

# **FATCA/CRS Fiscal Transparency Program Overview**

## **Impact for Customers of Banco Davivienda and its Subsidiaries**

***NOTE:*** *Banco Davivienda and its subsidiaries do not provide tax or fiscal advice to their clients. This document aims only to report in general terms the impacts of the DIAN's FATCA and CRS Law. For customers who require it, we recommend consulting an independent tax advisor, or an expert in United States tax laws or those of any other jurisdiction, as the case may be.*

Banco Davivienda and its subsidiaries will participate in the FATCA Act and CRS Law, as will all financial institutions worldwide who give priority to transparency and regulatory compliance. Thus, we suggest that clients of our entities expand any additional information they require from the following sources:

<http://www.irs.gov/Spanish>

<http://www.irs.gov/uac/Newsroom/Ayuda-Tributaria-en-Espa%C3%B1ol-2>

<http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/>

or at the DIAN web page: [www.dian.gov.co](http://www.dian.gov.co)

## **1. FATCA (Foreign Account Tax Compliance Act)**

### **1.1 Definition**

The Foreign Account Tax Compliance Act or FATCA, passed in March 2010 by the United States Congress, is intended to prevent tax evasion by identifying persons with tax obligations in the United States who hold financial assets in financial institutions outside that country.

The governments of Colombia and the United States have established an Intergovernmental Agreement (IGA), within the framework of Law 1666 of 2013, which makes compliance with the FATCA Act mandatory for Colombian financial institutions and their clients. This law was implemented in Colombia through Resolution 60 of 2015 issued by the DIAN in June of that year.

The FATCA Act will be applied within Banco Davivienda and its Subsidiaries that by the nature of their business are obliged to comply with the terms of the agreement.

## 1.2 Participating entities - FATCA Scope

The FATCA regulations cover all financial institutions: banks, brokerage firms, trusts, funds and investment vehicles, among others, established outside the United States.

## 1.3 Obligations of Entities Participating in FATCA

- ✓ Identify and qualify clients (natural or legal persons) who are U.S. Persons, potential United States taxpayers, through due diligence processes in knowing new clients to be enrolled and in updating data of the clients previously enrolled.
- ✓ Report annually to the DIAN (National Tax and Customs Office of Colombia) information regarding clients subject to FATCA, under the terms established by the regulations.

## 1.4 What kind of natural person clients does FATCA impact?

- ✓ People with dual nationality (American-other).
- ✓ Persons with American nationality or citizenship, even if they do not reside in the United States or any of its territories.
- ✓ Natural persons with an American passport.
- ✓ Persons born in the United States or any of its territories (except if nationality is waived).
- ✓ Permanent residents in the United States or any of its Green Card territories.
- ✓ Natural persons with a stay >182 days in the last year or >121 days on average in the last 3 years.
- ✓ Persons who have issued periodic transfer orders to a U.S. account.

**Exceptions to Permanence:** Diplomatic Activity, Study, Medical Treatment.

## 1.5 What type of legal person clients does FATCA affect?

1. Those entities whose country of incorporation or headquarters country is the United States.
2. Those companies that are branches, affiliates or subsidiaries of North American companies.
3. Those entities whose shareholders (owners/beneficiaries) are citizens or companies classified as a U.S. Person or who must fiscally report to the USA, whose participation is greater than 9.99%.
4. Companies that have issued periodic transfer orders to a U.S. account.

**Exceptions:** Public Government Entities and/or Entities listed on the Stock Exchange.

### **1.6 What documentation supports FATCA due diligence or exceptions?**

- Customer Registration and Update Formats.
- Certification Forms (W9, W8 BEN E)
- Certificates of the exception invoked, signed by the customer with identification type and number
- Written/electronic communication from customers.
- Official Certificate of Citizenship Waiver

### **1.7 What is the custody time for these supporting documents?**

- At least 6 years in physical form and permanently in electronic format.

### **1.8 What kind of products are reported within the framework of the Fatca Act?**

- Initially products falling under Liabilities (Savings and Investments)

### **1.9 What happens if the Client does not provide the information to be qualified as impacted or not impacted by FATCA, requested during the registration process or update?**

Clients who do not provide the information required to properly qualify their FATCA status will be identified as Recalcitrant, and may be subject to a withholding of 30% of their U.S. source income received at the entity. They will also be reported to the DIAN under the Recalcitrant classification.

### **1.10 Effectiveness of the FATCA Act**

The law came into effect on July 1, 2014.

## **2. ACRONYMS Related to the FATCA Act**

- **FATCA: Foreign Account Tax Compliance Act**
- **HIRE Law: Hiring Incentives to Restore Employment Act**
- **FFI: Foreign Financial Entity**
- **NFFE: Non-Financial Foreign Entity**
- **USFI: United States Financial Institution**
- **IRS: U.S. Internal Revenue Service**
- **GIIN: Global Intermediary Identification Number**

## **3. CRS (Common Reporting Standard)**

### **3.1 Definition**

The Common Reporting Standard is a law created and approved by the Council of Europe and member countries of the Organization for Economic Co-operation and Development (OECD), implemented by Colombia through Law 1661 of 2013. Its objective is to guarantee fiscal transparency through the exchange of financial information for tax purposes, identifying clients who are fiscal residents in jurisdictions other than Colombia.

This Law aims to identify and report natural and legal persons who have fiscal residence in a country outside Colombian jurisdiction. Its scope covers fostering a globalized framework for fiscal transparency, setting out guidelines for the exchange of financial information between tax authorities in the jurisdictions. This law is regulated in Colombia by the DIAN (National Directorate of Taxes and Customs) through Resolution 0119 of 2015 and its subsequent updates.

### **3.2 Participating entities - CRS Scope**

The CRS regulation's scope extends to all financial institutions: banks, brokerage firms, trusts, funds and investment vehicles, among others, established in countries that sign the agreement with the OECD.

### **3.3 Obligations of Entities Participating in CRS**

- ✓ Identify and qualify clients (natural or legal persons) who have fiscal residence in a country or countries other than Colombia, through processes of due diligence and knowledge during registration of new clients and the updating of data for previously registered clients.
- ✓ Report annually the information on customers subject to CRS to the DIAN (Colombia's National Directorate of Taxes and Customs), under the terms established by regulations.

### **3.4 What kind of natural person customers are impacted by CRS?**

- ✓ Natural persons with fiscal residence outside Colombia, that is, having tax obligations in a country or countries other than Colombia.

### **3.5 What type of legal person clients does CRS impact?**

Legal persons with fiscal residence outside Colombia, or who have partners or final beneficiaries with fiscal residence outside Colombia, that is, who have tax obligations in a country or countries other than Colombia.

### **3.6 What documentation supports due diligence or exceptions?**

- Customer Registration and Data Update Formats.

### **3.7 What is the custody time for these documents?**

- At least 6 years in physical form and permanently in electronic format.

### **3.7 What kind of products are reported within the framework of the CRS Act?**

- Initially products falling under Liabilities (Savings and Investments)

### **3.8 What happens if the Client does not provide the requested information during the linking process or update to qualify their status in CRS?**

Clients who do not provide the information required to properly qualify their CRS status will be subject to reporting to the DIAN.

### **1.10 Validity of CRS Law**

The law came into effect on January 1, 2016.

**Notice:** *Efforts have been made so the information contained in this document is correct and complete. However, Banco Davivienda and its Subsidiaries are not responsible for omissions, inaccuracies or errors in the same.*