Agenda

Section 1: Introduction
Section 2: Update to the Financial Account Tax Compliance Act
Section 3: Update to the Intergovernmental Agreements
Section 4: Update to the Common Reporting Standard
Section 5: Questions & Answers
Introduction: The automatic exchange of tax information – steadily increasing global standards

- **2001**: QI
- **2005**: EUSD
- **2010**: US FATCA
- **2012**: IGA FATCA
- **2013**: UK FATCA
- **2013 - 2014**: DAC, EUSD, EU Pilot Project

**FATCA: Developments & Perspective**

**QI**: In favor of the U.S., begin of an automatic exchange of information with a yet limited scope but including tax treaty benefits.

**EUSD**: Mutual exchange of information for the effective taxation of cross-border interest income and revenues applied by EU member states (with the exception of Austria and Luxembourg) and certain third countries.

**US FATCA**: In favor of the U.S., a comprehensive automatic exchange of tax information regime was enacted by FATCA.

**IGA FATCA**: Intergovernmental negotiations concerning the implementation of FATCA lead to bilateral Model Agreements (IGAs) including the opportunity of a reciprocity.

**UK FATCA**: Bilateral agreements were signed between the UK and Guernsey, Jersey and Isle of Man, which are consistent with the Model 1 IGA to implement FATCA.

**OECD - Common Reporting Standard (CRS)**: Proposed amendments to the EU Savings Directive (EUSD) and Directive on Administrative Cooperation (DAC) as well as a EU “Pilot Project” are planned in order to achieve a comprehensive reporting standard within the EU analog to FATCA.

The OECD received a mandate by the G8/G20 countries to develop a global reporting standard to achieve a comprehensive and multilateral automatic exchange of information (AEOI) in the future.
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Section 5: Questions & Answers
FATCA – The Basics

FATCA
Foreign Account Tax Compliance Act

Purpose of FATCA
• Prevent and detect offshore tax evasion by US citizens
• Increased information reporting
• Enforced by withholding tax

Effective
Withholding begins on 1 July 2014

FATCA ≠ QI
The QI regime aims for correct withholding on payments to non-US persons
The FATCA regime is about gathering information (via FFI reporting) and bringing noncompliant US persons back into the system and uses withholding as a punitive measure to get the information on US persons

How does it work?
While the IRS generally has no jurisdiction over foreign people and entities, FATCA financially compels foreign entities to identify and report information about U.S. persons to the IRS by requiring US withholding agents and participating foreign financial institutions to report on and withhold 30% of certain payments to foreign persons that are not compliant.
## Update to FATCA: Follow a phased-in timeline

<table>
<thead>
<tr>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017 / 2018</th>
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<tbody>
<tr>
<td><strong>FFI Governance</strong></td>
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<tr>
<td>19 August 2013 – 5 May 2014 – IRS FATCA registration to ensure compliance by July 01 2014 and to be included on the June 2 IRS FFI List</td>
<td>22 December 2014 – IRS FATCA registration of Reporting Model I FIs to ensure compliance by Jan 01 2015</td>
<td>Jan 1 2016 – Expanded affiliated group transition period ends for Limited FFIs and Limited Branches</td>
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<tr>
<td><strong>Due Diligence for preexisting accounts</strong></td>
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<tr>
<td>31 December 2014 – FFIs must complete due diligence for preexisting prima facie FFIs (Note 1)</td>
<td>30 June 2015 – FFIs must complete due diligence for preexisting high value individual accounts (Note 1)</td>
<td>30 June 2016 – FFIs must complete due diligence for all other preexisting accounts (Note 1)</td>
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<tr>
<td><strong>Procedures for new accounts</strong></td>
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<tr>
<td>1 July 2014 – FFIs must have new account opening procedures in place (Note 1)</td>
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<td><strong>Withholding</strong></td>
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<tr>
<td>30 June 2014 – Begin FATCA withholding on U.S. source FDAP income (Note 2)</td>
<td>31 March 2015 – Basic account reporting for CY 2014 and aggregate reporting of recalcitrant accounts (Note 3)</td>
<td>15 March 2016 – Transitional reporting of aggregate foreign reportable amounts and payments of U.S. source FDAP to NPFIs (Note 4)</td>
<td>1 Jan 2017 – Begin FATCA withholding on gross proceeds and foreign passthru payments (expected)</td>
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<td>1 July 2014 – General cutoff date for grandfathered obligations</td>
<td>15 March 2015 – Begin FATCA reporting on Form 1042-S for U.S. source FDAP income for CY 2014</td>
<td>31 March 2016 – Account reporting for CY 2015 including certain income payments (excl. gross proceeds)</td>
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<tr>
<td>30 June 2014 – Begin FATCA withholding on U.S. source FDAP income (Note 2)</td>
<td>Sep 30 2015 – Exchange of information from IGA Tax Authority to the IRS begins for U.S. accounts for 2014</td>
<td>Sep 30 2015 – Exchange of information from IGA Tax Authority to the IRS begins for U.S. accounts for 2014</td>
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<tr>
<td>30 June 2016 – FFIs must complete due diligence for all other preexisting accounts (Note 1)</td>
<td>15 March 2015 – Begin FATCA reporting on Form 1042-S for U.S. source FDAP income for CY 2014</td>
<td>31 March 2016 – Account reporting for CY 2015 including certain income payments (excl. gross proceeds)</td>
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<tr>
<td>1 July 2014 – General cutoff date for grandfathered obligations</td>
<td>31 March 2016 – Account reporting for CY 2015 including certain income payments (excl. gross proceeds)</td>
<td>2016 – Begin reporting to FATCA Partner Authority the name and the aggregate amount of payments made to NPFIs (Notes 4 and 5)</td>
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<td><strong>Reporting</strong></td>
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<tr>
<td><strong>FATCA: Developments &amp; Perspective</strong></td>
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</table>

(1) Certain de minimis thresholds and retesting rules may apply.
(2) Customer base for which withholding applies will be phased in as preexisting accounts are identified and documented.
(3) Items to be reported in account information reporting are phased in through 2017.
(4) This is a two-year transitional reporting for payments made in calendar years 2015 and 2016.
(5) Dates will be provided under legislation or regulations issued by FATCA Partner tax authorities.
Update to FATCA: New Regulations and new US-forms

New Regulations

1. Modifications to the “final” FATCA regulations; and,
2. “Harmonization” of the existing chapters 3 and 61 and Section 3406; NRA and domestic information reporting – Forms 1042-S and 1099 etc. with the FATCA rules
3. Notice 2014-33: transitional relief

Highlights

• Demonstrates that the IRS listened to comments
• Contains a number of clarifications and technical corrections
• Implemented changes announced in prior notices
• Provides for transitional relief (e.g. pre-existing entity accounts, treatment of limited branches)
Highlights from recent regulations: Withholding certificates and statements

- Extends the validity period of forms scheduled to expire on June 30, 2014 to December 31, 2014
- Indefinite validity of W-8-Forms until change of circumstances: Only in Chapter 4 cases and for the duration of the alternative documentary evidence. However, not for Chapter 3 treaty application.
- Faxed and scanned W-8s are OK for BOTH QI and FATCA! Unclear: Pure electronic format (xeroxed)
- No authentication of author required, applies an “actual knowledge” standard
- Entity accounts opened on or after July 1, 2014 but before January 1, 2015 may be treated as pre-existing obligations (but without applying USD 250,000 threshold)
In general, a withholding agent must withhold 30 percent of any **withholdable payment** made after June 30, 2014, to a payee that is non-participating FFI.

**What is a withholdable payment?**

- Includes:
  - Payments of U.S. source FDAP income beginning on July 1, 2014
  - Gross proceeds beginning on January 1, 2017
  - Passthru payments after January 1, 2017
- Excludes:
  - Payments made under grandfathered obligations
  - Effectively connected income and other specific exclusions listed in the regulations

**Who is a non-participating FFI?**

Nonparticipating FFIs (e.g., FFIs that have not registered with the IRS as a participating or registered deemed-compliant FFI and received a GIIN* or are unable to otherwise certify that they are deemed-compliant)

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* A GIIN is a global intermediary identification number and is issued by the IRS to FFIs that register as participating or registered deemed-compliant on the IRS registration portal.
## Withholding

### Withholdable Payment

<table>
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<tbody>
<tr>
<td>Examples of FDAP Income:</td>
<td>Property which can produce US source FDAP income:</td>
</tr>
<tr>
<td>1. interest,</td>
<td>1. sales of securities,</td>
</tr>
<tr>
<td>2. dividends,</td>
<td>2. redemptions of stock,</td>
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<tr>
<td>3. rents,</td>
<td>3. retirements of indebtedness,</td>
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<td>4. royalties,</td>
<td>4. closing transaction in a forward contract,</td>
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<td>5. salaries,</td>
<td>5. option or other instrument that is otherwise a sale</td>
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<tr>
<td>6. wages,</td>
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<tr>
<td>7. premiums and</td>
<td></td>
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<tr>
<td>8. annuities</td>
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</tbody>
</table>

### Exceptions

Withholdable Payments do not include:

1. grants or purchases of options,
2. exercises of call options for physical delivery,
3. payments of interest on short-term obligations (183 days or less),
4. income effectively connected with the conduct of a trade or business in the US

*Note 1: Please note that there are differences in the definition of FDAP income for Chapter 3 and Chapter 4 purposes. For example, the exceptions allowed under Chapter 3 (e.g., portfolio interest) are not allowed under Chapter 4. However, there are specific exceptions from the definition of a withholdable payment for FATCA.*

*Note 2: Please note that the definition of US source FDAP income is currently in the process of being modified under US law in accordance with new legislation introduced under section 871(m) of the US Internal Revenue Code.*

FATCA: Developments & Perspective

PwC

May 2014
**Withholding**

Grandfathered Obligations

*The term Grandfathered Obligation means any obligation outstanding on July 1, 2014*

An obligation does not include any legal agreement or instrument that is treated as equity for US tax purposes or any legal agreement that lacks a stated expiration or term, such as a savings deposit or demand deposit.

**Includes but is not limited to:**

1. debt instruments (bond, etc.),
2. binding agreement to extend credit for a fixed term (revolving credit facility, etc.),
3. life insurance contract payable upon attaining a stated age or death,
4. a term certain annuity contract,
5. derivatives transactions entered into under an ISDA Master Agreement and evidenced by a confirmation

**Does not include:**

1. any brokerage agreement, custodial agreement, or other similar agreement to hold financial assets for the account of others and to make and receive payments of income and other amounts with respect to such assets
2. a master agreement that merely sets forth general and standard terms and conditions that are intended to apply to a series of transactions between parties

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* A grandfathered obligation that is materially modified after July 1, 2014 will cease to be a grandfathered obligation and will be treated as newly issued or executed as of the effective date of such modification.
**Reporting**

**FATCA introduces new reporting of information on account holders**

- The FFI Agreement will specify the participating FFIs obligation to report on an annual basis with respect to US investors and investments held by recalcitrant account holders. (Form 8966)

**FATCA also changes existing Form 1042 and 1042-S reporting**

- Every withholding agent shall file an income tax return on Form 1042 to report chapter 4 reportable amounts and must also file an information return on Form 1042-S to report to the IRS chapter 4 reportable amounts that were paid to a recipient during the preceding calendar year.

- A Form 1042 must be filed even if no tax was required to be withheld for chapter 4 purposes (e.g., because the obligation was grandfathered or the withholding rate under the treaty is zero)
### Reporting

Required to report the following information on an annual basis:

<table>
<thead>
<tr>
<th>US Specified Persons</th>
<th>NFFE that are US Owned Foreign Entities</th>
<th>Non-participating FFIs</th>
</tr>
</thead>
</table>
| • Name, address, and TIN of each investor (acct holder) that is a specified US person  
  • Account number  
  • Account balance or value of the account (investment)  
  • Payments made with respect to the account during the calendar year  
  • Such other information as is otherwise required to be reported under the regulations or in the form required | • Name of the US owned foreign entity that is the account holder (investor)  
  • Name, address, TIN of each substantial U.S. owner  
  • Account number  
  • Account balance or value of the account (investment) held by the NFFE  
  • Payments made with respect to account during the calendar year  
  • Such other information as is otherwise required to be reported | • Name of non-participating FFI to which payments were made  
• Aggregate amount of payments made  
• In 2016 and 2017 for payments made in 2015 and 2016 |

**Phased in approach for these accounts**

**Transitional reporting**
**Agenda**

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*Section 4:* Update to the Common Reporting Standard  
*Section 5:* Questions & Answers
Update to IGAs

- Signed or concluded an IGA
- Actively engaged in dialogue of concluding an IGA
- IGAs treated as being in effect to Include Agreements in Substance
- Exploring options for an IGA

**Signed or concluded an IGA**

Australia, Austria, Belgium, Bermuda, Canada, Cayman Island, Chile, Costa Rica, Denmark, Estonia, Finland, France, Germany, Guernsey, Honduras, Hungary, Ireland, Isle of Man, Italy, Japan, Jersey, Luxembourg, Malta, Mauritius, Mexico, Netherlands, Norway, Spain, Switzerland, United Kingdom

**IGAs treated as being in effect to Include Agreements in Substance**

Bahamas, Brazil, the British Virgin Islands, Bulgaria, Colombia, Croatia, Curacao, the Czech Republic, Cyprus, Gibraltar, India, Israel, Jamaica, Kosovo, Kuwait, Latvia, Liechtenstein, Lithuania, New Zealand, Panama, Peru, Poland, Portugal, Qatar, Republic of Korea, the Slovak Republic, Slovenia, South Africa, Sweden, Romania
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Common Reporting Standard (CRS)
Due diligence processes - differences from the Model 1 IGA

Definition of passive nonfinancial entity (NFE)
- Definition is expanded / Major change from FATCA
- Certain FIs (under FATCA) are treated as NFFEs (under CRS)
- Requires identification of the residency of controlling persons of investment entities that are not within a participating jurisdiction

Exempted financial accounts
- Removal of the ‘regularly traded on an established securities market’ rule (definition of financial accounts)
- Impact on investment entities

Documentary evidence
- More or less defined as it is under the Model 1 IGA

De minimis thresholds
- De minimis account balance or value thresholds for pre-existing individual accounts that applied under FATCA have been removed
- Threshold for high value accounts remains
Common Reporting Standard (CRS)  
Due diligence processes - differences from the Model 1 IGA

Due diligence
pre-existing
individual accounts

- Alternative for lower value accounts to an electronic search for indicia: option of relying on a residence address based on documentary evidence to determine an account holder’s status

Indicia

- Have been modified (CRS: tax residency and additional requirements for “hold mail / in care of”)
- Potential implementation issues with respect to due diligence processes organizations have developed

Accounts that have been closed

- No requirement to report the balance of such an account
- Only reporting of the fact that the account has been closed
- Simplification from FATCA
- Implementation of two different processes
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Please check IRS, PwC and Treasury-Websites for further information:

http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx


www.fatca.lu : PwC Luxembourg

Contacts

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+352 49 48 48 3177
Thank your for your attention!

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