

No. 52025*

**Spain
and
United States of America**

Agreement between the Kingdom of Spain and the United States of America to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (with annexes). Madrid, 14 May 2013

Entry into force: *9 December 2013 by notification, in accordance with article 10*

Authentic texts: *English and Spanish*

Registration with the Secretariat of the United Nations: *Spain, 22 July 2014*

**No UNTS volume number has yet been determined for this record. The Text(s) reproduced below, if attached, are the authentic texts of the agreement /action attachment as submitted for registration and publication to the Secretariat. For ease of reference they were sequentially paginated. Translations, if attached, are not final and are provided for information only.*

**Espagne
et
États-Unis d'Amérique**

Accord entre le Royaume d'Espagne et les États-Unis d'Amérique relatif au renforcement du respect des obligations fiscales internationales et à la mise en œuvre du "Foreign Account Tax Compliance Act" (avec annexes). Madrid, 14 mai 2013

Entrée en vigueur : *9 décembre 2013 par notification, conformément à l'article 10*

Textes authentiques : *anglais et espagnol*

Enregistrement auprès du Secrétariat des Nations Unies : *Espagne, 22 juillet 2014*

** Numéro de volume RTNU n'a pas encore été établie pour ce dossier. Les textes reproduits ci-dessous, s'ils sont disponibles, sont les textes authentiques de l'accord/pièce jointe d'action tel que soumises pour l'enregistrement et publication au Secrétariat. Pour référence, ils ont été présentés sous forme de la pagination consécutive. Les traductions, s'ils sont inclus, ne sont pas en form finale et sont fournies uniquement à titre d'information.*

Agreement Between the Kingdom of Spain and the United States of America to Improve International Tax Compliance and to Implement FATCA

Whereas, the Kingdom of Spain and the United States of America (each, a “Party”) have a longstanding and close relationship with respect to mutual assistance in tax matters and desire to conclude an agreement to improve international tax compliance by further building on that relationship,

Whereas, Article 27 of the Convention between the Kingdom of Spain and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and its Protocol, done at Madrid on February 22, 1990, (“the Convention”) authorizes exchange of information for tax purposes, including on an automatic basis,

Whereas, the United States of America enacted provisions commonly known as the Foreign Account Tax Compliance Act (“FATCA”), which introduce a reporting regime for financial institutions with respect to certain accounts,

Whereas, the Kingdom of Spain is supportive of the underlying policy goal of FATCA to improve tax compliance,

Whereas, FATCA has raised a number of issues, including that Spanish financial institutions may not be able to comply with certain aspects of FATCA due to domestic legal impediments,

Whereas, the United States of America collects information regarding certain accounts maintained by U.S. financial institutions held by residents of Spain and is committed to exchanging such information with the Kingdom of Spain and pursuing equivalent levels of exchange,

Whereas, the Parties are committed to working together over the longer term towards achieving common reporting and due diligence standards for financial institutions,

Whereas, the United States of America acknowledges the need to coordinate the reporting obligations under FATCA with other U.S. tax reporting obligations of Spanish financial institutions to avoid duplicative reporting,

Whereas, an intergovernmental approach to FATCA implementation would address legal impediments and reduce burdens for Spanish financial institutions,

Whereas, the Parties desire to conclude an agreement to improve international tax compliance and provide for the implementation of FATCA based on domestic reporting and reciprocal automatic exchange pursuant to the Convention and subject to the confidentiality and other protections provided for therein, including the provisions limiting the use of the information exchanged under the Convention.

Now, therefore, the Parties have agreed as follows:

Article 1

Definitions

1. For purposes of this agreement and any annexes thereto (“Agreement”), the following terms shall have the meanings set forth below:
 - a) The term **“United States”** means the United States of America, including the States thereof, and, when used in a geographical sense, means the territory of the United States of America, including inland waters, the air space, the territorial sea thereof and any maritime area beyond the territorial sea within which the United States may exercise sovereign rights or jurisdiction in accordance with international law; the term, however, does not include the U.S. Territories. Any reference to a **“State”** of the United States includes the District of Columbia.
 - b) The term **“U.S. Territory”** means American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands.
 - c) The term **“IRS”** means the U.S. Internal Revenue Service.
 - d) The term **“Spain”** means the Kingdom of Spain and, when used in a geographical sense, means the territory of the Kingdom of Spain, including inland waters, the air space, the territorial sea and any maritime area outside the territorial sea upon which, in accordance with international law and on application of its domestic legislation, the Kingdom of Spain exercises or may exercise in the future jurisdiction or sovereign rights with respect to the seabed, its subsoil and superjacent waters, and their natural resources.
 - e) The term **“Partner Jurisdiction”** means a jurisdiction that has in effect an agreement with the United States to facilitate the implementation of FATCA. The IRS shall publish a list identifying

all Partner Jurisdictions.

- f) The term “**Competent Authority**” means:
 - (1) in the case of the United States, the Secretary of the Treasury or his delegate; and
 - (2) in the case of Spain, the Minister of Finance and Public Administrations or his authorized representative.
- g) The term “**Financial Institution**” means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.
- h) The term “**Custodial Institution**” means any entity that holds, as a substantial portion of its business, financial assets for the account of others. An entity holds financial assets for the account of others as a substantial portion of its business if the entity’s gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 percent of the entity’s gross income during the shorter of: (i) the three-year period that ends on December 31 (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the entity has been in existence.
- i) The term “**Depository Institution**” means any entity that accepts deposits in the ordinary course of a banking or similar business.
- j) The term “**Investment Entity**” means any entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:
 - (1) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
 - (2) individual and collective portfolio management; or
 - (3) otherwise investing, administering, or managing funds or money on behalf of other persons.

This subparagraph 1(j) shall be interpreted in a manner consistent with similar language set forth in the definition of “financial institution” in the Financial Action Task Force Recommendations.

- k) The term “**Specified Insurance Company**” means any entity that 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 Contract or an Annuity Contract.
- l) The term “**Spanish Financial Institution**” means (i) any Financial Institution resident in Spain, but excluding any branches of such Financial Institution that are located outside Spain, and (ii) any branch of a Financial Institution not resident in Spain, if such branch is located in Spain.
- m) The term “**Partner Jurisdiction Financial Institution**” means (i) any Financial Institution resident in a Partner Jurisdiction, but excluding any branches of such Financial Institution that are located outside the Partner Jurisdiction, and (ii) any branch of a Financial Institution not resident in the Partner Jurisdiction, if such branch is located in the Partner Jurisdiction.
- n) The term “**Reporting Financial Institution**” means a Reporting Spanish Financial Institution or a Reporting U.S. Financial Institution, as the context requires.
- o) The term “**Reporting Spanish Financial Institution**” means any Spanish Financial Institution that is not a Non-Reporting Spanish Financial Institution.
- p) The term “**Reporting U.S. Financial Institution**” means (i) any Financial Institution that is resident in the United States, but excluding any branches of such Financial Institution that are located outside the United States, and (ii) any branch of a Financial Institution not resident in the United States, if such branch is located in the United States, provided that the Financial Institution or branch has control, receipt, or custody of income with respect to which information is required to be exchanged under subparagraph (2)(b) of Article 2 of this Agreement.
- q) The term “**Non-Reporting Spanish Financial Institution**” means any Spanish Financial Institution, or other entity resident in Spain that is identified in Annex II as a Non-Reporting Spanish Financial Institution or that otherwise qualifies as a deemed-compliant FFI,