayers that includes:**
    - The name, address and taxpayer identification number (TIN) of each US account holder.

- If the account holder is owned by a US entity, the name, address, and TIN of each substantial US owner of the entity.
- The bank account number.
- The end of year account balance or value in US dollars.
- Gross receipts and withdrawals in the year.
- The gross amount of dividends paid to the account.
- The gross amount of interest paid to the account.
- Other income paid or credited to the account.
- Gross proceeds from the sale of property paid to the account.
- The branch that maintains the account.

### 3. Collect a 30% withholding tax for the IRS on income coming from the US or the proceeds of any asset disposal generating US sourced income if the money goes to:

- A FFI without an agreement with the IRS.
- Account holders who fail prove they are not US taxpayers.
- A foreign organization that does not prove the owners are not US taxpayers.

FFIs must start withholding tax from January 2014 and any FFI that fails to make FATCA reports will face fines and possibly a ban on trading in the US.

## Identifying US taxpayers

Under general 'Know Your Customer' and money laundering rules, most FFIs will already know whether an account holder is a US tax resident.

For accounts opened after July 1, 2013, the FFI will request a Form W-8 or other US government documentation, like a passport, to establish whether the account holder is a US taxpayer.

## How will withholding tax work?

The withholding rules will be phased in over a number of years, starting with US sourced income payments, like rents, interest on savings or dividends, on January 1, 2014.

Next comes the gross proceeds from disposal of property that generates US-sourced interest or dividends from January 1, 2015.

From January 1, 2017, FFIs will have to report pass-through payments from other FFIs that have hit the accounts of US taxpayers.

## What happens to FATCA information?

To ease the reporting burden for FFIs, the US and some other governments, like the UK, France, Spain, Germany, Japan, Ital and a number of other governments, have agreed to share financial information about US citizens.

In effect, this sets up an international network that switches tax information between countries, with the US agreeing to reciprocate data from abroad by sending information from US financial institutions back through the network.

The end result is the IRS will receive masses of data about the offshore financial affairs of US taxpayers, while other countries will gain similar financial data about their taxpayers with holdings in the US.

Tax agencies in every country which joins the network will cross compare the information with tax returns and other government documents to make sure everyone is declaring and paying the correct amount of tax in each country.

## More information

More information can be found at IRS FATCA information web pages:

→ IRS FATCA Home Page
→ FATCA Information for Individuals
→ FATCA Information for Foreign Financial Institutions and Entities
→ FATCA Information for U.S. Financial Institutions and Entities
→ FATCA Information for Governments

## Getting advice

This document reviews some of the basic information about FATCA and how this legislation will affect the finances of all US citizens. There are actions that can be taken to downside to your financial situation. You should contact with a qualified financial adviser then can assist you in making the best financial plans.

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