

Foreign Account Tax Compliance Act (FATCA)

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1. Foreign Account Tax Compliance Act (FATCA)

The US tax law FATCA, which is aimed at financial institutions worldwide, came into force in 2014. Besides many other countries, Switzerland has also concluded a treaty with the USA to facilitate the implementation of FATCA legislation. A Swiss FATCA Act was finally enacted on the basis of this treaty, and this entered into force on 30 June 2014. FATCA is intended to curb possible tax evasion at the expense of the USA.

the US tax authorities can ultimately request specific account information to be handed over by making an administrative assistance request.

The USA therefore only receives specific account information due to FATCA for accounts with a US connection if the account holder explicitly gives their consent to having the information reported or as part of official investigations into specific tax cases. However, the latter always requires administrative or judicial assistance proceedings.

1.1 What is FATCA?

Under FATCA, the account holders and in this context the controlling persons (legal entities or trusts) must be checked by the financial institution managing the account to determine whether a US tax liability ("FATCA status") exists. The account-holding financial institution is legally obliged to determine the FATCA status of each account holder and of the controlling persons (legal entities or trusts). Financial institutions are also legally required to document the FATCA status determined. For this purpose, a form must be obtained from which the FATCA status can be determined. Depending on the FATCA status, US-specific forms (e.g. W-8BEN-E, W-8IMY) must also be signed. The form must also be obtained if the account holder does not have a US connection.

The new regulations under FATCA do not only apply to Swiss financial institutions. They must be implemented and complied with in all major financial centres worldwide.

If an account has no US connection, no data is reported by the account holder to the US tax authorities. If an account is attributable to a US person, the financial institution managing the account must also obtain IRS Form W-9 from the account holder or the controlling persons (legal entities or trusts) and consent to having certain account information reported to the US tax authorities.

1.2 What information is exchanged?

If the account holder gives their consent to have the account information reported, the financial institution managing the account will periodically report the statutory information to the US tax authorities. If the account holder does not give their consent, the financial institution managing the account will not provide any specific account information. Instead, the financial institution is required to report to the US tax authorities in aggregated form the number and total amount of all US-related accounts held with it for which no consent has been obtained. On the basis of the aggregated report,

