

FATCA

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While the prosecutions dealt with the past, the United States legislated for the future. The Foreign Account Tax Compliance Act, adopted in March 2010, required foreign financial institutions to identify accounts held by American persons and to report them to the Internal Revenue Service. Institutions that did not comply faced a withholding tax of 30 per cent on American-source payments, which in practice excluded them from the American capital market.¹ Since the reporting obligation conflicted with the data protection and secrecy laws of many states, the United States offered intergovernmental agreements in two forms. Under Model 1, the financial institutions report to their own tax authority, which exchanges the data with the United States. Under Model 2, the institutions report directly to the Internal Revenue Service with the consent of their clients.

Switzerland chose Model 2, which preserved the formal principle that no Swiss authority transmitted client data without a request. The agreement was signed in Berne on 14 February 2013.² It entered into force on 2 June 2014, and the implementing act took effect on 30 June 2014. Under this arrangement, Swiss financial institutions disclose account details to the Internal Revenue Service with the consent of their clients. For clients who refuse consent, the institutions report aggregated data, on the basis of which the United States may submit group requests through ordinary administrative assistance. Such requests have been possible since 20 September 2019 for information dating from 30 June 2014 onwards.³ In practice, most Swiss banks responded to FATCA by closing the accounts of American clients who could not demonstrate their tax compliance, and some ceased to accept American persons as clients altogether.

Model 2 was a transitional solution. On 8 October 2014 the Federal Council adopted a mandate to negotiate a switch to Model 1. The negotiations lasted almost a decade. The new agreement was signed on 27 June 2024. It provides for the automatic exchange of information between the

FATCA

competent authorities and includes transitional provisions to ensure continuity. According to the State Secretariat for International Finance, it is expected to enter into force on 1 January 2029 at the earliest.⁴ Once the new agreement applies, American accounts will be treated in the same way as accounts of residents of the partner states of the global standard, discussed in the next section.

1 Notes

1. 26 U.S.C. § 1471, added by Pub. L. 111–147 (Hiring Incentives to Restore Employment Act), title V, § 501(a), 18 March 2010, 124 Stat. 97, <https://www.law.cornell.edu/uscode/text/26/1471>. Subsection (a) provides for withholding of 30 per cent on withholdable payments to non-compliant foreign financial institutions. ↩
2. Federal Council, “Switzerland and United States sign FATCA agreement”, press release, 14 February 2013, <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-47779.html>. ↩
3. State Secretariat for International Finance (SIF), “FATCA agreement”, <https://www.sif.admin.ch/en/fatca-agreement>. ↩
4. Ibid. On the signature, see also U.S. Embassy in Switzerland and Liechtenstein, “Ambassador Scott C. Miller and Ambassador Nicole Krenger, SIF, Sign a New Agreement to Implement FATCA”, press release, <https://ch.usembassy.gov/press-release-ambassador-scott-c-miller-and-ambassador-nicole-krenger-sif-sign-a-new-agreement-to-implement-fatca/>. ↩

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