

# ***US and global information reporting and withholding: Looking ahead to 2014 and beyond***

*February 5, 2014*

## ***In brief***

Although the US tax regime is based on self-assessed tax, the Internal Revenue Service (IRS) continues to expand third-party information reporting requirements with the aim of ensuring that taxpayers file complete and accurate income tax returns by matching independent information with what is being reported on their returns. Globally, information reporting and withholding requirements are expected to become more numerous and complex, particularly in light of the many provisions of the Foreign Account Tax Compliance Act (FATCA) becoming effective July 1, 2014. Facing potentially steep penalties for non-compliance, companies should continue to evaluate the processes they have in place to ensure compliance for 2014, as well as prepare for additional information reporting and withholding requirements likely arising in the future. Early planning is critical and technology-enabled strategies can help generate efficiencies going forward.

This Tax Insight serves as a high-level primer to facilitate discussions as businesses consider their compliance requirements for the current year. First, this article highlights some key US information reporting requirements for 2014 with respect to FATCA. Important dates include July 1 – the effective date of FATCA withholding and the date when withholding agents must identify a payee's status and collect other information. As of the date of this publication, the revised Forms W-8 are still in draft.

Another important date is April 25 – the date by which foreign financial institutions (FFIs) must register using the IRS on-line registration system to obtain a global intermediary identification number (GIIN) and be included on the first IRS list of registered FFIs. Some 2014 filing due dates involving recent non-FATCA changes or developments are also included.

In addition, the discussion below includes a non-exhaustive list of other potential information reporting and withholding requirements looming on the horizon beyond 2014. The promulgation of many other US FATCA intergovernmental agreements (IGAs) promises to generate additional complexity. Another example of an upcoming critical development is the release by the Organization for Economic Co-operation and Development (OECD) of the Common Reporting Standard (CRS). This standardized model may prompt the proliferation of bilateral automatic exchange of tax information agreements.

## In detail

### Important information reporting and withholding dates for 2014

Date	US FATCA-related requirements	High-level description/recent developments
Starting immediately	Revised Form W-9 used to establish payee status	<p>In August 2013, the IRS released a new Form W-9, <i>Request for Taxpayer Identification Number and Certification</i>, and instructions. Form W-9 should be used by payees to certify that they are a US person for withholding purposes and to provide their correct taxpayer identification number (TIN) to facilitate proper reporting.</p> <p><b>Observation:</b> The IRS did not provide a time period for implementing the new form. Absent specific guidance, withholding agents and payors should work to implement the use of the new form immediately.</p>
Starting 1/1/2014	Registration of FFIs with the IRS	<p>Registration of FFIs using the IRS on-line registration system will enable FFIs to obtain GIINs in preparation for the July 1, 2014 start of FATCA withholding. Starting January 1, 2014, final information may be submitted into the registration system. Final Form 8957, <i>Financial Account Tax Compliance Act (FATCA) Registration</i>, was released simultaneously with the opening of the paperless system, however, the IRS is strongly encouraging the use of the on-line system.</p> <p>As part of the registration process, FFIs will enter into an FFI agreement with the IRS. In December 2013, the IRS released the final language of this agreement. (See previous <a href="#">Tax Insight</a> dated December 26, 2013 for more information on the final FFI agreement.)</p>
4/25/2014	Submission cut-off for first IRS list of registered FFIs	FFI registrations that are submitted by April 25, 2014 using the IRS on-line system will be included on the first IRS list of registered FFIs that is expect to be released on June 2, 2014.
6/2/2014	Expected release of first IRS list of registered FFIs	Starting June 2, 2014, payors may use this list to identify registered FFIs.
7/1/2014	FATCA withholding starts	<p>In July 2013, the IRS issued Notice 2013-43 announcing a six-month extension for implementing FATCA. As a result, FATCA withholding is currently slated to begin on July 1, 2014. Withholding on gross proceeds is delayed until 2017.</p> <p><b>Observation:</b> IRS officials have said that the effective date of FATCA will not be postponed again. However, the IRS may provide penalty relief for a certain period of time beyond July 1, 2014.</p>
7/1/2014	Revised Forms W-8 used to obtain payee status	<p>Forms W-8 have historically been used by non-US persons to provide certain information to withholding agents and claim exemption from US withholding taxes under Chapter 3 (withholding on nonresident aliens and foreign corporations). Given the significant overlap of Chapters 3 and 4 (FATCA), the IRS is in the process of updating Forms W-8 so that they can be used for both purposes. For example, FATCA classifications for non-US entities will be reflected on the forms. During 2013, the IRS issued drafts of the updated Forms W-8, but has not yet finalized them.</p> <p><b>Observation:</b> Various transition issues arise with respect to when a withholding agent may rely upon a valid pre-FATCA Form W-8 in lieu of obtaining an updated version of the form.</p>

Due date	US non FATCA-related filings	High-level description/ recent developments
1/31/2014, 2/18/2014, and 2/28/2014	Form 1099 provided to payment recipients/ filing of Form 1096	Generally, Forms 1099 must be furnished to recipients by January 31, 2014. However, the due date for furnishing Forms 1099-B, 1099-S, and 1099-MISC (if amounts are reported in Boxes 8 or 14) to recipients is February 18, 2014 (February 15 is a Saturday and February 17 is a US federal holiday). Additionally, any Form 1099 that is issued in combined form with one of these forms is not due until February 18, 2014. Form 1096, <i>Annual Summary and Transmittal of U.S. Information Returns</i> , for the transmittal of Forms 1099, must be filed with the IRS by February 28, 2014.
1/31/2014 and 2/28/2014	Form 1099-K	<p>Section 6050W requires payment settlement entities to report the gross amount of reportable payment card and third party network transactions made to participating payees; back-up withholding occurs if payees fail to furnish valid TINs. The payment settlement entity must file an annual Form 1099-K, <i>Payment Card and Third Party Network Transactions</i>, with the IRS as well as furnish a statement to the payee. Penalty relief will be provided for incorrect name and TIN combinations reported on Form 1099-K in 2013 and 2014 pursuant to Notice 2013-56.</p> <p>The IRS also released a revised schedule for issuing B Notices of missing TINs and incorrect name and TIN combinations on Form 1099-K. Specifically, B Notices relating to 2013 Forms 1099-K reportable payments will be sent in late 2014. (See previous <a href="#">Newsbrief</a> dated September 12, 2013 for more information on Form 1099-K filings.)</p>
3/15/2014	Forms 1042 and 1042-S	Forms 1042 and 1042-S reporting in 2014 should be similar to prior years as new FATCA requirements do not apply to this form for the 2013 tax year. See discussion below for FATCA-related updates to this form.
6/30/2014	Report of Foreign Bank and Financial Accounts (FBAR), now referred to as <a href="#">FinCEN Form 114</a> , formerly TD F 90-22.1	<p>Mandatory electronic filing is required for those FBARs filed after June 30, 2013. In July 2013, Financial Crimes Enforcement Network (FinCEN) made several process changes to make it easier to electronically file, such as eliminating the requirement to file explanatory statements for delinquent FBARs and adding a new form. (See previous <a href="#">Newsbrief</a> August 9, 2013 for more information on electronic FBAR filings.)</p> <p>In December 2013, FinCEN released Notice 2013-1 extending to June 30, 2015 the deadline for certain officers and employees with signature authority over company-owned foreign financial accounts to file their 2010, 2011, 2012, and 2013 FBARs. Taxpayers had previously been given until June 30, 2014 to file FBARs under Notice 2012-2. (See previous <a href="#">Newsbrief</a> dated January 3, 2013 for more information on Notice 2012-2.)</p>

## **Other important information reporting and withholding obligations on the horizon**

### **(1) The US FATCA regime**

#### **Additional IGAs to be signed**

On February 5, 2014, Canada became the latest country to sign an IGA with the United States. According to a February 5, 2014 US Department of Treasury (Treasury) [press release](#), the United States has signed 22 IGAs and has 12 agreements in substance to date. The promulgation of these IGAs may result in additional reporting obligations, depending upon each IGA's contents.

**Observation:** Stakeholders should monitor the implementation of these agreements and their contents even for countries in which they do not operate or have account holders. Many of the IGAs include provisions to incorporate more favorable rules included in newer IGAs.

#### **Additional FATCA guidance coming in 2014**

In January 2013, Treasury and the IRS released final FATCA regulations under Chapter 4 reducing some administrative burdens by taking a more risk based approach to implementation, detailing what affected parties must do to comply with FATCA, and clarifying the interaction of the regulatory regime with the IGAs implementing FATCA. In September 2013, Treasury and the IRS issued amendments to the final regulations correcting several citations and cross-references and clarifying certain provisions. To supplement the final regulations, two sets of temporary regulations are expected to be released in early 2014:

- Temporary Chapter 4 regulations are expected to provide further clarifications and modifications

- Temporary coordination regulations are expected to ensure that Chapter 4 is coordinated with Chapters 3 and 61 (relating to information reporting).

**Observation:** This expected guidance may help to clarify reporting and withholding obligations for many stakeholders, particularly with respect to any overlap between the non-US withholding regime that was in place prior to FATCA.

#### **FATCA Report due in 2015**

In August 2013, the IRS issued draft Form 8966, *FATCA Report*, for financial institutions and withholding agents to use when complying with certain FATCA reporting requirements. Although no instructions were released with the draft form, the FATCA regulations state that this form should be electronically filed on or before March 31 of the year following the end of the calendar year to which it relates. When released, the final Form 8966 is expected to facilitate the reporting of US accounts, their US owners, and other payment recipients as required by FATCA.

#### **New information required on Forms 1042 and 1042-S for filing in 2015**

The IRS currently requires reporting of US source income paid to non-US persons using Forms 1042, *Annual Withholding Tax Return for U.S. Income of Foreign Persons*, and 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*. Certain amounts and information reportable under FATCA will be added to the 2014 Forms 1042 and 1042-S. Revised final forms will be needed well in advance of the March 15, 2015 filing deadline. In April 2013, the IRS issued draft Forms 1042 and 1042-S with instructions. The former has been modified for withholding agents to report amounts withheld under

Chapter 4 with respect to certain FATCA-classified entities. The latter requires filers to report not only certain income and amounts withheld under Chapter 3, but those under Chapter 4 as well.

**Observation:** Withholding agents will need to focus on processes that will enable the tracking of withholdable and non-withholdable payments under Chapter 4.

### **(2) FATCA-type obligations arising around the world**

#### **OECD soon to release CRS model**

Even before FATCA withholding begins in July 2014, the OECD is expected to release the CRS as a standardized, cost effective model for bilateral automatic exchange of tax information by non-US jurisdictions. (See previous [Tax Insight](#) dated January 9, 2014 for more information on CRS.) The CRS is expected to build upon FATCA and will be based on the IGAs entered into between the United States and its FATCA partner countries. The CRS model is intended to serve as the starting point for participating countries to negotiate CRS IGAs similar to FATCA IGAs and enact domestic legislation to implement the CRS. According to the OECD, this legislation should require financial institutions located in CRS-participating countries to collect information beginning in 2015 and report to the respective jurisdictional tax authority beginning in 2016.

**Observation:** The transparency created by the CRS is intended to serve as an added deterrent to the use of offshore financial accounts to avoid domestic tax liabilities. Like FATCA, the CRS will require financial institutions around the world to play a central role in providing tax authorities with greater access and insight into taxpayer financial account data.

## European Union 2011 Council Directive

FATCA and CRS are part of a broader global trend to achieve more standardized sharing and flow of tax-related information. The IGAs facilitating the implementation of FATCA have served as an 'icebreaker' to extend the scope of automatic exchange of tax information to European Union (EU) member states. The 2011 Council Directive on Administrative Cooperation in the Field of Taxation contains a 'most favored nation' clause requiring tax information of the type shared with a third country to be provided to any other EU member state. In June 2013, the EU put forth a proposal to amend the 2011 Directive acknowledging that US FATCA may provide the roadmap to the implementation of an EU automatic exchange of tax information to combat tax fraud and evasion.

**Observation:** *The EU proposal appears to be running in parallel to, but actually lagging somewhat behind, the OECD's release of the CRS.*

## EU Savings Directive

The EU Savings Directive (EUSD), which has been in place since 2003, is another similar endeavor. The EUSD aims to counter cross-border tax evasion through the collection and exchange of information about foreign resident individuals receiving savings income outside their resident state. Current proposals to widen the scope of EUSD were not approved at the ECOFIN (Economic and Financial Affairs Council) and European Council meetings in November and December 2013, however the intention remains that "the revised Directive on the taxation of savings income will be adopted by March 2014."

## (3) Movement towards standardized flow of information for withholding tax relief

In January 2013, the OECD Committee on Fiscal Affairs approved the Treaty Relief and Compliance Enhancement (TRACE) Implementation Package. TRACE involves standardized agreements and forms to be used by any country wanting to minimize administrative barriers for claiming withholding tax relief at source on portfolio investments. The OECD has noted that the efforts regarding TRACE will need to be aligned with US FATCA and other emerging reporting regimes to reduce implementation costs.

## (4) Cost-basis-reporting on certain debt instruments, options, and securities futures

In April 2013, Treasury and the IRS issued final regulations under Section 6045 relating to basis reporting and basis determination for debt instruments, option contracts, and security futures contracts. Under the final regulations, basis reporting for less complex debt instrument begins January 1, 2014 while basis reporting for more complex debt instruments will begin on January 1, 2016. The final regulations also give brokers until January 1, 2015 to comply with the reporting requirements for the transfer of less complex debt instruments and until January 1, 2017 for the transfer of more complex debt instruments.

**Observation:** *Although information returns related to basis reporting on debt instruments and options contracts will not be due until 2015 at the earliest, the processes to capture, store, and prepare this information should be in place by this time.*

## (5) Reporting of original issue discount (OID) interest income

In April 2013, Treasury and the IRS issued temporary regulations under Section 6049 requiring broker reporting of OID interest income to reflect amounts of amortized bond premium or acquisition premium for a covered debt instrument. Under the temporary regulations, a broker will assume that a customer has elected to amortize bond premium unless the broker has been notified that the customer has not made such an election. The temporary regulations apply to covered securities acquired on or after January 1, 2014.

## (6) Reporting under the Affordable Care Act (ACA)

Section 6056, added to the Internal Revenue Code by the ACA, requires employers to report certain health insurance coverage information on full-time employees to assist the IRS in determining whether an employer is subject to the excise tax assessed against large employers failing to offer minimum essential or affordable health coverage to their employees. Notice 2013-45 provides for transitional voluntary reporting for 2014, followed by mandatory reporting beginning in 2015. In September 2013, the IRS issued proposed regulations under Section 6056 which describe new Form 1094-C (a transmittal form) and Form 1095-C (an employee statement) that will be used by employers to collect and report certain information to their employees. (See previous [Newsbrief](#) dated September 25, 2013 for more information on ACA reporting requirements.)

**Observation:** *Although the first Forms 1095-C will not be issued until 2015, employers must start planning now for how the required information will be acquired, and how and by whom it will be reported.*

## The takeaway

### Imminent US FATCA dates

Entities classified as FFIs should be preparing if they wish to register with the IRS by the April 25 deadline so as to be included in the first IRS list of registered FFIs. Identifying FFIs (e.g., analyzing pensions, treasury centers, and holding companies) may be time-consuming and should be done as early as possible. July 1 is also a critical date by which to ensure that Form W-8 and GIIN verification processes, as well as FATCA withholding procedures, are in place so that payment flows are not impeded. Proper due diligence procedures for FFIs should also be in place by this date.

### Early project planning, with a technology focus

Keeping abreast and planning for imminent reporting and withholding compliance is an important and challenging task. Furthermore the global environment of tax information

exchange and transparency is becoming even more fast-paced and dynamic with the evolution of FATCA, CRS, and other developments. The result is that multinational companies must become even more agile and more keenly focused on early planning to keep pace with the significantly increasing number of global requirements as their business operations expand.

The above discussion reflects not only on important dates for 2014, but also on some developments on the horizon that could affect information reporting and withholding requirements beyond this year. Project plans should reflect both 2014 and these potential requirements and include specific steps that focus on decreasing administrative burden. Most notably, plans may reflect the increasing shift towards more electronic processes to achieve greater autonomy and less manual intervention.

### Thinking ahead to gain future cost efficiencies

Each multinational company will generally have different priorities and risk areas but a common factor will be to consider operational and technology-based solutions that could be more cost efficient as the focus on transparency expands. Cost efficiencies can be gained not only with respect to resources needed to fulfil compliance requirements, but also by being ready for future tax audits through effective data management. Operational solutions could include the use of centers of excellence and shared services centers to centralize knowledge and processes. Technology-based solutions could include the pursuit of an electronic Form W-8 system, the implementation of electronic due diligence procedures for entities classified as FFIs, as well as electronic tracking of legal entities and potential changes in their FATCA status.

## Let's talk

For more information on how the above developments and requirements might impact you, please contact a member of the Global Information Reporting Network. To view contacts for over 60 countries worldwide, click [here](#).

For additional thought leadership regarding FATCA guidance and implementation please see PwC's [FATCA Publications archive](#).