

About the Foreign Account Tax Compliance Act (FATCA)

The Foreign Account Tax Compliance Act (commonly known as “FATCA”) refers to sections 1471 through 1474 of the Internal Revenue Code. Under FATCA provisions a withholding tax of 30% on certain payments to certain foreign entities (including financial intermediaries) is imposed unless various US information reporting, due diligence and certain other requirements have been satisfied. Payments subject to withholding include interest (including original issue discount), dividends, rents, annuities, and other fixed or determinable, annual or periodical (FDAP) income or certain gains derived from US sources, as well as gross proceeds from the sale of securities (or repayments of debt) that could produce US source interest or dividends. FATCA withholding generally applies to these payments made after June 30, 2014, or, in the case of payments of gross proceeds described above, after December 31, 2016.

Generally, to avoid withholding, FATCA requires that: (i) a foreign financial institution or entity must identify and provide information in respect of its financial accounts held by US persons (directly or indirectly) and US-owned foreign entities, and (ii) a non-financial foreign entity must identify and provide information regarding its substantial US owners. This information must generally be reported either to the US Internal Revenue Service (“IRS”) or to the local taxing authority or government which may then exchange this information with the IRS. Various requirements and exceptions are provided under FATCA and additional requirements and exceptions may be provided in subsequent guidance. Further, the US has entered into (and may enter into more) intergovernmental agreements (“IGAs”) with foreign governments relating to the implementation of, and information sharing under, FATCA; such IGAs or the laws effecting them may alter one or more of the FATCA requirements.