



Zetland Tax Advisors Limited ("Zetland Tax") is a member firm of the Zetland Fiduciary Group. At Zetland Tax, we are a team of energetic tax professionals that can assist you with your tax obligations and tax planning solutions. Our services focus on USA, Hong Kong, United Kingdom and Australian taxes.

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## **Foreign Account Tax Compliance Act (FATCA)**

The following are basic requirements and descriptions. For further information, please talk to one of our professional team members.

The provisions commonly known as the Foreign Account Tax Compliance Act (FATCA) is outlined by the Internal Revenue Code (Chapter 4).

FATCA is an additional level of reporting and compliance which addresses any perceived tax abuse by U.S. persons through the use of offshore accounts. These regulations mandate that foreign financial institutions (FFI's) provide to the Internal Revenue Service information on certain U.S. persons invested in accounts outside of the U.S. and for certain non-U.S. entities to provide information about their U.S. owners.

### **Reporting Requirements**

At the FFI level, any FFI making a payment of U.S. source income should look into whether it is subject to FATCA reporting requirements, such as a Form W-8BEN-E. FATCA may apply to both financial and non-financial operating companies, based upon the level of connection that such entities have to US account holders or US source payments. Because FATCA is wide in scope, FATCA impacts virtually all non-U.S. entities, directly or indirectly, who receive U.S. source income, including gross proceeds from the sale or disposition of U.S. property which can produce interest or dividends.

At the individual level, an individual with US indicia such as citizenship or permanent residency is subject to reporting requirements such as filing an FBAR or Form 8938, particularly if such U.S. persons own a foreign bank account(s) whose highest balance exceeds \$10,000. These forms are serious, and so are the criminal and civil penalties. FBAR failures can mean fines up to \$500,000 and prison up to ten years. Willful FBAR violations can draw the greater of \$100,000 or 50% of the account for each violation – and each year is a separate penalty.

### Non-compliance

For account holders or FFIs deemed to be noncompliant or recalcitrant, there is a withholding penalty imposed. The general FATCA withholding begins for fixed or determinable annual or periodical (FDAP) payments made on or after January 1, 2014. FDAP payments are generally in the form of passive income, such as interest, dividends, rents, royalties, etc.

The IRS does offer amnesty program to U.S. account holders who aren't compliant to get up to date on their filing requirements. Two of these programs are the Offshore Voluntary Disclosure Program (OVDP) which imposes a 27.5% penalty, and the Streamlined Offshore Procedure, which imposes a lighter penalty under certain conditions. This amnesty program requires a signed certification that the taxpayer's noncompliance was not willful.

### **What does Zetland Tax do in relation to FATCA reporting?**

At the FFI level, we provide due diligence to assess and determine the extent to which an entity needs to comply with FATCA filing requirements. This includes assistance in the online registration of your FFI and obtaining a GIIN if required. We also help prepare compliance forms for all FFIs such as Form 8966, as well as FATCA classification forms W-8BEN, W-8BEN-E, W-8-ECI, W-8IMY, W-9.

At the individual level, we assist all US persons in identifying and assessing all foreign bank accounts to determine the necessity of filing the FBAR and Form 8938. We analyze all foreign financial account statements and determine whether the US person meets the threshold for foreign bank account reporting.

For those tax filers who have not been fully compliant and want to be up to date on their FATCA requirements, we help you to choose an amnesty program, such as the OVDP or Streamlined Offshore Procedure, which is appropriate for your situation. We prepare all past income tax filings and FBARs, and we assist in calculating all back taxes and penalties which may apply. In addition, we help in drafting a certification statement to the IRS indicating that the non-compliance was not willful.

***Talk to us today so that you may better understand FATCA requirements and what they mean to you.***