# Foreign Account Tax Compliance Act (FATCA)

**Affects US taxpayers/citizens invested in STANLIB**

## What is the Foreign Account Tax Compliance Act (FATCA)?

**FATCA is a US tax law which was designed to:**
- Prevent US taxpayers (who are taxed on their worldwide income) from avoiding US tax by investing through non-US financial institutions and offshore investment vehicles
- Ensure that US taxpayers declare all income received outside of the US
- Increase transparency for the Internal Revenue Service (IRS) with respect to US persons that may be investing and earning income through non-US institutions.

FATCA was enacted in March 2010 and is effective 1 July 2014, with staggered implementation dates.

## Who is impacted by FATCA?

FATCA regulations will impact all Foreign Financial Institutions (FFIs) and their customers worldwide. A Foreign Financial Institution refers to all non-US financial institutions (foreign to the US).

An entity is a Foreign Financial Institution (FFI) and within the scope of FATCA if it:
- Accepts deposits in the ordinary course of a banking or similar business (depository institutions)
- Holds financial assets for the account of others as a substantial portion of its business (custodial institutions)
- Is an investment entity that is primarily engaged in the business of, or operations for and behalf of a customer, related to trading in securities, portfolio management, or investing, administering, or managing funds, money, or financial assets on behalf of other persons (investment entity)
- Is an insurance company or the holding company of an insurance company that issues or is obligated to make payments with respect to a cash value insurance or annuity contract
- Is an entity that is a holding company (holds outstanding stock of one or more members of its expanded affiliated group) or treasury centre (enters into investments, hedging and financing transactions with or for members of its group)

## What is impacted by FATCA?

Products where Fixed or Determinable Annual Period (FDAP) income can be earned are deemed in scope for FATCA. FDAP income categories consist of interest, dividends, rental income, annuities, compensations, remunerations and other ''passive'' type income.

## What is the process for compliance?

At a country level, governments can enter into an agreement with the USA Inland Revenue Services (IRS). Such an agreement is known as an "Inter-governmental agreement" (IGA).
In terms of this agreement, FFIs will be required to report information on US accountholders directly to their national tax authorities.

Where there is no IGA in place, FFIs will have to register directly with the IRS via the online portal and will be required to report the information gathered directly to the IRS.

All registered FFIs (known as "Participating FFIs") commit to comply with a number of FATCA obligations.
These obligations include:
- Identifying US persons who hold assets with the FFI,
- Identifying the status of entity customers and counterparties in terms of FATCA,
- Reporting US person's assets to the national tax authorities.

For countries that do not have IGAs in place, FFIs who do not register with the IRS are referred to as "Non-Participating FFIs" (NPF).
Kenya does not currently have an IGA in place.

## Why would FFIs, including STANLIB, want to comply with FATCA?

The US is the largest recipient of inward investments in the world. It is very difficult for any international financial institution to operate without investing directly or indirectly into the US or dealing with financial institutions that invest in the US.

Non-compliance with FATCA in the market place is likely to reduce business opportunities and compliant firms may be reluctant to deal with non-compliant firms.

Furthermore, non-compliance with FATCA will result in IRS withholding 30% on all payments derived from US investments due to the FFI.

**Example:**
A US paying agent (example XYZ Bank) is making a payment to Asset Manager Co X (an FFI), who is a FFI not complying with FATCA; XYZ Bank will withhold 30% of the payment. This will continue to occur when payments are made to Asset Manager Co X (an FFI) until such time that they comply. The 30% lost while non-compliant and non-participating will not be refunded at point of compliance.

For more information please contact STANLIB Kenya or visit www.irs.gov

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