Foreign Account Tax Compliance Act - Frequently Asked Questions

1 Introduction

1.1 What is FATCA?

The Foreign Account Tax Compliance Act (FATCA) is a US law designed to prevent offshore tax evasion by US persons. It applies to financial institutions worldwide. Most countries have implemented FATCA in local law. ING's policy is to comply with FATCA bankwide.

FATCA requires non-US financial institutions, called foreign financial institutions (FFIs), to identify and report financial accounts held by reportable customers. Reportable customers are US persons and specific types of non-US entities with US owners or US controlling persons.

1.2 What is offshore tax evasion?

Offshore tax evasion occurs when taxpayers abuse offshore accounts in order to evade tax. The stereotype is a wealthy American using offshore accounts to hide assets in a bank secrecy country or so-called tax haven.

1.3 How big is the tax evasion problem?

The revenue a country loses due to tax evasion is called the tax gap. The US publishes estimates of its tax gap periodically. For 2008-2010 the estimate was USD 458 billion.

1.4 Why was FATCA created?

Offshore tax evasion by US persons was highlighted 2009, when a European bank was found to have assisted and advised 17,000 customers on how to evade US tax. USD 20 billion assets were involved. The consequences were a USD 780 million fine for the bank, closure of the responsible business unit, criminal prosecution of its customers and criminal prosecution of a member of the bank's staff. FATCA is designed to prevent this type of situation.

1.5 What is the objective of FATCA?

The objective is transparency about the financial assets US persons held offshore. FATCA achieves this through comparing annual reporting by the FFIs to annual reporting by US persons. FFIs provide the US Tax Authorities with an independent source of information about the offshore assets held by US persons.

1.6 Who is impacted?

FATCA directly impacts FFIs, such as ING, and US persons. Indirectly, non-US customers are also impacted by the FATCA due diligence obligations.

1.7 How are the different parties impacted?

- US persons (private individuals and legal entities): have new due diligence obligations and must identify themselves and their tax identification numbers to their FFIs. In addition, US financial institutions must apply a 30% penalty withholding tax on US source income paid to or through FFIs who do not comply with FATCA.
- FFIs: either comply with FATCA and agree to fulfil key obligations, or the institution and its customers are subject to a 30% penalty withholding tax on US source income. ING requires compliance with FATCA at group level.

- Non US-persons (private individuals and legal entities): may be requested to provide additional information by their financial institution to fulfil FATCA due diligence obligations.

1.8 When does FATCA start?

FATCA came into effect on 1 July 2014.

2 FATCA and Financial Institutions

2.1 What is a financial institution in FATCA?

FATCA has a specific definition for financial institution that may be broader than the definition previously used by your business. The FATCA definition includes five types:

- Depositary institutions;
- Custodial institutions;
- Investment entities;
- Insurance companies; and
- Holding companies for other FIs.

Financial institution includes US financial institutions and non-US financial institutions.

2.2 What is a FFI?

A FFI is any non-US financial institution. They are 'foreign' from the US perspective.

2.3 What is the legal basis for FFIs such as ING to comply with FATCA?

The approach to become a FATCA-compliant FFI depends on the legal position of the host country. There are two key possibilities. The first is where the host country enters into a bilateral IGA with the US. In this case, FATCA becomes mandatory for all local financial institutions under local law. In countries without such an agreement, FFIs need to enter into an agreement with the IRS directly in order to be treated as compliant. This is called a FFI Agreement.

2.4 What is an Inter-Governmental Agreement (IGA)?

An Inter-Governmental Agreement is a bilateral agreement between the US and a partner country to implement FATCA and achieve full compliance. The partner country commits to implement FATCA in local law and make it mandatory for its financial institutions to comply.

What are the obligations of a complying FFI such as ING?

ING has five obligations under FATCA:

- FFI Identification and Registration: identify and register each majority owned FFI in its group as a FATCA complying institution. Complying institutions receive a Global Intermediary Identification Number (GIIN). The US Tax Authorities publish the list of complying FFIs and their GIINs.
- Customer identification: give each customer a FATCA classification that determines how their accounts are treated in Reporting.
- Reporting: annually, report the financial accounts held by reportable customers. Reporting is either to their local Tax Authority or direct to the US Tax Authorities, depending on the rules applicable in each host country.
- Withholding: withhold a 30% penalty withholding tax on US source income paid to (or through) FFIs who do not comply. Withholding also applies to non-financial institution customers who do not comply, if the host country does not allow identifying information about the customer to be reported.
- Verification and certification: periodically Senior Management verifies and signs-off that controls are effective. For IGA 2 and non-IGA countries, a periodic certification to the IRS is required.

2.5 Which customers are reportable?

Reportable customers are:

- US persons (individuals and entities), unless they fall under the exemption that applies to specific types of US entities (e.g. publically listed US corporations);
- Specific types of non-US entities with US owners or US controlling persons; and
- Customers who do not respond to requests for information.

2.6 What is the definition of a US person?

US persons include private individuals and legal entities.

For private individuals, the definition of US person includes:

- US citizens, regardless of where they live and regardless of any other citizenship they hold; and
- US residents, including 'green card' holders, regardless of their citizenship.

For legal entities, the definition of US person includes:

- US corporations and companies;
- US partnerships;
- US trusts; and
- The US Government and its agencies and the States themselves.

2.7 Which products are reportable?

Financial accounts are reportable. The definition includes:

- Depository Accounts;
- Custodial Accounts;
- Specific types of debt or equity interests in the reporting Foreign Financial Institution that are not regularly traded on an established securities market; and
- Cash value insurance or annuity contracts.

2.8 How does FATCA reporting work?

The approach to FATCA Account Reporting depends on the agreement signed (or lack of an agreement) in each country. The FFI reports either via their local Tax Authority (countries with a Model 1 Inter-Governmental Agreement), or direct to the IRS (countries with Model 2 Inter-Governmental Agreement, and countries without an Inter-Governmental Agreement).

3 FATCA and Customers

3.1 What does FATCA mean for customers?

Every customer needs to receive a FATCA classification that determines whether their accounts are reportable. The classification process is called FATCA Identification and is part of the Customer Due Diligence (CDD) Process.

- Existing received a FATCA classification automatically using data in local customer systems. If more information was required to confirm a customer's FATCA classification, customers were contacted.
- New customers (those on-boarded after the start date of FATCA) are classified as part of CDD.

All customers will be monitored for changes that indicate their FATCA classification is no longer valid.

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3.3 Will ING exit US customers because of FATCA?

The objective of FATCA is to report accounts held by reportable customers, not exit them. ING is open for business with US persons who comply with FATCA and respond to our requests for information. The products available to US persons do not change because of FATCA.

3.4 Will customer information be sent to the US without informing customers?

No. ING's policy is to contact reportable customers and give them an opportunity to correct their FATCA classification prior to reporting them for the first time. Account Reporting will be handled by each ING entity locally, in accordance with the rules applicable to FATCA in each host country.

3.5 What are the consequences for customers who do not comply?

ING does not accept new customers or open new financial accounts for existing customers who do not provide FATCA information. ING does not accept new customers who do not provide complete information.

Non-participating FFIs (NPFFIs) are subject to a 30% withholding tax on US source income.

Undocumented customers are reported either to the local Tax Authority or to the US Tax Authorities, according to the host country's rules. The 30% penalty withholding tax applies to undocumented customer's US source income. Financial accounts of existing customers who are continually non-responsive to requests for information may be closed.