

FATCA, Credit Cards and Prepaid Currency Arrangements

Effective since March 18, 2010, the U.S. Foreign Account Tax Compliance Act (FATCA) arose from U.S. Government pressure for transparency relative to foreign bank accounts held by U.S. taxpayers. FATCA answered the call by imposing on foreign financial and similar institutions (FFIs) the requirement of informing of U.S. citizen-held accounts or otherwise have up to 30% of their U.S. source earnings withheld.

On September 23, 2014, an international agreement (the IGA) for the exchange of information was signed between Brazil and the United States towards establishing the means of applying FATCA to Brazilian FFIs. Said agreement imposes strict rules on financial and similar institutions, obligating their communicating information on their U.S. account holders to the Brazilian Internal Revenue for subsequent relay to the United States authorities.

The IGA's requirements are imposed on institutions providing custodian services (Custodial Institutions), taking deposits (Depository Institutions), managing investments (Investment Entities) and certain insurance businesses (Specified Insurance Companies). Of those, only Depository Institutions encompass credit cards and other payment arrangements, as explained below.

The so-called payment arrangements are defined in Brazil under Law No. 12.865, of October 9, 2013, and by Central Bank normative regulation. They are subdivided into payment arrangement creators and payment institutions. Payment arrangement creators may group one or more payment institutions. Payment institutions are identified as i) issuers of prepaid electronic currency, ii) issuers of post-paid credit instruments, typically credit cards and iii) accreditation institutions, that interpose themselves between payment arrangements and payees, to enable the former to participate in the arrangements.

Prepaid electronic currency issuers are the only entities of the preceding paragraph that accept deposits in the normal course of their activities.

Credit card companies can also receive deposits, whenever they hold amounts paid in excess by the card users. In these cases, according to the IGA, FATCA's requirements do not apply should internal procedures of the card issuer i) avoid consumer deposits greater than US\$ 50,000.00, or ii) assure the return of any deposit larger than said amount within 60 days of receipt. The US\$ 50,000.00 limit will be calculated excluding disputed charges, but including any credits resulting from merchandise returns.

Prepaid electronic currency issuers who receive deposits and credit card issuers other than those identified in the preceding paragraph must report accounts held by U.S. individuals and company entities within nine months following the end of the calendar year to which the information refers. Even in this case, there are general non-reporting exceptions that are identified in the IGA to their favor: 1) deposits in excess of US\$ 50,000.00; ii) pre-existing accounts held by company entities with balances in excess of US\$ 250,000.00, until such time as the balance exceeds US\$ 1 million, and other situations.

Credit and debit card issuers not falling within the above exceptions have the obligation to audit existing accounts to determine whether they should be reported, including the obligation of physical document review. In the improbable case of deposits greater than US\$ 1 million,

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information provided by account executive managers will be analyzed. With regard to company entity-held accounts, the measures to be taken include verification of documents collected for anti-money laundering prevention. This is to determine whether the deposit account holder is a U.S. company entity controlled by a U.S. resident, or if it is another Brazilian financial institution not complying with its respective reporting obligation, in which case the total amount of payments in favor of such institution must be informed to the Brazilian Internal Revenue Secretariat.

The IGA, with its many new rules has yet to be ratified by the Brazilian Congress and published by decree, in addition to being subject to extensive regulation by the competent authorities.

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