

Foreign Account Tax Compliance Act (FATCA)

FATCA Background

The Foreign Account Tax Compliance Act (FATCA) was enacted by the United States of America (U.S.) on March 18, 2010 as part of the U.S. Hiring Incentives to Restore Employment (HIRE) Act. FATCA is geared towards combating tax evasion by U.S. taxpayers holding assets in non-U.S. financial accounts/ institutions. FATCA requires Foreign Financial Institutions (FFIs) to report to the U.S. Internal Revenue Service (IRS) information on assets held by U.S. tax payers, or by foreign entities in which U.S. taxpayers hold substantial (greater than 10%) ownership interest. Where an FFI chooses not to comply with FATCA, the IRS will impose 30% withholding on payments to FFIs and on behalf of its customers.

Entities Required to Report

Non-U.S. financial institutions that accept deposits, hold financial assets for others, invest in securities or trade in securities for others. The following entities are required to report under FATCA:

- custodial institutions
- depository institutions
- investment entities
- specified insurance companies

These entities include Banks, Funds, Insurance Companies, Trusts, Private Equity Companies, and Special Purpose Entities.

Model IGAs Overview

In order to facilitate the transmittal of information from FFIs to the IRS, the U.S. Treasury Department has issued several model Inter-Governmental Agreements (“IGAs”). These are as follows:

- Reciprocal Model 1A Agreement, Preexisting TIEA or DTC
- Nonreciprocal Model 1B Agreement, Preexisting TIEA or DTC
- Nonreciprocal Model 1B Agreement, No TIEA or DTC
- Model 2 Agreement, Preexisting TIEA or DTC
- Model 2 Agreement, No TIEA or DTC

Model 1 IGA

The category of agreements referred to as **the Model 1 IGA**, requires Foreign Financial Institutions (“FFIs”) to report all FATCA-related information to their own governmental agencies. The government agency would then report the FATCA-related information to the U.S. Internal Revenue Service. The Model 1 IGA takes two forms – reciprocal and nonreciprocal. The Model 1A IGA is reciprocal, requiring the United States of America to provide certain

information relating to residents of the FATCA Partner country to the government agency in that country. The FATCA Partner country will also provide FATCA-related information to the U.S.

The Model 1B IGA is nonreciprocal. This IGA is available to countries which do not currently have in effect a Double Taxation Convention (DTC) or a Tax Information Exchange Agreement (TIEA) that provides for automatic exchange of information with the U.S. Government. FATCA-related information is provided by the FATCA Partner country to the U.S., however no information is sent from the U.S. to the FATCA Partner country.

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' FATCA Registration Portal online.

Model 2 IGA

The Model 2 IGA—requires FFIs to report information directly to the IRS. Under such an agreement, FFIs will need to register with the IRS. Certain Foreign Financial Institutions will also sign a version of the FFI agreement modified to reflect the IGA. In the event of any discrepancy found by the IRS with the information provided by the FFIs, the FATCA Partner's government will be contacted by the IRS to deal with the query.

Model IGA selected by St. Kitts and Nevis

The Federation of St. Kitts and Nevis has selected to utilise the Model 1B IGA, where all information required under FATCA will be submitted by the FFI to the government's Competent Authority for FATCA purposes. The Competent Authority would then relay such information to the IRS. All communication from and to the IRS will be done via the government's Competent Authority.

The Model 1B IGA and Annexes I and II that pertain to St. Kitts and Nevis can be accessed by clicking on the links provided to the right under "FATCA: Related Downloads."

- ***Benefits of the Model 1B***
 - Allows for the Government to maintain control of the process and avoid reputational damage. The Government is able to monitor financial information which is sent out of the country;
 - Preferable that the government deals with the IRS through an IGA rather than the individual FFIs directly;
 - IGA would address certain legal concerns that may not have been an option had the FFIs been required to report information directly to the IRS;
 - Stepping stone to obtaining a Model 1A, where information will be reciprocated;
 - Greater transparency in respect to FATCA compliance by FFIs.

- ***Requirements of Model***
 - The Competent Authority to be designated;
 - FFIs are required to register with the IRS and will be assigned a Global Intermediary Identification Number (GIIN);

- FFIs are to report information to the Competent Authority, who transmits such information to the IRS;
- Information on assets of US\$50,000.00 or more held by U.S. taxpayers or by foreign entities in which U.S. taxpayers hold substantial ownership interest (>10%), are to be identified and reported to the IRS by the FFIs;
- Pre-existing Entity accounts that have account balances that exceed US\$250,000.00 are required to be identified, and reviewed to ascertain if the account holder is a U.S. person;
- The Competent Authority is required to enforce compliance if notified by the U.S. Competent Authority that an FFI has been significantly non-compliant, or else the FFI will be treated as a non-participating FFI (NPFPI) and has 18 months to resolve the issue.

Status of FATCA Implementation

IGA Agreement

The Federation of St. Kitts and Nevis reached an agreement in substance with the U.S. Treasury in June 2014 (Model 1B IGA) and is being treated as a Jurisdiction which has an IGA in effect. Accordingly, FFIs within the Federation of St. Kitts and Nevis that have registered on the IRS FATCA portal will not be subject to the withholding tax. Arrangements are currently being made for the Governments of St. Kitts and Nevis and the United States of America to sign the IGA.

Draft Legislation

The Legal Sub-Committee of the Eastern Caribbean Currency Union's (ECCU) Working Group on FATCA, pursuant to its mandate, drafted harmonised legislation comprising of:-

- the Foreign Account Tax Compliance Act (United States of America) (Implementation and Enforcement of Inter-Governmental Agreement) Bill 2015, and
- the Foreign Account Tax Compliance (United States) (Implementation and Enforcement of Inter-Governmental Agreement) (ECCU Member Country) Regulations 2015.

The draft legislation was distributed to each member territory in the ECCU. Each member is required to amend the legislation as necessary to fit that country's specific needs. The legislation is to be passed as soon as the IGA is signed. It is intended that the IGA will be scheduled to the Bill.

FATCA Software

The Federation is currently at an advanced stage of acquiring a software package that will facilitate the receipt and transmission of data for FATCA purposes. The implementation of the software will commence shortly.

Prior to going live, the software will be tested and the relevant persons will be trained. A selected number of FFIs will be given the opportunity to be involved in the testing phase and to understand the system before the official reporting commences.

Competent Authority

The Competent Authority for St. Kitts and Nevis for FATCA purposes is the Financial Secretary. Specific duties to be performed by the FATCA Competent Authority will be delegated to the Comptroller of Inland Revenue Department. The St. Kitts and Nevis Inland Revenue Department is currently in the process of operationalizing a unit that will be responsible for dealing with FATCA. Staff from the Department will be trained in the use of the FATCA software and all FATCA related matters.

Registration

Foreign Financial Institutions are required to register on the IRS website before reporting commences. The U.S. IRS FATCA registration page can be found [here](#). FFIs that have registered with the U.S. IRS will be issued a GIIN and will appear on a monthly published IRS FFI list.

A list of St. Kitts and Nevis entities that have already registered can be found by following this [link](#).

(Instructions: In the list of countries search and click on “Saint Kitts and Nevis”. Use the arrow pointing to the right to add “Saint Kitts and Nevis” to the field entitled “Selected”. Click “Search” below.)

Role of the Responsible Officer

- Appointed to ensure the participating foreign financial institution (PFFI) meets the requirements of the agreement;
- Will be identified as the FATCA Responsible Officer in the FATCA registration system;
- May select points of contact to help complete all aspects of registration except signing;
- Officer in charge shall establish sufficient policies and procedures for the PFFI to meet the requirements of the agreement;
- Reviews the adequacy of the program;
- Reports material errors;
- Prepares certification within six months of every certification period.

Resource Links:

[St. Kitts and Nevis Inland Revenue Department](#)
[U.S. IRS FATCA](#)

Frequently Asked Questions

IRS Time Frames

Activity	Due Date
Opening of IRS Portal for registration of FFIs	19 August 2013
Date of final registration on IRS Portal to ensure inclusion on 2014 IRS FFI list	25 April 2014
Circulation of list of compliant FFIs	2 June 2014
Commencement of collection of information by FFIs	1 July 2014
Commencement of reporting for FFIs in non-IGA jurisdictions and FFIs in Model 2 IGA jurisdictions	31 March 2015
Commencement of reporting for FFIs in Model 1 IGA jurisdictions	30 September 2015

What is FATCA?

The Foreign Account Tax Compliance Act was enacted by the United States of America (U.S.) on March 18, 2010 as part of the U.S. Hiring Incentives to Restore Employment (HIRE) Act. Its purpose is to reduce tax evasion by U.S. taxpayers holding assets in non-U.S. financial accounts. It requires FFIs to report to the U.S. Internal Revenue Service (IRS) information on assets held by US taxpayers, or by foreign entities in which U.S. taxpayers hold substantial (greater than 10%) ownership interest.

Which entities are required to register?

Non-U.S. financial institutions that accept deposits, hold financial assets for others, invest in securities or trades in securities such as:

- custodial institutions
- depository institutions
- investment entities
- specified insurance companies

Such entities include banks, funds, insurance companies, trusts, private equity companies, and special purpose entities.

What is a Foreign Financial Institution (FFI)?

Foreign Financial Institutions (FFIs) are institutions that:

- Accept deposits in the ordinary course of a banking or similar business;
- Hold financial assets for the account of others as a substantial portion of its business;
- Are engaged (or holding itself out as being engaged) primarily in the business of investing;
- Are involved in reinvesting, or trading in securities, partnership interests, commodities or any interest in such securities, partnership interests or commodities.

Which entities are exempt?

- Exempt Beneficial Owners other than Funds
 - Government entities
 - International Organizations
 - Central banks (No commercial banking activities)
- Retirement/ Pension Funds
- Small or Limited Scope Financial Institutions
 - Financial Institution with a Local Client Base (institution must not solicit customers or Account Holders outside FATCA Partner country)
 - Local Bank (bank or credit union operating without profit and that does not have assets of more than US\$175 million)
 - Financial Institution with only Low-Value Accounts (no financial account has a value in excess of US\$50,000.00 and does not have assets of more than US\$50 million)
 - Qualified Credit Card Issuer
- Investment Entities that qualify as Deemed-Compliant FFIs
 - Trustee Documented Trust
 - Sponsored Investment Entity and Controlled Foreign Corporation
 - Sponsored Closely Held Investment Vehicle
 - Investment Advisors and Investment Managers
 - Collective Investment Vehicle

For further details, please see the Model 1 IGA [Annex II](#).

Who is considered to be a US Person?

- U.S. citizen (including dual citizen)
- U.S. resident (e.g. Green card holder)
- Meets requirements as a “tax resident”
- U.S. corporation, U.S. partnership, U.S. estate or U.S. trust
- U.S. indicia
 - U.S. place of birth
 - U.S. resident or mailing address (including a U.S. post office box)
 - Standing instructions to transfer funds to a U.S. account
 - Power of attorney or signatory authority with a U.S. address
 - U.S. in-care-of address or hold mail address that is the sole address the FFI has identified for the account holder
 - U.S. telephone number (and no non-U.S. telephone number on file)

What is U.S. source payment?

U.S. source income is income that arises from sources within the U.S.

What types of payments are subject to FATCA?

FATCA provisions apply to withholdable payments. These are defined as:

- Any payment of interest (including any portfolio interest and original issue discount), dividends, rents, royalties, salaries, wages, annuities, licensing fees and other fixed, determinable or periodical (FDAP) income, gains, and profits, if such payment is from sources within the United States.
- Any gross proceeds from the sale or disposition of U.S. property of a type that can produce interest or dividends
 - Interest paid by foreign branches of U.S. banks

Certain “passthru” payments will also be subject to FATCA – a passthru payment generally includes any portion of a payment that is not withholdable multiplied by the entity’s so called “passthru payment percentage.”

What are the withholding requirements under FATCA and how will they affect my operations?

FATCA requires withholding of 30% on the proceeds of the sale of U.S. securities by foreign persons - regardless of the amount of gain, or even whether there is a gain or loss on the sale – unless the appropriate disclosures are made. Custodians and brokers will need the ability to distinguish between U.S. and non-U.S. securities and withhold tax when necessary. Transfer agents who also act as custodians will need to prepare to withhold on proceeds as well. 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.

Who are “recalcitrant account holders”?

This refers to account holders who fail to comply with any request by an FFI to provide documentation and/or information required to determine the status of their accounts (i.e. U.S. or non-U.S. accounts). As a consequence of this classification, FFIs are required to report the customers as recalcitrant. Customers who allow their accounts to become recalcitrant may also see their financial institutions giving serious consideration as to the future of the business relationship.

Who is the Withholding Agent?

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 information would FFIs be requesting?

- Additional Due Diligence (customers with U.S. indicia) including:
 - Tax Identification Number (TIN)
 - Declaration of Place of Birth, Nationality, Permanent Residency
- Tax Forms
 - W-8 - U.S businesses, citizens and Green Card Holders
 - W-9 - non U.S. citizens and non U.S businesses

- Authorization for the FFI to report customers' information to U.S. Tax Authorities

Foreign Financial Institutions (FFIs) must report account numbers, balances, names, addresses, and U.S. identification numbers. For U.S.-owned foreign entities, they must report the name, address, and U.S. [TIN](#) of each substantial U.S. owner.

An “FFI Agreement” requires the following for the FFI:

- A determination of which accounts are United States accounts;
- Compliance with verification and due diligence procedures and annual reporting on U.S. accounts to the U.S. Treasury;
- Compliance with additional IRS reporting requests;
- Calculating passthru payments;
- Withholding tax of 30% on payments of certain U.S. source income (e.g. dividends, interest, insurance premium).

What can be done now by FFIs to prepare?

- Identify who within your organization is going to take responsibility for FATCA
- Put together a steering committee that includes all of the impacted businesses and functions
- Undertake an assessment to help identify the relative impact of the legislation on the organization and budget needed to address steps necessary to comply.

Are remittances subject to FATCA?

No. The mere transfer of money from someone in the U.S. to someone in a foreign country will not trigger FATCA withholding. However, money transferred into, and income earned in, a U.S. account may be subject to the FATCA reporting requirements.

For a U.S. account holder, is the FFI supposed to report to the IRS only its U.S. income and proceeds or also income and proceeds from non-U.S. assets?

The latter. FFIs are required to report world-wide income and proceeds received by specified U.S. persons.

What if there are non-U.S. clients who will not give the FFI the documentation needed for FATCA. Is there a process to exclude these individuals from the documentation requirement?

No. Generally, any account holder whose account is at least US\$50,000 that does not comply with reasonable requests for information necessary to determine whether its account is a United States account will be a “recalcitrant account holder” and will be subject to 30% withholding on withholdable payments and gross proceeds from the sale or disposition of U.S. assets which can produce interest or dividends.

Is there any reporting on non-U.S. accounts? Will an FFI have to report withholding on recalcitrant account holders?

There is no FATCA requirement to report on non-U.S. accounts. However, a participating FFI still needs to report the number and aggregate value of financial accounts held by recalcitrant account holders (which may include non-U.S. account holders) and the number and aggregate value of financial accounts held by related or unrelated nonparticipating FFIs.

If a joint account is held by a U.S. person and a non-U.S. person, is it considered 50% U.S. or 100% U.S.? Does it make a difference if they are not U.S. residents?

A joint account which has one U.S. owner is treated as a U.S. account and the entire account is subject to reporting as a U.S. person.

How does an FFI report if it has multiple owners for a private individual account e.g. a husband and wife joint account?

When an account is jointly held, each of the joint holders is considered an account holder for the purposes of the Agreement. The balance or value in the account is to be attributed in full to each holder of the account. This value is to be reported on the Form 8938. This will apply for both aggregation and reporting purposes.

For example; When a joint account has a balance or value of US\$100,000 and both account holders are specified U.S. persons, each is attributed the US\$100,000 and reports are made for both. For reporting purposes, one slip with the full account balance, should be prepared for each joint holder that is a U.S. person.