



## FATCA requires U.S. withholding agents take action

U.S. taxpayers are taxed on their worldwide income, unless there is a specific exemption or tax treaty provision, and are required to file an annual income tax return regardless of where they reside. Congress was concerned that U.S. taxpayers were not fully reporting income from foreign financial assets. As a result, the Foreign Account Tax Compliance Act ("FATCA") was enacted in 2010 as part of the Hiring Incentives to Restore Employment (HIRE) Act. The purpose of FATCA is to ensure that U.S. taxpayers with financial assets or interests outside of the United States pay taxes on their world-wide income.

FATCA requires certain U.S. taxpayers holding financial assets outside of the United States to report those assets to the IRS. FATCA also requires foreign financial institutions to report directly to the IRS certain information about financial accounts held by U.S. taxpayers or comply with the Intergovernmental Treaty Arrangement (IGA) that their government has entered into with the United States. FATCA also imposes requirements on U.S. withholding agents such as Prudential Retirement.

### Background

FATCA requires 30% withholding on U.S. source "withholdable payments" made to certain foreign financial institutions or non-financial foreign entities unless the payee complies with FATCA requirements. U.S. income is income that arises from sources within the U.S.

FATCA requires:

- U.S individual taxpayers that hold foreign financial assets with a total value in excess of \$50,000 to report those assets on [Form 8938 "Statement of Specified Foreign Financial Assets"](#) and attach it to their income tax return;
- Foreign financial institutions to comply with new reporting requirements. Failure to comply with the reporting requirements results in 30% withholding; and
- U.S. financial institutions and other U.S. withholding agents, such as Prudential Retirement, to withhold 30% on certain payments to foreign entities that do not document their FATCA status and report this information to the IRS.

U.S. withholding agents are required to take the following actions to comply with FATCA:

- Identify accounts subject to FATCA;
- Determine who is the payee;
- Establish FATCA status by obtaining required documentation from account holders and verifying the FATCA status claimed;
- Determine if 30% withholding under FATCA applies and remit amounts accordingly; and
- Provide information reporting to the IRS. Amounts withheld under FATCA are required to be reported to the account holder and IRS. The 30% withholding will be reported under Form 1042-S.

FATCA does not replace current reporting and withholding rules, although to the extent FATCA withholding applies it takes precedence over any other withholding that might otherwise apply.

Examples of payments subject to FATCA withholding include, but are not limited to:

- Any payment of U.S. source interest, dividends, rents, salaries, wages, premiums, annuities, compensation, and other fixed or determinable annual periodic gains, profits and income;
- Payments from insurance contracts (excluding payments made on account of death);

- Payments from an annuity contract;
- Payments from a retirement plan;
- Fund manager fees;
- Interest paid by foreign branches of U.S. banks; and
- Investment management fees.

Nontaxable payments are not subject to FATCA withholding.

## Documentation requirements

FATCA requires withholding agents to obtain documentation to establish the status of a payee for FATCA withholding purposes. As a result, Prudential Retirement will be requesting the following documentation from non-individual recipients of retirement plan payments:

- [Form W-9 "Request for Taxpayer Identification Number \(TIN\) and Certification."](#) Form W-9 should be provided by a U.S. person to certify the person's U.S. tax status and to provide a U.S. tax identification number (TIN). A U.S. person includes individuals and entities for tax purposes.
- Form W-8 series. The Forms W-8 are U.S. tax forms used for non-U.S. persons to certify that they are not U.S. taxpayers. Although there are five different variations of this form used for different payees, the following Forms W-8 are the most relevant to participants and beneficiaries receiving payments from Prudential Retirement:
  - [Form W-8BEN "Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting"](#) (Individuals); and
  - [Form W-8BEN-E "Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting"](#) (Entities).

## Impact on retirement plans

Plan sponsors are not required to take any action. However, plan sponsors may have certain plan payees that will have to submit documentation in order to avoid 30% FATCA withholding. Affected payees may need to submit either a:

- Form W-BEN-E; or
- Form W-9.

## Effective dates

FATCA withholding on new accounts will take effect on July 1, 2014, and withholding for pre-existing accounts begins on January 1, 2016. Generally, a new account is an account opened on or after July 1, 2014, and a pre-existing account is an account in existence on June 30, 2014 (or accounts opened on or after July 1, 2014 where the account owner has accounts in existence on June 30, 2014).

## Next steps

Prudential Retirement is required to review existing accounts to properly identify the FATCA status of payees and determine whether to apply tax withholding on payments made to these payees and/or report these transactions to the IRS. Prudential Retirement is currently reviewing all of their accounts to identify which account holders may be impacted by FATCA.

### Compliance Bulletin by Prudential Retirement

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