

FATCA reporting of US source insurance premiums not required in certain circumstances

September 25, 2014

In brief

Prior to the enactment of the Foreign Account Tax Compliance Act (FATCA or Chapter 4), US source insurance and reinsurance premiums (US premiums) paid to non-US carriers generally were not subject to US withholding tax or information reporting due to an exception that applies when the premiums are subject to the federal excise tax under Section 4371 (Federal Excise Tax) of the Internal Revenue Code (IRC). Despite this long-standing exemption from reporting and withholding, it appeared that, beginning January 1, 2015, all US premiums paid to non-US carriers could be subject to withholding and would require year-end reporting on [Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding](#).

Fortunately, recently released [instructions](#) to Form 1042-S clarify that Form 1042-S reporting is not required with respect to US premiums if they are subject to the Federal Excise Tax and FATCA withholding is not actually applied (or required to be applied).

Given this recent change, it will be critical for payors of US premiums to collect appropriate documentation in order to minimize or eliminate FATCA withholding and reporting. Appropriate documentation will include Form W-8BEN-E, *Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)* or Form W-9, *Request for Taxpayer Identification Number (TIN) and Certification*.

In detail

Reporting of US premiums under the FATCA regulations

The FATCA regulations provide that a withholding agent (i.e., payor) is required to report certain payments to non-US carriers on Form 1042-S ('FATCA reportable amounts'). The regulations define a FATCA reportable amount as one of the following amounts:

<i>FATCA reportable amounts generally include:</i>	<i>Observation</i>
<i>i. A withholdable payment of US source fixed, determinable, annual, or periodic (FDAP) income that is reportable under Chapter 3</i>	<i>Since US premiums subject to the Federal Excise Tax are exempt from withholding and reporting under Chapter 3, US premiums are not included in this definition.</i>

<i>FATCA reportable amounts generally include:</i>	<i>Observation</i>
ii. A withholdable payment subject to FATCA withholding after June 30, 2014	<i>Withholding would occur on US premiums if the entity paid was a documented or presumed nonparticipating FFI (NPFFI) and an exemption does not apply (e.g. grandfathered obligation).</i>
iii. A foreign passthru payment subject to FATCA withholding	<i>Guidance regarding what constitutes a foreign passthru payment has been reserved and will not apply earlier than January 1, 2017.</i>
iv. Foreign reportable amounts paid by a participating foreign financial institution (FFI) in certain circumstances	<i>This is unlikely to apply, as (1) insurance premium sourcing would not change based on the location of the payor, and (2) most payors of insurance premiums are not FFIs.</i>

Given this construct, certain industry stakeholders were concerned that all US premiums would be subject to Form 1042-S reporting since they are 'subject to withholding under Chapter 4' even though such withholding could be avoided with appropriate documentation which would include Form W-8BEN-E or Form W-9. The term 'subject to withholding under Chapter 4' is defined to only include amounts that are actually or required to have FATCA withholding. As a result, FATCA reporting or withholding will not apply to US premiums when valid documentation is obtained.

New reporting instructions clarify reporting obligations

The IRS is revising many existing forms to reflect changes in the reporting requirements due to FATCA, including Form 1042-S, which is the information return withholding agents use to report US source income paid to non-US persons.

The final instructions for the 2014 Form 1042-S released on June 24, 2014 reiterate the long-standing rule that US premiums are not subject to Chapter 3 reporting and withholding if they are subject to the Federal

Excise Tax. The instructions state the following:

Withholdable payments not subject to reporting for chapter 3 purposes (other than bank deposit interest paid to certain nonresident aliens) are not required to be reported if withholding is not applied (or required to be applied) under chapter 4.

As such, US premiums that are subject to the Federal Excise Tax and that are not subject to withholding under Chapter 4 meet the criteria to be excluded from Form 1042-S reporting.

PwC observation: *In effect, the IRS is allowing taxpayers to continue to apply the Chapter 3 reporting exemption for insurance premiums unless FATCA withholding is required. This is a welcomed clarification for payors of insurance premiums and one that is consistent with the agency's desire to minimize administrative burdens for those affected by FATCA.*

A US premium, however, is subject to reporting on Form 1042-S if FATCA withholding is applied or is required to be applied. Thus, it is important for payors to gather valid withholding certificates for payments of insurance premiums so that the insurer certifies its compliant FATCA status.

Withholding certificates used for this purpose can include Forms W-8BEN-E and W-9.

If adequate documentation is not obtained, the IRS requires payors and withholding agents to use the so-called 'presumption rules' to determine a payee's status. Under the new presumption rules, a payor may be required to presume that an undocumented recipient of a withholdable payment is a foreign entity and ultimately a NPFFI. As a NPFFI, the payor would be required to apply FATCA withholding to the gross US premium paid.

PwC observation: *Based on the application of the presumption rules, it will be a good practice to gather withholding certificates from all recipients of US premiums (or withholdable payments in general) in order to avoid a requirement to apply FATCA withholding.*

The takeaway

Recently released instructions to the 2014 Form 1042-S clarify FATCA reporting requirements for US premiums. According to the instructions, US premiums subject to the Federal Excise Tax are not reportable so long as FATCA withholding is not applied or required

to be applied. This is a helpful clarification and should reduce reporting of US premiums. However, a failure to properly document the payee's status introduces both withholding and reporting risk to the payor who fails to obtain the appropriate documentation from

payees. As a result, payors should enhance the processes with respect to the collection, review, and storage of payee documentation.

Insurance companies and others receiving these premiums will need to make sure that they present

appropriate documentation (including Forms W-8BEN-E and W-9) to certify their FATCA status. Absent such documentation, FATCA withholding could needlessly apply.

Let's talk

For more information, please contact one of the following members of PwC's Global Information Reporting Network:

Global Information Reporting

Steve Chapman
(646) 471-5809
steve.chapman@us.pwc.com

Dominick Dell'Imperio
(646) 471-2386
dominick.dellimperio@us.pwc.com

Candace Ewell
(202) 312-7694
candace.b.ewell@us.pwc.com

Mina Freij
(646) 471-2235
mina.n.freij@us.pwc.com

Additional information

For more information about FATCA, please visit [PwC's FATCA web site](#).

© 2014 PricewaterhouseCoopers LLP, a Delaware limited liability partnership. All rights reserved. PwC refers to the United States member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see www.pwc.com/structure for further details.

SOLICITATION

This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.