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Foreign Account Tax Compliant Act

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

What is FATCA?

Foreign Account Tax Compliance Act (FATCA) became law in March 2010. Its purpose is to target tax non-compliant by U.S taxpayers with foreign accounts. This is achieved through reporting, by the taxpayers themselves about certain foreign financial accounts and offshore assets; by foreign financial institutions, such as banks, about accounts held by U.S taxpayers or foreign entities in which U.S taxpayers hold a substantial ownership interest.

What is its objective?

The objective of FATCA is the reporting of foreign financial assets; withholding is the cost of not reporting. Under FATCA, to avoid being withheld upon, foreign financial institutions (FFIs) may register with the IRS and agree to report to the IRS certain information about their U.S. accounts, including accounts of certain foreign entities with substantial U.S. owners

The impact of FATCA on individuals

U.S individuals, who also include permanent residents and a very limited number of non-resident individuals who own foreign financial account or offshore assets and are required to file income taxes in the U.S, are to use form 8938, if the threshold tests are met.

What is the threshold?

- **Unmarried taxpayers living in the US:** The total value of your specified foreign financial assets is more than $50,000 on the last day of the tax year or more than $75,000 at any time during the tax year
- **Married taxpayers filing a joint income tax return and living in the US:** The total value of your specified foreign financial assets is more than $100,000 on the last day of the tax year or more than $150,000 at any time during the tax year
- **Married taxpayers filing separate income tax returns and living in the US:** The total value of your specified foreign financial assets is more than $50,000 on the last day of the tax year or more than $75,000 at any time during the tax year.
- **Taxpayers living abroad. You are a taxpayer living abroad if:**

    - You are a U.S. citizen whose tax home is in a foreign country and you are either a bona fide resident of a foreign country or countries for an uninterrupted period that includes the entire tax year, or
    - You are a US citizen or resident, who during a period of 12 consecutive months ending in the tax year is physically present in a foreign country or countries at least 330 days.

If you are a taxpayer living abroad you must file if:

- You are filing a return other than a joint return **and** the total value of your specified foreign assets is more than $200,000 on the last day of the tax year or more than $300,000 at any time during the year; or

- You are filing a joint return **and** the value of your specified foreign asset is more than $400,000 on the last day of the tax year or more than $600,000 at any time during the year.

If you are not required to file income taxes in the U.S then you do not need to file form 8938.

The impact of FATCA on Foreign Financial Institutions (FFIs)

FFIs that enter into an agreement with the IRS to report on their account holders may be required to withhold 30% on certain payments to foreign payees if such payees do not comply with FATCA.

Which FFIs are exempt?

- Most non-profit organizations
- Certain small, local financial institutions
- Certain retirement entities
- Most Government entities

Penalties for non-compliant institutions

Unless otherwise exempt, FFIs that do not both register and agree to report face a 30% withholding tax on certain U.S.-source payments made to them.

Note

All figures within this document are denominated in United States currency.