



Final Regulations on Foreign Account Tax Compliance Act (FATCA)

How the Rules Impact Reporting

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Reporting: Overview

- The Regulations provide additional clarity detailing reporting requirements and timing and introducing some new forms.
- Countries may enter into an agreement to report on the FFI's behalf
- The IRS has also indicated that they are discussing with partner jurisdictions the possibility of adopting a single format for reporting FATCA information, whether that information is reported directly to the IRS or to the tax administration in a Model 1 IGA jurisdiction.

Reporting: Timing

Reporting will be phased in gradually between 2015 and 2017

2015:

- FFIs are required to report name, address, TIN, account number and account balance on U.S. accounts (U.S. Account Reporting)
- If the FFIs agreement is effective date on or before December 31, 2014, it is required to report U.S. accounts maintained during 2013 that are outstanding on December 31, 2013

2016:

- FFIs are required to add income payments made in the prior year to its U.S. Account Reporting
- FFI is required to complete Forms 1042-S allocating the income and withholding paid to its recalcitrant account holder pools
 - Reporting is required regardless of whether the FFI made a payment of a chapter 4 reportable amount to each such account holder
- FFI must aggregate report on NPFFI payments made in 2015

Reporting: Timing

2017:

- FFI are required to add gross proceed payments made in the prior year to its U.S. Account Reporting
- FFI is required to complete Forms 1042-S allocating the income and withholding paid to its recalcitrant account holder pools
- FFI must aggregate report on NPFFI payments made in 2016

Reporting is required to be filed electronically on March 31, 2015

Reporting: Highlights

- The FFI that maintains the account is generally responsible for reporting the account.
 - The final regulations add a rule to determine when the FFI is treated as maintaining an account.
- FFIs will be issued a GIIN that will be used for FATCA reporting purposes
 - The IRS currently contemplates that the GIIN will also be used by QIs, in lieu of the current QI EIN, for purposes of QI reporting
- Reporting does not need to be performed in U.S. currency
- The character of payments may be determined under the same principles that the FFI uses to report information to the tax authorities in their own country.
 - The amount and character of items of income need not be determined in accordance with U.S. federal income tax principles.

Reporting: Highlights

- The address to be reported for an account held by a specified U.S. person is the residence address recorded in the FFI's records or, if none, the address used by the FFI for mailing or for other purposes.
- In the case of an account held by a U.S. owned foreign entity, the address to be reported is the address of each substantial U.S. owner of such entity.
- The account number to be reported is the identifying number used by the FFI for other purposes or, if no number is assigned to the account, a unique serial or other number assigned for purposes of reporting.
- In the case of an depository or custodial account or a cash value insurance or annuity contract that is closed or transferred during the calendar year, payments made with respect to the account include income paid or credited to the account until the date of transfer or closure and the amount or value withdrawn or transferred

Reporting: Highlights

- If the FFI has account statements that summarize the activity (withdrawals, transfers, and closures) for a reportable account it must retain a record of the statements for the longer of 6 years or the retention period under their normal business procedures.
 - The FFI may be required to extend the 6 year retention period if the IRS requests such an extension prior to the expiration the 6 years.
- Generally a FFI may elect to report under sections 6041, 6042, 6045, and 6049 with respect to any account that must be reported.
 - If the FFI makes this election they must report as if they are a U.S. payor and each accountholder that is a specified U.S. person, U.S. owned foreign entity, or owner-documented FFI is a payee who is an individual and citizen of the United States.
 - Cannot take advantage of certain reporting exemptions
 - Must report the information for the calendar year regardless of whether a reportable payment was actually made to the U.S. account during the calendar year.

Reporting: IGAs

- In many cases, foreign law would prevent an FFI from reporting directly to the IRS, thus potentially exposing the FFI to withholding.
 - This would be inconsistent with FATCA's objective to address offshore tax evasion through increased information reporting.
- To overcome this Treasury has collaborated with several foreign governments to remove legal impediments and allow for alignment and coordination with local law and reporting practices.
 - This collaboration has culminated in the issuance of two model Intergovernmental Agreements or IGAs and the signing of four agreements.
 - The IGAs represent efficient and effective ways of implementing FATCA and Treasury has stated that they are committed to working cooperatively with foreign jurisdictions to improve transparency and information exchange on a global basis.

Reporting: Form 8966

- The IRS intends to release a new Form 8966, “**FATCA Report**,” that will be used by FFIs (including QIs, WPs, WTs) and withholding agents to comply with their chapter 4 reporting obligations.
- This new Form 8966 will set forth all the information that must be reported with respect to financial accounts
- Will be used to report:
 - Certain information regarding U.S. accounts
 - Substantial U.S. owners of passive NFFEs and owner documented FFIs
 - Aggregate recalcitrant account information
- Form 8966 will be filed electronically with the IRS on or before March 31 of each year reporting prior year information.

Reporting

- The IRS intends to issue a revised Form 1042, **Annual Withholding Tax Return for U.S. Source Income of Foreign Persons**, and Form 1042-S, **Foreign Person's U.S. Source Income Subject to Withholding**.
- Revised Forms 1042 and 1042-S will set forth all the information that must be reported by withholding agents to meet their obligations under both §1.1474-1(c) and (d) (chapter 4) and §1.1461-1 (chapter 3).
- The requirements regarding Form 1042 and 1042S reporting by QIs will continue to be governed by the QI Agreement
 - Not sure how these may be modified
- The IRS intends to publish final versions of Form 8966 and Form 1042-S, together with the XML-based schemas to be used by withholding agents for the electronic filing of these forms.

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