Oberbank AG

Information from the Oberbank:

Foreign Account Tax Compliance Act

The coming into force of FATCA will mean new reporting obligations for clients in Austria with US tax obligations.

In 2010 a law was passed in the US to heighten the tax compliance obligations of those liable to pay tax in the US. As a consequence, foreign financial institutions will have to pass on data regarding US persons to the US tax authorities.

In order to implement FATCA, the Republic of Austria – like most countries worldwide – has entered into an Intergovernmental Agreement with the US. This Agreement means that all domestic financial institutions will have to report specific data on persons, accounts and custody account details of persons liable to pay US tax to the IRS (Internal Revenue Service).

• What does FATCA mean for you?

The FATCA regulations largely mean the following for bank clients:

1. Clients with a US connection must do the following:
   a) Complete their Form W9 together with their consent to report to the US tax authority **or**
   b) Fill out Form W8-BEN, thus making a formal declaration that they are not liable to pay tax in the US.
2. Alongside US natural persons liable to pay tax, FATCA also covers US companies as well as US organisations.

Clients with US owners, largely carrying out investment activities (foundations, venture capital firms, etc.) are also to be reported. The reporting of the bank as such does not release clients from their obligation to submit their tax declarations to the IRS.

• Clients liable to pay tax in the US

- **Clients that are US citizens**
- **Clients born in the US**
- **Clients whose main residence is in the US**
- **Clients with US tax liability for other reasons**

Clients liable to pay US tax must ensure that they enter their US Taxpayer Identification Number (TIN) when filling out their Form W9. Despite the reporting obligations, they must also first ensure that they give their financial institution the necessary consent to report their personal details to the US tax authorities.
Under US law, **being a US citizen** will always be deemed sufficient to establish unlimited tax liability in the US. This also applies to those holding dual citizenship.
As a rule, a person will usually obtain US citizenship merely by virtue of having been **born in the US**. In such cases, however, a client may also seek to prove to the financial institution that he or she either never obtained US citizenship or that it was renounced at a later point in time.
A client will be automatically liable to pay tax if his or her **main residence is in the US**.
However, there may still be **other reasons** why a client may be liable to pay US tax. The mere issuance of the Green Card might result in US tax liability – even in instances where the non-US citizen has „not yet“ moved to the US.
If as a client you need to clarify whether you might be liable to pay US tax, we recommend that you get in touch with a tax advisor. Banking staff are not authorised to pass judgment on your individual tax affairs.
Providing that all documents are correctly presented, the bank will not withhold any tax of US citizens. Please note that only your tax advisor will be able to tell you what you owe in US taxes. Double taxation treaties may also apply.

• Clients not liable to pay US tax

If client data reveal a US connection, this will result in the client having to prove or credibly establish that he or she is not liable to pay US tax. This will mean having to provide the following documents:

– Self-certification (usually Form W8-BEN) stating that the client is neither a US citizen nor a US company. Confirmation that US residence does not apply (i.e. no tax liability in the US) must also be included.
– A currently valid identification document not issued by the US (passport or ID card; driving licence not acceptable).

Example: A US connection will be deemed to exist if a standing order is used to ensure the transfer of regular support payments to the US, for example in the case of a family member spending a semester abroad in the US.

• Consequences of non-disclosure or non-consent

The bank will be under an obligation to clarify with the client – within a specified period of time – whether there is any US tax liability from the very moment any US connection as defined by FATCA becomes apparent.
Refusal of the client to offer clarification by failing to answer any questions or refusal to sign the relevant forms will result in he or she obtaining **„non-consenting“** status under FATCA.
Financial institutions will be under an obligation to report how many **non-consenting** clients they have together with the asset volumes involved. The first such report will be at the end of March 2015 for the reporting period covering 2014.
The US will be entitled to make a request for mutual legal assistance to the Republic of Austria in relation to the disclosure of these clients.

• Does the client have to play an active role?

The answer is no – those clients affected by FATCA will be written to or contacted by their financial institution as from mid-2014. Please note that this may take up to two years.
However: Please note that for the purpose of ensuring proper tax processing, your bank must always be kept up to date on the following: Main residence, citizenship(s), domicile (tax residency) as well as any tax obligations arising for other reasons. You must inform your bank immediately, if there are any changes to your client details.

• US securities of non-US persons

QI policies and procedures will continue to apply. If it is unclear, the non-US person has to furnish a W-8BEN to confirm the applicable double taxation rate.
This will still apply even if the client already had a securities deposit together with the corresponding documentation (e.g. Form W-8). The QI waiver issued for US revenue remains valid.

• For further information:

– **Visit the IRS website**
http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-(FATCA)

– **Contact a tax advisor familiar with US tax law**
and – insofar as required – with knowledge about the relevant rules arising from double taxation treaties

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