

[SEC MEMORANDUM CIRCULAR NO. 8, April 03, 2014]

FOREIGN ACCOUNT TAX COMPLIANCE ACT

Adopted: 03 April 2014
Date Filed: 08 May 2014

The Commission En Banc in its meeting held on April 3, 2014, resolved to approve this Circular to guide non-bank financial institutions (NBFIs) that are covered by Foreign Account Tax Compliance Act (FATCA) regulations.

FATCA was enacted in 2010 by the United States (U.S.) Congress as part of the Hiring Incentives to Restore Employment (HIRE) Act. FATCA was enacted to prevent off-shore tax abuses by U.S. taxpayers, FATCA requires, among others, the on-line registration of foreign financial institutions (FFIs) with the U.S. Internal Revenue Service (IRS) and their reporting to the IRS of information about financial accounts by FFIs in which U.S. taxpayers hold a substantial ownership interest. Under the Act, noncompliance therewith will result to the imposition of a 30 percent withholding tax on payments of U.S. sourced income to FFIs.

The FFIs referred to in the FATCA pertain to financial institutions which are organized under the laws of a jurisdiction other than the United States of America.

The IRS has included the following FFIs in its non-exclusive list^[1]:

- Depository institutions
- Custodial institutions
- Investment entities
- Certain types of insurance companies that have cash value products or annuities

NBFIs that are licensed by the Commission are hereby instructed to conduct the following procedures:

1. Evaluate if the company is a foreign financial institution covered by FATCA;
2. Study the potential effects of FATCA to its business and determine the necessary steps to take to avoid the unfavourable consequences of noncompliance with FATCA requirements;
3. Establish a policy and prepare the company's operating systems which would enable it to capture and perform tagging of its account holders subject of the FATCA requirement;
4. Consider the provisions of domestic laws, such as, but not limited to, the Securities Regulation Code, the Investment Company Act, the Law on Secrecy of Bank Deposits and the Data Privacy Act in crafting the guidelines;
5. Raise all FATCA-related questions or concerns of NBFIs through its respective association which shall act as the central repository of FATCA related inquiries