



GGI North America

FATCA
Overview and Model
Agreements

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FATCA - Overview

Foreign Account Tax Compliance Act (FATCA) - enacted on March 18, 2010 as part of the Hiring Incentives to Restore Employment (“HIRE”) Act

- **Requires U.S. tax payers holding foreign financial assets exceeding \$50,000 to report such assets on IRS Form 8938 that must be attached to the taxpayer’s income tax return, starting with the 2011 tax year.**
- **Requires Foreign Financial Institutions (“FFI’s”) to enter into agreements with the I.R.S. and report offshore accounts to I.R.S. regarding financial accounts held by:**
 - U.S. persons, or
 - Foreign entities in which U.S. persons hold a substantial ($\geq 10\%$) ownership interest



FATCA - Withholding

New FATCA withholding mechanism

- **Unless exception applies, 30% FATCA withholding tax is imposed (new Chapter 4 withholding) when –**
 - FFI does not have FFI-EIN (i.e., new FATCA ID number), *or*
 - FFI-EIN is wrong (i.e., it does not match with I.R.S. published list)
 - Prop. Reg. §1.1471-3(d)(3)



FATCA – Obligations of Participating FFI's

Due Diligence Procedures:

- **Determine what accounts are owned by US persons & US owned foreign entities**
 - Draft Procedures published on February 8, 2012
 - Prop. Reg. §1.1471-4(c)
 - Different procedures depending upon:
 - Pre-existing v. New Accounts
 - Individual v. Entity Accounts

FATCA - Due Diligence

Individuals

Preexisting Individual Accounts

- **Accounts ≤ \$50,000: No review needed**
- **Accounts > \$50,000: Review Electronic records**
 - Look for U.S. indicia (e.g., address, place of birth)
 - If find U.S. indicia, further inquiry required
- **Accounts > \$1M: Review paper records**

New Individual Accounts

- **Person must certify as to status**

Entities

Preexisting Entity Accounts

- **Account ≤ \$250,000: No review (until account balance exceeds \$1M)**
- **Accounts > \$250,000: Must review**
 - Look at “information maintained for regulatory or customer relationship purposes”
 - KYC Procedures

New Entity Accounts

- **More detailed rules**



FATCA - FFI Reporting

Reporting to IRS:

- **Report to IRS information about accounts owned by U.S. persons & U.S. owned foreign entities**
- **New W-8IMY Form incorporating FATCA provisions**
- **New W-8BEN form will be used solely for non-U.S. individuals.**
- **New W-8BEN-E form proposed for non-U.S. entities**



FATCA - FFI Withholding

Payments subject to withholding tax

- **U.S. source FDAP**
- **Sales proceeds from the disposition of securities that produce U.S. source interest and dividends, and**
- **Pass-through payments**



FATCA - FFI Withholding

Withholding 30% tax on payment to an investor who is:

- **Non Participating FFI (“NPFFI”)**
 - Investor is itself an FFI and chooses not to participate in FATCA reporting system *or*
- **Recalcitrant holder**
 - Investor in FFI who refuses to give requested information to the FFI is subject to withholding tax on pass-through payments
 - Pass-through payment is a portion of payment to recalcitrant holder that is attributable to deployment of assets in the U.S.



FATCA – Important Dates

January 1, 2013

- FATCA becomes effective for USFI's.
- Accounts opened prior to January 1, 2013 are categorized as pre-existing at USFI's and account due diligence may begin at any time
- FATCA-compliant on-boarding processes/systems must be operational
- FFI electronic application process expected to begin
- Grandfathered obligations: FATCA withholding not required on obligations outstanding on January 1, 2013 unless materially modified.

January 1, 2014

- USFI's must withhold on U.S.-source FDAP payments to new accounts held by documented NPFFI's and presumed FFI's and on pre-existing accounts held by undocumented *prima facie* FFI's
- PFFI's must withhold on U.S. source FDAP payments to undocumented new accounts and new accounts held by NPFFI's



FATCA – Important Dates (cont.)

January 1, 2015

- USFI's begin withholding on gross proceeds from the sale of property that can produce U.S. source interest or dividends to all documented NPFFI's and presumed FFI's
- PFFI's begin withholding on payments of gross proceeds from the sale of property that can produce U.S.-source interest or dividends to:
 - Pre-existing, undocumented high value individual account holders, documented NPFFI's, and prima facie FFI accounts
 - Undocumented new accounts and new accounts held by NPFFI's

January 1, 2016

- Expiration of certain phase-in exceptions regarding a PFFI's expanded affiliated group with local law restrictions to compliance must now comply

March 15, 2016

- USFFI's and PFFIs must report 2015 US-sourced FDAP and gross proceeds paid to non-US accounts



FATCA – Important Dates (cont.)

January 1, 2017

- Withholding on foreign pass-through payments may begin

March 31, 2017

- PFFI's must report gross proceeds in addition to all data fields reported previously



FATCA - Two Model Agreements

Reciprocal and Nonreciprocal Forms

- **Establish a framework for reporting by FFI's of certain financial account information to their respective tax authorities**
- **Automatic exchange of information under existing bilateral tax treaties or tax information exchange agreements**
- **Addresses the legal issues that had been raised in connection with FATCA and simplifies implementation for financial institutions**



Reciprocal Model Agreement

- **U.S. and partner country (“FATCA Partner”) exchange information relating to the *other* country's residents owning accounts with an FI in the reporting country**
 - The exchange is made on an automatic basis (Article 2)
 - Used by U.K., Germany, France, Italy and Spain, which agreed to this approach on February 8, 2012
 - Other countries to follow
 - Applies only to jurisdictions with which the U.S. has an income tax treaty or a tax information exchange agreement
 - Reporting is required even if the account produces only income that arises from sources outside the U.S.

Reciprocal Model Agreement

Reporting requirements from FATCA Partner to IRS:

- Name, address, and U.S. TIN of each Specified U.S. Person that is an Account Holder
- Account number
- Name and identifying number of the Reporting Financial Institution
- Account balance or value as of end of relevant calendar year

U.S Reporting requirements to FATCA Partner:

- Name, address, and TIN of any person that is resident of FATCA Partner jurisdiction and is an Account Holder
- Account number
- Name & identifying number of Reporting U.S. Financial Institution
- Gross amount of U.S. source interest, dividends or other income paid or credited to the account



Reciprocal Model Agreement

**When must this information be given to the other country?
(Article 3(5))**

- **For reporting on 2013, not later than Sept. 30, 2015**
 - 1 year later than provided in the proposed regulations
- **For year 2014, not later than 9 months after end of year**



Due diligence Procedure

How does the FFI determine what accounts are owned by U.S. persons or U.S.-owned foreign entity?

- **Annex I to each Model Agreement contains 15 pages of procedures to follow to identify US reportable accounts**



Additional Points

FATCA Partner FFI

- **Need not withhold or close accounts of recalcitrant holders as long as U.S. receives information on account holder (Article 4(2))**
 - However, the closing of accounts held directly or indirectly by U.S. persons is common
- **If FFI does not significantly comply, the U.S. notifies FATCA Partner (Article 5(2))**
 - FATCA Partner contacts FFI to resolve problem
 - If problem not resolved within 18 months, FFI is categorized as a non-participating and becomes subject to FATCA withholding



Non-reciprocal Model Agreement

Non-Reciprocal

- **Only FATCA Partner is obligated to supply information with respect to U.S. Reportable Accounts to the IRS. (Article 2)**
 - Same reporting requirements imposed on the Foreign FATCA Partner
 - Participating Countries: To be announced

Comparison of Model Agreements (Model 1 IGA)

Reciprocal Agreement

Two-way Street

- U.S. & FATCA Partner country exchange information relating to other country's residents owning accounts with an FI in reporting country

Non-Reciprocal Agreement

One-way Street

- Only FATCA Partner country is obligated to supply information with respect to US Reportable Accounts to IRS



Model 2 Agreements

Hybrid Approach of Inter-Governmental Agreements

- **With Japan and Switzerland so far**
- **Non-reciprocal form of Agreement so only information is supplied to IRS**
- **FFI reports information directly to IRS and not to tax authorities in Japan or Switzerland**
- **No form for this Model 2 Agreement has yet been released**



General Disclaimer & Circular 230 Statement

- This presentation has been prepared for general discussions of the specific issues raised and is not meant to be a comprehensive analysis of U.S. tax issues that may be applicable.
- Because this presentation has not been written as a formal opinion of counsel, I.R.S. regulations require us to advise that any statement contained herein is not intended or written by us to be used, and cannot be used for the purpose of avoiding tax penalties.



Thank You!

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