Compliance with the Foreign Account Tax Compliance Act (FATCA)

What is FATCA?

FATCA, which stands for the Foreign Account Tax Compliance Act, is a United States law. The main purpose of FATCA is to prevent individuals and juristic entities with U.S. person status from avoiding taxation by holding accounts, for financial transaction purposes, with financial institutions outside the U.S.A.

FATCA requires foreign (i.e., non-U.S.) financial institutions ("FFIs"), including commercial banks, to report information about accounts held by U.S. individuals and U.S. owned juristic entities and income credited to such accounts and in some cases to withhold tax on withholdable payments paid to certain accounts and remit the withheld taxes to the U.S. Internal Revenue Service (IRS).

How does FATCA affect financial institutions?

FATCA requires that FFIs, including commercial banks, either agree to participate in the FATCA program by entering into an agreement with the IRS to report information on financial transactions of their U.S. individual or U.S. owned juristic customers to the IRS on an annual basis or be subject to withholding tax on any U.S. source income and potentially gross-proceeds from transactions in certain assets as prescribed under FATCA.

Why do Thai Financial Institutions have to comply with FATCA?

FFIs, including commercial banks, in Thailand often have direct investments in U.S. assets, such as equities of U.S. corporations of U.S. government bonds, and/or a substantial volume of financial transactions with financial institutions and commercial banks worldwide. Therefore, in order to avoid being subject to withholding tax on income associated with these investments or from being denied the right to engage in financial transactions by other participating financial institution counterparties with whom they do business worldwide, financial institutions in Thailand began to cooperate with the IRS's requirements under FATCA, by completing the FATCA registration process from April 2014.

What is the impact for Thai financial institutions' customers?

From 1 July 2014, Thai financial institutions need to request additional information from customers wishing to enter into financial transactions or opening new accounts. Customers will normally be requested to complete a type of U.S. person self-identification questionnaire created to assist the financial institution in its determination of the status of the account holder or payee, as either a U.S. or non-U.S. person. For those customers who are not specified U.S. persons and don't appear to be U.S. persons, no further action should be required upon completion of the form. However, if a customer (i.e., an account holder or payee) is a U.S. person or appears to be a U.S. persons, they will be required to complete an IRS form in which the customer declares his or her U.S. or non-U.S. status to the financial institution.

Questions & Answers

Q: Are all Thai commercial banks complying with FATCA?
A: Yes, all Thai commercial banks are FATCA compliant banks. They have entered into agreements to comply with FATCA, and will collect information from 1 July 2014 onwards which support identification of customers' as either U.S. individuals or U.S. owned juristic status.
Q: Why do Thai individuals or juristic customers have to complete a self-identification questionnaire?

A: Under FATCA, from 1 July 2014, banks must conduct identification due diligence on all customers executing certain types of transactions with them, (e.g. opening a new deposit account, purchasing investment units, fund units or certain life insurance policies, etc..) to determine if the customer is a U.S. person or an entity owned, either directly or indirectly, by U.S. persons, based on certain indications of U.S. status. To help facilitate this process, Thai commercial banks have jointly created a standardized self-certification questionnaire for customers to confirm their FATCA status. A U.S. person status is not determined merely by U.S. citizenship. Customers may have other indications of U.S. status, such as U.S. place of birth, U.S. address, etc.

Q: What are the indications of potential U.S. status?

A: Under FATCA, the indications of potential U.S. status include:

For individuals
- U.S. citizenship, U.S. place of birth, U.S. permanent residence (i.e., green-card);
- a current residence or contact address in the U.S.;
- a U.S. telephone number;
- a power of attorney authorizing other persons with U.S. residence to handle accounts on the individual's behalf;
- an "in care of" address or "hold mail" address;
- a temporary residence in the U.S. or having been present in the U.S.A. for more than 183 days.

For juristic entities
- a place of incorporation in one of the States of the U.S.;
- being a U.S. related company with U.S. shareholders owning shares, either directly or indirectly, in excess of 10 percent;

Q: What is the required action if customers who are U.S. persons or appear to be U.S. persons wish to enter into financial transactions?

A: Customers will be requested to complete any of the following self-identification forms:

- Form W-9 to verify their U.S. individual or juristic status and identify their Tax Identification Number (TIN);
- Form W-8BEN to verify their non-U.S. individual status, together with supporting documents; or
- Form W-8BEN-E to verify their non-U.S. juristic status, together with supporting documents.

Q: Will the banks impose withholding tax on U.S. individuals or juristic customers on behalf of the IRS?

A: If U.S. individuals or U.S. owned juristic customers cooperate and comply with the FATCA requirements, the banks will have no duty to withhold tax on behalf of the IRS but will merely compile and report information on these accounts and financial transactions to the IRS.

Q: Are the banks required to report information of all customers to the IRS? What is the schedule of such report?
A: The banks will report information of their U.S. individual or juristic customers only, such as account names, addresses, TINs, account numbers, account balances, etc. This report is made on an annual basis.

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<td>The banks reserve the right to request additional documents from customers and/or to comply with their agreements with customers who open an account.</td>
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<td>2.</td>
<td>This document is intended only to provide information to customers of financial institutions and commercial banks, and is not advice or an offer of any advice on the U.S. taxation law. Should you have any questions relating to such law, please seek advice from your professional tax adviser or obtain additional information on <a href="http://www.irs.gov/FATCA">www.irs.gov/FATCA</a>.</td>
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