




# GENERAL INFORMATION ON “FATCA”



## **Introduction**

The Foreign Account Tax Compliance Act (“FATCA”), enacted by the U.S. Congress in March 2010 as part of the Hiring Incentives to Restore Employment (HIRE) Act, is an important development in the United States efforts to combat tax evasion by U. S. persons holding investments in offshore accounts. FATCA requires Financial Institutions (FIs) to report certain information about certain financial accounts<sup>1</sup> held by U.S. persons<sup>2</sup> or by foreign entities in which U.S. persons hold a substantial ownership interest<sup>3</sup>.



## **What is the scope of FATCA for the US tax authorities?**

U.S. persons, who use non-U.S. accounts and certain offshore investment vehicles to conceal their income and assets to avoid U.S. taxation.

## **FATCA imposes three main obligations on (non-U.S.) foreign financial institutions (FFIs):**

1. Documentation and Due Diligence  
Classify and (where applicable) document all new and existing customers as U.S. taxpayers, non-U.S. taxpayers, or exempt from documentation and/or reporting.
2. Withholding  
Withhold 30% on withholdable payments being sent to: (a) non-participating FFIs, i.e., FFIs that do not comply with FATCA; and (b) the accounts of recalcitrant clients (i.e., those who fail to provide requested documents and/or information required by Maduro & Curiel's Bank N.V. for FATCA compliance).
3. Reporting  
Report annually on:  
(a) all U.S. taxpayers who are not exempted; (b) recalcitrant accounts; (c) non-participating FFIs; (d) certain non-financial foreign entities; and (e) other persons as required under FATCA.

## **Documentation and Due Diligence**

Classification of clients is done based on the following U.S. indicia:

- U.S. citizenship or lawful permanent resident (green card) status;
- A U.S. birthplace;
- A U.S. residence address or a U.S. correspondence address (including a U.S. P.O. box);
- Standing instructions to transfer funds to an account maintained in the United States, or directions regularly received from a U.S. address;
- An "in care of" address or a "hold mail" address that is the sole address in the U.S. with respect to the client; or
- A power of attorney or signatory authority granted to a person with a U.S. address.

Having one of these indicia does not necessarily mean that the account is owned by a U.S. person, depending on other documentation provided (see last page).

<sup>1</sup> FATCA defines a financial account as depository accounts (e.g. commercial; checking; savings; time accounts), custodial accounts, certain equity or debt interests in another entity (e.g. an investment entity; in a holding company or treasury center) or cash value insurance and annuity contracts.

<sup>2</sup>U.S. Person is, in any case, 1) a citizen of the United States; 2) an alien lawfully admitted for permanent residence; 3) an unincorporated association with a substantial number of members who are citizens of the U.S.; or are aliens lawfully admitted for permanent residence; and 4) a corporation that is incorporated in the U.S. For more information, visit the website of the IRS: [www.irs.gov](http://www.irs.gov).

<sup>3</sup>Substantial ownership interest means any specified U.S. person that owns, directly or indirectly, more than 10 percent of the stock of a corporation (by vote or value) or more than 10 percent of the profits interests or capital interests in a partnership.

## **Withholding**

“Withholdable” payments are U.S. sourced payments the IRS sees as posing the risk for potential tax avoidance. They include (a) any payment of interest, dividends, rents, salaries, wages, premiums, annuities, compensations, and other fixed or determinable annual or periodic gains, profits, and income if such payment is from sources within the United States; and (b) any gross proceeds from the sale or other disposition of any property of a type which can produce interest or dividends from sources within the United States.

## **Reporting**

FFI's that enter into an FFI agreement with the IRS will need to report the following information on their U.S. accounts:

- The name, address, and Taxpayer Identification Number (TIN) of each account holder who is a specified United States person and, in the case of any account holder which is a United States owned foreign entity, the name, address, and TIN of each substantial United States owner of such entity;
- The account number;
- The account balance or value at year end; and
- Gross dividends, interest and other income paid or credited to the account.

## **Exemptions**

Certain accounts and beneficial owners of U.S. accounts are exempt from being reported.

The FATCA regulations exempt some categories of entities from the requirement to register and report, including:

- Foreign governments
- Governments of U.S. territories
- International organizations
- Foreign Central Banks

## **What is an FFI?**

An FFI is a foreign financial institution, which is any non-U.S. entity that:

- Accepts deposits in the ordinary course of a banking or similar business;
- As a substantial portion of its business, holds financial assets for the account of others; or
- Is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, or any interest in such securities, partnership interests, or commodities.

Generally non-U.S. entities such as banks, broker/dealers, insurance companies, hedge funds, securitization vehicles and private equity funds will be considered FFIs.



### **What is an FFI Agreement?**

In general, an FFI will enter into an agreement (referred to as "FFI Agreement") with the U.S. Internal Revenue Service (IRS) by which the FFI can avoid FATCA withholding on payments it receives and become a Participating FFI (PFFI). Generally, an FFI Agreement requires a determination of which accounts are financial accounts beneficially owned by a U.S. person/entity, comply with verification and due diligence procedures, annual reporting to the IRS on those accounts, recalcitrant account holders, Non-Participating FFIs, compliance with additional reporting requests and withholding 30% where applicable.

Maduro & Curiel's Bank N.V. and its subsidiaries ("Bank") are committed to comply with FATCA and will be Participating Foreign Financial Institutions. Therefore MCB and its subsidiaries are obliged to:

1. Classify its customers as U.S. Persons or Non-U.S. persons;
2. Report certain account information pursuant to FATCA on its U.S. customers;
3. Withhold 30% of incoming payments on recalcitrant account holders and Non-Participating Foreign Financial Institutions.

Non-compliance by PFFT's will expose those entities to a 30% withholding tax on a wide range of U.S. sourced payments to the entity and its clients and would expose the entire Bank to reputational and financial risk.



**What documentation must an FFI collect if it has an account with indicia of U.S. status:**

U.S. Indicia	Documentation Required
U.S. citizenship or lawful permanent resident	Obtain W-9
U.S. birth place	1. Obtain W-9 or W-8BEN; and 2. Non-U.S. passport or similar documentation establishing foreign citizenship; and 3. Written explanation regarding U.S. citizenship
U.S. address (residence, correspondence, or P.O. Box)	1. Obtain W-9 or W-8BEN; and 2. Non-U.S. passport or similar documentation establishing foreign (i.e. non-U.S.) citizenship
Instructions to transfer funds to U.S. accounts or directions regularly received from a U.S. address	1. Request W-9 or W-8BEN; and 2. 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; or 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; or Documentary evidence establishing non-U.S. status

**Waiver**

Where U.S. status has been established, the account holder must provide the FFI with a waiver in addition to the above mentioned documents. The waiver authorizes the FFI to provide the IRS with the information specified above under "Reporting".

Non-compliance by a customer of a PFFT's

Customers who refuse to provide the required documentation will be classified as "recalcitrant" (non-compliant customer with U.S. status). FATCA provides that an FFI should close such accounts within a reasonable period of time.

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