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# Introduction

# 1. Introduction

## 1.1 What is FATCA?



The Foreign Account Tax Compliance Act ("FATCA") is an information reporting and withholding regime which was enacted by the United States ("US") in 2010 as part of the Hiring Incentives to Restore Employment ("HIRE") Act.

Even though FATCA is a US law, it impacts Financial Institutions ("FIs") organised outside the US and their customers across the world.

The United States enacted FATCA with an objective towards obtaining information on certain US persons with income or assets outside the United States for the purpose of increasing compliance with US tax laws. To obtain access to this information, FATCA generally requires withholding agents to withhold a 30% withholding tax on certain payments to non-US financial institutions ("foreign financial institutions" or "FFIs") that do not conclude an agreement ("FFI agreement") with the IRS wherein they agree to report information on their US account holders. In addition to reporting on their US account holders, FFIs will also be required to withhold on payments they make to their account holders that do not provide the requisite documentation regarding their FATCA status.

At the core of the FFI agreement between the FFI and the US tax authorities (the "Internal Revenue Services" or "IRS") is the commitment of the financial institution to examine its existing customer base to identify and document its US accounts and then to report them to the IRS. This commitment covers accounts held by both individuals and entities. For FATCA purposes, a financial institution means a depository institution, a custodial institution, an investment entity, and insurance companies that issue cash value insurance contracts or annuity contracts. Generally, an account means a depository account, custodial account, and certain debt or equity interests in an FFI (excluding debt or equity interests that are regularly traded on an established securities market). Also included within the definition of an account is a cash value insurance contract or an annuity contract. The United States has issued detailed final Treasury Regulations covering many issues under FATCA. The IRS is approaching FATCA implementation in phases over an extended time period.

The US recognised that in some jurisdictions there are legal barriers to implementing FATCA as well as some practical difficulties for Financial Institutions in complying with FATCA. Therefore the US has entered into Intergovernmental Agreements ("IGAs") with other jurisdictions in order to facilitate the implementation of FATCA. There are two Model IGA versions. The first model agreement ("Model 1") involves the provision

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of information to the FATCA Partner government followed by a government-to-government exchange of information; the second ("Model 2") involves the direct provision of information to the IRS. There are several variations of each Model Agreement. The Model 1 Agreement comes in both a reciprocal ("Model 1A") and nonreciprocal ("Model 1B") version.

On 7 January 2015, Qatar and the US government signed a Model 1B IGA, the "Agreement", to implement FATCA in Qatar. Qatar is considered as an IGA partner jurisdiction, and as such Qatari based Financial Institutions should not be subject to a 30% withholding tax on US source income, unless they fail to meet the requirements set out in the Agreement.

Circular No 21/2015 issued on the 17 March 2015 brought into effect the implementation of the Qatar-US IGA.

The Qatar Ministry of Finance ("MOF"), the "Competent Authority" in Qatar, has requested the Qatar Central Bank ("QCB"), Qatar Financial Market Authority ("QFMA") and Qatar Financial Centre ("QFC") to assist them with the implementation of the Agreement in Qatar. Further, the MOF has requested QCB to provide guidance and instructions to its licensed entities regarding the implementation of the Agreement and the reporting mechanisms for QCB licensed FIs. The Guidance Notes and any Circulars in relation to the Qatar-US IGA have been prepared to deliver the overarching principles of the Agreement, abiding by the spirit of the Agreement and developing international standards for the automatic exchange of information.

Under the terms of the Agreement, QCB Regulated Financial Institutions will provide the QCB FATCA Unit with the required information. The QCB FATCA Unit will in turn provide the required information to the Ministry of Finance. The Ministry of Finance will then forward that information to the US Internal Revenue Service.

## 1.2 The purpose of these Guidance notes

These Guidance Notes have been developed for QCB licensed entities and are intended to provide practical assistance to businesses, their advisers and QCB in dealing with the application of the Agreement. It applies to:

- Qatari Financial Institutions;
- Qatari entities that will need to certify their entity "classification" for the purposes of FATCA; and
- Entities that undertake FATCA obligations on behalf of Financial Institutions.

Certain issues may not be covered in these Guidance Notes where the Agreement is considered to be sufficiently clear. Where topics are covered, the Guidance Notes are not

exhaustive but do seek to convey principles which can be applied to various situations and circumstances. If further guidance is required, it may be sought from QCB.

These Guidance Notes are designed to assist QCB licensed entities who may be affected by the Agreement. Information and guidance in relation to entities not licensed by QCB or entities licensed by QCB and another Regulator should seek clarification from the Regulator to whom they will be reporting to. These Guidance Notes do not cover every conceivable situation.

A guiding principle in implementing the Agreement, and therefore of these Guidance Notes, is the desire to avoid unnecessary administrative and cost burdens and to ensure the efficient operation of the reporting requirements. These Guidance Notes take into account current local laws and regulations and are a living document that may be amended from time to time by QCB.

### 1.3 Scope of the Agreement

The Agreement applies to all Financial Institutions located in Qatar, regardless of whether or not they hold any Financial Accounts for Specified US Persons.

Some action will be required from all Qatari Financial Institutions. The extent of that action will depend on a number of factors including whether accounts held by the Qatari Financial Institution are held by Specified US Persons and the value and nature of the account.

In addition, Qatari Financial Institutions may need to report payments made to Non-Participating Financial Institutions (“NRFI”).

Any Qatari entity that is not a Financial Institution will be a Non-Financial Foreign Entity (“NFFE”). A NFFE has no obligations itself under the Agreement but may have to confirm its status and provide details of controlling persons to another Financial Institution if requested to do so by the Financial Institution. A Financial Institution may have reporting obligations in respect of Financial Accounts it maintains for a Passive NFFE.

In order to determine how the Agreement applies it will be necessary for a Financial Institution to consider a number of questions, namely:

- Am I a Financial Institution?
- Do I maintain Financial Accounts?
- Do I need to register with the IRS and, if so, by when and how?
- Are there indicators that any of the account holders’ are Specified US Persons?
- After applying the relevant due diligence, do I have any US Reportable Accounts?

- Do I need to report any information and, if so, what information, when and how?
- I maintain a Financial Account for a NFFE. What are my obligations?

## 1.4 Interaction with US Regulations and other IGAs

A Financial Institution must comply with the Agreement with reference to these Guidance Notes and any circulars released by QCB or the MOF.

A Qatari Financial Institution should not be disadvantaged however by the application of the US Treasury Regulations nor another IGA agreed between a country and the United States. Where a Financial Institution identifies alternative elements in the US Regulations that it considers are more favourable in application then it should contact QCB to discuss the issue. In addition, as per Article 7 of the Qatari IGA, Qatar shall benefit from any more favourable terms given to another Partner Jurisdiction in its IGA with the United States. Financial Institutions will be informed of any such favourable terms that can be used by Qatari Financial Institutions via a Circular issued by QCB.

Should the US subsequently amend the underlying US Regulations to introduce additional or broader exemptions, MOF will determine whether amendments will be required to its Agreement and QCB will determine whether amendments will be required to its Guidance Notes. Any updates will be issued through a Circular, a copy of which will be included within the Instructions to Banks and on the FATCA Reporting Portal.

## 1.5 Contact Information

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