

# FATCA – FREQUENTLY ASKED QUESTIONS

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## **General**

### **1. What is FATCA?**

The provisions commonly known as the Foreign Account Tax Compliance Act (FATCA) became law in the United States of America in March 2010. FATCA targets tax non-compliance by U.S. taxpayers with foreign accounts. FATCA focuses on reporting:

- By U.S. taxpayers about certain foreign financial accounts and offshore assets.
- By foreign financial institutions about financial accounts held by U.S. taxpayers or foreign entities in which US taxpayers hold a substantial ownership interest.

More information regarding FATCA can be found on the relevant [IRS website](#).

### **2. What is the purpose of the Cyprus-U.S. Intergovernmental Agreement?**

The Republic of Cyprus and the United States of America signed on 2 December 2014 an Inter-Governmental Agreement in regards to the Foreign Account Tax Compliance Act (FATCA).

The relevant Agreement is: “The Agreement Between The Government Of The United States Of America And The Government Of The Republic Of Cyprus To Improve International Tax Compliance And To Implement FATCA”. The Agreement is on the [website of the Tax Department](#).

Under the Inter- Governmental Agreement (the ‘Agreement’) all participating Cyprus financial institutions are required to report all FATCA related information to the Tax Department in Cyprus.

FATCA obligations require Cyprus financial institutions to identify financial accounts held by U.S. residents or U.S. citizens, or by entities that are organized in the US or controlled by one or more U.S. persons and to report that information to the IRS of the United States. Under the Agreement, this reporting will take place through the Tax Department in Cyprus (formerly “Inland Revenue Department”). The U.S. will provide Cyprus with enhanced and increased information on certain accounts of Cyprus residents held at U.S. financial institutions.

### **3. When will FATCA come into effect?**

All participating Cyprus financial institutions will have to report information on their existing and new U.S. account holders to the Tax Department of Cyprus (“Tax Department”) in 2015. Thereafter, accounts will be reported annually for the previous year.

### **4. Why does the Tax Department exchange information with other countries?**

Exchanging information with other countries gives the Tax Department and other tax authorities the right to access all relevant information held by other countries for tax administration purposes. The information helps tax administrators prevent tax evasion and ensure that everyone pays fairly their share of taxes.

## **What FATCA means for individuals that maintain financial accounts in Cyprus**

### **1. What information will my financial institution use to identify whether I could be subject to reporting?**

You may be contacted by your financial institution if one or more of the following indicia apply to you:

- You have U.S citizenship or lawful permanent resident (green card) status.
- U.S birthplace.
- You have a U.S residence address or a U.S. correspondence address (including a U.S P.O box).
- You have a telephone number in the U.S.
- You repeat payment instructions to pay amounts to a U.S address or an account maintained in the U.S.

- You have granted a power of attorney to a person with a U.S. address.
- You have an In-Care-Of or Hold-Mail address in the United States that is the sole address submitted to your institution.

## **2. Will I be required to provide any additional information to my Cyprus financial institution in order to comply with FATCA provisions?**

You might be asked about your tax residency status in connection with your existing accounts (if there is information associated with your account that suggests you may be a U.S. person) or when you open a new account. You might also be asked by your financial institution to provide certain evidence to support a claim that you are not a U.S. person if information associated with your account otherwise suggests that you may be a U.S. person. Financial institutions will need this information to satisfy their obligations under Cyprus law and to determine whether they have certain tax reporting obligations to the Tax Department.

## **3. What processes may the financial institutions follow in order to identify U.S account holders?**

The participating financial institutions will need to follow one or more processes for identification of account holders such as the indicia search and the self- certification process. The participating financial institutions may obtain a self- certification from an account holder where applicable. The Tax Department will issue a self-certification form that financial institutions may use. Therefore you might be asked by your participating financial institution to fill out a self-certification form for this purpose or the participating financial institution might have proceeded to a new comprehensive form of its account opening documents or to the preparation of an additional document in respect of FATCA provisions.

## **4. What types of accounts will be reported?**

Participating Cyprus financial institutions will have to report accounts which include most bank accounts, mutual funds, brokerage accounts, custodial accounts, annuity contracts (including segregated fund contracts), and some life insurance policies with a cash value.

An account shall not be reportable if it falls within an exempt category in the Agreement.

## **5. How does my citizenship affect my tax residency?**

Cyprus and virtually all other countries do not tax on the basis of citizenship. The citizenship you hold is generally not relevant in determining your residency for tax purposes.

The U.S. tax system is different from most countries in that it treats all U.S. citizens as U.S. residents for tax purposes no matter where in the world they reside. Therefore, if you are a U.S. citizen, you are a resident of the U.S. for tax purposes even if you hold another citizenship or reside in Cyprus or any other country.

## **6. Am I obliged to provide the information?**

Cyprus financial institutions are committed to become fully FATCA compliant and hence your financial institution is entitled to ask you to provide the required documentation.

In cases where customers fail to provide the appropriate documentation your participating financial institution must treat your account as a U.S. reportable account and report the account to the Tax Department.

## **7. What type of information will be reported to the U.S.?**

Participating Cyprus financial institutions will generally have to report the following type of information:

- Identifying information about the account holder (e.g. name, address, tax identification number).

- Account number.
- Account balance or value at end of the year.
- Certain amounts paid or credited to the account.

#### **8. Do I have to provide my U.S. Taxpayer Identification Number?**

Yes. Cyprus financial institutions will be obliged to ask for your U.S. TIN in connection with certain accounts. If you are a U.S. resident or U.S. citizen, you have to provide your U.S. TIN to your financial institution when asked.

#### **9. I am not a U.S. person, but I have a joint account with a U.S. person. How does FATCA affect me?**

A joint account which has one U.S. owner shall be treated as a U.S. account by a participating Cyprus financial institution. The participating financial institution will then report the full value of the account to the Tax Department.

Identifying information (e.g. name, address, Taxpayer Identification Number) associated with U.S. owner will be reported. No information will be reported for the non U.S joint account holder.

#### **10. I am a Cyprus resident and I hold accounts in the U.S. How does the Agreement affect me?**

If your account is identified as a reportable account by your U.S. financial institution, then the account will be reported by the U.S. financial institution to the IRS, which will transmit the information to the Cyprus Tax Department.

#### **11. If I maintain several financial accounts in a financial institution, how will they be reported?**

If you are identified as a U.S. person, your Cyprus financial institution will report each of your accounts individually to the Tax Department.

#### **12. Could financial institutions be exempted from FATCA provisions?**

Under the Agreement, a number of Cyprus financial institutions could be partially or fully exempted from the requirements to undertake due diligence and to report on U.S. account holders. For instance, smaller Cyprus deposit-taking institutions, such as credit unions, with assets under \$175 million, may be exempted.

A partial exemption is available for a Cyprus financial institution if it is not part of a multinational group (i.e., it is not related to any entities organized outside of Cyprus) and at least 98 percent of its financial accounts are held by residents of Cyprus or other EU member states. These financial institutions will not be obliged to apply due diligence or report on accounts held by individuals who are Cyprus residents.

If you would like to know the status and obligations of a particular financial institution under the Agreement, please contact the financial institution directly.

#### **13. I am a U.S. citizen living in Cyprus and I was not aware that the U.S. wants me to file tax returns. Does the signing of the Agreement mean that I now have to pay U.S. tax?**

The Agreement is strictly an information-sharing agreement and does not involve any new or higher taxes.

FATCA does not replace the existing US tax regimes, as imposed to U.S. citizens. Unlike Cyprus, the U.S. taxes its citizens who reside in other countries on their worldwide income. The U.S. citizenship-based tax regime has been in place for many years and is not altered by the Agreement. For more information, please refer to your tax consultants and the [U.S. IRS Instructions for New Streamlined Filing Compliance Procedures for Non-Resident, Non-Filer U.S. Taxpayers](#).

**14. Does the Agreement require Cyprus financial institutions to report to the Tax Department the accounts of individuals who relinquished their U.S. citizenship when they became Cyprus citizens?**

The Agreement does not require Cyprus financial institutions to report on any individuals who have relinquished their U.S. citizenship and are no longer considered as citizens of the U.S.

Individuals who have relinquished their U.S. citizenship may be asked by their financial institution for documentation to support their claim.

**FATCA and Data Protection**

**1. How is the disclosure of my details covered by the Data Protection Law?**

Regarding the account details of accounts held by individuals that come within scope of the Cyprus-US Agreement to Improve International Tax Compliance, the disclosure of the information to the United States (the “US”) is subject to the provisions of the ‘ Processing of Personal Data [Protection of the Individual] Law (138 (I)/2001)’ as amended (the “Data Protection Law”).

The Tax Department and the financial institutions are data controllers of the information and must therefore comply with the Data Protection Law. Further information on the operation of the Data Protection Law and your rights can be found on the website of the Office of the Commissioner of Data Protection at [www.dataprotection.gov.cy](http://www.dataprotection.gov.cy).

**2. How will I know if my details have been/will be sent to the US?**

Under the Cyprus - US Agreement, the financial institutions have an obligation to report details regarding the account holders to the Tax Department. The Tax Department will then, under the terms of the Cyprus-US Agreement, automatically exchange these details with the US. The financial institutions must inform those customers whose accounts they have reported to the Tax Department.

The first information will be exchanged in 2015 and will relate to accounts held in 2014.

If you have any concerns on whether your account details have been or will be forwarded to the US authorities, you should contact your financial institution.

**3. As I have not consented to the disclosure, is this a breach of the Data Protection Law?**

No. As the transfer is being made to comply with a legal obligation (the Law ratifying the Cyprus –US Agreement to Improve International Tax Compliance N.19(VII)/2014) according to the Data Protection Law, the consent of the account holders is not required.

However you should be informed by your financial institution that your account details have been or may be transferred to the US authorities.

**4. Is this disclosure a breach of banking secrecy?**

No. Specific provisions which allow financial institutions to report details of accounts for the purposes of FATCA without this being a breach of banking secrecy , shall be contained in the relevant legal framework by July 2015.

**5. What can the US authorities do with my information?**

The Tax Department will exchange the details of the accounts with the US authorities as provided under its existing Double Tax Convention (the ‘Convention’). The Convention can be found at the [Tax](#)

Department website. The Convention is subject to the International rules on tax treaties, which limit what the US authorities can do with the information.

The Convention is an agreement between the Republic of Cyprus and the US that all information exchanged will be subject to the confidentiality and other protections provided for in Article 27 of the aforementioned convention. The Convention contains specific provisions that limit the use of the exchanged information.

## **6. How do I find out what details you've sent to the US?**

Under the Data Protection Law, you have the right to request a copy of the information, by making a 'subject access request' (the "SAR") to the financial institution (that disclosed it to the Tax Department).

## **7. The information that has been sent is inaccurate. How do I get it corrected?**

You have the right under the Data Protection Law to request correction of the inaccurate information. You should make an application for correction to the organization (either to the Tax Department or to the financial institution) which you believe to be the source of the error, or to both if you are unsure.

You can check whether your details are accurate, by making a SAR to the relevant organization.

## **What the Agreement means for financial institutions in Cyprus**

### **1. Under the Agreement, how will financial institutions identify accounts held by U.S. residents and U.S. citizens? What will the financial institutions do with this information?**

Participating Cyprus financial institutions will be required to identify account holders that are U.S. persons, including U.S. residents and U.S. citizens, by following the due diligence procedures of the Agreement. The due diligence procedures vary depending on whether the account holder is an individual or an entity and whether the account was opened on or before, or after, June 30, 2014. In certain circumstances, the due diligence procedures are more intensive for accounts with a value of more than US\$1,000,000.

Participating Cyprus financial institutions will report information on their U.S. account holders to the Cyprus Tax Department annually starting in 2015. Cyprus financial institutions will also be required to report on account holders that fail to respond to their financial institution when contacted with a request for documentation to clarify whether they are a U.S. resident or U.S. citizen, in a manner similar to the reporting on U.S. account holders.

### **2. What types of financial institutions are deemed compliant?**

The Agreement generally applies to all types of financial institutions, including deposit-taking institutions, custodial institutions, insurance companies, and investment entities. Guidance will also be provided in the near future for participating Cyprus financial institutions.

For certain types of financial institutions, exemptions from some or all of the due diligence and reporting obligations under the Agreement will be available. For example, smaller deposit-taking institutions can be exempt from reporting.

A partial exemption is available for a participating Cyprus financial institution if it is not part of a multinational group (i.e., it is not related to any entities organized outside of Cyprus), at least 98 percent of its financial accounts are held by Cyprus or European Union residents and it meets a number of other conditions. These financial institutions will not be obliged to apply due diligence or report on accounts held by individuals who are Cyprus residents.

**3. How will Cyprus and the U.S. enforce the reporting of information by their respective financial institutions?**

The Tax Department, as the administrator of Cyprus's tax laws, will be responsible for monitoring and enforcing the due diligence and reporting requirements in Cyprus for participating Cyprus financial institutions under the Agreement.

In the U.S., the IRS will be responsible for enforcing the reporting of the information required under the Agreement by U.S. financial institutions. The U.S. will rely on its existing laws to require U.S. financial institutions to report to the IRS the information that U.S. financial institutions are required to obtain under the Agreement on accounts held by Cyprus residents.