

FATCA – Foreign Account Tax Compliance Act

The Republic of Slovenia and the United States of America concluded on June 2, 2014 the Agreement to improve International Tax Compliance and to implement FATCA which sets out detailed requirements for Slovenian financial institutions and tax authority with regards to FATCA which will be operational from July 1, 2014. According to the Agreement Slovenian financial institutions will be required to report information on account holders classified as specified U.S. Persons (U.S. taxpayers) to Slovenian tax authority for further delivery to Internal Revenue Services – IRS.

Identifying account holder and reporting on U.S. reportable accounts

U.S. tax regulations specify account holders in general as U.S. taxpayers if they are:

- 1.) **U.S. citizens** irrespective of their place of living and/or
- 2.) **U.S. tax residents** who can also be citizens of other countries (e.g. Slovenia) but are regarded as U.S. tax residents due to living or working in the United States of America.

Due diligence obligations for identifying and reporting account holders on U.S. reportable accounts by Slovenian financial institutions are set forth in Annex 1 of the Agreement. Slovenian financial institutions must review certain indicia that point out the possibility that account holder (individual or legal entity) shall be treated as a U.S. reportable account (taxpayer).

Financial institutions must review data for any of the following U.S. indicia:

For individual as account holder:

- 1) identification of the account holder as a U.S. citizen or as a U.S. tax resident;
- 2) unambiguous indication of a U.S. place of birth;
- 3) current U.S. mailing or residence address (including a U.S. post office box);
- 4) current U.S. telephone number;
- 5) standing instructions to transfer funds to an account maintained in the United States;
- 6) currently effective power of attorney or signatory authority granted to a person with a U.S. address or
- 7) an »in-care-of« or »hold mail« address is the sole address of the account holder.

For legal entity as account holder:

- 1) U.S. place of incorporation or organization;
- 2) U.S. address;
- 3) U.S. controlling person.

For identifying account holders, IRS forms **W-8** (for non-U.S. Persons) or **W-9** (for U.S. Persons) or other agreed forms may be used (according to the circumstances) such as:

- 1) a certificate of residence issued by an authorized government body of the non-U.S. jurisdiction;
- 2) for individual – any valid identification issued by an authorized non-U.S. government body that includes the individual's name and is typically used for identification purposes;
- 3) for legal entity – any official documentation issued by an authorized non-U.S. government body that includes the name of the entity and address of its principal office;
- 4) any of the documents approved by IRS in connection with the Slovenian anti-money laundering rules;
- 5) any financial statement, third-party credit report, bankruptcy filing or U.S. Securities and Exchange Commission report.

Those account holders who:

- 1) will be required to further clarify and document their identity as U.S. non-/taxpayer based on results of initial indicia search or
- 2) were categorized as a U.S. taxpayer and data on their assets and transactions were reported to the IRS, will need assistance of legal and tax advisers for U.S. tax purposes.

First reporting of data of U.S. taxpayers and their assets and transactions will be done in prescribed scope in 2015 for business activities in 2014.

Slovenian financial institutions may not advise the account holder on what the account holder's FATCA status is or should be and are not in the business of giving legal or tax advice to the account holders with regards to their U.S. tax related status or obligations.

Accordingly, account holders should seek advice based on their particular circumstances from an independent legal and tax advisor.

FATCA information sites:

http://www.mf.gov.si/si/delovna_podrocja/davki_in_carine/dokumenti/fatca/

<http://www.irs.gov/fatca>

<http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx>