
IRS releases draft FATCA registration forms and additional information regarding FFI lists

April 9, 2013

In brief

The Internal Revenue Service (IRS) released draft [Form 8957](#), *Foreign Account Tax Compliance Act (FATCA) Registration*, for public review and comment on April 5, 2013. No accompanying instructions were included. Form 8957, when issued in final form, may be used by foreign financial institutions (FFIs) to register for FATCA purposes. In the [IRS release](#) of the draft Form 8957, the IRS reiterated its intention to utilize an on-line registration portal (Portal) for FATCA registration. The Portal is expected to be available in July of this year.

Taxpayers should not use this specific *draft* Form 8957 for registering. The IRS will accept registrations that are in paper form using a final Form 8957, however, paper forms may not be processed until October 2013 and taxpayers may experience a delay in receiving a response. Rather, the IRS is encouraging financial institutions to use the on-line Portal. Questions presented in the on-line process should look very similar to the questions shown on the draft form, but likely presented differently to make the electronic process more efficient (i.e., there may be drop down responses for some questions).

The IRS also released more information on April 9 about the [schema](#) of its so-called December List - a published list of FFIs that have registered with the IRS by October 25 and their corresponding global intermediary identification number (GIIN). The on-line Portal and Form 8957 (when finalized) will enable FFIs to obtain a GIIN and be included in the list.

These IRS releases follow the recent unveiling of a new draft [Form 1042-S](#) (*Foreign Person's U.S. Source Income Subject to Withholding*), which has been revised to reflect the implementation of FATCA. The Form 1042-S is a long-standing form used by withholding agents to report both to the IRS and the payment recipient certain US source amounts paid to foreign persons and any applicable withholding.

In detail

Form 8957 used to obtain a GIIN

The final FATCA regulations released on January 17 provide that FFIs should utilize a new online Portal to register with the IRS using a paperless resource. The Portal will be the primary means for financial institutions

to interact with the IRS with respect to the registration of entities and various other tasks. Most notably, the registration process will enable participating FFIs (PFFIs) and deemed compliant FFIs to receive what the IRS has referred to as a GIIN used to satisfy reporting requirements and identify its

status to withholding agents. This number will be assigned once the IRS approves the registration.

Observation: *Obtaining a GIIN will be an important step to mitigate the 30% FATCA*

withholding. Entities registered by October 25 will be included in the December List - the first of many lists of GIINs to be published monthly. Some financial institutions in the marketplace have noted that they will not prospectively engage in business with those financial entities that do not have a GIIN from the IRS by the time the December List is published.

Once the registration is approved by the IRS and the GIIN has been issued, the Portal will also be used for other interactions between FFIs and the IRS such as the required certifications by responsible officers (ROs) and the renewal of existing qualified intermediary (QI) status.

Detailed information required

Draft Form 8957 requires 4 pages of detailed information for each entity that wishes to register. A financial institution must not only provide its legal name and mailing address, but also its **'Type'**, which refers to whether it is a single entity, part of an expanded affiliated group (EAG), or serves as a sponsoring entity. The registrant must also report whether it is the 'Lead' of an EAG. Details concerning each EAG member are required in Part 2 of the form.

Observation: *The draft Form 8957, released without accompanying instructions, does not provide any information about the obligation of a sponsoring FFI to provide details of their sponsored entities. While the draft form does not provide specific fields for such information, it is expected that this detail should be provided to the IRS at some point in time.*

Draft Form 8957 also requires the entity to list its **'FACTA classification'** as either (i) a PFFI not covered by an intergovernmental agreement (IGA) or one that falls under a Model 2 IGA, (ii) a registered

deemed compliant entity (which includes an entity that falls under a Model 1 IGA), (iii) a Limited Financial Institution, or (iv) None of the above. A Limited Financial Institution is a member of an EAG that includes one or more PFFIs but that cannot satisfy the requirements of an FFI agreement. The draft form also requires identification of any Limited Branches.

Observation: *The final regulations provide many different categories of a deemed compliant FFI but the draft form does not require that such entity describe why it is deemed compliant - it is simply required to check a box.*

Another important requirement of draft Form 8957 is the identification of the financial institution's RO in Part I. The form gives the registrant a choice - one alternative is for the RO to constitute the only point of contact (POC) for that financial institution. A second option is for the RO to list additional POCs that will be allowed to complete the Form 8957, take other FATCA-related actions, and obtain access to the entity's tax information. The form also indicates that an RO registering as a Lead of all or part of an EAG will be the POC for each member of that group.

Observation: *The draft Form 8957 requires the signature of the RO, which indicates under penalty of perjury that to the best of the RO's knowledge and belief, the form is true, correct, and complete. There is also a box to check which indicates the financial institution's agreement to comply with its FATCA obligations set forth in the regulations, IGAs, and other administrative guidance. The latter likely refers to a revenue procedure that is expected to be released by the IRS containing all of the terms and conditions applicable to FFIs. Although the paper form requires an actual signature, it is*

unclear how the Portal will require a signature from the RO.

Other draft form requirements include whether the financial institution already has in effect a withholding agreement with the IRS as either a QI, withholding foreign partnership (WP), or withholding foreign trust (WT). The draft form also requires the identification of any branches within the United States or other country.

Electronic filing preferred

Entities are 'strongly encouraged' to use the electronic online registration process. The IRS states that FATCA registration will be accomplished most efficiently and effectively that way. As mentioned above, the IRS plans to process paper registration forms starting in October 2013 but those financial institutions who choose to utilize paper may experience a delay in receiving notice of registration acceptance and obtaining a GIIN needed to show FATCA compliance.

Observation: *It appears that entities submitting paper forms may not be included in the December List. Practically speaking, submitting a paper form will simply not be a viable option for many FFIs who are engaged in a marketplace that demands having a GIIN by this time.*

An upcoming challenge with respect to electronic filing may involve the use of required fields. What fields must be completed to satisfy IRS requirements? The draft form does not address this. As a result, it is unclear whether a registration may be properly completed if fields within the form are left blank or incomplete.

Contents of the registered and approved FFI list

Those FFIs that register by October 25 will be on the IRS December List. The IRS intends to publish a 'List of

registered and approved financial institutions under FATCA' on a monthly basis thereafter. But what will the list look like and what information will it include? The sample FFI list released by the IRS today is a simple 3-column list that includes (i) the 16 character GIIN, (ii) the financial institution's legal name and an indication of whether a branch is involved, and (iii) the country of residence for tax purposes. The sample files were released in two formats - XML and CSV.

Observation: *Today's release by the IRS states that additional information on FATCA registration and GIIN composition will be provided soon. It appears that the 16 character GIIN has 4 distinct sections - future IRS guidance will likely describe what each section refers to, e.g., the specific EAG or type of legal entity involved.*

The takeaway

The first and most imminent date for FATCA implementation is the July 2013 opening of the IRS on-line Portal. This first FATCA compliance

date is quickly approaching. Organizations should not assume that registration is a simple task that can be accomplished without prior planning - on the contrary, planning and early analysis is critical for being ready to provide the necessary information.

As a first step, each organization will need to assess FATCA's impact on its business operations and craft its own unique preparation and compliance plan to meet its business needs and objectives. Completing the registration process will likely require items within this plan to be completed prior to entering information in the Portal. The registration process will force organizations to engage in various analyses, including a legal entity analysis to determine type and classification, as well as an EAG analysis. This latter task means that each EAG within an organization should be defined, while identifying all members that need to register.

Entities must also determine their approach to FATCA program governance structure, most notably the identification of the RO and

potential other POCs. The registration process will also require the retrieval of other detailed information such as the formal legal entity name and mailing address that may require more tedious information gathering.

Additional background

For a link to the US Treasury FATCA Resource Center, click [here](#).

For additional information regarding FATCA guidance and implementation, please click [here](#) for the Global IRW Newsbrief archive.

How do you plan to keep up-to-date with the release of the FATCA intergovernmental agreements (IGAs) and some of their unique differences? **Access our FATCA IGA Website Monitor** that includes:

- a high-level overview of signed IGAs
- the latest IGA developments
- potential actions to think about as you look at the impact of the IGAs to your FATCA program.

Let's talk

For more information on how FATCA might impact you, please contact:

Global leader, Global Information Reporting Network

Stuart Finkel
(646) 471-0616
stuart.finkel@us.pwc.com

United States

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

Iris Goldman
(646) 471-2386
iris.goldman@us.pwc.com

Jon Lakritz
(646) 471-2259
jon.w.lakritz@us.pwc.com

Robert Limerick
(646) 471-7012
robert.limerick@us.pwc.com

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