

The Essential Guide to FATCA



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The Foreign Account Tax Compliance Act (FATCA) is a new U.S. law intended to prevent U.S. investors from evading their tax obligations by investing through non-U.S. entities.

FATCA's new reporting and withholding regime will significantly impact both U.S.-based companies and non-U.S. companies with U.S. assets or clients. Compliance will be enforced through a new 30% withholding tax on "withholdable payments" made to non-compliant non-U.S. entities. The mechanics of the new regime have largely been left to the U.S. Treasury Department (Treasury) to develop. Withholding will begin phasing in on 1 July 2014, although payments on certain obligations outstanding on 1 July 2014 (or later in some cases) may be eligible for a grandfathering exception.

Key Points

- The preliminary guidance for FATCA was issued in stages: U.S. Internal Revenue Service (IRS) Notice 2010-60 (27 Aug. 2010), IRS Notice 2011-34 (8 April 2011) and IRS Notice 2011-53 (14 July 2011).
- Treasury issued final regulations on 17 January 2013 that incorporate the changes made by Announcement 2012-42 and numerous other revisions to the proposed regulations.
- IRS Notice 2013-43 (12 July 2013) revised timelines for implementation of FATCA and provided additional guidance for certain financial institutions.
- On 19 August 2013, the IRS established an online FATCA Registration Portal (the Portal) through which foreign financial institutions (FFIs) can complete their registrations, agreements and certifications.
- In 2014, the IRS will begin assigning a Global Intermediary Identification Number (GIIN) to each participating or registered-deemed compliant FFI that has registered through the Portal; the FFI will use the GIIN to establish its FATCA status.
- Beginning 2 June 2014, the IRS will post electronically (and update monthly) a list of participating and registered deemed-compliant FFIs; an FFI must register by 25 April 2014 to be included on the 2 June 2014 list.

At the Forefront on FATCA

Dechert LLP has established itself as a premier thought leader on FATCA. Our global financial services and investment management team can offer valuable guidance on the operational and compliance issues that financial institutions and asset managers will face from FATCA's new reporting and withholding rules. We have represented a wide variety of entities with respect to FATCA including governments, trade associations, commercial banks, investment funds and investment advisers.

Our experienced tax lawyers advise on various aspects of FATCA, including:

- Non-U.S. governments in negotiating and drafting their Intergovernmental Agreement (IGA) for complying with the FATCA provisions.
- U.S. asset managers in relation to FATCA compliance for its investment funds, including UCITS vehicles.
- U.S. fund managers on FATCA obligations that may apply to them or their U.S.-based funds.
- Commercial and private banks, investment funds, investment managers, trustees and private wealth managers, on FATCA compliance, including due diligence and reporting obligations.
- Reviewing documentation that may be impacted by FATCA, including offering documents, subscription agreements, ISDA schedules and other derivatives documentation, distribution agreements, investor side letters, administration agreements and investment management agreements.

- Global investment managers in maintaining compliance for their worldwide funds, and updating related disclosure and documentation to assure full protection.
- Non-U.S. trusts on whether they are subject to FATCA, and how best to comply by using the new sponsoring approach for compliance.

Our close relationships with senior government officials in the IRS, Treasury and Congressional staff place us in a unique position to advise on FATCA, particularly where the rules of compliance are still evolving. Dechert's tax team took principal responsibility for preparing the American Bar Association's submission of comments on the FATCA provisions to the IRS in August 2010, authored several other comment papers on FATCA submitted to the IRS on behalf of the American Bar Association Tax Section, provided comments on numerous other comment papers and industry letters, and were invited to submit a paper to the 2013 G8 summit regarding FATCA. Our partners have served on numerous FATCA panels at virtually every major tax conference and have spoken alongside co-panelists from government entities.

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