

Tax Transparency: FATCA

WHAT IS FATCA?

The Foreign Account Tax Compliance Act (FATCA) was enacted in 2010 by the United States Congress to address non-compliance by U.S. taxpayers using foreign accounts. FATCA's main objective is to enforce disclosure of offshore accounts held by U.S. taxpayers. Under this regulation, withholding agents are required to withhold 30% withholding tax on certain U.S. source payments made to Foreign Financial Institutions (FFIs), unless the FFIs, among other requirements, agree to report to the U.S. Internal Revenue Service (IRS) information about financial accounts held by U.S. taxpayers or by foreign entities in which U.S. taxpayers hold a substantial ownership interest.

The U.S. government has entered into intergovernmental agreements (IGA) with counterparts in other jurisdictions to implement FATCA and facilitate financial account information exchange. Some IGAs also require the IRS to reciprocally exchange certain information about accounts maintained by residents of foreign jurisdiction in U.S. financial institutions with their jurisdictions' tax authorities that, among other requirements, meet the IRS's safeguard, privacy and technical standards.

WHO NEEDS TO COMPLY?

1. U.S. Withholding Agents (USWA):
U.S. entity that has control, receipt, custody disposal or payment of any withholdable payment.
2. Foreign Financial Institutions (FFIs):
Non-U.S. entity that accepts deposits in the ordinary course of a banking or similar business; holds financial assets for the account of others as a substantial part of its business; acts as a holding company or treasury center in an FFI group or used in connection with certain investment vehicles; is an investment entity conducting certain investment activities for customers, is an investment vehicle managed by another FFI, or is a collective investment vehicle or similar; or is a specified insurance company (or holding company of one).
3. Non-Financial Foreign Entities (NFFEs). Includes any foreign entity that is not a FFI or is not one of the following specifically EXCEPTED entities:
 - › Any publicly traded corporation and its corporate affiliates (more than 50% of vote and value)
 - › Any entity organized under the laws of a possession of the U.S.
 - › Any foreign government, or any wholly owned agency of
 - › Any international organization or any wholly owned agency or instrumentality of such
 - › Any foreign central bank (unless acting as intermediary for clients)
 - › Any other class of persons identified by the Secretary as posing a low risk of tax evasion
4. U.S. Persons:
A U.S. citizen or U.S. resident; partnership or corporation organized in the U.S. or under the laws of the U.S. or any State thereof; a trust if (i) a court within the U.S. would have authority under applicable law to render orders or judgments concerning the administration of the trust, and (ii) one or more U.S. persons have the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the U.S.

HOW IS FATCA BEING IMPLEMENTED?

The U.S. Department of The Treasury has issued two model intergovernmental agreements (“IGAs”):

Model 1 IGA requires financial institutions to report all FATCA-related information to their own governmental agencies, which would then automatically exchange the FATCA-related information with the IRS. Some Model 1 IGAs are reciprocal, requiring the U.S. to provide certain information about residents of the Model 1 country to the Model 1 jurisdiction in exchange for the information that the jurisdiction provides to the U.S. An FFI covered by a Model 1 IGA will not need to sign an [FFI agreement](#), but it will need to register on the IRS’s FATCA Registration Portal or file [Form 8957](#).

Model 2 IGA requires financial institutions to report information directly to the IRS. Under Model 2 IGAs, FFIs will need to register with the IRS, and certain FFIs will need to sign a version of the [FFI agreement](#) modified to reflect the IGA.

WHERE CAN I FIND MORE INFORMATION?

FATCA - U.S. Internal Revenue Service (www.irs.gov/fatca)

SANTANDER PRIVATE BANKING INTERNATIONAL

At Santander Private Banking International (“SPBI”), we aim to uphold the highest standards of service, rigorously meeting our regulatory requirements while continuing to satisfy each client’s specific financial needs.

We are committed to complying with FATCA and to report any “specified US person” to the relevant tax authorities.

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