

# FATCA - INFORMATION FOR INDIVIDUAL CLIENT (INCLUDING NATURAL PERSONS CONDUCTING BUSINESS ACTIVITY AND PARTNERS OF CIVIL PARTNERSHIPS THAT ARE NATURAL PERSONS)<sup>1</sup>



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. Has FATCA been implemented in Poland and what obligations does it impose on PKO Bank Polski S.A.?

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

Based on the provisions of the Act and the Agreement PKO Bank Polski S.A. is obliged in particular to collect the Declaration of satisfying or not satisfying the definition of a U.S. Person (FATCA) from its Clients.

According to Article 1 section 1 letter ee in conjunction with letter ff of the Agreement the definition of a U.S. Person shall be construed in accordance with the provisions of the Internal Revenue Code of the United States of America, according to which a U.S. Person is a natural person who fulfills at least one of the conditions listed below, i.e. natural person who:

- 1) is a U.S. citizen,
- 2) is a U.S. permanent resident having the right to stay in the United States of America for any period of time in a tax year (holder of a green card),
- 3) selected the American residency for tax purposes after fulfilling the requirements provided in the regulations of the United States of America,
- 4) satisfied the following conditions concerning the length of the stay:
  - a) the person stayed in the United States of America for a period not shorter than 31 days in a tax year and, at the same time
  - b) the number of days spent by this person in the United States of America in the current and two preceding calendar years equals or exceeds 183 days. To determine the length of the stay, the number of days of the stay is multiplied by 1 for the current year, by 1/3 for the previous year and by 1/6 for the first year of the period taken into account.

Notwithstanding the above, a U.S. Person is also a natural person whose personal and economic ties with the United States of America are stronger than those with the Republic of Poland (i.e. a center of vital interests in the United States of America within the meaning of the convention between the government of the United States of America and the Government of the Polish People's Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Washington on October 8, 1974; Journal of Laws 1976 No 31 item 178).

The obligation to provide the Declaration of satisfying or not satisfying the definition of a U.S. Person (FATCA) applies to Clients who signed with PKO Bank Polski S.A. contracts for a financial account (e.g. savings account, savings and checking account, current account, credit card account, security custody account, deposit account) in the following periods:

- 1) **on or after December 1<sup>st</sup> 2015:**

Submission of the Declaration of satisfying or not satisfying the definition of a U.S. Person (FATCA) by these Clients is a part of the procedure of opening an account in PKO Bank Polski S.A.
- 2) **from July 1<sup>st</sup> 2014 to November 30<sup>th</sup> 2015:**

The Declaration of satisfying or not satisfying the definition of a U.S. Person (FATCA) 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 1<sup>st</sup> 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 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 29<sup>th</sup> 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 30<sup>th</sup> 2014:**

<sup>1</sup> It does not apply to legal persons, including companies which are partners of civil partnerships and commercial entities without legal personality, to whom the information for institutional Client is applicable.

In the case of Clients holding a FATCA financial account in PKO Bank Polski S.A. as at June 30<sup>th</sup> 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 Declaration of satisfying or not satisfying the definition of a U.S. Person (FATCA), PKO Bank Polski S.A. will request the account holder via mail to deliver relevant clarification, documents or a valid Declaration of satisfying or not satisfying the definition of a U.S. Person (FATCA). 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. according to the procedures of identification and verification of Clients for FATCA purposes?**

If the information that a Client is a taxpayer of the United States of America 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 the Client's data (name, family name, address and TIN - American tax identification number and the date of birth, if TIN is not 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.