

INFORMATION ON CRS AND FATCA

(CRS = Common Reporting Standard)

(FATCA = Foreign Account Tax Compliance Act – the US tax law)

What is CRS and FATCA?

CRS, i.e., Common Reporting Standard, is a global standard on automatic exchange of information provided by financial institutions to tax administrations developed by OECD (Organisation for Economic Co-operation and Development) which copies, with minor deviations, the requirements imposed on financial institutions by FATCA (i.e., towards the USA).

CRS, just like FATCA, obliges financial institutions, i.e., also SAB Finance a.s. (hereinafter as “SAB Finance”), to ascertain and verify the tax residency of their clients, identify reportable accounts and collect required information on their owners. Such information shall be reported by financial institutions regularly (once a year for the previous calendar year) to relevant revenue authorities. Based on CRS and FATCA, information is exchanged automatically with tax authorities of the individual participating countries around the world which can help local tax administrations fight against extensive tax evasion.

Czech legislation

In Czech legislation, CRS and FATCA are provided for in Act No. 164/2013 Coll., on International Cooperation in Tax Administration. Act No. 164/2013 Coll. provides for the procedural processes of automatic exchange of information received from financial institutions and harmonizes the procedures for automatic exchange of information for tax purposes based on the global standard with the procedures required by the Agreement between the Czech Republic and the United States of America to Improve International Tax Compliance and with Respect to the United States Information and Reporting Provisions commonly Known as the Foreign Account Tax Compliance Act (FATCA), published in the Collection of International Treaties under No. 72/2014 Coll.

Requirements for SAB Finance's clients

In order to meet the obligations imposed on SAB Finance by CRS/FATCA and Act on International Cooperation in Tax Administration, SAB Finance will require from its clients when opening an account (or concluding contract documentation) a self-certification of their tax residence and TIN (tax identification number) if their tax residence is in any participating country outside of the Czech Republic (for a list of participating countries see the useful links section). In case of clients - legal persons that are Passive Non-Financial Entity (see the glossary below), SAB Finance may also require a self-certification of tax residence in relation to the client's beneficiary owners.

In accordance with CRS, FATCA and relevant legislation, SAB Finance will regularly verify, ascertain, evaluate and annually report legally required information about its clients and their accounts that are subject to the CRS or FATCA regime to the relevant revenue authority. The revenue authority will then pass such information on to the relevant tax administrations of the individual participating countries. In view of the above, SAB Finance may ask its clients at any time to provide additional information or documents so that SAB Finance can check whether it is obliged to report the client's account in accordance with the requirements set out in CRS/FATCA. Pursuant to § 13i of the Act on International Cooperation in Tax Administration, clients are obliged to comply with SAB Finance's requests in connection with CRS/FATCA within a reasonable time limit and submit all the required documents (particularly the self-certification or documents confirming the client's tax domicile – certificate of tax residence issued by the relevant tax administrator in the country of the client's tax residence). The client is also obliged to immediately notify SAB Finance of a change in its tax residence and provide relevant documentation if requested by SAB Finance. A client - legal person that is Passive Non-Financial Entity is also obliged to proceed by analogy if there is a change in the tax residency of the persons who are its beneficiary owners.

If the client's tax residency is in a country other than the country of its permanent residence (or registered office in case of legal persons), SAB Finance may also require, in addition to the self-certification, additional documents confirming the respective tax residency (e.g., certificate of tax residence).

What will be reported to the revenue authority

Based on due diligence processes, SAB Finance is obliged to send information about reportable accounts to the Czech tax administrator once a year. Reportable account means a financial account owned by a “reportable” person, i.e. a client with tax residence in one of the participating countries outside of the Czech Republic or a client - legal person that is Passive Non-Financial Entity with one or more controlling persons (beneficiary owners) that have tax residence in one of the participating countries outside of the Czech Republic (excepted from this reporting obligation are e.g. legal persons regularly traded on securities markets and their affiliates, government entities, international organizations or central banks).

SAB Finance shall provide information on a reportable account valid as on 31. 12. of the reportable year to the Czech tax administrator no later than by 30. 6. of the following year. Reportable data include:

- identification of the owners of reportable accounts and in case of legal persons also identification of the beneficiaries of the legal persons to the following extent: name, address/registered office, country of tax residence, TIN, and in case of natural persons also the date and place of birth;
- reportable account number;
- account balance, including the balance currency, at the end of the relevant reportable year, or if the account was cancelled in that year, information about the account balance right before its cancellation.

The Czech tax administrator will sort out the data received and pass them on to the relevant tax administrator in the country where the owners of the reportable accounts are tax residents.

The aforementioned data are treated in accordance with applicable legislation concerning the protection of personal data and are provided only to the tax administrator based on legal requirements.

Glossary

Tax Residency (Tax Domicile): tax residency is determined by where the tax payer (natural or legal person) is obliged to pay tax – the tax payer is a tax resident of that particular country.

Pursuant to Act No. 586/1992 Coll., on income tax,

– natural person is a tax resident in the Czech Republic in particular if he/she has a domicile in the Czech Republic or habitually resides here (i.e., stays in the Czech Republic for a total of more than 183 days in a calendar year); a domicile is defined as a place where a natural person has a permanent apartment in circumstances from which it can be inferred that he/she intends to reside in this apartment.

– legal person is a tax resident in the Czech Republic especially if it has its registered office or headquarters in the Czech Republic (i.e., a place from where it is controlled).

If a natural person, natural person - entrepreneur or legal person does not have Czech tax residency, they shall establish their tax residency according to the relevant foreign legislation and applicable double taxation treaties.

In most countries, the payer's tax residency is linked to their domicile on the territory of the country, or at least to their stay on the territory of the country or their personal or economic links in the given country; however, there are countries where the payers' tax residency is linked to their citizenship, such as e.g. in the USA (in practice, a situation may occur where a payer is a tax resident in the USA even though in the given year they did not stay on the territory of the USA at all). In most cases, a natural or legal person has their tax residency in one country only; but it is also possible that during the year, their tax residency may change.

In view of the fact that the rules for establishing tax residency may vary from country to country, we recommend consulting your particular situation with the tax administrator (revenue authority) or with your tax advisor if you are not sure about your tax residency.

Tax Identification Number (TIN): unique number assigned in the relevant country primarily for tax purposes. If the client does not know their TIN, they can find it out from the tax administrator in the country of their tax residency (see also the useful links below).

In the Czech Republic, TIN (“DIČ”) is assigned by the tax administrator usually according to the following rules: (i) the TIN of a natural person is usually based on their birth certificate number without the slash (i.e. 9 or 10 digits); the number is preceded by the prefix CZ; (ii) the TIN of a legal person is usually based on their identification number (ID No.) according to the commercial register; the number is preceded by the prefix CZ.

Entity: legal person (e.g., trading company, cooperative) or legal arrangement without legal personality (e.g., trust fund).

Financial Institution: particularly banks, credit unions, building societies, administrators, persons managing financial assets, some types of insurance companies, certain investment funds, etc. which are residents in a participating country and in connection with CRS / FATCA they are bound to cooperate and obliged to find out and report data about some of their clients to the relevant tax administrator of the participating country.

Non-Financial Entity: any entity that is not a financial institution.

Active Non-Financial Entity (Active NFE): particularly an entity that meets the following criteria: (i) less than 50% of the entity’s gross income per calendar year is passive income and less than 50% of assets held by the entity are assets that form or are held in order to form passive income, and/or (ii) shares issued by the entity are traded on an established securities market, or the entity is affiliated with an entity whose shares are traded on an established securities market. This category mainly includes legal persons conducting standard business activities (production, trade, services, etc.).

Passive Non-Financial Entity (Passive NFE): an entity that is not an active NFE. This mainly includes “sleeping” entities not actively engaged in any activities and earning revenues exclusively from interests and dividends.

In simple terms, a Passive Non-Financial Entity can be characterized as follows:

- The entity's revenue from financial operation (within the scope of the profit and loss statement) represents more than 50% of the entity’s total revenue.
- The entity primarily owns real estate out of which more than 50% is let out.
- The entity primarily owns shares in other entities, more than 50% of its total gross income comes from dividends, granted licenses or patents, interests or bonds.
- The entity's activities are a combination of the above activities, i.e., more than 50% of its total gross income comes from the lease of buildings, premises, flats, warehouses, etc., dividends, bonds, interests, granted licenses or patents.

Examples of specific types of Passive Non-Financial Entity:

- activities of holding companies;
- activities of trusts, funds and similar financial entities;
- lease of own or leased property;
- operation of gambling clubs, casinos and betting offices.

Certificate of Tax Residence: document confirming your tax residence, issued upon request by locally competent revenue authority (in the country of your tax residence).

Participating Country: contractual country with which the Czech Republic has a legal basis for exchanging information concerning CRS or FATCA and which is included in the list made available to the public by the Czech Ministry of Finance and regularly updated (see the useful links below).

Useful links

Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information and the Common Reporting Standard (CRS)

<https://www.mfcr.cz/cs/legislativa/mezinarodni-spoluprace-v-oblasti-dani/umluva-o-vzajemne-spravni-spolupraci-mca/mnohostranna-dohoda-mcaa-a-spolecny-stan>

Act on international cooperation in tax administration and the list of participating countries:
<http://www.mfcr.cz/cs/legislativa/mezinarodni-spoluprace-v-oblasti-dani/zakon-o-mezinarodni-spolupraci>

Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation:
<http://eur-lex.europa.eu/legal-content/CS/TXT/?uri=CELEX:32014L0107>

Tax Identification Numbers (TIN) (their structure or functional equivalents of TIN numbers):
https://ec.europa.eu/taxation_customs/tin/tinByCountry.html
<http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/>

OECD portal:
<http://www.oecd.org/tax/automatic-exchange/>

FATCA (Agreement between the Czech Republic and the United States of America to Improve International Tax Compliance and with Respect to the United States Information and Reporting Provisions commonly Known as the Foreign Account Tax Compliance Act):
<https://www.mfcr.cz/cs/legislativa/mezinarodni-spoluprace-v-oblasti-dani/dohoda-fatca/zakladni-informace>

Legal disclaimer

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