

## Tax Transparency: FATCA and CRS

The Common Reporting Standard (CRS) and the Foreign Account Tax Compliance Act (FATCA) were initiated by the Organization for Economic Cooperation and Development (OECD) and the U.S. government, respectively, to foster greater tax cooperation, increase transparency and improve communication. Governments around the world have widely embraced both initiatives, which require institutions to document clients' tax status and, if required, report financial account information to the relevant tax authorities.

### 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 US 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.

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## WHAT IS CRS?

The Common Reporting Standard (CRS) is a global reporting standard for the Automatic Exchange of Financial Account Information (AEOI) developed by the OECD. Released in July 2014, the CRS provides a set of rules for financial institutions to identify reportable persons and report to the respective authorities in their jurisdictions. The relevant information will be automatically exchanged between the participating jurisdictions on an annual basis.

The standard establishes:

- › The financial account information to be exchanged
- › The financial institutions required to report
- › The different types of accounts and taxpayers affected
- › Common due diligence procedures

## WHO IS IMPACTED BY CRS?

CRS affects individuals and entities (including trusts) holding reportable accounts in financial institutions located in participating jurisdictions<sup>1</sup>. Certain types of entities that are located in

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<sup>1</sup> Jurisdictions that have signed an agreement with another reportable jurisdictions on the automatic exchange of financial account information committing to locally implement the CRS and exchange information.

non-participating jurisdictions with reportable controlling persons<sup>2</sup> may be required to disclose certain information to financial institutions located in participating jurisdictions when doing business with those institutions.

## WHAT INFORMATION MAY BE EXCHANGED?

The information exchanged, for a specified reporting period, between a reportable jurisdiction and another jurisdiction will include:

- › Name, address, jurisdiction of residence, Tax Identification Number (TIN) and date and place of birth for each account holder;
- › In the case of an entity identified to have one or more controlling persons that are reportable, the name, address and TIN(s) of the entity and the name, address, TIN(s) and date and place of birth of each reportable person;
- › Account number;
- › Name and identifying number of the Reporting Financial Institution;
- › Account balance or value (or closure of the account if the account has been closed during the year).

For custodial accounts:

- › Total gross amount of interest, total gross amount of dividends, and total gross amount of other income generated with respect to the assets held in the account;
- › Total gross proceeds from the sale of assets paid or credited to the account where the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise agent for the account holder;

For depository accounts:

- › Total gross amount of interest paid or credited to the account;

For all other accounts:

- › Total gross amount paid or credited to the account holder with respect to the account where the reporting financial institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the account holder.

## WHEN WILL THE INFORMATION BE EXCHANGED?

The countries called “early adopters countries” (EU and other selected countries) began to implement the AEOI as of January 1<sup>st</sup>, 2016 with reporting on 2017. For other countries, including Switzerland and Bahamas, the AEOI will enter into effect in January 1<sup>st</sup>, 2017 with reporting in 2018.

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<sup>2</sup> The natural persons who exercise ultimate control over an entity. For a trust, the term would refer to the settlor(s), trustee(s), protector(s) (if any), beneficiary(ies) or class(es) of beneficiary. In the case of a legal arrangement other than a trust, the term refers to the persons in equivalent or similar positions.

## WHERE CAN I FIND MORE INFORMATION?

FATCA - U.S. Internal Revenue Service ([www.irs.gov/fatca](http://www.irs.gov/fatca))

CRS – OECD (<http://www.oecd.org/tax/automatic-exchange/>)

## 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 the Automatic Exchange of Financial Account Information in accordance with CRS and FATCA. In the context of the CRS, your financial account information may be provided to the reporting governments which, in due course, will exchange it with authorities of the participating country or countries of which you are tax resident, disclosing the information solely to the relevant authorities in accordance with applicable laws of the jurisdiction. In the context of FATCA, any “specified US person” will be reported to the relevant tax authorities.

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