

Foreign Account Tax Compliance Act

1 Background

The Foreign Account Tax Compliance Act (FATCA) is a unilateral US law to combat tax evasion. It obliges financial institutions outside the United States (Foreign Financial Institutions, FFIs) to pass on US client data to the US tax authorities.

With the Liechtenstein Declaration of 2009, Liechtenstein and its banks expressly committed themselves to implementing the global standards of transparency and exchange of information for tax purposes developed by the OECD and to strengthening their participation in international efforts to combat non-compliance with foreign tax laws.

Alongside many other countries, Liechtenstein signed a FATCA Model 1 intergovernmental agreement (Model 1 IGA) and a Memorandum of Understanding (MoU) with the United States on 16 May 2014. This means that Liechtenstein financial institutions must provide the United States with information on US clients. On the basis of this agreement, Liechtenstein adopted a Law on Implementation of the FATCA Agreement between the Principality of Liechtenstein and the United States of America (FATCA Act). This Act entered into force on 22 January 2015.

2 Functioning of the FATCA Agreement

Liechtenstein banks are required to transmit information about their US account and custody account holders to the US Internal Revenue Service (IRS) via the Liechtenstein Fiscal Authority. Financial intermediaries that qualify as Foreign Financial Institutions (FFIs) (including banks, professional trustees, and insurers) are subject to the reporting requirement. In this way, the US tax authorities receive information that enables them to verify fulfilment of tax obligations by taxpayers with assets even outside US borders.

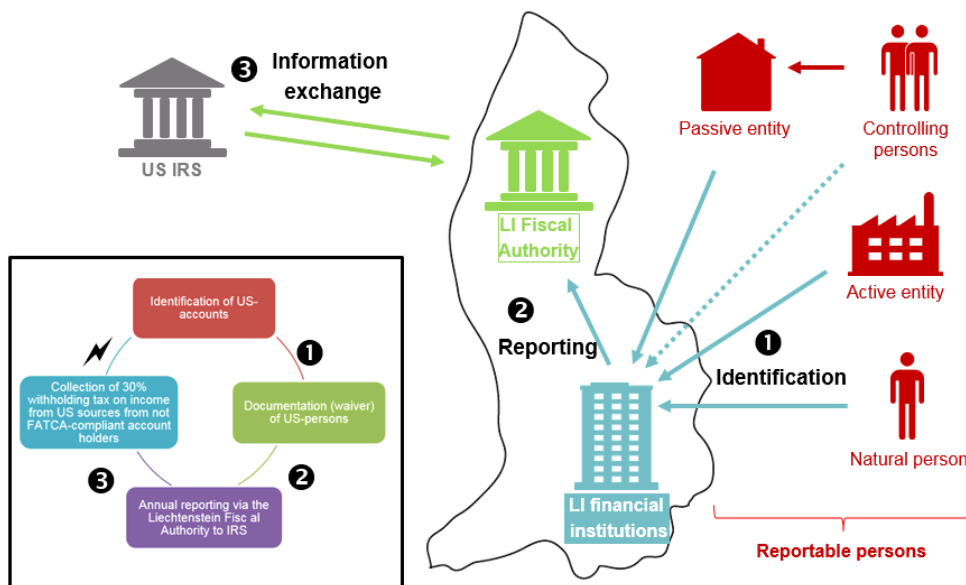
While under the FATCA Agreement, Liechtenstein financial institutions are not required to sign a separate agreement with the US Internal Revenue Service (IRS), they are obliged to register with the IRS and apply for a Global Intermediary

Identification Number (GIIN). Reports on US accounts are then administered under that registration.

The FATCA Model 1 IGA is a reciprocal agreement. This means account information is also exchanged about Liechtenstein citizens in the United States. The key obligations of the Liechtenstein financial institutions include:

- annual transmission of information on US account holders to the IRS. This must be done electronically;
- collection of 30% withholding tax on income from US sources (i.e. dividends, interest, gross proceeds from the sale or other disposal of US property) from account holders who are not FATCA-compliant;
- reduction of business relationships with clients and business partners who are not FATCA-compliant.

The collection of 30% withholding tax applies only to payments made from US sources to non-participating financial institutions. This applies even if the payments are collected for the benefit of non-US persons.



Who is affected by FATCA and what are the obligations?

FATCA affects accounts and custody accounts of natural US persons maintained at a Liechtenstein bank as well as legal entities in which US persons hold at least 25%. US persons are subject to the reporting requirement, given that they are considered taxable in the United States. A natural person is considered a US person under the Internal Revenue Code, 26 U.S. Code §7701(a)(30), if the following criteria are met:

- US citizenship or
- US residence

In the case of legal entities which have their registered office or management in the United States, a report must generally be made.

Clients are likewise subject to the reporting requirement if they appear to be a US person under the IGA and no evidence to the contrary is provided. Indicators to be taken into account are:

- US citizenship
- permanent US residence (e.g. on the basis of a Green Card)
- place of birth in the United States
- postal address or PO box in the United States
- US phone number
- standing order to transfer funds to the United States
- power of attorney or disposal for the benefit of a person with a US address
- c/o address in the United States or poste restante address as the only available address (also outside the US)

In order to invalidate any of these indicators, Liechtenstein banks request their clients to provide clarification of their US tax status. If the client provides evidence invalidating these indicators of US taxability, no FATCA report is filed. If the client is unable to provide evidence invalidating an indicator or if the Liechtenstein bank does not receive a response from the client, the bank is required to report that client's data.

What data is exchanged under FATCA?

The yearly reporting includes the following information to the Liechtenstein Fiscal Authority:

- name, address, country or countries of tax domicile, tax identification number(s), and date of birth (in the case of natural persons) of each reportable person holding the account and, in the case of a legal entity holding the account, name, address, country or countries of tax domicile, and tax identification number(s) of the legal entity and name, address, country or countries of tax domicile, tax identification number(s), and date of birth of each reportable controlling person;
- account number and name and (where applicable) identification number of the reporting financial institution;
- account balance at the end of the calendar year (or the balance immediately before account closure from 1 January 2014);
- total gross income from dividends, interest, and other income earned on existing assets, total gross proceeds from the sale or repurchase of assets during the reporting period, and total balance or total value of the account/custody account at the end of the reporting period.

In constellations involving several natural persons as account holders of a joint account or several controlling persons of a reporting entity, 100% of the financial information must always be reported for each reportable person, without regard to any proportions of holdings.

It should also be noted that the information collected and reported may differ from the information of a reportable person that is relevant for tax purposes.

What will the exchanged information be used for, and will the data be treated confidentially?

The exchange of data between the United States and Liechtenstein is intended to ensure that, even with regard to any assets held with foreign banks and the resulting income, the tax obligations of the reportable person can be met in the countries of their tax domicile.

In accordance with the provisions governing the permissible use of exchanged information under Article 8a of the FATCA Act, any exchanged information received by the competent authority of a partner country must be treated with the same level of confidentiality as information obtained under the domestic law of that partner country. This means that the transmitted information may in principle be made available only to persons or authorities (including courts and administrative authorities) involved in assessment or collection, enforcement or prosecution, and determination of legal remedies in relation to taxes of a partner country or the supervision of such persons or authorities. Those persons or authorities may use the exchanged information only for those purposes. Disclosure of the exchanged information in the context of public court proceedings or in a court decision is permissible.

Notwithstanding the above provisions, a country may use the exchanged information for other purposes if such information may be used for such other purposes under the law of the country as well as Liechtenstein law, and if the Liechtenstein Fiscal Authority consents to such other use. The transfer of exchanged information to third countries is not permissible.

3 Additional information

What are the rights of a reportable person?

Under the Liechtenstein FATCA Act and the Liechtenstein Data Protection Act (DSG), reportable persons are entitled in particular to the right to information and the right to correct or delete incorrect data to be exchanged.

What other aspects must be considered?

In the context of FATCA, Qualified Intermediary (QI) Agreements concluded bilaterally between the US Internal Revenue Service and the financial institutions must also be observed. These may require a financial institution to comply with more extensive and strict verification and due diligence obligations when identifying clients and when determining clients' tax domicile.

4 Useful external links

- ↗ [Liechtenstein Fiscal Authority - FATCA](#)
- ↗ [FATCA Agreement](#)
- ↗ [Foreign Account Tax Compliance Act](#)
- ↗ [Data Protection Act](#)

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The Liechtenstein Bankers Association and its member banks recommend consulting a qualified tax advisor for further information on FATCA.

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