

Indonesia: How financial institutions should prepare for FATCA implementation during the transition period



In brief

FATCA, the Foreign Account Tax Compliance Act, was enacted by the US Congress in 2010 in order to prevent and detect offshore tax evasion. The complex FATCA required certain non-U.S. financial institutions to identify, report, and withhold tax of certain account holders for the Internal Revenue Service (IRS). Financial institutions (FIs) that are in scope of FATCA and have to register with the IRS are depository institutions, custodial institutions, insurance companies with annuity contract, investment entities, certain holding and treasury centres. However, FIs such as BPR (*Bank Perkreditan Rakyat*), financing companies, cooperatives, and other certain FIs do not need to register with the IRS since they are considered complied with FATCA. The cost of non-compliance for financial institutions that are not subject to FATCA exemption is the imposition of 30% withholding tax on their US-sourced income.

Indonesia obtained temporary status as a Model 1 Intergovernmental Agreement (IGA)¹ country on May 4, 2014 ([link](#)). As stated in Announcement 2014-17 ([link](#)), released by the US Department of the Treasury and the IRS, this temporary status will expire on December 31, 2014. In order to maintain this status, Indonesia has to sign the IGA by December 31, 2014 at the latest.

At present, *Otoritas Jasa Keuangan* (OJK) is in the process of creating an Indonesian version of the FATCA regulation (*Rancangan Peraturan OJK - RPOJK*), based on the FATCA Model 1 IGA regulation. Meanwhile, many Indonesian FIs that have registered with FATCA are using the Model 1 IGA as the basis to satisfy registration, identification, reporting, and withholding obligations.

What does it mean to be an IGA country?

Indonesia's temporary FATCA status as a Model 1 IGA Country until December 31, 2014 means that Indonesian FIs are entitled only to identify and report U.S. taxpayers, not withhold tax from them. This lessens the burden of Indonesian FIs, because they are no longer mandated to act as withholding agents, as stated in IGA Article 4 No. 1.

Furthermore, by having Model 1 IGA Country status, Indonesian FIs are less exposed to the risk of breaching bank secrecy regulations through FATCA reporting, because all data exchanged with the IRS will be facilitated by the Indonesian Competent Authority. Reports from all of the participating FIs will be compiled and given to the IRS directly by the Indonesian Competent Authorities.

In addition, as a Model 1 IGA country, any payment given to Indonesian FIs that have not registered for FATCA up until January 1, 2015 will be exempted from being withheld by any withholding agent ([link](#)).

There is a possibility that Indonesia could become a Model 2 IGA country; however, the essential advantage of having Model 1 IGA status would still remain. Model 2 country Foreign Financial Institutions (FFIs) are not entitled to become withholding agents and thus this liberates FFIs from complex withholding procedures. Comparison of IGA Model 1 and Model 2 status shows differences in carrying out due diligence and reporting procedures.

¹ IGA: Agreement between the U.S. and the FATCA Partner Country to implement FATCA.

	Model 1	Model 2
Report	Report to local jurisdiction Competent Authority	Report to IRS directly
	Report due on September 30, 2015	Report due on March 31, 2015
Governance	Could be reciprocal or non-reciprocal	There is no reciprocal version
Procedure	Consent letter is not mentioned	Requirement of consent letter for U.S. Accounts and Non-Participating FFIs to be reported
	U.S. Accounts that refuse to sign consent letter are recalcitrant accounts	U.S. Accounts that refuse to sign consent letter are Non-Consenting U.S. Accounts. The consent letter simultaneously must state in writing that if consent is not given, aggregate information about the account shall be reported and may give rise to a group request by the IRS for specific information about the account.
	There is no notification that the IRS could ask for the details of pooled accounts of recalcitrant and Non-Participating FFI accounts	The U.S. Competent Authority may make a group request to the local jurisdiction Competent Authority based on aggregate information of Non-Consenting U.S. Accounts and Foreign Reportable Amounts paid to Non-Participating FFIs. Within 6 month, Competent Authority has to report all relevant information in the same format had it obtained consent in the first place.
Compliance	Local jurisdiction Competent Authority will address significant non-compliance using domestic law and penalty. If it is not resolved within 18 months, the FFI will be treated as a Non-Participating FFI.	IRS will notify significant non-compliance issues to the local jurisdiction Competent Authority. If it is not resolved within 12 months, the FFI will be treated as a Non-Participating FFI.

What happens if Indonesia does not sign an IGA agreement?

Indonesia has to sign an agreement by December 31, 2014 at the latest for continuing its temporary status as a Model 1 IGA country. If the Indonesian government decides not to sign the IGA before the deadline, then it may be removed from the temporary list as stated in Announcement 2014-17 ([link](#)). If this happens, from January 1, 2015, Indonesian FIs may not have the right to claim the status of a Reporting Model 1 IGA FFI. FIs and their branches will have to update their status from Reporting Model 1 FFI to Participating FFI ([link](#)).

As a Participating FFI, FIs are entitled to act as withholding agents and obligated to withhold 30% of withholdable payment. Moreover, reporting will no longer be facilitated by the Competent Authority. Participating FIs will have to report directly to the IRS. In addition, a Responsible Officer (RO) must be appointed to sign the FFI Agreement directly with the IRS. Participating FFIs will have their RO periodically certify to the IRS regarding FFI's compliance with the FFI agreement ([link](#)).

What is expected from Indonesian FIs?

Under FATCA, Indonesian FIs must identify and report U.S. Person's information to the IRS. FATCA subjects for identification and reporting are U.S. account holders classified as Specified U.S. Persons² and Passive Non-Financial Foreign Entities with Substantial U.S. Owner(s)³. In addition, FATCA also requires Indonesian FIs to provide limited (non-financial) information of Non-Participating FFIs and recalcitrant accounts.

The takeaway

Until now, there has been no official announcement about when the Indonesian government will sign the Model 1 IGA. This has resulted in public anxiety about how Indonesian FIs should implement their compliance plan for FATCA. Indonesian FIs that have already initiated their FATCA program may rely on the IGA Model 1 released by the IRS ([link](#)) for guidance in implementation while waiting for the official decision. It is advised that those who are subject to the FATCA regulation and have not initiated a FATCA program should start planning compliance because the impact and consequences of FATCA have already taken effect. Additionally, these entities might be subject a 30% withholding rate under FATCA, from January 1, 2015.

Let's talk

For more information on how the regulations may affect you, please contact:



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² Specified U.S. Person

: U.S. taxpayers that are the subject of FATCA reporting.

³ Passive NFFEs with Substantial U.S. Owner(s): A non-U.S. non-financial entity of which 50% or more of its income is generated from passive activities (dividends, interest, royalty, rent, etc.) or 50% of its assets are used to generate passive income AND owned substantially (10% or more) by U.S. taxpayers.

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