

Trans-World Compliance, Inc.

# FATCA Briefing

Foreign Account Tax Compliance Act



**For Release**

July, 2014



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# Executive Overview

## FATCA Overview

The Foreign Account Taxation Act (FATCA) was enacted in 2010 by the US Congress as part of the Hiring Incentives to Restore Employment (HIRE) Act. FATCA requires Foreign Financial Institutions (FFIs) to provide the IRS with information about financial accounts held by U.S taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest. In order to avoid withholding under FATCA, a participating FFI will have to enter into an agreement with the US' tax authorities, the Internal Revenue Service (IRS), to:

- Identify U.S. accounts;
- Report certain information to the IRS regarding U.S accounts; and
- Withhold a 30 percent tax on certain U.S. connected payments to non-participating FFIs and account holders who are unwilling to provide the required information.

## FATCA Highlights

- Attempts to improve tax compliance of specified U.S. persons who have offshore financial accounts
- Requires FFIs to enter into compliance agreements with U.S. Treasury by June 30, 2014 to identify and report U.S. accounts annually
- Requires U.S. withholding agents to perform enhanced due diligence on foreign accounts and perform withholding and reporting in addition to their current regulatory obligations under Chapter 3
- Requires certain non-financial foreign entities (NFFEs) to report substantial U.S. owners or certify no U.S. ownership
- Requires U.S. withholding agents and FFIs to withhold 30% of payments made to foreign financial institutions, non-financial foreign entities and individuals that are not in compliance with FATCA requirements
- Requires FFIs to withhold on foreign pass through payments made to foreign financial institutions, non-financial foreign entities and individuals that are not in compliance with FATCA requirements no earlier than 2017
- Projected to raise \$7.6 billion in tax revenue over a 10 year period
- Applies generally to payments made after June 30, 2014

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# The FATCA Regulations

## Who does FATCA effect?

The FATCA regulations are an attempt to ensure that all US Citizens fully report and pay taxes on all income received. As such, the primarily affected group are US tax payers with offshore income, especially those that may not be in full tax compliance.

FATCA compliance is primarily enforced through two entities: Foreign Financial Institutions (FFI) and US Withholding Agents (USWA). Ultimately, these groups are responsible to ensure that income made to US Citizens is reported to the IRS. Note that existing Foreign Bank and Financial Account (FBAR) reporting and Form 8938, Statement of Specified Foreign Financial Assets, reporting requirements means US Citizens should be self-reporting their foreign assets to the IRS. By matching these self-reported account values to those reported by FFIs, the IRS is hoping to catch FFIs that claim to be participating, but don't fully report.

U.S. Withholding Agents must determine if payments are made to US citizens (filing the usual 1099 or other IRS forms), verify the citizenship of those claiming to be foreign citizens, and separate those foreign entities into those that are participating or exempt. Withholding on recalcitrant individuals with unknown citizenship and non-participatory entities is 30%.

Example: A US based real-estate investment fund raises money from a variety of US and overseas individuals and entities. After management fees are paid, each participant is paid an annual dividend. The management company must determine the citizenship of the individuals and report any income received by a US citizen, and withhold on any individuals that are recalcitrant with citizenship unknown. In addition, the real-estate investment fund must ensure that any offshore entity investors are Participating Foreign Financial Institutions (or otherwise exempt), or, in the case of a Non-Participating Foreign Financial Institution, withhold 30%. Since the IRS will come after the investment fund for any 30% withholding penalties, it is in the fund's interest to ensure compliance.

Foreign Financial Institutions must determine if payments are made to US citizens, verify the citizenship of those claiming to be foreign citizens, and separate entities into those that are participating or exempt. Withholding on recalcitrant or individuals with unknown citizenship and non-participatory entities is 30%.

Example: The real estate investment fund used the last example pays a participating FFI, a hedge fund located in the Cayman Islands, their full dividend payment (the real estate investment fund must withhold only on non-participating entities). As part of its agreement as a participatory FFI, it must report any payments made to US citizens and verify those claiming to be foreign citizens. For entity shareholders, it



too must separate entities into those that are participating or exempt and withhold accordingly. Should the hedge fund not properly report to the IRS, it may lose its status as a Participating Foreign Financial Institution (PFFI) and future dividend payments from the real estate investment fund would be minus the 30% withholding penalty.

Directly Responsible...	Targeted...	What...	If not...
Foreign Financial Institutions (FFIs)	U.S. Individuals  Privately-held U.S. Taxable Entities	FFIs must document account holders; and identify and report U.S. accounts annually among other requirements  Certain Non-Financial Foreign Entities (NFFE) must certify no substantial U.S. owners or provide info on them to FFIs and USWAs	FFI must withhold a tax of 30% on any withholdable payment made to any non-FATCA compliant FFI, NFFE, or individual account
U.S. Withholding Agents (USWAs)	U.S. Individuals  Privately-held U.S. Taxable Entities  Foreign Financial Institutions	USWA must document payees of withholdable payments	US withholding agents must withhold a tax of 30% on any withholdable payment made to any non-FATCA compliant FFI, NFFE, or individual account

A **withholdable payment** is defined in section 1473(1) to mean, subject to certain exceptions: (i) any payment of interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income (FDAP income), if such payment is from sources within the United States; and (ii) any gross proceeds from the sale or other disposition of any property of a type which can produce interest or dividends from sources within the United States.

A **foreign financial institution (FFI)**, which is any non-U.S. entity that:

- Accepts deposits in the ordinary course of a banking or similar business,
- As a substantial portion of its business, holds financial assets for the account of others, or
- Is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, or any interest in such securities, partnership interests, or commodities.



Generally non-U.S. entities such as banks, broker/dealers, insurance companies, hedge funds, securitization vehicles, and private equity funds will be considered FFIs.

In Notice 2010-60 Treasury and the IRS outlined their intention to issue regulations that will identify certain types of entities as excluded from the definition of an FFI, or ***Deemed Compliance Foreign Financial Institution***.

Such entities include:

- Certain holding companies for subsidiaries engaged in a non-financial business;
- Foreign “start-up” entities that invest capital into assets with the intention of operating a nonfinancial institution business (exclusion valid for first 24 months of organization);
- Non-financial entities that are liquidating or emerging from reorganization or bankruptcy;
- Hedging/financing centers of a non-financial group (must provide financing services solely to members of its expanded affiliated group);
- Insurance companies selling insurance products without cash value;
- Entities with certain identified owners; and
- Certain financial institutions organized in U.S. Territories.

Notice 2011-34 also identifies three additional categories of deemed compliant FFIs, broadly:

- Local banks that do not solicit account holders outside their country of organization and implement procedures to ensure that they do not open or maintain accounts for non residents, non-participating FFIs or non-excepted NFFEs;
- Local FFI members of Participating FFI Groups; and
- Certain investment vehicles that only have participating FFIs as direct interest holders and certify that any pass-through payment percentages are calculated and published in accordance with Notice 2011-34

Notice 2011-34 describes the process for obtaining deemed compliant status. Eligible FFIs must apply to the IRS for deemed-compliant status, obtain an FFI identification number (FFI-EIN) and certify every three years to the IRS that it meets the requirements for such treatment.

## **Intergovernmental Agreements (IGAs)**

Since FATCA imposes regulations on local Financial Institutions, many governments have come forward and made their own agreements with the U.S. In exchange for guaranteeing compliance by financial institutions within their jurisdiction, the local tax authorities are able to negotiate a blanket reporting agreement framework with the U.S.

There are two basic types: IGA Model 1 and IGA Model 2. With the intergovernmental agreements, the US makes an agreement with the local regulatory authorities to perform the testing and reporting





required by FATCA. In exchange, the local jurisdiction will pass a law requiring compliance. This means the local taxing authority will assume responsibility for FFIs in their jurisdiction to adhere to the proper FATCA reporting and compliance. In the Model 1 IGA, the local FFIs report to the local tax authorities who then report to the IRS. Any inquiries would go back to the local authorities who then pass the request to the local FFI. With the Model 2 agreement, the local authorities pass a law to require compliance, but the FFIs report directly to the IRS.

For US Withholding Agents, all FFI in an IGA jurisdiction can be considered participating and therefore no payments need to be withheld.

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# FATCA Impacts

## FATCA Impact Overview

FATCA will impact much more than just back-office reporting. FATCA will require changes to the way FFIs do business, from customer on-boarding, to systems, to policies and procedures (for example, client non-disclosure policies). It is recommended that firms setup a cross-functional team to examine the impact of FATCA on each area of business and develop a plan to address each area. Specifically:

1. Determine impacts.
2. Determine current state and derive a gap analysis.
3. Develop a plan to bridge the gap.
4. Execute.

As an example, just gathering the required data may require tapping multiple data sources, stored in different locations, in different formats (including paper). Some data may not even exist and will require reaching out to clients directly. Several areas of concern are listed below.

## Tax Reporting

Participating FFIs will be required to do more than identify and report on their US accounts. They will need to classify all of their accounts under the appropriate FATCA classification (e.g. non-participating FFIs, participating FFIs, deemed compliant FFIs, active NFFEs). US withholding agents will be required to perform due diligence on and classify foreign entity accounts, new individual accounts, and preexisting individual accounts in certain circumstances. The process for identifying and documenting a foreign entity's status can be significant and there is potential exposure if the determination is incorrect.

Impact:

- Properly identifying and classifying foreign entities
- Foreign entity status documentation
- U.S. indicia search and documentation for individual accounts

## Technology

Both USWAs and FFIs will need to develop enhancements to already existing technologies and systems in order to meet the requirements of FATCA. Significant changes in data structure, as well as additional data



collection, calculation and reporting requirements will be pervasive across multiple systems. Requirements, development, testing and implementation will be required for each system impacted.

- Potential new systems to continuously track
- Tax reporting and reconciliation systems required documentation
- Data cleansing and remediation
- Account opening/ maintenance systems
- Data and architecture
- Sales, dividend, interest, corporate actions
- Compliance systems other proceeds systems
- Any systems supporting the withholding

Withholding calculation systems reporting regime under chapter 3 will need to be enhanced to accommodate FATCA

Impact:

- Requirements definitions
- Outsourcing considerations
- Development
- Testing
- Implementation

## **Operations**

Both USWAs and FFIs will need to address changes in processes and workflows across the back- office impacting several functions of customer facing, asset servicing, regulatory reporting, and risk and control activities.

- Customer Facing: New Account Processing, Account Transfers, Client Reporting / Statements, Privacy and AML / KYC
- Asset Servicing: Corporate Actions Processing, Tax Reporting, Security Master, and Payments inventory and withholding
- Regulatory Reporting: New annual IRS/U.S. Treasury Reporting
- Risk & Control: Legal and Organizational Compliance and Procedures & Policies

Impact:

- New and modified policies and procedures
- Adjusted workflows



- New reporting and monitoring controls
- Staff additions
- Staff Training

## **Clients**

USWAs and FFIs will need to educate impacted clients including:

- Require privacy waivers or implement account closures
- Withholding on recalcitrant account holders and non-participating FFIs
- Cash flow and tax refunds

Impacts:

- Information and documentation request from clients
- Client follow-up for missing information
- Client education

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# The FATCA IT Process

## Overview

Assuming you are a FFI or USWA and need to adhere to the new FATCA regulations, the requirements are onerous. They have already begun and will increase through 2017 in terms of the depth and breadth of data to be reported as the regulations fully phase-in. Spending time in planning can save substantial time later. Before processing gaps (for example, tracking down citizenships) it is helpful to develop a step-by-step plan, such as:

1. Conduct an information inventory and completing a gap analysis. What information do you currently have, where is it, and is it electronic or paper based? There is likely some information that isn't available. Lost files, an account opened many years ago, or the like. These accounts will likely require follow-up with the account holder to get W-8 or W-9 information. It is assumed that you may never be able to determine all the required information for all your accounts.
2. Analyze the data. For example, you may determine that you have 100,000 contacts in your database, many without citizenship. However, you only need to report those with accounts over \$50,000. Weeding out closed accounts and accounts with values less \$50,000 can substantially reduce the work.
3. Process the data. Examine the records to be reported and begin filling out the missing data. Identify those fields that raise flags, such as US Indicia, and remediate the data.
4. Report the results. Everyone recognizes the results may not be ideal, but it is expected that there will be some leniency as these new regulations are implements. Subsequent years can improve on the data acquired in year one, and since new account on-boarding processes have changed, proper data is being collected and will prevent the problem from getting worse.

## Registration

By now, a firm should have already registered if it is an included entity. However, the list of included and excluded entities is useful to determine those entities that may require withholding.

Included entities:

- Depository institution
- Custodial institutions
- Investment entities
- Specified insurance company

- Holding company or treasury centers

Excluded entities:

- Excepted nonfinancial group entities
- Excepted nonfinancial startup companies or Companies entering a new line of business
- Excepted nonfinancial entities in liquidation or bankruptcy
- Excepted inter-affiliate FFI
- Section 501(c) entities
- Non-profit organizations
- Reserving activities of an insurance companies

Note that firms that firms in an IGA country (either Model 1 or Model 2) are considered deemed compliant. In total firms can be any of the following seven categories:

Type	Description
P-FFI	Participating Foreign Financial Institution (these firms will have registered with the IRS and will have a GIIN)
DC-FFI	Deemed Compliant Foreign Financial Institution (these include financial institutions in IGA covered jurisdictions and those in Expanded Affiliated Groups (EAGs).
NP-FFI	Non-Participating Foreign Financial Institutions (which require 30% withholding)
LP-FFI	Limited Participation Foreign Financial Institutions (these are firms that are in jurisdictions where data privacy laws limit the data that can be reported to foreign countries and require withholding).
NFFE	Non-Financial Foreign Entities. These include new companies, companies in reorganization, and active companies (those that derive a majority of income from non-investment activities).
PNFFE	Passive Non-Financial Foreign Entities. These include passive investment firms that derive a majority of its income through investments. For a PNFFE, any US Persons with a controlling interest need to be reported to the payor or it can be a Direct Reporting (or Sponsored Reporting) PFFE and report directly to the IRS.
Exempt-FFI	Exempt Foreign Financial Institutions include: Central Banks Certain pension activities US Branch Local Bank Non-cash value insurance

Check on these categories (for example, certain pension activities are exempt)

## Entities

Both withholding agents and foreign financial institutions need to determine and document the status of entities being paid (in the case of a withholding agent) or an entity account holder (in the case of a FFI). If the status is non-participating, unknown, or limited participating, then withholding must occur.

## Individual Remediation Process

In the case of individuals, participating FFIs and US Withholding agents need to determine if an individual is a US citizen, appears to be foreign citizen with no US indicia, appears to be a foreign citizen with some US indicia, and those that are unknown or unclear. The following chart provides for the acceptable documentary evidence allowed:

### A. Documentary Evidence

- A certificate of residence issued by the local tax authority indicating the account holder has filed its most recent tax return as a resident of that country;
- A non-U.S. government issued ID typically used for identification purposes (e.g., driver's license, passport, cedula, national ID card, etc.);
- With respect to an account maintained in a jurisdiction with anti-money laundering rules that have been approved by the IRS in connection with a QI agreement, any documents other than a Form W-8 or W-9 referenced in the jurisdiction's attachment to the QI agreement for identifying individuals

### B. Information provided by a third party credit agency

- As part of account opening procedures, the account holder provides a residence address outside the U.S. and attests in writing that he or she is not a U.S. citizen or resident;
- The agency verifies the claimed residence with at least one government data source from the FFI's jurisdiction or the individual's claimed residence country; and
- The participating FFI relies on this information for AML due diligence with respect to the account in a FATF-compliant jurisdiction.

### C. Withholding Certificate

- In the case of a Form W-9, the form must contain the payee's TIN.
- A Form W-8 must contain permanent residence information, a TIN (if required), a certification that the person is not a U.S. citizen or certification of foreign organization, as well as the entity classification of the person, the FATCA status of the person and any supporting information necessary to establish the person's FATCA status. Forms W-8 lacking such information will generally be considered insufficient to establish a payee's FATCA status.



For all individual accounts which claim or show foreign citizenship, the firm must try to determine if there are secondary indicia of US citizenship. The following chart lists secondary indicia criteria acceptable documentary evidence allowed to help remediate records with US Indicia.

Instance of U.S. indicia in account records despite claim of foreign status on a Form W-8	Curative documentation required to treat claim of foreign status as valid
U.S. Place of Birth (Individuals)	1) Certificate of Loss of Nationality so long as no other U.S. indicia in account records,  or  2) A non-U.S. passport or other government issued ID establishing non-U.S. citizenship and either a) a Certificate of Loss of Nationality or b) a reasonable written explanation of the account holder’s non-U.S. citizenship.
U.S. residence address, U.S. mailing address or U.S. telephone number with no telephone number for the person outside the U.S.	Documentary evidence establishing foreign status that does not contain a U.S. address. For individuals, a reasonable written explanation is also required.
For an offshore obligation: Standing instructions to pay amounts to an address or an account maintained in the U.S.	Documentary evidence establishing foreign status that does not contain a U.S. address.
U.S. power of attorney	Documentary evidence establishing foreign status that does not contain a U.S. address.
U.S. “in-care-of” or “hold mail” address	Documentary evidence establishing foreign status that does not contain a U.S. address. For individuals, a reasonable written explanation is also required.





The goal of this process to move customers in two (status 1 and 2 below) of the four statuses:

1. Self-declared US Citizens
2. Foreign Citizens with no US Indicia (reason to believe they might be a US Citizen)
3. Foreign Citizens with US Indicia
4. Unknown

For those accounts in the last two categories, additional research needs to be conducted to determine the actual status (moving the person into the first two categories). Finding and documenting a citizen's nationality may require simply looking for evidence in paper files, or contacting the client. However, it is recognized that some accounts are orphaned, some clients are recalcitrant, or contact information is out-of-date. For whatever, reason, not all clients may be able to properly categorize and will have to be reported as if they are US Citizens.

**Note:** The W-8 series of forms are good for 3 years and attest to a foreign citizenship or exempt status; the W-9 attests to US citizenship. It is recommended that FFIs get new W-8 (or equivalent) forms from their clients for FATCA compliance.



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# FATCA One™

## About Trans-World Compliance

Trans-World Compliance was created by a dedicated team of international entrepreneurs with extensive experience with regulatory IT systems. The company was created to develop a wholly new system, built from the ground up to handle the internationalization, customization, and reporting required by FATCA.

## Benefits

### Security

Trans-World Compliance software is created with the latest security measures built in. It keeps all data local and can be delivered as an installed solution. We recognize and accept that the data required by FATCA includes the “crown jewels” of a financial institution and we protect them as such.

### Ease of use

FATCA One was created to allow users to work wherever they feel most comfortable. We recognize that many small and mid-size firms have limited IT resources, and our goal was to provide the tools to assemble the required data without requiring IT expertise. The only required fields are a Name (we need something to process) and a Unique ID Number (this is usually a customer number, account number, but could just be sequential number assigned for the FATCA One data load). In addition, we need to separate entities and individuals, since the data required and the processing rules are different. Obviously, only loading the minimum data would cause a lot of raised flags – for example, every individual would have an unknown citizenship – and the more data loaded the more accurate the flagging and reporting.

Data can be updated and reloaded as many times as necessary and can be pieced together from multiple systems. Updates can occur in three different ways:

1. Updates occur in the source system, re-exported and reloaded into the FATCA One™ product.
2. Updates can occur in the intermediary file and re-loaded. For example, if the data is initially exported into from the source systems and loaded into Excel, additional columns can be added and fields populated for upload into FATCA One™.
3. Updates can occur within the FATCA One™ system itself.

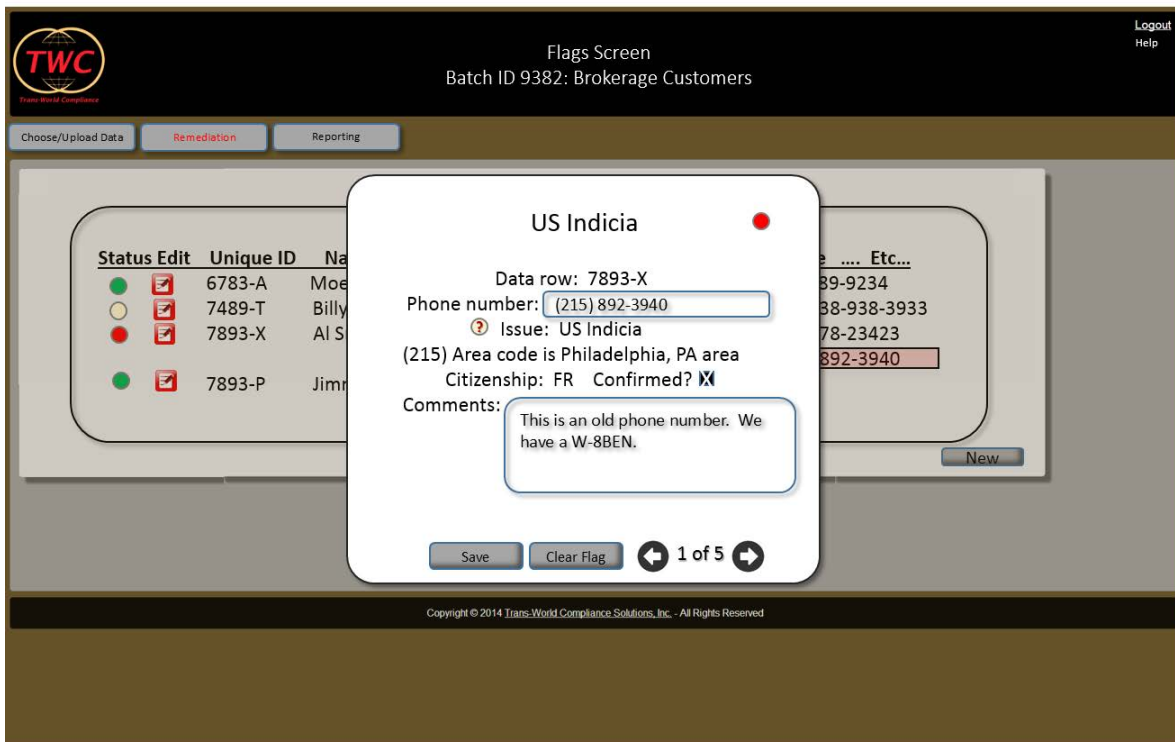
This methodology can be combined depending on need.

## Customization/Localization via Rule Bases

Trans-World Compliance created FATCA One software using a concept of Rule Bases. Rules differ between jurisdiction and fiscal year, as well as some between types of industries. A Cayman based firm might choose the “Cayman Island 2015” Rule Base to account for specific idiosyncrasies of the Cayman IGA (including reporting requirements) and the 2015 IRS reporting requirements which require only reporting account balances. Other rule bases for later reporting years would include more extensive reporting as the requirements phase in.

## Supported FATCA Process via Flags

The FATCA rules are applied after the data is loaded. To simplify, the data can be thought of as a spreadsheet, with rows for each account and columns for each field (this is a little simplistic because the system supports multiple addresses, phone numbers, and names per a single account and tracks all history and comments).



The Flag Concept in FATCA One

Flags are either red (items that may affect the categorization of reporting, for example entities default to non-participatory and individuals to recalcitrant, requiring withholding unless remedied) or yellow (fields required for completeness in reporting). Rows are designated green (no flags), yellow (one or more yellow



flags, but no red flags), and red (at least one red flag and possibly additional yellow or red flags). Clicking on the row drills down and allows the user to see the information, get help to understand the issue or see the recommended curative action, and update the information, provide a comment, and either skip the flag or clear the flag.

### **Focused Solution**

We recognize that no system is a panacea to the work required to adhere to the new FATCA regulations. Much of the work will be digging through old files, updating database, and contacting clients to chase down data and W-8/W-9 forms. The FATCA One solution was developed to assist and manage the process, with the cost of development shared among many clients – delivering a cost effective solution. At Trans World Compliance, we do one thing – Regulatory software – and we do it well.

### **Reporting**

FATCA One has an automated reporting module for reporting directly to the IRS (in the case of Model 2 IGAs and non-IGA jurisdictions) or interfaces with the local regulatory bodies (in the case of Model 1 IGA countries). In addition to assisting with the reporting aspect of FATCA, the audit features of FATCA One provides a 3<sup>rd</sup> party independent audit trail for regulators or auditors to show when decisions were made, by whom, and why.

### **Contacting Trans-World Compliance, Inc.**

To contact Trans World Compliance, Inc. to schedule a discussion and demo or to learn more about TWC and the FATCA One product, go to [www.TransWorldCompliance.com](http://www.TransWorldCompliance.com) or email us at [info@transworldcompliance.com](mailto:info@transworldcompliance.com).

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# Appendix A: IRS Guidance

For your reference, we've listed a compilation of guidance provided by the US Internal Revenue Service (IRS) and the US Treasury Department.

## **FATCA Information for U.S. Financial Institutions and Entities**

- U.S. financial institutions (USFIs) and other types of U.S. withholding agents are required to withhold 30% on certain U.S. source payments made to foreign entities, if they are unable to document such entities for purposes of FATCA.
- USFIs and U.S. withholding agents must also report to the IRS information about certain non-financial foreign entities with substantial U.S. owners.
- USFIs are also eligible to submit a FATCA Registration application via the FATCA Registration Website for the following reasons:
  - A USFI with a foreign branch in a Model 1 IGA jurisdiction to obtain a GIIN for the branch.
  - A USFI with a foreign branch that is a qualifying intermediary (QI) to renew the branch's QI agreement.
  - A USFI may register as a sponsoring entity for FFIs and agree to perform, on behalf of the FFI, all the FATCA activities that the FFI otherwise would have to do.
- U.S. financial institutions (USFIs) and other types of U.S. withholding agents are required to withhold 30% on certain U.S. source payments made to foreign entities, if they are unable to document such entities for purposes of FATCA.
- USFIs and U.S. withholding agents must also report to the IRS information about certain non-financial foreign entities with substantial U.S. owners.
- USFIs are also eligible to submit a FATCA Registration application via the FATCA Registration Website for the following reasons:
  - A USFI with a foreign branch in a Model 1 IGA jurisdiction to obtain a GIIN for the branch.
  - A USFI with a foreign branch that is a qualifying intermediary (QI) to renew the branch's QI agreement.
  - A USFI may register as a sponsoring entity for FFIs and agree to perform, on behalf of the FFI, all the FATCA activities that the FFI otherwise would have to do.
- A USFI may register as a Lead FI to manage the FATCA registration process for members of its Expanded Affiliated Group of FFIs.

## Model 1 IGA

- The partner jurisdiction agrees to report to the IRS specified information about the U.S. accounts maintained by all relevant FFIs located in the jurisdiction.
- FFIs identify U.S. accounts pursuant to due diligence rules contained in Annex I of the IGA.
- FFIs report specified information about their U.S. accounts to the partner jurisdiction.
- The partner jurisdiction, in turn, reports such information to the IRS on an automatic basis.
- The exchange of information under a Model 1 IGA may be on a reciprocal or nonreciprocal basis.
- Data Safeguarding: Jurisdictions signing a reciprocal Model 1A IGA with the United States will be asked to complete an International Data Safeguards & Infrastructure Workbook. The information in this workbook will facilitate the evaluation of safeguards and provisions regarding confidentiality, use, and infrastructure effectiveness prior to exchanging information. The United States' response to data safeguards is included in this workbook.

## Model 2 IGA

- The partner jurisdiction agrees to direct and enable all relevant FFIs located in the jurisdiction to report specified information about their U.S. accounts directly to the IRS.
- FFIs identify U.S. accounts pursuant to due diligence rules contained in Annex I of the IGA.
- FFIs report specified information about their U.S. accounts to the IRS.
- FFIs also report to the IRS aggregate information with respect to holders of pre-existing accounts who do not consent to have their account information reported, on the basis of which the IRS may make a "group request" to the partner jurisdiction for more specific information.

## FATCA Information for Individuals

- U.S. citizens, U.S. individual residents, and a very limited number of nonresident individuals who own certain foreign financial accounts or other offshore assets (specified foreign financial assets) must report those assets
  - Use Form 8938 to report these assets
- Attach Form 8938 to the annual income tax return (usually Form 1040)
- Taxpayers with a total value of specified foreign financial assets below a certain threshold do not have to file Form 8938
  - If the total value is at or below \$50,000 at the end of the tax year, there is no reporting requirement for the year, unless the total value was more than \$75,000 at any time during the tax year
  - The threshold is higher for individuals who live outside the United States
  - Thresholds are different for married and single taxpayers



- Taxpayers who do not have to file an income tax return for the tax year do not have to file Form 8938, regardless of the value of their specified foreign financial assets.
- Penalties apply for failure to file accurately

**Alert:** The reporting requirement for Form 8938 is separate from the reporting requirement for the FinCEN Form 114, (formerly TD F 90-22.1). An individual may have to file both forms and separate penalties may apply for failure to file each form. See the [Comparison of filing requirements](#) for further information.

Third-party reporting: Foreign financial institutions may provide to the IRS third-party information reporting about financial accounts, including the identity and certain financial information associated with the account, which they maintain offshore on behalf of U.S. individual account holders.

Application to domestic entities: The IRS anticipates issuing regulations that will require a domestic entity to file Form 8938 if the entity is formed or used to hold specified foreign financial assets and the total asset value exceeds the appropriate reporting threshold. Until the IRS issues such regulations, only individuals must file Form 8938. For more information about domestic entity filing, see [Notice 2013-10](#).

## **FATCA Information for Foreign Financial Institutions and Entities**

- Revenue Procedure 2014-13 – Final FFI Agreement is Now Available for FFI Agreement for Participating FFI and Reporting Model 2 FFI.
- NEW International Data Exchange
- Under FATCA, to avoid being withheld upon, foreign financial institutions (FFIs) may register with the IRS and agree to report to the IRS certain information about their U.S. accounts, including accounts of certain foreign entities with substantial U.S. owners
- FFIs that enter into an agreement with the IRS to report on their account holders may be required to withhold 30% on certain payments to foreign payees if such payees do not comply with FATCA
- The FATCA regulations exempt many categories of FFIs from the requirement to register and report, including
  - Most governmental entities
  - Most non-profit organizations
  - Certain small, local financial institutions
  - Certain retirement entities
- FFIs include, but are not limited to:
  - Depository institutions (for example, banks)
  - Custodial institutions (for example, mutual funds)
  - Investment entities (for example, hedge funds or private equity funds)
  - Certain types of insurance companies that have cash value products or annuities
- Unless otherwise exempt, FFIs that do not both register and agree to report face a 30% withholding tax on certain U.S.-source payments made to them.



- An FFI that registers on the “FATCA Registration Website” (“Website”), upon approval, will receive a Global Intermediary Identification Number (GIIN) from the IRS, unless the FFI is treated as a Limited FFI.
  - An FFI may also register on paper, but this is not recommended
- The Website is a secure online web application that provides paperless FATCA registration accessible from anywhere in the world, 24 hours a day. Visit the FATCA Registration Resources page for registration instructions, user guide, frequently asked questions and other helpful tools.
- IRS will publish a list of registered and approved FFIs and their GIINs every month. An FFI List search and download tool will also be available to search this list by FI name, GIIN or country.
- An FFI uses its GIIN to identify that it is registered and approved to:
  - Withholding agents and
  - The IRS
- Withholding agents may rely on the IRS published list or FFI list search and download tool to verify an FFI’s GIIN and not withhold on payments made to the FFI.
- The treatment of an FFI established in a jurisdiction with an intergovernmental agreement treated as in effect may differ from the treatment described above. An FFI in such a jurisdiction should refer to the applicable intergovernmental agreement.
  - REMINDER: For withholdable payments made prior to January 1, 2015, verification of a GIIN is not required with respect to payees that are reporting Model 1 FFIs. As a result, reporting Model 1 FFIs will have additional time beyond July 1, 2014 to register and obtain a GIIN in order to ensure that they are included on the IRS FFI list before January 1, 2015.



# Appendix B: FATCA Deadlines

## Final FATCA Regulations Timeline – Post Notice 2013-43

FATCA Compliance Action Items	2014		2015		2016		2017		2018	
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2
<b>General Compliance</b>	FFI: GIIN registration deadline for first 2014 List	◆ Apr 25								
	First 2014 GIIN list	◆ Jun 2								
	FFI: Effective date of Agreement for FFIs receiving a GIIN prior to July 1, 2014	◆ Jun 30								
	FFI: End of transition period for affiliated group rule				◆ Jan 1					
<b>New / Pre-existing Accounts</b>	USWA / FFI: Begin new account onboarding	◆ Jul 1								
	USWA: Complete documenting/classifying preexisting entity accounts			◆ Dec 31 Prima Facie FFIs		◆ Jun 30 All other entity accounts				
	FFI: Complete documenting/classifying preexisting accounts			◆ Dec 31 Prima Facie FFIs		◆ Jun 30 All other accounts				
<b>Withholding</b>	USWA/FFI: Grandfathered obligation cutoff	◆ Jul 1								
	USWA/FFI: Begin withholding on U.S. source income (excludes certain offshore payments)	◆ Jul 1								
	USWA/FFI: Begin withholding on offshore U.S. source income payment						◆ Jan 1			
	USWA/FFI: Begin gross proceeds withholding						◆ Jan 1			
	FFI: Begin withholding on foreign passthru payments						◆ Jan 1			
<b>Reporting</b>	FFI: Begin U.S. Account/Owner information and balance reporting (for 2014 calendar year)*			◆ Mar 31						
	FFI: Begin U.S. Account/Owner income reporting (for prior year)*				◆ Mar 31					
	FFI: Begin U.S. Account/Owner gross proceeds reporting (for prior year)*					◆ Mar 31				
	FFI: Aggregate reporting on NPFFI payments (only for 2015 and 2016)**				◆ Mar 15		◆ Mar 15			
	USWA: Begin U.S. Owner reporting*			◆ Mar 31						
	USWA/QI FFI: Reporting on withholdable income payments made to recipients**			◆ Mar 15						
	USWA/QI FFI: Begin reporting on gross proceeds made to recipients**									◆ Mar 15

Foreign Account Tax Compliance Act (FATCA) \* Form 8966 \*\* Form 1042-S

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A graphical representation of FATCA deadlines (from Deloitte)



## Withholding (by withholding agents)

### 2014

July 1: 30% U.S. withholding tax will apply to payments of certain U.S. source income (e.g., dividends, interest, insurance premiums) made to non-U.S. financial institutions (FFIs) ... **UNLESS** FFI establishes **by registration** it is a participating FFI, including FFIs in Model 2 IGA, an FFI in a jurisdiction with a Model 1 IGA treated as in effect, or a low-risk FFI.

**Exception:** Certain smaller and more local FFIs and exempt beneficial owners (primarily government-owned entities and international organizations) can avoid withholding if they provide the withholding agent with documentation about their status.

## Registration (by financial institutions)

### 2013

August 19: Registration website available for testing purposes only

### 2014

January 1: Official opening date to register and obtain Global Intermediary Identification Number (GIIN)

May 5: Final day to register for guaranteed inclusion on first registered FFI list (to avoid withholding)

June 2: First Registered FFI list published – updated monthly thereafter

**Exception:** FFIs in **Model 1 IGAs** jurisdictions have more time to register and be listed, since withholding agents not required to confirm GIINs **before January 1, 2015**

## Reporting (by financial institutions)

### 2015: Reporting Begins

#### When to Report

March 31: FFIs in non-IGA jurisdictions and FFIs in Model 2 IGA jurisdictions

September 30: FFIs in Model 1 IGA jurisdictions:



**What to Report (with respect to 2014):**

1. Account holder's name  
For passive non-financial foreign entity, the name(s) of any substantial U.S. owners
2. Account holder's U.S. taxpayer identification number (TIN)  
For passive non-financial foreign entity, only the TIN(s) of any substantial U.S. owner(s)
3. Account holder's address  
For passive non-financial foreign entity, only the address(es) of substantial U.S. owner(s)
4. Account number
5. Account balance or value
6. For accounts held by recalcitrant/nonconsenting account holders: report aggregate number and balance or value

**2016**

**When to Report**

March 31: FFIs in non-IGA jurisdictions and FFIs in Model 2 IGA jurisdictions

September 30: FFIs in Model 1 IGA jurisdictions:

**What to Report (with respect to 2015):**

Everything reported in (1) through (6) for 2014

7. Income paid (except certain gross proceeds from the sale or redemption of property)

**2017**

**When to Report**

March 31: FFIs in non-IGA jurisdictions and FFIs in Model 2 IGA jurisdictions

September 30: FFIs in Model 1 IGA jurisdictions:

**What to Report (with respect to 2016):**



Everything reported in (1) through (7) for 2015

8. Gross proceeds paid to custodial accounts

**After 2017**

**When** to Report

March 31: FFIs in non-IGA jurisdictions and FFIs in Model 2 IGA jurisdictions

September 30: FFIs in Model 1 IGA jurisdictions:

**What** to Report (with respect to previous year):

Everything reported in (1) through (8) for 2016