
***Global information
reporting and withholding***
Round two of FATCA guidance:
IRS Notice 2011-34 addresses
priority concerns, revises
earlier guidance, and
introduces new concepts



On April 8, 2011, the Internal Revenue Service (IRS) issued Notice 2011-34 which provides supplemental guidance on the documentation, reporting and withholding requirements under the Foreign Account Tax Compliance Act (FATCA) of 2009 which was enacted in the Hiring Incentives to Restore Employment (HIRE) Act of 2010 (which added Chapter 4 of the Internal Revenue Code (Code or IRC) at sections 1471-1474).

The Notice requests comments on the new approach the Treasury and IRS are considering and other priority issues in connection with forthcoming guidance on the application of FATCA. Written comments must be received by June 7, 2011.

This whitepaper provides an executive summary of the key points contained in Notice 2011-34, as well as a more in-depth analysis of the seven sections outlined in the notice with a glossary of defined terms.

Executive summary

Highlights of the Notice include:

1. Updated guidance for identifying U.S. accounts among preexisting individual accounts: The procedures provided in an earlier notice (Notice 2010-60) were modified and new procedures have been developed for participating Foreign Financial Institutions (FFIs) to certify their completion of the steps required for determining the status of their preexisting individual accounts. Additionally, participating FFIs will be required to certify that they determined the status of their preexisting individual accounts in accordance with the new procedures.

The revised process outlined in the Notice demonstrates that the IRS and Treasury listened to the comments provided and made an effort to simplify and relieve some of the compliance burdens for the FFIs by modifying the identification process of the preexisting individual accounts and the reporting only on year-end account balances and values. However, additional requirements have been imposed on the Private Banking functions of the FFI and the relationship managers of such accounts to identify U.S. account holders.

2. Initial guidance on passthru payments: FATCA requires participating FFIs to withhold 30 percent of any “passthru payment” made to a recalcitrant account holder or non-participating FFI.
 - Determination: A payment to a recalcitrant account holder or non-participating FFI is treated as a passthru payment to the extent of (a) the amount of the payment that is a “withholdable payment” plus (b) the amount that is not a withholdable payment multiplied by the “passthru payment percentage.”
 - Calculation: The FFI’s passthru payment percentage will be determined by dividing the sum of the FFI’s U.S. assets on each of the last four quarterly testing dates by the sum of the FFI’s total assets on those dates.
 - Determination of assets: Based on participating FFI’s quarterly or the most recent financial statements, all on and off-balance sheet assets (as specified in future guidance) should be included while excluding assets held by the FFI as a custodian, agent or nominee for the benefit of an account holder.
 - U.S. assets include any investment of debt or equity in a domestic corporation and any other asset that could give rise to a passthru payment.
3. Deemed compliant FFIs must apply for such status with the IRS, obtain a FFI EIN and certify every three years that it continues to satisfy the requirements for such treatment. The following entities are eligible for deemed compliant FFI status:
 - Certain local banks
 - Local FFI members of participating FFI groups
 - Certain investment vehicles
 - Other categories of deemed compliant FFIs.
4. Further guidance on the reporting on U.S. accounts by FFIs: Participating FFI account balance reporting will be limited to year-end balances or values, and in the case of investment fund accounts, as determined for the purpose that require the most frequent determination of value. Furthermore, participating FFIs must report annually (a) gross dividends paid or credited to the account, (b) gross interest paid or credited to the account, (c) other income paid or credited to the account, and (d) gross proceeds from the sale or redemption of property paid or credited to the account of a U.S. account when the FFI acts as custodian, broker, nominee or agent for the account holder. Separate branch-level reporting can be elected to accommodate local restrictions on the transfer of account information.

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5. Treatment of qualified intermediaries (QIs): FFIs currently acting as QIs will be required to become participating FFIs, unless they qualify as deemed compliant FFIs, effective January 1, 2013. The same rules will apply to FFIs acting as Foreign Withholding Partnerships (FWP) or Foreign Withholding Trusts (FWT). Treasury and the IRS anticipate modifying the current QI, FWP and FWT agreements to require each to be a participating FFI.
 6. Application of FATCA to expanded affiliated groups: FATCA requires that all reporting, withholding and other requirements apply to U.S. accounts maintained at a participating FFI and at all other FFIs that are members of the same expanded affiliated group. Affiliate is defined by an FFI's ownership of more than 50 percent of another FFI.
 - Treasury and the IRS intend to issue regulations requiring that each FFI in an FFI group be a participating or deemed compliant FFI.
 - Not only will each FFI enter into an FFI agreement that will apply to all of its worldwide branches and offices but more importantly, each FFI affiliate will be obligated to conduct its own due diligence, reporting and withholding, as well as return filing under its individual FFI agreement.
 - FFI affiliates will apply for FFI or deemed compliant FFI status through a coordinated application process for which a "lead FFI" will be designated for each group and will file an application on behalf of each group member, provide the IRS with documentation evidencing that each affiliate has agreed to the FFI agreement, and represent that it is authorized to act as agent in contracting with the IRS. Furthermore, Treasury and the IRS intend to provide the option for one FFI to act as a "compliance FFI", handling compliance with FATCA for all group members (e.g., establishing and enforcing policies and procedures).
 7. Clarification on the effective date of FFI agreements: FFI agreements will become effective on the later of (a) the date they are executed, or (b) the effective date of section 501 of the Act.

Treasury and the IRS intend to issue proposed regulations and related guidance incorporating the principles contained in the two Notices and addressing other matters necessary to implement FATCA. Future guidance is expected to include a draft FFI agreement and draft information reporting and certification forms. Notably, the IRS did not provide any significant guidance on the application of FATCA to the insurance and alternative investment industries, nor did the Notice address the scope of the exemption for retirement plans or other employee benefit plans.

Treasury and the IRS have requested comments on the issues addressed in this Notice and the priority of other issues that should be addressed in future guidance.

Future analyses will be provided as guidance is provided by Treasury or the IRS.

For more information

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1. Preexisting individual accounts

The Notice provides a multi-step process similar to Notice 2010-60 for reviewing preexisting individual accounts for U.S. ownership. The first step requires identifying individual accounts that have been documented as U.S. for other U.S. tax purposes (i.e. Form W-9) as being treated as U.S. accounts (Step 1). Although the Notice acknowledged that many comments on Notice 2010-60 found the \$50,000 account balance exclusion impractical for a number of different reasons, the Notice retains the option of treating accounts with a balance of \$50,000 or less as non-U.S. accounts (Step 2).

For purposes of determining the balances or values (as relevant) of accounts in each step, an FFI will be required to treat all accounts with partial or complete common ownership maintained by the FFI or its affiliates under the FFI's existing computerized information management, accounting, tax reporting, or other recordkeeping systems as a single account. With respect to a jointly held account, each account holder will be attributed the full balance or value of the joint account to determine the combined balance or value of that account holder's associated accounts.

The relationship of the private banker

The due diligence process under Notice 2011-34 begins to deviate from the process outlined in Notice 2010-60 in Step 3 by specifically targeting private banking accounts. Private banking accounts are defined as accounts maintained or serviced by either a "private banking department" or through a "private banking relationship". FFIs cannot rely on any documentation associated with a private banking account that "the private banking relationship manager" (relationship manager) knows or has a reason to know is unreliable or incorrect. The FFI must ensure that the relationship manager (a) identifies the clients they know are U.S. persons and obtain a Form W-9, and (b) performs a diligent review of the paper and electronic account files and other records for each preexisting individual account they serve. Should the relationship manager, upon review or from personal knowledge, identify a client (including any associated family members) with indicia of U.S. status, the relationship manager is required to obtain the appropriate documentation to establish ownership (see table below).

PwC observation: The concept of a diligent review appears to be a subjective test that as discussed later requires the participating FFI to carefully document its policies and procedures for determining whether an individual including any associated family members is a U.S. person. Such procedures should include a thorough review of all documentation received from the client, as well as documenting other knowledge the relationship manager has about its client. The term "diligent review" is subjective and will need to be documented in the appropriate policies and procedures.

Indicia	Required documentation ¹
a) U.S. citizenship or a lawful permanent resident (green card) resident	Form W-9
b) A U.S. place of birth	Form W-9 or Form W-8BEN and a non U.S. passport or similar government-issued document establishing the client's citizenship in a country other than the U.S. and a written explanation regarding the client's renunciation of U.S. citizenship or reason that the client did not acquire U.S. citizenship at birth
c) A residence address or a correspondence address in the U.S (including a U.S. post office box)	Form W-9 or Form W-8BEN and a non U.S. passport or similar government-issued document establishing the client's citizenship in a country other than the U.S.

¹Any written request for information and responses related to the search are to be retained by the FFI for ten years.

Indicia	Required documentation ¹
d) Standing instructions to transfer funds to an account maintained in the U.S., or directions regularly received from a U.S. address	Form W-9 establishing U.S. status, or Form W-8BEN and documentary evidence establishing the non-U.S. status of the client
e) An "in care of " or "hold mail" address that is the sole address with respect to the client	Form W-9 establishing U.S. status, or Form W-8BEN or documentary evidence establishing the non-U.S. status of the individual account holder
f) A power of attorney or a signature authority granted to a person with a U.S. address	

PwC observation: Participating FFIs are required to maintain documentary evidence of status (as discussed in Notice 2010-60). This is satisfied if they retain a copy of documents, or a record of documents examined, including the type of document and the name of the examining employee.

If a Form W-9 is used to establish U.S. status, a waiver of applicable restrictions on reporting the client's information to the IRS is also required ("The Waiver"). If the client's account contains indicia of U.S. status as described above, and the client has not established non-U.S. status by providing the required documentation, the relationship manager must treat all accounts associated with the client as U.S. accounts. If the client does not provide the required documentation (and waiver, if necessary), the FFI is required to treat the client as recalcitrant after the end of the first year in which the FFI's FFI agreement is in effect. However, an account held solely by a family member of a client who provides a Form W-8BEN and documentary evidences establishing non-U.S. status of the family member will not be treated as a U.S. account unless the relationship manager knows or has a reason to know that the family member is acting as a nominee or agent for the client.

PwC observation: The notice acknowledges that the Form W-8BEN may be replaced or supplemented by another substitute certification in future guidance.

These procedures for private banking accounts described above need to be completed by the end of the first year that an FFI's agreement is in effect. The effective date of the agreement has been clarified in the Notice to be the later of the date the FFI agreement is executed or January 1, 2013 ("the effective date"). The relationship manager is also required to create and retain lists of all existing clients whose accounts are U.S. accounts, non-U.S. accounts and recalcitrant accounts.

Should the relationship manager later become aware that the account holder has U.S. indicia, the account holder has one year from the date the relationship manager becomes aware of the fact to provide the appropriate documentation and waiver. Account holders that have provided a Form W-9 and a waiver are required to be included in the participating FFI's reporting of its U.S. accounts.

Accounts with U.S. indicia - Updated guidance for electronically searchable information

Participating FFIs must determine whether its electronically searchable information contains any U.S. indicia for accounts (Step 4) that were not previously identified as either a U.S. Account, above the \$50,000 account balance threshold, or a private banking account. The Notice also clarifies the types of files which need to be searched such as tax reporting, customer master or similar files that are used for contacting account holders and satisfying Know Your Customer (KYC) or Anti-Money Laundering (AML) requirements. The Notice defines electronically searchable information by describing an electronic database against which standard queries in programming languages maybe be used. The Notice mentions that files stored in images such as pdfs files or scanned documents are not considered electronically searchable.

PwC observation: This clarification was requested by a number of commentators because the efforts to review all of the pdfs files or scanned documents received by the organization would be an immense task.

If any indicia of U.S. status related to a client are found, participating FFIs will be required to request the appropriate documentation to establish the account is a U.S. account or non-U.S. account. FFIs must use a process that is similar to the process for private banking accounts and completed the process within one year of the FFI agreement's effective date. If a client does not respond to the FFI's request and provide appropriate documentation within two years of the FFI's FFI agreement, the client will be treated as a recalcitrant account holder until the appropriate documentation is provided.

PwC observation: Unlike the rules for a private banking account, it does not appear that a waiver of applicable restrictions, if any, is required to report the client's information to the IRS. However, similar to the rules for private banking accounts, Participating FFIs can rely on documentation it collects or maintains in the account holder's files, unless it knows or has reason to know that such documentation is unreliable.

High value accounts

If an account is not categorized in any of the previous four steps and has a balance of \$500,000 or more at the end of the year preceding the effective date of the FFI agreement, the account is considered a high value account. For these accounts (Step 5), the FFI must perform a diligent review of the account files associated with the account, and search for indicia of U.S. status (in a process similar to the one used for electronically searchable information). To the extent the account contains indicia of U.S. status, the FFI is required to solicit appropriate documentation from the client. If the account holder does not provide the appropriate documentation within two years of the effective date of the FFI's FFI agreement, the account will be classified as recalcitrant.

PwC observation: Based on the modifications and additional guidance that is provided, it is apparent that the IRS and Treasury listened to the comments provided and made an effort to simplify and relieve some of the compliance burdens for the FFIs by modifying the identification process of the pre-existing individual accounts to certain thresholds.

Annual testing

Beginning in the third year following the effective date of an FFI's FFI agreement, an FFI is required to repeat Step 5 annually for any preexisting individual account that did not meet the \$500,000 threshold in the year preceding the year of the effective date of the FFI's FFI agreement, but did meet the threshold on the last day of a preceding year. If indicia of U.S. status are discovered, and the account holder does not provide the required documentation by the end of the year, the FFI must treat the account as recalcitrant.

Certification of procedures for identifying accounts among preexisting individual accounts

The Notice provides that the responsible officer (i.e. Chief Compliance Officer or other equivalent level officer) must certify to the IRS when the FFI has completed the procedures for preexisting individual accounts according to the schedule below:

Procedures/steps for identifying U.S. accounts among preexisting individual accounts	Deadline for certifying completion to the IRS
Steps 1 through 3	By the end of the year the FFI agreement becomes effective (the latter of the date the FFI agreement is executed or January 1, 2013)
Steps 4 and 5	By the end of the second year after which the FFI agreement becomes effective

PwC observation: By designating a responsible officer, the IRS has provided a view consistent with many tax professionals that the provisions of FATCA are closely linked to an organization's operations functions.

As part of these certifications, the responsible officer must certify that between April 8, 2011 and the effective date of the FFI agreement; the FFI did not encourage or assist any account holder with a strategy for avoiding identification under the preexisting individual account procedures outlined above. Moreover, the responsible officer must certify that written policies and procedures are in place prohibiting employees from advising U.S. account holders on how to avoid having their accounts identified as of the effective date of the FFI's agreement.

PwC observation: The FFI's responsible officer is required to certify that the FFI did not encourage or assist any account holder with a strategy for avoiding identification under the preexisting account procedures from the date that Notice 2011-34 was published (i.e., April 8, 2011) to the date that the FFI's FFI agreement becomes effective. This requirement is sudden and unexpected, and will compel entities that are contemplating FFI status to immediately examine their current policies and procedures to make certain that they are able to make this certification to the IRS.

2. Passthru payments

A passthru payment is defined in the statute as "any withholdable payment or other payment to the extent it is attributable to a withholdable payment". Participating FFIs (PFFIs) are required to withhold 30 percent when a passthru payment is made to a recalcitrant account holder or to a non-participating FFI. In the Notice, the IRS noted that one purpose of the passthru payment rule is to encourage FFIs to enter into FFI agreements (i.e., a passthru payment paid to a participating FFI is not subject to FATCA's withholding requirement, whereas a passthru payment paid to a non-participating FFI would be subject to FATCA withholding). Additionally, the passthru payment rule is an anti-abuse rule designed to prevent PFFIs from being used as a blocker for non-participating FFIs who could otherwise avoid FATCA's withholding tax on income from indirect investments in U.S. assets. Notice 2010-60 sought comments on how best to structure this requirement.

The Treasury and IRS received several comments to limit the definition of a passthru payment. Given the concerns, the Treasury and IRS did not adopt the multiple comments received to limit the definition of passthru payments. Instead the Treasury and IRS accepted the comments that suggested the use of the FFI's ratio of assets that produce withholdable payments to total assets as a method to make the passthru payment rule administrable.

Treasury and the IRS chose to adopt a formulary approach that takes into account the ratio of the FFI's assets that could give rise to a withholdable payment (U.S. assets) to its total assets.

Future guidance will contain a provision that requires PFFIs to use the following ratios to calculate the amount of a passthru payment that is subject to withholding under Chapter 4:

In general, a payment will be a passthru payment to the extent:

$$\text{Amount that is withholdable payment} + \left[\text{Amount that is not a withholdable payment} \times \text{Passthru payment percentage} \right]$$

Passthru payment percentage

An FFI's passthru payment percentage is another mathematical formula and is calculated by dividing:

$$\left[\begin{array}{c} \text{The sum of the FFI's U.S. assets held on each of the last four quarterly testing dates} \\ \text{by} \\ \text{The sum of the FFI's total assets held on each of the last four quarterly testing dates} \end{array} \right]$$

The notice describes a passthru payment percentage as a rolling quarterly ratio which requires a PFFI to use the four most recent quarterly testing dates in the calculation of its passthru payment percentage.

Total assets for purposes of calculating an FFI's passthru payment percentage includes the gross value of any asset held on the FFI's balance sheet used for reporting to its interest holders without any reduction for liabilities or associated obligations. An asset will also include off-balance sheet transactions or positions to the extent provided in future regulations. Assets held in a custodial account of an FFI will not be considered assets for purposes of computing an FFI's passthru percentage. A custodial account is an account with respect to which the FFI acts as a custodian, broker or other nominee for the benefit of an account holder or customer.

U.S. assets for purposes of calculating an FFI's passthru payment percentage are any assets that can give rise to a passthru payment. However, an FFI's equity or debt interest in a domestic corporation will be treated solely as a U.S. asset, whereas an FFI's equity or debt interest in a non-financial foreign entity (NFFE) will be treated as solely a non-U.S. asset (even if the asset could produce a passthru payment). U.S. assets also include certain interests in another FFI. An interest in another FFI (a Lower-tier FFI) constitutes a U.S. asset in an amount equal to the value of the interest in the Lower-tier FFI multiplied by the Lower-tier FFI's passthru payment percentage. An FFI may rely on a passthru payment percentage from a Lower-tier FFI that is a participating or deemed-compliant FFI, if the passthru payment percentage is published in accordance with the terms of the Notice.

A PFFI must calculate and publish its passthru payment percentage quarterly, otherwise the PFFI is deemed to have a 100 percent passthru payment percentage. A non-participating FFI is deemed to have a zero passthru payment percentage. If financial statements are not produced for the quarterly testing date then the FFI should use its most recently issued financial statement to determine its total asset values. FFIs must also use a single currency to value its total assets (USD is not required).

PwC observation: Although the passthru payment percentage calculations appear simple, the ability of an FFI to actually perform the calculation may still require significant technological enhancements and process change.

Alternative transition method

An alternative method for determining the FFI's passthru payment percentage can be used during the first year of the FFI agreement. PFFIs can elect to calculate their passthru payment percentage on any date during the six months prior to the effective date of the FFI agreement (initial testing date). A PFFI can use this passthru payment percentage for the first quarter of the first year of its agreement. For the first three complete quarters after the effective date of the FFI's FFI agreement, the FFI will determine its passthru payment percentage by dividing the sum of the FFI's U.S. assets held on the initial testing date and each of the subsequent quarterly testing dates by the sum of the FFI's total assets held on the initial testing date and each of the subsequent quarterly testing dates.

Treasury and the IRS intend to develop an anti-abuse rule that will apply if an FFI has a pattern of disposing of U.S. assets prior to the quarterly testing date and subsequently reacquiring the same assets after the quarterly testing date. Under the anti-abuse rule, PFFIs will be required to calculate their passthru payment percentage without taking into account the transactions prior to the quarterly testing date.

PwC observation: FFIs that are assessing the viability of becoming a PFFI should evaluate whether they can calculate a passthru payment percentage. Since it will require an FFI to understand the types of assets that it holds, personnel within an organization's treasury function may be necessary to prepare this calculation.

3. Deemed compliant status for certain FFIs

Similar to Notice 2010-60, the Notice provides additional guidance related to the types of FFIs that could be treated as deemed compliant FFIs, and it discusses considerations that the IRS and Treasury will take into account in determining whether certain types of FFIs will be treated as deemed compliant. Additionally, the Notice describes certain administrative actions needed to obtain deemed compliant status. Specifically, deemed compliant FFIs will be required to apply for deemed compliant FFI status with the IRS and obtain an FFI identification number (FFI-EIN) from the IRS. The regulations will also require re-certification every three years to the IRS that it meets the requirements for being treated as a deemed compliant FFI.

Certain local banks

The Notice provides that certain local banks will be treated as deemed compliant FFIs depending on whether the following conditions are met with respect to each FFI in its expanded affiliated group:

- Each FFI is licensed in its country of organization as a bank or similar organization authorized to accept deposits in the ordinary course of its business and does not engage (or hold itself out as being engaged) primarily in the business of trading securities, commodities or other financial products;
- Each FFI is organized in the same country;
- Each FFI does not maintain operations outside its country of organization and does not solicit account holders outside its country of organization; and
- Each FFI implements policies and procedures to ensure that it does not open or maintain certain accounts that could contain U.S. owners.²

Local members of participating FFI groups

An FFI could be treated as a deemed compliant FFI if is a member of an expanded affiliated group that includes one or more participating FFIs, and when it maintains no operations nor solicits account holders outside of its country of organization. The FFI would also need to implement the pre-existing account and customer identification procedures required of a participating FFI to identify the following types of accounts: a) U.S. accounts, b) accounts of non-participating FFIs, and c) accounts of NFFEs (other than excepted NFFEs that are organized and operating in the jurisdiction where the FFI maintains the account).

If any of the accounts described above are found, the deemed compliant FFI will also agree to either (1) enter into an FFI Agreement; (2) transfer such accounts to an affiliate that is a participating FFI; or (3) close the accounts.

Certain investment vehicles

Collective investment vehicles and other investment funds would be treated as deemed compliant FFIs if the following three conditions are met:

- All direct holders of interests in the fund are participating FFIs or deemed compliant FFIs holding on behalf of other investors, or an exempted FFI;
- The fund prohibits the subscription for an acquisition of any interests in the fund by any person that is not a participating FFI, a deemed compliant FFI or an exempted FFI; and
- The fund certifies that any passthru payment percentages that it calculates and publishes will be done in accordance with the Notice.

² The local bank's policies and procedures must make certain that it does not open or maintain accounts owned by: (a) non-residents of the jurisdiction in which it is organized, (b) non-participating FFIs, and (c) NFFEs other than excepted NFFEs that are organized and operating in the jurisdiction where the FFI is organized.

Publicly-traded funds

Treasury and the IRS are considering whether foreign entities whose interests are regularly traded on established securities markets should be treated as deemed compliant FFIs. For example, an exchange-traded fund (ETF) could be treated as a deemed compliant FFI if certain conditions are met. Treasury recognizes that such publicly traded funds do not maintain U.S. accounts, but they are FFIs and are subject to certain obligations under FATCA to the extent they receive passthru payments – i.e., they would have to enter into an FFI Agreement, withhold on passthru payments made to non-participating FFIs, and certify that any passthru payment percentage they publish will be published in accordance with the Notice.

4. Reporting on U.S. accounts

An FFI is required to report to the IRS the account balance or value of each U.S. account, as well as the gross receipts and gross withdrawals or payments from each U.S. account, Notice 2011-34 provides rules for reporting these amounts.

Under Notice 2010-60, a PFFI would have been required to report the highest monthly or quarterly balance or value of each U.S. account, and would have been required to provide additional account related information to the IRS upon request (i.e. statements and daily receipts and withdrawals). The Treasury and IRS received comments that the reporting requirements in Notice 2010-60 were overly burdensome in light of the current capabilities of many FFIs.

Account balance reporting. In an effort to ease the burden and improve the administration of account balance reporting, the IRS and Treasury announced their intention to limit an FFI's obligation to report the balance or value of U.S. accounts to year-end balances or values, as determined for purposes of reporting to the account holder.

Account statements to be provided to IRS upon request. The Notice addresses whether a PFFI will be required to provide copies of account statements for U.S. accounts to the IRS. Under the Notice, a PFFI is required to provide account statements to the IRS upon request, but only if the FFI retains copies of such statements in the ordinary course of its business. If the PFFI does retain account statements in the ordinary course of its business, the Notice states that it must retain such statements for a period of five years.

Gross receipts and withdrawals reporting. The Notice describes the requirement to report gross receipts and gross withdrawals. Commentators informed the Treasury and IRS that many FFIs do not currently maintain gross receipts and withdrawal data, and that reporting this information would require significant investments to modify existing systems and business processes. To reduce this burden, the Treasury and IRS intend to issue regulations that will require PFFIs to report the following information with respect to U.S. accounts:

- a) The gross amount of dividends paid or credited to the account;
- b) The gross amount of interest paid or credited to the account,
- c) The gross amount of other income paid or credited to the account; and
- d) The gross proceeds from the sale or redemption of property paid or credited to the account with respect to which the FFI acted as a custodian, broker, nominee, or otherwise as an agent for the account holder.

The Notice permits PFFIs to determine the amount and character of dividends, interest, other income, and gross proceeds in accordance with the method that the PFFI uses for reporting such amounts to the tax administrator of the jurisdiction in which the PFFI is located. If reporting to a local tax authority is not required, the PFFI must determine these amounts in the same manner as is used for purposes of reporting to the account holder. If these amounts are neither reported to the local tax administrator nor to the account holder, then they must be determined either under U.S. tax principles or by a reasonable method of reporting consistent with the accounting principles generally applied by the PFFI. Once a PFFI applies a method to determine the amount and character of the income and gross proceeds, then that method must be maintained unless the IRS Commissioner consents to a change.

In the case of a U.S. account that is closed or transferred during the year, the FFI will be required to report income paid or credited to the account until the date of transfer or closure, and will also be required to report the amount or value withdrawn from the U.S. account as a gross withdrawal. In addition, the FFI will be required to report the account as a closed or transferred account.

Election to report as a U.S. financial institution. PFFIs may elect to report in the same manner as a U.S. financial institution is required to report interest, dividends, gross proceeds and other income (i.e., on Forms 1099-INT, DIV, MISC and B). If an FFI makes this election, it will not be subject to FATCA's requirement to report account balances and gross receipts and gross withdrawals. The Notice provides that this election may be made with respect to some branches and not others, and that the FFI agreement will specify which branches have made the election to report as a U.S. financial institution. The Notice also states that FFIs that make this election will not be subject to cost basis reporting if they are non-U.S. payors.

PwC observation: The modified year end reporting is similar to the current reporting requirements under Chapter 61 (Form 1099 reporting) with some simplifying features. It is not clear whether the reporting of year end balances will be incorporated into existing Forms 1099 or if the IRS intends to develop new forms to accommodate this reporting.

5. Chapter 4 requirements for Qualified Intermediaries

The Notice addresses certain questions raised by the Qualified Intermediary ("QI") community who are trying to understand the impact of FATCA on them. Under the current regime, QIs agree to perform certain reporting and withholding functions with regard to their U.S. and non-U.S. account holders. A QI that is an FFI is also subject to the requirements of FATCA in addition to the reporting and other requirements under their QI agreements.

Treasury and the IRS intend to coordinate the reporting and withholding requirements under FATCA with the requirements that presently apply to QIs. In the Notice, Treasury and the IRS announce their plan to coordinate a QI's responsibilities so that FFIs that are currently acting as QIs must consent to include in their QI agreements the requirement to become a participating FFI by January 1, 2013, unless they qualify as a deemed compliant FFI.

FFIs applying for QI status after the effective date will be required to become a participating FFI, unless they are a deemed compliant FFI.

The Notice also provides that Withholding Foreign Partnerships and Withholding Foreign Trusts will be required to consent to include in their agreements the requirement to become a participating FFI, unless they are a deemed compliant FFI.

6. Application of section 1471(e) regarding expanded affiliated groups of FFIs

Under the statutory provisions of FATCA, the withholding, reporting and other requirements imposed on an FFI will also apply to other FFIs which are members of the same expanded affiliated group ("FFI group"). The Notice describes various requirements for FFI affiliates, a coordinated process for FFIs to apply to become participating FFIs or deemed compliant FFIs, and centralized compliance options for FFI groups and for funds.

The lead FFI and the coordinated application process

The IRS intends that each FFI affiliate in an FFI group will be a participating FFI or a deemed compliant FFI, and that each member will apply for PFFI or deemed compliant status through a coordinated application process. For this purpose, each group will designate a lead FFI that will be required to complete an application and execute either an agreement with the IRS to become a participating FFI or a certification for deemed compliant FFI status. The lead FFI will also be required to complete an application on behalf of each FFI affiliate.

The lead FFI will be required to provide the following information or documentation in the FFI application about itself and each affiliate in the FFI group:

1. Documentation evidencing that each FFI affiliate has agreed to the provisions of an FFI agreement or certification of deemed compliant status,
2. A legally binding authorization from each FFI affiliate for the lead FFI to act on its behalf in signing and submitting an Application for Employer Identification Number (Form SS-4) to apply for and obtain an FFI-EIN for each FFI affiliate,
3. The lead FFI will represent it has identified each affiliate in the FFI group and has completed the application consistent with the instructions for each affiliate and provide the following information for each affiliate:
 - a. Name, address and country of organization,
 - b. Which of the three types of FFIs apply to the FFI affiliate (i.e., accepts deposits, holds financial asset for others, or invests or trades in securities and other financial products),
 - c. Whether it is a participating or deemed compliant FFI,
 - d. What types of financial accounts the FFI maintains,
 - e. Whether the affiliate maintains private banking accounts,
 - f. Whether the affiliate is a qualified intermediary, a withholding foreign partnership, or a withholding foreign trust,
 - g. The name, address and country of organization of each member of the FFI group that is not an FFI,
 - h. Identifying information for each FFI affiliate that maintains a branch that elects to separately report its U.S. accounts under the rules applicable to U.S. financial institutions, including the jurisdiction of each such branch, and
 - i. Any other information required in future guidance.

Affiliate FFIs who are participating FFIs

Participating FFI affiliates will be responsible for their own due diligence, reporting, withholding, and return filings obligations. Each FFI affiliate that becomes a participating FFI will execute their FFI agreement through the coordinated process noted above which will apply to all branches and offices worldwide.

Although the lead FFI will continue to act as a central contact point with the IRS regarding the FFI application process, an FFI affiliate could designate another FFI affiliate to be the point of contact (POC FFI) for members of the group that share a common line of business or operate in the same jurisdiction. POC FFIs will be responsible for addressing matters with the IRS related to an FFI's status as a participating or deemed compliant FFI, or that pertain to any NFFE in the FFI group.

Centralized compliance option for FFI groups

The Treasury and IRS intend to provide FFI groups with an option to designate an FFI to assume oversight of the policies and procedures for all or a portion of the group (Compliance FFIs). For example, a Compliance FFI could be responsible for 1) establishing policies and procedures, 2) ensuring that policies and procedures have been adopted and implemented, and 3) being accountable to the IRS with respect to each FFI affiliate's compliance with such policies and procedures.

PwC observation: Treasury and the IRS expect that both the IRS and FFIs may gain efficiencies by having designated parties to coordinate the compliance activities of groups of FFIs.

Centralized compliance option for funds

Similar to the compliance option for FFI groups, the IRS and Treasury are considering that certain collective investment entities that are associated with a common asset manager or agent (common agent) would have the option to execute a single FFI agreement on behalf of the associated group and perform the required functions under the FFI agreement (so long as the common agent is able to monitor each fund's compliance with the FFI agreement based on its legal agreement or other arrangement with the fund). The common agent would be required to be the point of contact for the group or designate an agent to assume this responsibility. It would also have responsibilities to implement policies and procedures covering an FFI's due diligence and reporting obligations, and ongoing compliance. However, each fund will remain liable for the performance of its obligations under its agreement.

PwC observation: Investment funds that currently use a third-party organization for tax and administrative functions may wish to explore whether their current administrator will address FATCA-related compliance matters.

If you have any questions, please contact Dominick Dell'Imperio (646-471-2386); Candace Ewell (202-312-7694); Jon Lakritz (646-471-2259); Steve Nauheim (202-414-1524); Stuart Finkel (646-471-0616); or Oscar Teunissen (646-471-3223).

Glossary

Defined term	Cite	Definition
Custodial account	Notice 2011-34	An account with respect to which a financial institution acts as a custodian, broker, nominee, or agent for the benefit of the account holder.
Custodial payment	Notice 2011-34	A payment with respect to which an FFI acts as a custodian, broker, nominee, or otherwise as an agent for another person.
Customer master files	Notice 2011-34	The FFI's primary files for maintaining account holder information, such as information used for contacting account holders and for satisfying AML/KYC requirements.
Deemed compliant FFI	Notice 2010-60	An FFI that (i) complies with such procedures as the Secretary may prescribe to ensure that such institution does not maintain U.S. accounts and meets such other requirements as the Secretary may prescribe with respect to accounts of other FFIs maintained by such institution; or (ii) is a member of a class of institutions with respect to which the Secretary determines that the application of section 1471 is not necessary to carry out the purposes of Section 1471. Because such a deemed compliant FFI would remain a financial institution under Section 1471(d)(5), it would not be an NFFE, and therefore would not be subject to withholding under section 1472.
Documentary evidence	Notice 2011-34	For purposes of the identification of Pre-existing Individual Accounts, the term includes: <ol style="list-style-type: none"> 1. Documentary evidence sufficient to establish the identity of an individual and the status of that person as a non-U.S. person (consistent with the documentary evidence that may be relied upon pursuant to §1.6049-5(c)(1)), which may include, but is not limited to, photo identification described in §1.1441-6(c)(4); 2. Any valid document issued by an authorized governmental body that includes the individual's name and address and is typically used for identification purposes; and (iii) with respect to an account maintained in a jurisdiction with AML/KYC rules that have been approved by the IRS in connection with a QI agreement (as referenced in §1.1441-1(e)(5)) 3. Any of the documents (other than a Form W-8) referenced in the jurisdiction's QI attachment for identifying natural persons, as shown on the IRS's webpage.

Defined term	Cite	Definition
Documentary evidence establishing non-U.S. status	Notice 2011-34	For purposes of the identification of Pre-existing Individual Accounts, this means documentary evidence that includes the account holder's name and indicates citizenship or residence outside the United States.
Documentation	Notice 2011-34	For purposes of the identification of Pre-existing Individual Accounts, this, includes all information recorded in written or electronic form (including documentary evidence and Forms W-8) that is collected in connection with a financial account (e.g., for purposes of maintaining the account, corresponding with the account holder, or complying with regulatory or AML/KYC requirements).
Electronically searchable information	Notice 2011-34	Information stored in the form of an electronic database against which standard queries in programming languages, such as Structured Query Language, may be used. Information, data, or files are not electronically searchable merely because they are stored in an image retrieval system (such as .pdf files or scanned documents)
Excepted NFFE	Notice 2010-60	NFFEs that will not be subject to withholding or reporting under sections 1471 or 1472 or future regulations.
Exempted FFI	PwC defined	Any withholdable payment to a foreign financial institution does not apply to any payment to the extent that the beneficial owner of such payment is: <ol style="list-style-type: none"> 1. Any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing, 2. Any international organization or any wholly owned agency or instrumentality thereof, 3. Any foreign central bank of issue, or 4. Any other class of persons identified by the Secretary for purposes of this subsection as posing a low risk of tax evasion.
Expanded affiliated group	1471(e)(2)	An expanded affiliated group is an "affiliated group" as defined in section 1504(a), determined by substituting "more than 50 percent" for "at least 80 percent" in each place it appears in section 1504(a) and without regard to paragraphs (2) and (3) of section 1504(b) (which would otherwise exclude insurance companies subject to tax under section 801 and foreign corporations). Section 1471(e)(2) further provides that a partnership or any other entity (other than a corporation) is treated as a member of an expanded affiliated group if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this rule).

Defined term	Cite	Definition
FFI effective agreement date	Notice 2011-34	The later of: the date executed; or January 1, 2013.
Financial account	1471(d)(2)	Generally means: <ul style="list-style-type: none"> A. Any depository account maintained by such financial institution, B. Any custodial account maintained by such financial institution, and C. Any equity or debt interest in such financial institution (other than interests which are regularly traded on an established securities market). Any equity or debt interest which constitutes a financial account under this subsection shall be treated for purposes of this section as maintained by such financial institution.
Financial institution	Section 1471(d)(5)	Generally means any entity that: <ul style="list-style-type: none"> 1. Accepts deposits in the ordinary course of a banking or similar business; 2. As a substantial portion of its business, holds financial assets for the account of others; or 3. Is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities, interests in partnerships, commodities, or any interest (including a futures or forward contract or option) in such securities, partnership interests, or commodities.
Foreign entity	1473(5)	Any entity which is not a United States person.
Foreign financial institution	1471(d)(4)	Any financial institution which is a foreign entity. Generally does not include a financial institution which is organized under the laws of any possession of the United States.
Grandfathered obligation	Notice 2011-34	An obligation that gives rise to payments that are exempt from withholding under section 501(d)(2) of the Act (grandfathered obligation), including any accrual of income with respect to such obligation, will not be treated as a U.S. asset for purposes of determining an entity's passthru payment percentage. A grandfathered obligation also will not give rise to a passthru payment under the rules for custodial payments.

Defined term	Cite	Definition
Indicia of U.S. status	Notice 2011-34	Such indicia include: (i) documentation suggesting that account holders are U.S. residents or U.S. citizens; (ii) a U.S. address associated with an account holder of the account (whether a residence address or a correspondence address); (iii) a U.S. place of birth for an account holder of the account; or (iv) any other indicia of potential U.S. status, including an “in care of” address, a “hold mail” address, a P.O. address in the United States that is the sole address on file with respect to the account holder, (v) a power of attorney or signatory authority granted to a person with a U.S. address, or (vi) standing instructions to transfer funds to an account maintained in the United States or directions received from a U.S. address.
Initial testing date	Notice 2011-34	For purposes of computing the passthru payment percentage, any date in the six months preceding the FFI's effective agreement date.
New entity account	Notice 2010-60	New entity accounts are financial accounts held by persons other than individuals opened after the date that a participating FFI's agreement becomes effective.
New foreign entity account	Notice 2010-60	For financial accounts that are opened at a USFI on or after January 1, 2013 and are held by persons other than individuals (new USFI accounts held by foreign entities)
New individual account	Notice 2010-60	New individual accounts are accounts opened by individuals after the date that a participating FFI's FFI agreement becomes effective.
Non-financial foreign entity	1472(d)	For purposes of this section, the term non-financial foreign entity means any foreign entity which is not a financial institution (as defined in section 1471(d)(5)).
Non-participating FFI	Notice 2010-60	An FFI who fails to enter into an FFI agreement to meet the requirements of section 1471(b) and is not a deemed compliant FFI.
Nonresident alien	7701	Generally, an individual is a nonresident alien if such individual is neither a citizen of the United States nor a resident of the United States.
Participating FFI	Notice 2010-60	An FFI who enters into an agreement to meet the requirements of section 1471(b) and agrees to undertake certain due diligence, reporting and withholding responsibilities.
Passthru payment	1471(d)(7)	The term passthru payment means any withholdable payment or other payment to the extent attributable to a withholdable payment.
Preexisting entity account	Notice 2010-60	Preexisting entity accounts are financial accounts held by persons other than individuals as of the date that a participating FFI's FFI agreement becomes effective.

Defined term	Cite	Definition
Pre-existing individual account	Notice 2010-60	Preexisting individual accounts are financial accounts held by individuals as of the date that a participating FFI's FFI agreement becomes effective.
Private banking account	Notice 2011-34	Any account maintained or serviced by an FFI's private banking department or any account maintained or serviced as part of a private banking relationship, including any account held by any entity, nominee, or other person to the extent the account is associated with the private banking relationship with an individual client.
Private banking department	Notice 2011-34	<p>Any department, unit, division, or similar part of an FFI:</p> <ul style="list-style-type: none"> A. That is referred to by the FFI as a private banking, wealth management, or similar department; B. That focuses on servicing accounts and investments of individual clients (or their families) whose accounts with the FFI or whose income, earnings, or assets exceed certain thresholds, or who are otherwise identified as high-net worth individuals (or families), as determined under an FFI's own policies and procedures; C. That is considered a private banking department under the anti-money laundering or know-your-customer (AML/KYC) requirements to which the FFI is subject; or D. In which some or all of its employees, under any of an FFI's formal or informal procedures or other guidelines for its personnel: (i) ordinarily provide personalized services to individual clients (or their families), such as banking, investment advisory, trust and fiduciary, estate planning, philanthropic, or other services not generally provided to account holders; or (ii) gather information about individual clients' personal, professional, and financial histories in addition to the information ordinarily gathered with respect to the FFI's retail customers.
Private banking relationship	Notice 2011-34	Exists when one or more officers or other employees of the FFI are assigned by the FFI to provide services referred to by the FFI as a private banking, wealth management, or similar department or to gather information about a client (or the client's family) that focuses on servicing accounts and investments of individual clients (or their families) whose accounts with the FFI or whose income, earnings, or assets exceed certain thresholds, or who are otherwise identified as high-net worth individuals (or families), as determined under an FFI's own policies and procedures, regardless of whether the assigned individual is employed within the FFI's private banking department.

Defined term	Cite	Definition
Private banking relationship manager	Notice 2011-34	An officer or other employee of the FFI who: (i) is assigned responsibility for specific account holders on an ongoing basis; (ii) advises account holders regarding their banking, investment, trust and fiduciary, estate planning, or philanthropic needs; and (iii) recommends, makes referrals to, or arranges for the provision of financial products, services, or other assistance by internal or external providers to meet those needs.
Quarterly testing date	Notice 2011-34	For purposes of computing the passthru payment percentage, the quarterly testing date for an FFI will be either the last redemption date of the quarter (for entities that conduct redemptions at least quarterly) or the last business day of the quarter (for all other entities). A quarter will be determined in accordance with the FFI's fiscal year.
Recalcitrant account holder	1471(d)(6)	The term recalcitrant account holder means any account holder which (A) fails to comply with reasonable requests for the information referred to in subsection (b)(1)(A) or (c)(1)(A), or (B) fails to provide a waiver described in subsection (b)(1)(F) upon request.
Resident alien	7701	An alien individual shall be treated as a resident of the United States with respect to any calendar year if (and only if) such individual meets the requirements if (i), (ii) and (iii): (i) lawfully admitted for permanent resident of the United States at any time during such calendar year, (ii) Substantial presence test. Such individual meets the substantial presence test paragraph 3, or (iii) First year election. Such individual makes an election provided in paragraph 4.
Specified financial institution payment	1474(b)(2)(B)	The term specified financial institution payment means any payment if the beneficial owner of such payment is a foreign financial institution.

Defined term	Cite	Definition
Specified United States person	1473(3)	Except as otherwise provided by the Secretary, the term specified United States person means any United States person other than (A) any corporation the stock of which is regularly traded on an established securities market, (B) any corporation which is a member of the same expanded affiliated group (as defined in section 1471(e)(2) without regard to the last sentence thereof) as a corporation the stock of which is regularly traded on an established securities market, (C) any organization exempt from taxation under section 501(a) or an individual retirement plan, (D) the United States or any wholly owned agency or instrumentality thereof, (E) any State, the District of Columbia, any possession of the United States, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing, (F) any bank (as defined in section 581, (G) any real estate investment trust (as defined in section 856), (H) any regulated investment company (as defined in section 851), (I) any common trust fund (as defined in section 584(a)), and (J) any trust which-- (i) is exempt from tax under section 664(c), or (ii) is described in section 4947(a)(1).
Substantial United States owner	1473(2)	The term substantial United States owner means (i) with respect to any corporation, any specified United States person which owns, directly or indirectly, more than 10 percent of the stock of such corporation (by vote or value), (ii) with respect to any partnership, any specified United States person which owns, directly or indirectly, more than 10 percent of the profits interests or capital interests in such partnership, and (iii) in the case of a trust- (I) any specified United States person treated as an owner of any portion of such trust under subpart E of part I of subchapter J of chapter 1, and (II) to the extent provided by the Secretary in regulations or other guidance, any specified United States person which holds, directly or indirectly, more than 10 percent of the beneficial interests of such trust.
Territory-organized FI	Notice 2010-60	A financial institution organized under the laws of a U.S. territory.
United States account	1471(d)(1)	In general, the term United States account means any financial account which is held by one or more specified United States persons or United States owned foreign entities.
United States owned foreign entity	1471(d)(3)	The term United States owned foreign entity means any foreign entity which has one or more substantial United States owners.

Defined term	Cite	Definition
Value of an asset	Notice 2011-34	For purposes of computing the passthru payment percentage, the amount shown on the quarterly financial statements issued by the FFI for purposes of reporting to its interest holders. If no such financial statements are issued for a quarterly testing date, then the value of an asset shall be determined consistent with the method used on the most recently issued financial statements to interest holders.
Withholdable payment	1473(1)	The term withholdable payment means (i) any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and 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. Exception for income connected with United States business. Such term shall not include any item of income which is taken into account under section 871(b)(1) or 882(a)(1) for the taxable year.
Withholding agent	1473(4)	The term withholding agent means all persons, in whatever capacity acting, having the control, receipt, custody, disposal, or payment of any withholdable payment.

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Solicitation

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