



# The US Tax Group

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## 30% Withholding to Apply to U.S. Source Income and Stock Sale Proceeds May Apply Under New Law

**T**he Foreign Tax Compliance Act of 2009 (“FATCA”) was enacted on March 18, 2010 as part of the Hiring Incentives to Restore Employment Act (“HIRE”) will have broad implications to any Canadian-based multinational which makes “withholdable payments” of U.S. source income.

Failure to comply with these rules, which will be in effect after 2012, will result in a required 30% withholding on any “withholdable payment” made to either a foreign financial institution or a foreign nonfinancial institution.

These rules could apply to Canadian banks, brokerage companies, hedge funds, broker-dealers, etc.

Withholdable payments include payments of U.S. source interest, dividends, rents, salaries, wages, premiums, annuities, etc. As well, these rules apply to payments of gross proceeds from the sale or disposition of property that can produce U.S. source interest.

The law requires 30% withholding on any withholdable payment made by a foreign financial institution (e.g. including broker-dealers) unless the institution enters an agreement with the IRS to do the following:

1. Obtain information from each account holder as is necessary to determine which accounts are U.S. -owned accounts;

2. Comply with verification and due diligence procedures (to be prescribed by forthcoming regulations) with respect to the identification of U.S. accounts;
3. Report annually certain information related to any U.S. account maintained by such institution;
4. Deduct and withhold 30% on certain pass-through payments made to the benefit of an account holder that refuses to provide the required information (a “recalcitrant account holder”) or other FFIs not meeting the requirements of the new provisions;
5. Comply with requests by the IRS for additional information with respect to any U.S. account maintained by such institution; and
6. Attempt to obtain a waiver in any case in which any foreign law would (but for a waiver) prevent reporting of information under the provision related to any U.S. account maintained by such institution and, if a waiver is not obtained, to close the account.

In general, the annual information reporting requirements under the new rules will require the financial institution to report the following information to the IRS:

1. The name, address, and taxpayer identification number of each account holder that is a specified U.S. person;
2. The name, address, and identification of each substantial U.S. owner of any account holder that is a U.S.-owned foreign entity;
3. The account number and balance or value and;
4. The gross receipts and gross withdrawals or payments from the account.

The Treasury Department has been changed to draft regulations related to the new law. It has been provided with leeway to exclude certain classes of payment from reporting where there is a low risk of tax evasion.

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