

Getting up to speed on FATCA

Foreign
Account
Tax
Compliance
Act



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Disclosure:

The information provided in this presentation does not represent tax advice. You should consult with your own tax advisors regarding any concepts discussed.

Today's Objectives

** Primary focus on Wealth Management Organizations*

- What is FATCA? – Summarization
- How does FATCA Apply to my organization?
 - Focus on US Wealth Mgt. Perspective
- Requirements – Information/Withholding
 - Where is the \$\$ going?
 - Tax Reporting
- Timeline
- Why do I need to care?
- Questions?
- Appendix – Resources to go!
 - How can I be prepared?
 - Acronyms
 - Resources
 - Tax Forms to think about

FATCA

*“The objective of FATCA is the reporting of foreign financial assets; withholding is the cost of not reporting.” **

- Enacted as part of the Hiring Incentives to Restore Employment (HIRE) Act on March 18, 2010
 - Payments made in 2014 and beyond
- New reporting and withholding requirements
- Why? Minimize tax evasion and off shore accounts
- Increase effectiveness of reporting/disclosures of foreign bank accounts
- Target to raise \$8.6B in revenue over 10 years

* [http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-\(FATCA\)](http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-(FATCA))

FATCA for Wealth Management Organizations

How can FATCA apply to me?

- Do you have foreign subsidiaries overseas?
- Do you have beneficiaries (recipients) receiving recurring payments from trust accounts or agencies? (payors)
 - Does your existing book of business have any foreign recipients today?
 - Do you have these identified and understand reporting/withholding impact?
 - Are you aware which income qualifies for withholding?
- *Are you prepared* for one time distributions from estates or terminating trusts to foreign recipients?
- Do you make payments directly to individuals or to foreign financial accounts (on their behalf)
 - There will be a difference if the payment goes directly to an individual or a foreign financial account.
 - Do you know what countries are involved and why that is important?
 - Are you familiar with how a foreign financial institution will need to qualify to avoid withholding?
- Is your tax department up to speed on necessary forms to conform with FATCA?
 - Some are new, others in process of being revised
 - This includes forms to determine residency status, withholding, review of financial accounts
- Does your organization understand the withholding requirements?
 - Do you know which income needs to be considered for withholding and what the exceptions are?

FATCA things to know

Information

- Who is receiving payment ?
 - Individual or foreign institution
- Treasury looking to have agreements with countries to exchange information (IGA's)
 - FFI's, NFFE's
- Is withholding needed?
- Tax reporting
 - Proper information required (W-8, W-9)
 - Wealth Mgt. Organization (1042 and 1042S)
 - Client & other

Withholding

- Burden on PAYOR making payments to foreign person (If there is non-compliance – payor blamed!)
- Withholding rate = 30%
- Type of income
 - FDAP payments
 - Gross proceeds from sales/dispositions of US property (can produce interest or dividends)
 - There are exceptions!
- Penalties may be incurred
- Major focus on withholding at IRS (top 3 priorities)

What do I need to know about Withholding?

- US Treasury wants tax at the source rather than waiting for taxpayers to file (unless agreements are made)
- Withholding agent (has custody) - rate is 30%
- Withholding payments starts July 1, 2014 and include
 - FDAP – Fixed, Determinable, Annual and Periodic Income (Interest, Dividends, Rents, Wages, premiums, annuities, etc.)
 - Gross payments from sale/disposition of any property producing US source FDAP
 - Mechanism to transfer is EFTPS
- Does the new rules replace existing withholding rules? – No
 - It is separate and additional requirements
 - Rules “were coordinated” (credits with other withholding, etc.) and Forms adjusted (1042)
- Other rules for pass thru payments
- Exceptions to withholding
 - Countries adopting IGA (intergovernmental Agreements)
 - Compliant FFI’s and NFFE’s
 - Foreign source income
 - US trade/business
 - Short term obligations - less than 183 days
 - Grandfathered obligations (generally before Jan 1, 2013)

Withholding Issues – Why you need to be on top of this?

- This is NEW and will change!
- Dealing with foreign agreements will make this complicated
- Difficult to obtain refunds once tax withheld
 - Amendments will take time to get through process
 - Chapter 3 and 4 - “let’s see how coordination goes”
 - Beneficiaries may also need to file amended US Tax returns
 - Due to different governments and organizations, this will not be easy
- Penalties “payor” will be accountable
- Clients will be confused

Information- Where is the \$\$ going?

1. Individual
2. Foreign Institution – classification determines how reporting and withholding obligations apply. They have reporting obligations to US. ***It will be your job (as Payor) to know whether or not the firms/countries are compliant or certified!***
 - FFI – Foreign Financial Institution – range of organizations (withholding generally applies) – unless agreement entered – then participating FFI or PFFI
 - Banks – depository institutions, savings & loans,
 - Custodial – Trust, Investment management, broker-dealers, benefits plans, c
 - Investment – hedge funds, ETF's, mutual funds, private equity, holding companies
 - Insurance companies – some (annuities)
 - NFFE- Non Financial Foreign Entity – “not” a financial organization or is treated as an NFFE under IGA with Treasury
 - Withholding generally applies unless it certifies it does not have “substantial US owners”
 - Examples might be Professional Services firms, privately held operation businesses

What you need to know?

- GIIN – Global Intermediary Identification # - assigned to participating FFI or PFFI or registered deemed compliant FFI. 19 characters. Goes on W-8 and verification
- IGA's – Intergovernmental Agreements - Country to country alternative to compliance with IRS specific to FATCA – focus on due diligence & reporting requirements
 - Reporting varies
 - Different models – Model 1 (reciprocal agreements reporting to local governments then shared with IRS), Model 2 (not as formal of an agreement – rules can be different)
 - US and UK entered into first IGA 9/12/2012 (Model 1)
 - 23 signed and full reporting. 24 signed and guidance issued. 51 unsigned!

Information – Tax Reporting

- Tax Reporting (brief list of forms in Appendix)
- Information Needed for documentation purposes
 - Examples are W-8BEN for indiv. and entities (status of beneficial owner for US Tax withholding) , W-9, etc.
 - Some are in “draft” form, others expire
 - *Are these incorporated into new account procedures?*
- Reported
 - Form 8938 – Statement of specified Foreign Financial Assets & attached to federal income tax return (>\$50K on last day of tax year or over \$75K anytime)
 - Grantor trusts MAY be excluded – rules such as type of assets
 - 1042 and 1042S – Annual withholding Tax returns for US Source Income of Foreign Individuals
 - Beneficiaries may also have filing requirements

Timelines – Key Dates*

<u>Action</u>	<u>Target Dates</u>
Notice 2014-33 Released – FATCA Transition Relief - Does not provide relief for deadline. Allows for penalty waivers if sufficient evidence shown	2014
Withholding starts on FDAP payments FFI's need to address reporting requirements	2015
Form 8966 Substantial Owners identified by Dec. 31, 2014	March 2015
Annual Tax reporting Form 1042 and 1042S	March 15, 2015
Reporting of balance information by FFI's, etc. (depends on agreement)	March 15, 2015-Sept 2015
Annual reporting for US accounts including payments (does not include gross proceeds)	2016
Reporting to include gross payments (and also withholding as applicable)	2017

** Keep checking as things change!!!!!!*

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Why do I need to care?

- It's complicated - your clients will expect you to know the rules and be up to speed
- Impacts multiple departments – need coordinated effort
- Ramp up time – it will take time to identify impacted accounts and establish procedures
- Failure to understand may result in...
 - Penalties - 1042S penalties starts at \$100/return
 - Increased reputation risk
- Mistakes in this area are NOT easy to fix and increase and reputation risk
- It just takes one example!

Questions
Thank You!



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Appendix

How can my Organization prepare?

- Form validation
- 1042S process
- W-8/W-9 collection

Reporting



Planning

- Review processes
- Develop FATCA plan
- Assign resp. officer
- Start communication plan



Identification

- Identify foreign benes
- Existing accounts
- Countries/FFI's – start grid

Withholding

- W/H Procedures
- Centralize decision making process
- Training



Build process

Create flowcharts , modify client onboarding , documentation gathering process

A few Key Terms

- FATCA – Foreign Account Tax Compliance Act
- FFI – Foreign Financial Institution
- PFFI – Participating Foreign Financial Institution (has an agreement)
- NPFFI – Non participating FFI– no agreement
- NFFE – Non-Financial Foreign Entity
- FDAP – Fixed, Determinable, Annual, Periodic income
- IGA – Intergovernmental Agreement
- GIIN – Global Intermediary Identification Number (registered with IRS)
- USWA – US Withholding Agent
- FBAR – Report of Foreign Bank and Financial Accounts
- Indicia – data engine that analyzes customer data

There are many more (NPFFI, DCFFI, certified and limited FFI, etc.) !!!!

Resources

- Larger Accounting Firms – Websites (search for FATCA)
- LinkedIn – 40+ Groups (very active and valuable information, discussions)
 - FATCA – Thousands of Members – Discussions, surveys, connections
 - FATCA & Withholding Tax
 - FATCA for Asset Managers
- US Dept. Of Treasury Resource Center
 - <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx>
- IRS – Registrations, Forms, Support
 - <http://www.irs.gov/Businesses/Corporations/FATCA-Registration>
- Registration for Financial Institutions
 - <https://sa2.www4.irs.gov/fatca-rup/>
- AICPA- FATCA and FBAR
 - <http://www.aicpa.org/interestareas/tax/resources/international/pages/fbarresources.aspx>
- Presentations & webinars – Tax Software providers
- Notice 2013-43 (Revised dates) - <http://www.irs.gov/pub/irs-drop/n-13-43.pdf>

A few Important Tax Forms

Form 8938 FBAR (Foreign Assets)	Form W-8BEN & IMY (Indiv/Entities)	Form W-9
Form 8957 FATCA Reg.	Form 1042S	Form 1042