

1. What is FATCA?

FATCA stands for the Foreign Account Tax Compliance Act. It is a new piece of legislation to help counter tax evasion in the United States.

Introduced by the United States Department of Treasury (Treasury) and the US Internal Revenue Service (IRS), the purpose of FATCA is to encourage better tax compliance by preventing U.S persons from using banks and other financial organisations to avoid U.S taxation on their income and assets.

A significant number of countries worldwide have to signed inter-governmental agreements (IGAs) relating to FATCA compliance with the United States government.

2. What is CRS?

Alike FATCA, Government Of India has further committed to implement a Common Reporting Standard (CRS) as part of reciprocal exchange of information on financial accounts on an automatic basis with other countries/ non-sovereign territories. India would be obligated to get its financial institutions to share financial account information of accountholders who are tax residents in any of these countries. Likewise, India would also get similar information through financial institutions of such treaty countries.

3. What is the impact of FATCA & CRS?

On an annual basis, banks and other financial organisations will be required to report information on financial accounts held directly or indirectly by US persons.

We will therefore be reviewing our existing customer base to confirm the FATCA statuses of our customers and where necessary we may have to contact our customers for further information and documentation.

The purpose of CRS is to aid automatic exchange of information between bilateral treaty partner countries about accountholders/investors maintaining accounts in foreign jurisdictions.

4. Who will be covered under the purview of FATCA & CRS?

FATCA legislation will affect both individual and entity customers who are treated as a 'US person' for US tax purposes. The FATCA legislation will also affect certain types of entities with beneficial owners/ controlling persons from US.

5. Is FATCA/CRS applicable to both personal accounts and business accounts?

FATCA legislation will affect both personal and business customers who are treated as 'U.S Person' for U.S tax purposes. The FATCA legislation will also affect certain types of businesses with U.S owners and account holders with U.S persons as signatory authority or power of attorney.

6. Who is a U.S. person?

The term 'U.S person' includes the following (but is not limited to):

- a citizen of the U.S, including an individual born in U.S but resident in another country (who has not given up their U.S citizenship)
- a person residing in the U.S, including U.S green card holders
- certain persons who spend a significant number of days in the U.S each year
- U.S corporations, U.S partnerships, U.S estates and U.S trusts

7. What is the basis for identification of U.S. status or U.S. person?

Seven indicators are:

- U.S. citizenship or lawful permanent resident (green card) status;
- U.S. birthplace;
- U.S. residence address or a U.S. correspondence address (including a U.S. P.O. box);
- U.S. telephone number (regardless of whether such number is the only telephone number associated with the account holder)
- Standing instructions to pay any amounts from the account to an account maintained in the U.S.;
- An “in care of” address or a “hold mail” address that is the sole address with respect to the client; or
- A power of attorney or signatory authority granted to a person with a U.S. Address

8. 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. account.

9. What are the Banks required to do?

There are separate due diligence procedure for Pre-existing and New Accounts:

a. New Accounts

- For accounts opened from 1st January, 2016 onwards additional information to determine residence in a country/territory outside India will be obtained.
- or all the individual and entity accounts opened from 1st July, 2014 to the date of entry in to force of the IGA between India and USA, i.e., 31st August, 2015, we will need to obtain the self-certification and carry out due diligence procedure to determine the reasonableness of the self-certification.”

10. Are foreign exchange transactions subject to FATCA?

Foreign Exchange (FX) payments are not withholdable payments. Although gain on such contracts is generally reported as gross proceeds, the FATCA rules apply to proceeds from sale or disposition of any property of a type which can produce interest or dividends from sources within the United States.

11. Are remittances subject to FATCA (i.e someone in U.S sends money to family member in India)?

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 maybe subject to the FATCA reporting requirements. Further, instructions to transfer money to an account within the U.S is one of the indicators of U.S status.

12. What information is to be sought from customers?

Customers will be expected to provide details such as :

- Country of Tax residence
- Tax Identification Number from such country
- Country of Birth
- Country of Citizenship
- In case of Non-individual customers, the above mentioned information of any of the controlling persons will have to be submitted.

The Bank would be required to report additional information sought by the local authorities from time to time.

13. What if a customer refuses to provide the requisite information?

In case if a new customer refuses to provide the FATCA/CRS information and documents then he/she may not be allowed to open an account.

While in case of pre-existing customers, such clients/customers will be treated as Recalcitrant Account Holders and be reported to the tax authority as such. A recalcitrant account holder is defined as per the FATCA/CRS regulations as - any holder of an account maintained by a Bank who fulfils threshold criteria of reportable accounts , if such account holder:

- Fails to comply with the requests (documentation or information) by the bank;
- Fails to provide valid W9
- Fails to provide waiver
- Provides documentation to classify the entity as Passive NFFE but fails to provide information on substantial owners

14. What documentation must a Bank collect if it has an account with indicators of U.S. status?

US Indicators	Documentation Required
U.S. Citizenship or lawful permanent resident	1. Obtain W-9 or a W-8BEN <i>and</i> 2. Non-U.S. passport or similar documentation evidencing citizenship in a country other than the U.S.
U.S. birth place	1. Obtain W-9 or W-8BEN; <i>and</i> 2. Non-U.S. passport or similar documentation evidencing citizenship in a country other than the U.S.; <i>and</i> 3. A copy of the individual's Certificate

	of Loss of Nationality of the U.S. <i>or</i> a written explanation of the account holder's renunciation of U.S. citizenship
U.S. address (residence, correspondence, or P.O. Box)	1. Obtain W-9 or W-8BEN; & 2. Non-U.S. passport or similar documentation establishing foreign citizenship <i>or</i> a certificate of residence or other QI documentation for identifying the client.
One or more U.S. telephone numbers and no other telephone numbers	Obtain W-9 or W-8BEN; <i>and</i> 2. Non-U.S. passport or similar documentation establishing foreign citizenship <i>or</i> a certificate of residence or other QI documentation for identifying the client.
One or more U.S. telephone numbers and at least one telephone number outside the U.S.	1. Obtain W-9 or W-8BEN; <i>or</i> 2. Non-U.S. passport or similar documentation establishing foreign citizenship <i>or</i> a certificate of residence or other QI documentation for identifying the client.
Instructions to transfer funds to U.S. accounts or directions Regularly received from a U.S. Address	3. Request W-9 or W-8BEN; <i>and</i> 4. Documentary evidence establishing non-U.S. status
Only address on file is "in care of" or "hold mail" or U.S. P.O. Box	Request W-9, W-8BEN; <i>or</i> Documentary evidence establishing non-U.S. status
Power of Attorney or signatory authority granted to person with U.S. address	Request W-9, W-8BEN; <i>or</i> Documentary evidence establishing non-U.S. status

15. Where can I find more information on FATCA?

FATCA and CRS regulations, notices and other related topics are available on the below websites:

IRS website - <https://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-FATCA>

OECD website - <http://www.oecd.org/tax/exchange-of-tax-information/>

