

# Foreign Account Tax Compliance Act (FATCA)

## 1. What is FATCA?

The U.S. Foreign Account Tax Compliance Act (FATCA) is an important development to combat tax evasion by US persons holding investments in offshore (non U.S.) accounts.

Under FATCA, U.S. taxpayers with specified foreign financial assets that exceed certain thresholds must report those assets to the IRS. This reporting will be made on Form 8938, which taxpayers attach to their federal income tax return (see obligations for U.S. Tax Payers).

In addition, FATCA will require non-U.S. foreign financial institutions (FFI) to report to the IRS certain information about financial accounts held by U.S. taxpayers, or held by foreign entities in which U.S. taxpayers hold a substantial ownership interest (see obligations for FFIs).

## 2. What is the purpose of FATCA?

FATCA is written to specifically address the avoidance of tax by U.S. persons through foreign financial institutions. The purpose of FATCA is, therefore, to ensure that the U.S. Internal Revenue Service (IRS) can identify and collect the appropriate tax from U.S. persons holding financial assets outside the U.S. FATCA legislation potentially applies to US individuals or US companies or entities with U.S. clients or assets that could generate U.S. source income.

## 3. Intergovernmental Agreement (IGA)

In many cases, foreign law would prevent an FFI from reporting directly to the IRS the information required by the FATCA statutory provisions and these regulations, thus potentially exposing the FFI to withholding. Such an outcome would be inconsistent with FATCA's objective to address offshore tax evasion through increased information reporting. To overcome these legal impediments, the Treasury Department has collaborated with foreign governments (including Czech Republic) to develop intergovernmental agreements that facilitate the effective and efficient implementation of FATCA in a manner that removes domestic legal impediments to compliance, fulfills FATCA's policy objectives, and further reduces burdens on FFIs located in partner jurisdictions.

It is expected that the IGA between Czech Republic and the United States of America will be signed during the spring of 2014 and the obligations will start retrospectively as of 1.7.2014.

## 4. What are the obligations for US Taxpayers?

### Report information on Form 8938

FATCA requires certain U.S. individual taxpayers to report information about certain foreign financial accounts and offshore assets on a new form (Form 8938), if the total asset value exceeds the appropriate reporting threshold. The Form 8938 must be attached to the taxpayer's annual income tax return (usually Form 1040).

You must file Form 8938 if:

- A. You are a specified individual;
- B. You have an interest in specified foreign financial assets required to be reported; AND
- C. The aggregate value of your specified foreign financial assets is more than the reporting threshold that applies to you.

**A. You are a specified individual.**

A specified individual is:

- ◆ A U.S. citizen;
- ◆ A resident alien of the United States for any part of the tax year;
- ◆ A nonresident alien who makes an election to be treated as resident alien for purposes of filing a joint income tax return;
- ◆ A nonresident alien who is a bona fide resident of American Samoa or Puerto Rico

**B. You have an interest in specified foreign financial assets required to be reported.**

A specified foreign financial asset is:

- ◆ Any financial account maintained by a foreign financial institution, except as indicated above
- ◆ Other foreign financial assets held for investment that are not in an account maintained by a US or foreign financial institution, namely:
  - ◆ Stock or securities issued by someone other than a U.S. person
  - ◆ Any interest in a foreign entity, and
  - ◆ Any financial instrument or contract that has as an issuer or counterparty that is other than a U.S. person.

Please refer to the Form 8938 instructions for more information on the definition of a specified foreign financial assets and when you have an interest in such an asset.

**C. The aggregate value of your specified foreign financial assets is more than the reporting thresholds that applies to you:**

- ◆ **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 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.
- ◆ **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.

The FATCA disclosure must include the name and address of the financial institution and account number of the taxpayer's account or, in the case of a stock or security, the name and address of the issuer and the class or issue of the stock or security. Similar identification must be disclosed for other types of assets. The disclosure must include the maximum value of the asset during the tax year.

Failure to report foreign financial assets on Form 8938 may result in a penalty of \$10,000 (and a penalty up to \$50,000 for continued failure after IRS notification). Further, underpayments of tax attributable to non-disclosed foreign financial assets will be subject to an additional substantial understatement penalty of 40 percent.

Form 8938 reporting is in addition to FBAR reporting (Report of Foreign Bank and Financial Accounts).

### **Provide a valid Form W-9 to Patria**

Under FATCA, a financial institution must document any client holding a financial account in accordance with certain specific due diligence requirements. Specifically, U.S. Taxpayers (for example U.S. citizens or a U.S. corporation) holding financial accounts must be documented via a valid Form W-9

The U.S. Taxpayer will have to sign a Form W-9 to provide the correct tax identification number (TIN) and name. The (participating) FFI must obtain the correct taxpayer identification number (TIN) to report, for example, the income paid (see obligations for FFIs).

## 5. What are the obligations for Patria?

The Czech government will agree to report to the IRS specified information about the U.S. accounts maintained by all relevant Financial Institutions located in the Czech Republic.

Patria will be required to:

### **Undertake certain identification and due diligence procedures with respect to its accountholders**

For example, Patria will be required to identify and report holders of financial accounts that are specified U.S. persons or U.S. Owned Foreign Entities:

- ♦ A Specified U.S. Person includes a U.S. citizen and U.S. resident, a privately owned U.S. domestic cooperation, a U.S. domestic partnership, a U.S. domestic trust.
- ♦ A U.S. Owned Foreign Entity is a foreign entity which has one or more Controlling Persons.

The Controlling Persons means, the natural persons who exercise control over an entity. Patria must identify the "Controlling Persons" under the AML/KYC principles, which in many jurisdictions is a 25% ownership threshold.<sup>1</sup>

Comparable rules are provided for ownership in partnerships and trusts.

Patria must also request that each client identified as a U.S. taxpayer provide a Form W-9 (see above).

### **Report annually on its accountholders who are U.S. persons or foreign entities with substantial US ownership to the Czech government**

Patria must report information with respect to each account holder (Specified U.S. Persons or U.S. Owned Foreign Entities).

The information to be reported:

- ♦ The name, address and taxpayer Identification number (TIN);
- ♦ The account number;
- ♦ The account balance or value; and
- ♦ In certain cases, the gross amounts of income and gross proceeds or payments made to and from US accounts.

<sup>1</sup> According to the Final Regulations is a US Owned Foreign Entity a foreign entity which has one or more Substantial US Owners. Substantial US Owner means, with respect to a corporation, any specified US person that owns, directly or indirectly, more than 10% of the stock of such corporation by vote or by value.

Reporting will be phased in gradually between 2015 and 2017:

<b>2015</b>	<ul style="list-style-type: none"><li>• <b>March 31, 2015:</b> FFIs are required to report name, address, TIN, account number and account balance on U.S. accounts (U.S. Account Reporting) with respect to 2014.</li></ul>
<b>2016</b>	<ul style="list-style-type: none"><li>• <b>March 31, 2016:</b> FFIs are required to add income payments<sup>2</sup> made in the prior year to its U.S. Account Reporting;</li><li>• Reporting is required regardless of whether the FFI made a payment of a FATCA reportable amount to each such account holder.</li></ul>
<b>2017</b>	<ul style="list-style-type: none"><li>• <b>March 31, 2017:</b> FFI are required to add gross proceed payments made in the prior year to its U.S. Account Reporting.</li></ul>

The Czech Government, in turn, reports such information to the IRS on an automatic basis.

<sup>2</sup> This could include the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income.