

US Foreign Account Tax Compliance Act (FATCA): What You Need to Know

FATCA is a piece of US legislation designed to prevent US taxpayers with financial interests/assets in non-US financial institutions ("Foreign Financial Institutions" / "FFIs") from avoiding US tax payment obligations. A financial interest or asset in this context would include a bank account, fund, insurance, trust, partnership, subsidiary, property, investment, pension or other financial interest.

This legislation affects all US Tax resident businesses and individuals who directly or indirectly (e.g. through a controlled foreign company) have financial interests/assets outside of the US. You do not have to be carrying out activities associated with a financial institution in order to fall within the FATCA reporting regime - all businesses and individuals with any overseas financial interests/assets are required to self-certify as to the nature of their overseas activities. This means that **all US Tax Resident businesses and individuals** with financial interests/assets outside the US are required to file some form of FATCA disclosure to the:

- IRS
- relevant local tax authority (e.g. HM Revenue & Customs in the UK); *or*
- financial institution with which the overseas financial interest/asset is held.

US Tax residents are required to file such documents annually to capture any change in circumstances.

What is a Foreign Financial Institution (FFI)?

FFIs will include non-US banks, funds, insurers, trusts, partnerships and other institutions and entities holding investments, money or funds for the benefit of others.

What do FFIs have to do?

FFIs effectively act as information gatherers for local tax authorities and therefore by extension, the IRS.

Depending on the services provided, an FFI will have to document and report certain information regarding customers, including their US tax residency position.

FFIs must ensure that their customers self-certify as to their FATCA status.

What do non-FFI businesses & individuals have to do?

Businesses and individuals with overseas financial interests/assets will be asked to self-certify their FATCA status.

This includes international subsidiaries of US headquartered companies that have overseas bank accounts.

What do businesses have to do?

In most cases, the self-certification will take the form of IRS forms W8-BEN-E or W-9, which many US taxpayers will already be familiar with. In some cases, FFIs will issue their own self-certification forms, although the information captured will broadly reflect the IRS forms.

What do individuals have to do?

Individual US taxpayers must self-certify with any FFIs and file Form 8938 with the IRS, declaring all overseas financial interests/assets with an aggregate value above \$50k, as part of their annual tax return filing.

What are the penalties for non-compliance?

For individuals, failure to file Form 8938 or fully disclose their overseas financial interests/assets can result in a penalty of \$10k, an additional penalty of \$50k for continued failure to file after IRS notification and a 40% penalty on an understatement of tax attributable to undisclosed foreign financial interests/assets.

For businesses, failure to self-certify could lead to US banks imposing a 30% withholding on any payments made into these FFIs. Additional penalties may be incurred if these financial interests/assets have not been correctly reported through their US corporate tax return.

What next?

If you are a US taxpayer with overseas financial interests/assets and you have not received any correspondence regarding FATCA (from the IRS, a local tax authority or the FFI with which you hold assets), or if you have received correspondence but are unsure how to complete it, then contact Carla Graves for assistance.

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Updated January 2018. The content of this document is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.