

FATCA Updates and Reminders for Indonesian Financial Institutions: February 2015



In brief

Foreign Account Tax Compliance Act (FATCA) is a constantly-updated regulation. The United States Internal Revenue Service (IRS) has been continually releasing announcements and updates in order to accommodate the needs and concerns of FATCA's global stakeholders. As of January 2015, the IRS has issued new Frequently Asked Questions (FAQs) and guidelines on creating self-certification forms and IDES¹. Additionally, the IRS has also released the new version of the W-9 form which must soon be adopted by financial institutions globally.

At present, Indonesia is subject to a specific FATCA regime. Indonesia has been granted with "Model 1 IGA² in substance" status since May 4th 2014 which was supposed to expire on December 31st 2014. However, this status has been extended based on IRS Announcement 2014-38 yet there are cautionary clauses that must be noted by relevant Indonesian Financial Institutions (Indonesian FIs). Furthermore, the respective Indonesian FIs must be concerned with the progressing FATCA timeline. The nearest deadline will be the identification of pre-existing high-value individual accounts, scheduled to be due on June 30th 2015 at the latest.

IRS FAQs about Self-Certification Form

IRS has recently updated FATCA FAQs ([link](#)) which includes guidelines for creating self-certification forms as a substitute for IRS' FATCA forms (W-9 & W-8 forms). In short, below are the requirements and guidelines that must be followed on creating self-certification forms:

- Self-certification forms can be used to substitute all FATCA forms from the W-9 form to the W-8 form and can be translated into the local language.
- The substitute form for W-8BEN-E is allowed to not include all FATCA status (PFFI³, Active NFFE⁴, etc.) for entity accounts but must include any FATCA status for which withholding may apply, such as the categories for a NPFFI⁵ or Passive NFFE⁶.
- A substitute W-8 form is generally valid only if it contains the same penalties of perjury statement and certifications as the official forms and the required signature.
- Self-certification would only be acceptable if it is signed (or otherwise positively affirmed) and it is dated (at the latest at the date of receipt).
- Self-certification would only be acceptable if it solicits, at a minimum, the following information:
 - name;
 - residence address for tax purposes;
 - jurisdiction(s) of residence for tax purposes (note that a U.S. citizen is considered a U.S. tax resident even if the person is also a tax resident of another jurisdiction);
 - taxpayer identification number (TIN) (If the taxpayer has both a U.S. TIN and a foreign TIN, the U.S. TIN must be provided, and the foreign TIN may be provided);
 - in the case of an entity, the entity's FATCA status; and
 - in the case of a Passive NFFE, the name, residence address for tax purposes, and TIN with respect to any Controlling Person that is a Specified U.S. Person.

¹ International Data Exchange Service (IDES): A system set up by the IRS for FATCA reporting.

² Intergovernmental Agreement (IGA): Agreement between the IRS and another country's Competent Authority regarding FATCA

³ Participating Foreign Financial Institution (PFFI): Non-U.S. Financial Institution that is participating in FATCA regulation

⁴ Active Non-Financial Foreign Entity (Active NFFE): Non-U.S. Non-Financial Entity that is exempted from FATCA reporting due to its 'active' nature of business

⁵ Nonparticipating Foreign Financial Institution (NPFFI): Non-U.S. Financial Institution that is not participating or deemed-compliant in FATCA regulation

⁶ Passive Non-Financial Foreign Entity (Passive NFFE): Non-U.S. Non-Financial Entity that is not aligned in any 'Active NFFE' definition and may subject to FATCA reporting if it is owned substantially by U.S. taxpayer(s)

IRS FAQs about International Data Exchange Service (IDES)

As IGA 2 Countries and Non-IGA Countries will do their first FATCA Reporting on March 2015, the IRS announced the opening of the IDES for enrolment ([link](#)). In addition, the IRS has also released the technical FAQs ([link](#)) and user guide ([link](#)) of IDES.

Host country tax authorities in Model 2 IGA jurisdictions and financial institutions are encouraged to begin the enrolment process well in advance of their reporting deadline. IDES will also be used for IGA 1 Countries in September 2015 to be used between the IRS and IGA 1 Countries' tax authorities. For host country tax authorities in Model 1 IGA jurisdictions, the IRS will directly notify them to let them know when it is time to enroll.

To begin transmitting information in IDES, a financial institution or tax authority will need to first obtain a digital certificate. IDES adopts a double encryption approach in which the sender encrypts the data and the IDES encrypts the transmission pathway in order to improve the data privacy and safeguarding.

Why Indonesian FIs should pay attention to IDES?

As Indonesia's FATCA status is still "Model 1 IGA in substance", Indonesian FIs still have months before the reporting deadline on September 2015. However, this status will be reviewed monthly by the IRS and if Indonesia is deemed to no longer have the right to claim the "Model 1 IGA in substance" status, Indonesian FIs may face a closer reporting deadline. Hence, it will be better for Indonesian FIs and their FATCA reporting units to have a glimpse of IDES.

New version of W-9 Form

IRS has also released a new version of the W-9 form ([link](#)) along with its instruction notes ([link](#)). While the new version has no significant changes compared to the old version, Indonesian FIs must still update their W-9 form (and the substitution form, if applicable) since the W-9 form does not have the six-month implementation allowance that applies to W-8 forms.

Latest news regarding Indonesia's IGA status

Since May 4th 2014, Indonesia has been granted the "IGA 1 in substance" status. The status was originally meant to expire on December 31st 2014 and until that date, Indonesia did not sign the IGA. The IRS, however, released the Announcement 2014-38 ([link](#)) in which it stated that there will be an extension for those countries with "in substance" status who did nevertheless not sign the IGA officially as of December 31st, 2014.

The extension will be given based on the monthly review by the U.S. Treasury of all "in substance" jurisdictions. Those who are not showing progress and/or willingness to sign IGA officially in the future may have their "in substance" status revoked, which in practical terms changes the country's status to "Non-IGA".

What should Indonesian FIs do regarding the temporary IGA status of Indonesia?

Relevant Indonesian FIs must temporarily assume their status as a "Reporting Model 1 IGA" entity as long as Indonesia holds the "Model 1 IGA in substance" status. In case the "Model 1 IGA in substance" status is revoked by the IRS, Indonesia will then be a Non-IGA Country. Therefore, Indonesian FIs' status as "Reporting Model 1 IGA" will no longer be applied.

The IRS requires the revoked country's FFIs to change their FATCA status on the first day of the month following the month of removal. For example, if Indonesia loses the status on April 2015, any Indonesian FIs with "Reporting Model 1 IGA" status must change their status to "Participating FFI" by May 1st 2015.

The approaching deadline for identifying Pre-existing High-Value Individual Accounts

As stated in the IGA and FATCA Regulation, the identification of pre-existing high-value individuals must be completed by June 30th 2015 at the latest. Indonesian FIs must begin to identify their pre-existing high-value individual accounts as the deadline is 5 months away from now.

Characterised as any individual accounts opened by Indonesian FIs before July 1st 2014 with an account balance over US\$ 1,000,000 (equivalent) as of June 30th 2014, the high-value individual accounts must be identified through the following steps:

1. Identify any individual account with balance over US\$ 1,000,000 (equivalent).
2. Conduct an Electronic Search to examine any U.S. indicia of the account holder.
3. Conduct a Paper Search for any documents held by the FIs regarding the account holders (such as a customer master file) to inspect any U.S. indicia.
4. In addition to the electronic and paper record searches, the FIs must flag any high-value individual accounts with U.S. indicia if the relationship manager has actual knowledge that the account holder has any U.S. indicia.
5. If any U.S. indicia is found, the FIs must verify the account whether it is a reportable account or not through the self-certification form (W-9, W-8BEN, or similar agreed form).

Let's talk

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



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