

Tax Game Changers

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Agenda



- FATCA
- Common Reporting Standard
- IRS Audit Trends – *A look under the hood*

FATCA

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Foreign Account Tax Compliance Act - FATCA

Why? ■ Deficit and recession; Where is the money?

Who & Where? ■ Foreign Financial Institutions (FFIs) and Non-Financial Foreign Entities (NFFE's)
■ The United States and over 100 Countries

What? ■ Signed on March 18, 2010; IGAs and related legislation in many jurisdictions
■ Effective July 1, 2014

How? ■ IGAs (two types) concluded by US to roll out FATCA to many partner countries
■ Financial Institutions are required to identify and report 'Reportable Accounts'
■ Disclosure of assets and income by US taxpayers held with foreign financial institutions
■ Non-compliance: Withholding of 30% on US source income

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DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1 and 301
[TD 9691]
RIN 1545-0048

Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities
AGENCY: Internal Revenue Service (IRS), Treasury.
ACTION: Final Regulations.

SUMMARY: This document contains final regulations under chapter 4 of Subtitle A (sections 1471 through 1474) of the Internal Revenue Code of 1986 (Code) regarding information reporting by foreign financial institutions (FFIs) with respect to U.S. accounts and withholding on certain payments to FFIs and other foreign entities and payments by FFIs to other persons.

DATES: Effective date. These regulations are effective January 20, 2013.

Applicability dates. For dates of applicability, see §§ 1.1471-1(c), 1.1471-2(d)(3), 1.1471-2(d)(10), 1.1471-2(d)(11), 1.1471-2(d)(12), 1.1471-2(d)(13), 1.1471-2(d)(14), 1.1471-2(d)(15), 1.1471-2(d)(16), 1.1471-2(d)(17), 1.1471-2(d)(18), 1.1471-2(d)(19), 1.1471-2(d)(20), 1.1471-2(d)(21), 1.1471-2(d)(22), 1.1471-2(d)(23), 1.1471-2(d)(24), 1.1471-2(d)(25), 1.1471-2(d)(26), 1.1471-2(d)(27), 1.1471-2(d)(28), 1.1471-2(d)(29), 1.1471-2(d)(30), 1.1471-2(d)(31), 1.1471-2(d)(32), 1.1471-2(d)(33), 1.1471-2(d)(34), 1.1471-2(d)(35), 1.1471-2(d)(36), 1.1471-2(d)(37), 1.1471-2(d)(38), 1.1471-2(d)(39), 1.1471-2(d)(40), 1.1471-2(d)(41), 1.1471-2(d)(42), 1.1471-2(d)(43), 1.1471-2(d)(44), 1.1471-2(d)(45), 1.1471-2(d)(46), 1.1471-2(d)(47), 1.1471-2(d)(48), 1.1471-2(d)(49), 1.1471-2(d)(50), 1.1471-2(d)(51), 1.1471-2(d)(52), 1.1471-2(d)(53), 1.1471-2(d)(54), 1.1471-2(d)(55), 1.1471-2(d)(56), 1.1471-2(d)(57), 1.1471-2(d)(58), 1.1471-2(d)(59), 1.1471-2(d)(60), 1.1471-2(d)(61), 1.1471-2(d)(62), 1.1471-2(d)(63), 1.1471-2(d)(64), 1.1471-2(d)(65), 1.1471-2(d)(66), 1.1471-2(d)(67), 1.1471-2(d)(68), 1.1471-2(d)(69), 1.1471-2(d)(70), 1.1471-2(d)(71), 1.1471-2(d)(72), 1.1471-2(d)(73), 1.1471-2(d)(74), 1.1471-2(d)(75), 1.1471-2(d)(76), 1.1471-2(d)(77), 1.1471-2(d)(78), 1.1471-2(d)(79), 1.1471-2(d)(80), 1.1471-2(d)(81), 1.1471-2(d)(82), 1.1471-2(d)(83), 1.1471-2(d)(84), 1.1471-2(d)(85), 1.1471-2(d)(86), 1.1471-2(d)(87), 1.1471-2(d)(88), 1.1471-2(d)(89), 1.1471-2(d)(90), 1.1471-2(d)(91), 1.1471-2(d)(92), 1.1471-2(d)(93), 1.1471-2(d)(94), 1.1471-2(d)(95), 1.1471-2(d)(96), 1.1471-2(d)(97), 1.1471-2(d)(98), 1.1471-2(d)(99), 1.1471-2(d)(100).

FOR FURTHER INFORMATION CONTACT: John Sweeney, (202) 616-5046 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background.

I. In General.

This document contains final amendments to the Income Tax Regulations (CFR parts 1 and 301) under sections 1471 through 1474 of the Code (commonly known as the Foreign Account Tax Compliance Act, or FATCA). On March 18, 2010, the H.R. 4912 (Public Law 111-247) (the H.R. 4912), added chapter 4 of Subtitle A (chapter 4), comprised of sections 1471

through 1474, to the Code. Chapter 4 generally requires U.S. withholding agents to withhold tax on certain payments to foreign financial institutions (FFIs) that do not agree to report certain information to the Internal Revenue Service (IRS) regarding their United States accounts (U.S. accounts), and on certain payments to certain nonfinancial foreign entities (NFFEs) that do not provide information on their substantial United States income (substantial U.S. income) to withholding agents. Since the enactment of chapter 4, the Department of the Treasury (Treasury Department) and the IRS have issued preliminary guidance on the implementation of chapter 4. See Notice 2010-40 (2010-37 IRB 325), Notice 2011-34 (2011-19 IRB 765), and Notice 2011-53 (2011-12 IRB 124) (collectively, the FATCA Notices). The FATCA Notices are available at IRS.gov.

On February 15, 2012 (77 FR 9022), the Treasury Department and the IRS published a notice of proposed rulemaking (the proposed regulations) addressing chapter 4's due diligence, withholding, reporting, and associated requirements. On October 24, 2012, the Treasury Department and the IRS released Announcement 2012-42, which announced the intention to amend certain provisions of the proposed regulations in adopting the final regulations.

The Treasury Department and the IRS received numerous comments in response to the proposed regulations, and a public hearing on the proposed regulations was held on May 15, 2012. The comments received in writing and at the public hearing were carefully considered in developing these final regulations.

II. Chapter 4 Policy in the Context of the U.S. Federal Income Tax Laws.

U.S. taxpayers' investments have become increasingly global in scope. FFIs now provide a significant opportunity for, and act as intermediaries with respect to, the investments of U.S. taxpayers. Like U.S. financial institutions, FFIs are generally in the best position to identify and report with respect to their U.S. customers. Absent such reporting by FFIs, some U.S. taxpayers may attempt to evade U.S. tax by holding money in offshore accounts. To prevent this abuse of the U.S. voluntary tax compliance system and address the use of offshore accounts to shelter tax evasion, it is essential in today's global investment climate that reporting be available with respect to both the investors and offshore

accounts of U.S. taxpayers. This information reporting strengthens the integrity of the U.S. voluntary tax compliance system by placing U.S. taxpayers that have access to international investment opportunities on an equal footing with U.S. taxpayers that do not have such access or otherwise choose to invest within the United States.

To this end, chapter 4 extends the scope of the U.S. information reporting regime to include FFIs that maintain U.S. accounts. Chapter 4 also imposes increased due diligence obligations on certain FFIs that present a high risk of U.S. tax avoidance. In addition, chapter 4 provides for withholding on FFIs and NFFEs that do not comply with the reporting and other requirements of chapter 4. This withholding generally may be credited against the U.S. income tax liability of the beneficial owner of the payment to which the withholding is attributable, and generally may be refunded to the extent the withholding exceeds such liability. An FFI that does not comply with the requirements of section 1471(b), however, and that beneficially owns the payment from which tax is withheld under chapter 4, may not receive a credit or refund of such tax except to the extent required by a treaty obligation of the United States.

III. Statutory Provisions.

The following discussion briefly explains the statutory provisions of FATCA, which are implemented by these regulations. Section 1471(a) requires any withholding agent to withhold 30 percent of any withholdable payment to an FFI that does not meet the requirements of section 1471(b). A withholdable payment is defined in section 1471(c) to mean, subject to certain exceptions: (i) Any payment of interest, dividends, annuities, compensation, retirement, or other fixed or determinable annual or periodic gain, profit, or income (FDAP 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.

An FFI meets the requirements of section 1471(b) if it either enters into an agreement (an FFI agreement) with the IRS under section 1471(d)(1) to perform certain obligations or meets the requirements prescribed by the Treasury Department and the IRS to be deemed to comply with the requirements of section 1471(b). An FFI is defined as

FATCA Classifications

To determine the FATCA compliance actions, one needs to classify each non-US entity by applying the definitions set in the FATCA Regulations and / or the applicable IGA

Classification per each non-US entity as an FFI or NFFE is not dependent on whether there are US investments or US Investors

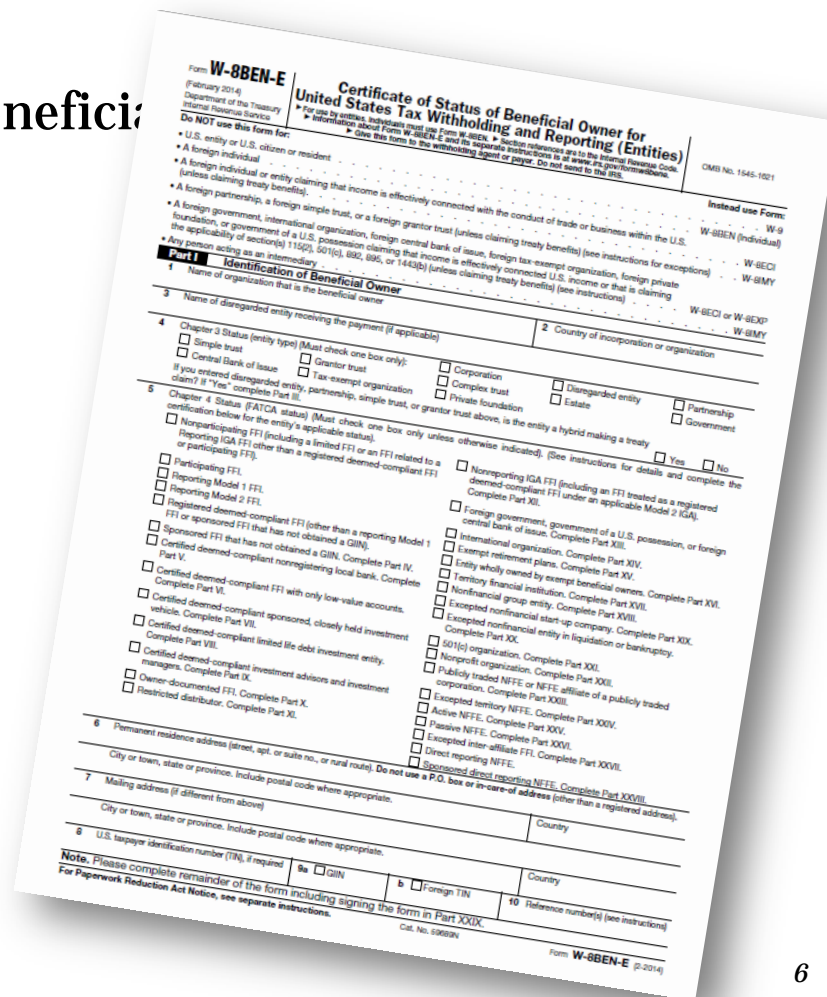
Types of Entities to Assess Impact

- Multinational Corporations – holding companies, treasury centers, retirement funds and special purpose entities
- Trusts and Custodial Entities – family offices
- Law firms and Accounting firms – holding escrow accounts
- Banks, Investment funds, Venture Capital and Private Equity
- Private Investment Companies
- Insurance Companies
- Entities involved cash pooling and securitization

FATCA Forms

Form W-8BEN-E (Entities) Overview

- Provided by an entity to establish:
 - It is a non-US entity and the beneficial owner
 - Claims for treaty benefits
 - FATCA status
 - GIIN as applicable



Form **W-8BEN-E**
(February 2014)
Department of the Treasury
Internal Revenue Service

Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)
For use by entities, individuals, and trusts (other than U.S. citizens or residents) to claim a reduced rate of withholding on payments of U.S. source income. See instructions for exceptions and limitations. Do not use this form to claim a reduced rate of withholding on payments of U.S. source income if the entity is a U.S. citizen or resident.

OMB No. 1545-0047

Do NOT use this form for:
• A U.S. entity or U.S. citizen or resident
• A foreign individual (unless claiming treaty benefits)
• A foreign partnership, a foreign simple trust, or a foreign grantor trust (unless claiming treaty benefits) (see instructions for exceptions)
• A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession claiming that income is effectively connected with the conduct of trade or business within the U.S.
• Any person acting on an intermediary's behalf (see instructions)

Instead use Form:
W-9 (Individual)
W-8ECI (W-8ECI)
W-8IMY (W-8IMY)

Part I Identification of Beneficial Owner

1 Name of organization that is the beneficial owner

2 Country of incorporation or organization

3 Name of disregarded entity receiving the payment (if applicable)

4 Chapter 3 Status (entity type) (Must check one box only):
☐ Simple trust
☐ Grantor trust
☐ Corporation
☐ Complex trust
☐ Disregarded entity
☐ Partnership
☐ Government
☐ Central bank of issue
☐ Tax-exempt organization
☐ Private foundation
☐ Estate

5 Chapter 4 Status (FATCA status) (Must check one box only unless otherwise indicated). (See instructions for details and complete the certification below for the entity's applicable status).
☐ Nonparticipating FFI (including a limited FFI or an FFI related to a participating FFI).
☐ Participating FFI.
☐ Reporting Model 1 FFI.
☐ Reporting Model 2 FFI.
☐ Registered deemed-compliant FFI (other than a reporting Model 1 FFI or sponsored FFI that has not obtained a GIIN).
☐ Certified deemed-compliant FFI that has not obtained a GIIN. Complete Part IV.
☐ Certified deemed-compliant nonregistering local bank. Complete Part VI.
☐ Certified deemed-compliant FFI with only low-value accounts.
☐ Certified deemed-compliant sponsored, closely held investment vehicle. Complete Part VII.
☐ Certified deemed-compliant limited life debt investment entity. Complete Part VIII.
☐ Certified deemed-compliant investment advisors and investment managers. Complete Part IX.
☐ Owner-documented FFI. Complete Part X.
☐ Restricted distributor. Complete Part XI.

6 Permanent residence address (street, apt. or suite no., or rural route). Do not use a P.O. box or in-care-of address (other than a registered address).
City or town, state or province. Include postal code where appropriate.

7 Mailing address (if different from above).
City or town, state or province. Include postal code where appropriate.

8 U.S. taxpayer identification number (TIN), if required. Do not use a GIIN.
a U.S. TIN
b Foreign TIN

9 Reference number(s) (see instructions)

Note. Please complete remainder of the form including signing the form in Part XXX.
For Paperwork Reduction Act Notice, see separate instructions.

Form **W-8BEN-E** (2-2014)

FATCA Forms

What is Your FATCA Status?

FFI or NFFE

- Financial Institutions can be:
 - Non-Participating;
 - Participating FFI;
 - Reporting Model 1 or 2 FFI;
 - Registered deemed-complaint FFI;
 - Sponsored;
 - Certified deemed-complaint; or
 - Owner-Documented
- Non-Financial Institutions will usually be Active or Passive NFFEs
 - This is determined by the type of income and assets the entity has (active or passive)

Self-certification forms:

- Where an IGA is in place
- Usually based on the W8-BEN-E
- Can be used instead of the W8-BEN-E

FATCA – Key Take Away



Regulatory Compliance

- Implementation of FATCA
- Understanding and coordination of IGA implications
- Adapt controls
- Customer Data: client repositories to be enriched (FATCA status; GIIN)



“End User” Experience

- W-8BEN forms or self-certification
- Adapt commercial policy and client communication
- No real banking secrecy anymore for US accounts



Business Change

- Business Process adapted
- Global compliance approach (FATCA, CRS, EU savings directive)
- KYC utilities adapted for FATCA



Common Reporting Standard (CRS)

CRS

Common Reporting Standard

Why?

- Countries globally desire tax transparency
- Developed by the OECD to provide a global standard for the automatic exchange of information (AEOI)

Who?

- Most OECD Countries +

What?

- Taxpayers will need to provide self-certifications regarding their tax residency
- Financial institutions to share information on “Reportable Accounts”

When?

- Wave 1 countries must implement New Account Due Diligence for CRS by January 1, 2016 reporting in 2017
- For Israeli FIs the timing is pushed to 2017 and 2018

How?

- Countries will need to sign Competent Authority Agreements, similar to IGAs and incorporate into local law
- The local tax authority in turn provides the information to the account holder’s country of tax residence

Standard for Automatic
Exchange of Financial
Account Information



COMMON
REPORTING
STANDARD

CRS and IGA status across Jurisdictions - as of 2 November 2015

	CRS First Wave New Procedures 2016 ¹ - Reporting 2017	CRS Second Wave New Procedures 2017 - Reporting 2018	CRS Committed Timeline TBD	Non-CRS
Signed IGA	<ul style="list-style-type: none"> <u>Austria</u>¹ (P: Oct 2016, R: 2018) Barbados Belgium Bermuda British Virgin Islands Bulgaria Cayman Islands Colombia Croatia Curaçao Cyprus Czech Republic Denmark Estonia Finland France Germany Gibraltar Guernsey Hungary Iceland India Ireland Isle of Man Italy Jersey Latvia Liechtenstein Lithuania Luxembourg Malta Mauritius Mexico Montserrat Netherlands Norway Poland Portugal Romania San Marino* Slovak Republic Slovenia South Africa South Korea Spain Sweden Turks and Caicos Islands United Kingdom 	<ul style="list-style-type: none"> Australia Bahamas Brazil Canada Chile Costa Rica Hong Kong (China) Israel Japan New Zealand Qatar Saint Kitts and Nevis Saint Vincent and Grenadines Singapore Switzerland Turkey United Arab Emirates 	(none)	<ul style="list-style-type: none"> Algeria Belarus Cambodia Georgia Holy See Honduras Jamaica Kosovo Kuwait Moldova Philippines Uzbekistan
Agreed in Substance IGA	<ul style="list-style-type: none"> Anguilla Dominica* Greece Greenland Seychelles Trinidad and Tobago* 	<ul style="list-style-type: none"> Antigua and Barbuda China Grenada Indonesia Macao (China) Malaysia Panama Saint Lucia Saudi Arabia 	<ul style="list-style-type: none"> Bahrain 	<ul style="list-style-type: none"> Angola Armenia Azerbaijan Cabo Verde Dominican Republic Guyana Haiti Iraq Kazakhstan Montenegro Nicaragua Paraguay Peru Serbia Taiwan Thailand Tunisia Turkmenistan Ukraine
Non-IGA	<ul style="list-style-type: none"> Argentina Faroe Islands Niue* 	<ul style="list-style-type: none"> Albania Andorra Aruba Belize Brunei Darussalam Cook Islands Ghana Marshall Islands Monaco Russia Samoa Sint Maarten Uruguay 	<ul style="list-style-type: none"> Nauru Vanuatu 	(all other jurisdictions)

IRS Audit Trends – A look under the hood

IRS Audit Trends

IRS 2015-2016 Priorities

- Select issues for audit rather than just doing a wide ranging full blown audit of a large company
- Focus more enforcement resources on mid-sized companies and partnerships
- Pursuit will be part of a "campaign" concept where there will be national direction from specialized teams

IRS Audit Trends

IRS 2015-2016 Priorities (con.)

- International and Interstate - the need for documentation is crucial
- U.S. inbound taxpayers - an increase in the proportion of agents
 - Companies whose size or location might have kept them off the international audit radar could find themselves targets
- IRS examiners will be better prepared and focused
 - Preparing for and defending an IRS examination in the future will require a strategic approach
- Asset Management/Private Equity
 - Increase in Global High Wealth Individual audits – a holistic approach
 - IRS audit focus on asset management clients

IRS Audit Trends

IRS 2015-2016 Priorities (con.)

- Transfer pricing key focus
- Major changes to the international audit team's approach to targeting audits
- Continued focus on intergovernmental cooperation (exchange of information)
- IRS is now training domestic agents on international issues
- IRS continues to apply penalties for late-filed information returns

IRS Audit Trends

IRS 2015-2016 Priorities (con.)

- IRS examiners are using the internet and its related tools to research information on entities and individuals
- Can inspect related tax returns online and can determine whether to expand the examination
- Expanded use of data analytics to identify noncompliance
- Withholding issues is a key initiative within the IRS
- OVDI Audits
- Increase in statute extension requests

Scope and Limitations

- The information contained in this presentation is for general guidance on matters of interest only. As such, it should not be used as a substitute for consultation with professional tax advisors.
- This document was not intended or written to be used, and it cannot be used, for the purpose of avoiding any U.S. federal, state or local tax penalties.

Thank you!

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