

FATCA INFORMATION FOR INSTITUTIONAL CLIENT (LEGAL PERSONS – INCLUDING PARTNERS OF CIVIL PARTNERSHIP, COMMERCIAL PARTNERSHIPS AND ENTITIES WITHOUT LEGAL PERSONALITY)¹



Bank Polski

1. What is FATCA?

FATCA stands for Foreign Account Tax Compliance Act and is a U.S. regulation on disclosure of information about foreign accounts for tax purposes, issued by the Congress of the United States on March 28th 2010. Its goal is to oblige foreign financial institutions to transfer to the United States of America data on account balances and holders that are U.S. taxpayers (the definition in point 3 below) and to prevent U.S. taxpayers from using foreign financial institutions for the purpose of hiding income or creation of structures of aggressive tax planning.

2. What is the legal basis for FATCA in Poland and how has it been implemented in the Polish legal system?

On October 7th 2014 the Agreement between the Government of the United States of America and the Government of the Republic of Poland to Improve International Tax Compliance and to Implement FATCA and the accompanying Final Arrangements (Journal of Laws 2015 item 1647), hereinafter referred to as "the Agreement" was signed. The Agreement was concluded in order to improve the fulfillment of tax obligations through mutual assistance in tax matters, based on an efficient infrastructure of automatic information exchange. According to the statement of the government of July 24th 2015 about the binding force of the Agreement, the Agreement entered into force on July 1st 2015.

The Agreement obliges financial institutions such as banks, insurance companies, investment funds, custodial institutions maintaining accounts for U.S. taxpayers to transfer (with the assistance of the Ministry of Finance) to the U.S. tax authorities information regarding these accounts. Rules for implementing obligations under the Agreement on the Polish territory are defined by the Act of October 9th 2015 on the execution of the Agreement between the Government of the United States of America and the Government of the Republic of Poland to Improve International Tax Compliance and to Implement FATCA and the accompanying final arrangements (Journal of Laws 2015 item 1712), hereinafter referred to as "the Act".

Polish reporting financial institutions, including PKO Bank Polski S.A., are obliged to apply due diligence procedures defined in Annex I to the Agreement in accordance with the Decree of the Minister of Finance dated January 26th 2016 on the detailed conditions for the use of due diligence procedures and the cases in which it is possible to select specific procedures under the Agreement (Journal of Laws 2016 item 123).

3. Who is affected and how are FATCA-related duties carried out in PKO Bank Polski S.A.?

The Act and the Agreement oblige PKO Bank Polski S.A. to identify reportable U.S. accounts (which include e.g.: current accounts, automatic deposit accounts, deposit accounts, credit card accounts) through:

- 1) identification of Clients of PKO Bank Polski S.A. in terms of the status of a specified U.S. person (a taxpayer of the United States of America for FATCA purposes),
- 2) verification whether Clients of PKO Bank Polski S.A. are controlled by a taxpayer of the United States of America (the beneficial owner within the meaning of the regulations on anti-money laundering and combating the financing of terrorism), and
- 3) providing relevant bodies with information regarding U.S. reportable accounts.

The identification and verification obligations apply to all Clients of PKO Bank Polski S.A.

Based on the provisions of the Act and the Agreement PKO Bank Polski S.A. will be obliged in particular to collect the FATCA status declarations of institutional Clients, and in particular to indicate whether a Client has a status of a Specified U.S. Person (an American taxpayer for FATCA purposes) or Passive Non-Financial Foreign Entity (NFFE) (from outside of the U.S.) with the Controlling Person who is a U.S. citizen or Resident.

In case of institutional Clients the term "Specified U.S. Person (American taxpayer for FATCA purposes)" means a U.S. partnership or corporation organized in the United States or under the laws of the United States or any State thereof; except for the entities listed below:

- 1) the Client is listed on a securities market or is related (within the meaning of FATCA) with such an entity,
- 2) a US bank,
- 3) an organization exempt from taxation under the regulations of the United States of America,
- 4) a federal or state entity or body,
- 5) an American investment company,
- 6) a dealer in securities or broker,
- 7) a trust fund that is exempt from taxation in the USA.

The obligation to provide the FATCA status declaration of institutional Client applies to Clients who signed with PKO Bank Polski S.A. contracts for a financial account (e.g. current account, term deposit account, automatic deposit, investment account, , credit card account) in the following periods:

- 1) **on or after December 1st 2015:**
submission of the FATCA status declaration of institutional Client by these Clients is a part of the procedure of opening an account in PKO Bank Polski S.A.
- 2) **from July 1st 2014 to November 30th 2015:**
the FATCA status declaration of institutional Client will be delivered to Clients in order to complete, sign and submit it to PKO Bank Polski S.A. in the manner defined in the letter of PKO Bank Polski S.A. sent to the Client. If the Client fails to deliver the completed and signed declaration to PKO Bank Polski S.A. within 12 months from the date of entry into force of the Act (i.e. December 1st 2015), PKO Bank Polski S.A. will be obliged to block the account, which consists in temporary prevention of the Client from using the assets held in the account. The blockade may partially affect the assets held in a consolidated account. The assets should be understood as means of payment, financial instruments within the meaning of Article 2 item 1 of the Act of July 29th 2005 on trading in financial instruments (Journal of Laws 2014 item 94 as amended) e.g. securities, units of collective investment schemes other than securities, options, futures, swaps, other securities, or foreign exchange values, property rights, movable assets and real estate. The blockade of a financial account is enforced within 3 working days from the date of expiry of the deadline for submission of the above-mentioned declaration. PKO Bank Polski S.A. shall immediately notify the account holder about the blockade of the financial account and the conditions of its unblocking. Unblocking of the financial account shall ensue no later than within 3 working days from the date of the receipt of the completed and signed declaration from the Client by PKO Bank Polski S.A.
- 3) **On or before June 30th 2014:**

¹ It does not apply to partners of civil partnerships that are natural persons and natural persons conducting business activity, to whom the information for individual Client is applicable.

in the case of Clients holding a FATCA financial account in PKO Bank Polski S.A. as at June 30th 2014, PKO Bank Polski S.A. is obliged to confirm the tax statuses of the Clients based on the documents and data being in possession of the PKO Bank Polski S.A. and also to monitor changes in circumstances that may affect the tax residence. If, while performing these obligations, PKO Bank Polski S.A. identifies the necessity to collect the FATCA status declaration of institutional Client, PKO Bank Polski S.A. will request the account holder via mail to deliver relevant clarification, documents or a valid FATCA status declaration of institutional Client. Refusal to provide the clarification will result in classifying the financial account as a reportable account.

PKO Bank Polski S.A. is obliged to verify the credibility of the declaration and for this purpose may request from its Clients additional documents proving their tax status.

4. What happens to the information obtained by PKO Bank Polski S.A. in the course of the procedures of identification and verification of Clients for FATCA purposes?

If the information that a Client is a Specified U.S. Person (American taxpayer) or Passive Non-Financial Foreign Entity controlled by a taxpayer of the United States of America (the beneficial owner within the meaning of the regulations on anti-money laundering and combating the financing of terrorism) is received, PKO Bank Polski S.A. will be required to inform the minister responsible for public finance or another authorized body about the financial account maintained for the Client, in order to enable the above-mentioned authorities to transfer the data to the tax administration of the United States of America. The above-mentioned information will include in particular the Client's data (name, address and TIN - American tax identification number, if available), the value or the balance of the account, as well as the amount of income or revenue of the Client disbursed by PKO Bank Polski S.A.