



The IRS issues new FAQs on FATCA certifications and FATCA Registration System upgrades

Closing the distance

The IRS added 14 new FAQs (dated July 20, 2018) to the FATCA General FAQs web-page clarifying various aspects of upcoming FATCA Certifications and FATCA registration system upgrades.

The IRS released 13 FAQs about FATCA certifications and one FAQ about the upcoming upgrade to the FATCA registration system. Each set of these FAQs are discussed in the brief below.

FAQs on FATCA Certifications

The IRS added 13 new FAQs to the General FATCA FAQs [web-page](#) under the heading “[FATCA Certifications.](#)” These questions clarify the various FATCA certifications, who needs to submit them, what information is required for the submission, how the certification submission process works and the submission deadline. The following is a brief summary of each of these certification FAQs (“CQ”).

[CQ 1: What is a FATCA certification?](#)

The FATCA certification consists of a series of questions that the responsible officers (“RO”) of certain entities must answer and submit to the IRS. These answers confirm the entities’ compliance with their FATCA obligations. There are two general types of certifications: (i) certifications relating to an entity’s preexisting accounts (“COPA”) and (ii) certifications relating to the entity’s compliance with various FATCA requirements (“Periodic Certification”).

The IRS suggests that FFIs consult the following sources about FATCA certifications: Treas. Reg. §§1.1471-4(c)(7), 1.1471-5(f)(1)(i)(A)(7) and (D)(6), and Prop. Reg. §1.1471-5(j)(5) relating to the COPA; Treas. Reg. §§1.1471-4(f)(3), 1.1471-5(f)(1)(ii)(B), 1.1472-1(c)(3)(vi), and Prop. Reg. §§ 1.1471-5(j)(3) and (l)(2)(iv) and 1.1472-1(f)(2)(iv) relating to the periodic certification; and Treas. Reg. §1.1471-4(f)(2)(ii)(B) relating to a consolidated compliance program.

[CQ 2: Does an entity that has registered on the FATCA registration system and obtained a GIIN need to submit a FATCA certification?](#)

The IRS states that the answer to this question depends on the entity’s FATCA classification. The IRS published the table below listing the types of entities that are required to certify and types of certification(s) they must provide. The IRS advises FFIs to consult Section 8 of Revenue Procedure 2017-16, the Treasury regulations, and applicable intergovernmental agreements (IGA) for more specific guidance.

Financial Institution's FATCA Classification in its Country/Jurisdiction of Tax Residence	Certification Required?	
	COPA	Periodic Certification
Participating FFI, including a Reporting Financial Institution under a Model 2 IGA *, **	Yes	Yes
Registered Deemed-Compliant FFI that is a Local FFI	Yes	Yes
Registered Deemed-Compliant FFI that is a Non-Reporting Member of a PFFI Group	No	Yes
Registered Deemed-Compliant FFI that is a Qualified Collective Investment Vehicle	No	Yes
Registered Deemed-Compliant FFI that is a Qualified Credit Card Issuer or Servicer	No	Yes
Registered Deemed-Compliant FFI that is a Restricted Fund	Yes	Yes
Reporting Financial Institution under a Model 1 IGA *	No, except on behalf of branches operating outside of Model 1 jurisdictions (other than related branches)	No, except on behalf of branches operating outside of Model 1 jurisdictions (other than related branches)
Direct Reporting NFFE	No	Yes
Sponsoring Entity of Sponsored Direct Reporting NFFEs	No	Yes
Sponsoring Entity of Sponsored FFIs	Yes	Yes
Sponsoring Entity of Sponsored FFIs and Sponsored Direct Reporting NFFEs	Yes, on behalf of Sponsored FFIs only	Yes
Trustee of a Trustee-Documented Trust	No	Yes ***
U.S. Financial Institution *	No	No

* Compliance FIs may make the COPA and periodic certifications on behalf of electing FFIs that are part of the compliance FI's consolidated compliance program. A compliance FI may have one of the following three FATCA classifications: (1) Participating FFI, including a Reporting Financial Institution under a Model 2 IGA; (2) Reporting Financial Institution under a Model 1 IGA; or (3) U.S. Financial Institution.

** A participating FFI that is an electing FFI of a consolidated compliance group will be included in the certification of the compliance FI.

*** A periodic certification of compliance is required only for a Trustee-Documented Trust that is subject to a Model 2 IGA.

Note that the FATCA registration system will suggest the certification for an entity based on its FATCA classification in question 4 of the registration system. Therefore, even entities that do not have a certification requirement should update their FATCA classification to avoid inapplicable certification-related notices in the future. For further guidance on this issue, please consult the following section of this publication: FAQ on Upcoming Online FATCA Registration System Update.

CQ 3: What information will the RO need for certification?

In order to make the certification, the RO must have access to the entity's FATCA registration system account. Accordingly, the RO will need to know the entity's FATCA ID and password to access entity's account.

Note that the IRS advises ROs to review the [Draft FATCA Certifications](#) applicable to their organization, gather the information required under the certifications and make sure to take any actions that are referenced in those certifications (e.g. the periodic review).

CQ 4: What is the process for submitting a FATCA certification?

FFIs must submit FATCA certifications online via the FATCA registration system. The link to the applicable FATCA certification will be on the entity's home page.

Before initiating the FATCA certification, the system will require every FFI to update pertinent information that was submitted at the time of its FATCA registration (see the discussion in the section - "FAQ on Upcoming Online FATCA Registration System Update.") The system will then prompt the RO certification based on the updated FATCA classification information.

The IRS is updating the FATCA Online Registration User Guide to provide detailed guidance on certifications. The RO may also consult the [Draft FATCA Certifications](#) for a preview of the questions asked as part of each certification.

CQ 5: What if the entity will be required to submit both the COPA and the Periodic Certification? Will there be a single link for both certifications on the entity's FATCA registration system account?

If the entity is required to submit both certifications, two links will appear on the entity's home page: one for the COPA and another for the Periodic Certification. The RO may submit these certifications in any order. After completing the first certification, the RO must return to the home page to submit the next certification. The RO may also partially complete a certification, save it, and submit it later before the certification deadline expires.

If the RO is required to certify, but the certification link does not appear on the entity's home page, the RO should contact IRS eHelp Desk for assistance.

CQ 6: There are three options for the certification: (1) the RO completes the certification; (2) the RO is not able to complete the certification at this time; and (3) the RO is not required to complete the certification. How should the RO know which option to choose?

Most entities that receive a certification link on their home page will be required to complete the certification. The third option is only available under special circumstances: for instance, a sponsoring entity is not required to certify because it only has sponsored FFIs subject to a Model 1 IGA jurisdiction, or, with respect to the COPA, the sponsoring entity has only late-joining sponsored FFIs or FFIs that have already submitted their required COPA.

Indicating that the RO is unable to complete the certification (third option) is an acknowledgement that the entity is not compliant with its FATCA obligations.

CQ 7: Does the RO have to answer every question in the certification?

The RO must answer every certification question displayed in the system, including completing text boxes. For the questions that are not applicable, the system will provide a "Not applicable" answer option. The RO must provide at least one character in each text box.

CQ 8: What if the RO submitted a certification but need to resubmit it because one or more of the RO's answers was incorrect?

The RO cannot edit the certification after its submission. The RO, however, may submit an additional certification with the corrected information through the same process the RO followed for the submission of the original certification. The RO must submit any additional (edited) certification before the certification deadline.

Submission of an edited certification implies completion of the entire certification again, i.e. the RO cannot selectively change the answers to particular certification questions. Generally, the additional certification will supersede the previously submitted certification; but all submitted certifications are saved in the system.

CQ 9: If an individual is the RO of an entity that is certifying on behalf of another entity, how does such RO submit the certification?

Entities may only certify on behalf of another FFI in the following circumstances:

- COPA or periodic certification by a compliance FI (Filer) on behalf of all electing FFIs (Entities);
- Periodic certification by a registered deemed-compliant FFI (Filer) collectively on behalf of the registered deemed-compliant FFI members of the Filer's expanded affiliated group (Entities);
- Periodic certification by a trustee on behalf of more than one trustee-documented trust;
- COPA or periodic certification by a sponsoring entity (Sponsor) on behalf of sponsored entities.

Compliance FIs and Certain Registered Deemed-Compliant FFIs

In the first two scenarios, the RO of the Filer must have registered as a Lead and must register all Entities as members of the Filer's expanded affiliated group (EAG). The RO may certify only on behalf of the Entities that are registered members of the Filer's EAG.

In these circumstances, the RO may submit the certification by clicking on the link on the Filer's home page. The certification system will display a list of eligible member entities for which the Filer may certify and the RO will need to select the entities included in the certification. The entity's eligibility for the certification is on the member's registration status and registration effective date. For example, a member with an effective date after December 31, 2017, is not eligible to be part of the certification due for the period ending December 31, 2017.

For a Filer that is collectively certifying on behalf of different types of registered deemed-complaint FFIs (e.g. local FFIs and restricted funds), the RO must submit a separate collective certification for each type of registered deemed-compliant FFI.

If the Filer has registered members for which it is not submitting certification, these members may be required to certify on their own.

Trustees of Trustee-Documented Trusts and Sponsoring Entities

In the third scenario, the RO of the trustee of the trustee-documented trust must be registered as a Sponsoring Entity. In order to be linked to the correct Periodic Certification, the trustee's FATCA classification must be "Trustee of a Trustee-Documented Trust." The Periodic Certification of compliance is required only if the trustee had any trustee-documented trusts that are subject to a Model 2 IGA. The RO of the trustee must provide the name and country/jurisdiction of each trustee-documented trust subject to a Model 2 IGA that is included in the certification.

In the fourth scenario, the RO of the Sponsor must register each sponsored entity on behalf of which they act as a sponsoring entity. The registration system will display a list of sponsored entities and the RO may choose from the entities included in the certification. The sponsoring entity must select all of the sponsored entities that are to be included in the certification, including any entities that were not registered. If any of the sponsored entities listed are not selected, the RO must briefly explain why the entity was not included in the certification.

Prior to submission of the certification questions, the sponsor must update its FATCA classification. The following FATCA classifications will be available for a sponsor: sponsoring entity of sponsored FFIs, the sponsoring entity of sponsored direct reporting NFFEs, or the sponsoring entity of both sponsored FFIs and sponsored direct reporting NFFEs.

CQ 10: What is the difference between a certification of effective internal controls and a qualified certification?

An RO can make either a certification of effective internal controls or a qualified certification.

Generally, a certification of effective internal controls means that the entity did not have any material failures, or if there were any material failures, the entity remediated them before submitting the certification and has taken necessary steps to prevent such failure from reoccurring.

A qualified certification generally means the entity has identified material failures that are not yet remediated, but that appropriate actions will be taken to prevent such failures from reoccurring. A qualified certification implies that the entity agrees to respond to any notice of default (if applicable) and will provide the IRS with a description of each material failure and a written plan to correct each (if requested).

The RO may also submit a COPA either by making all required certifications or by making a qualified certification stating that the RO will take corrective actions.

[CQ 11:](#) Does the RO of a registered deemed-compliant FFI in a Model 2 IGA jurisdiction need to certify?

A registered deemed-compliant FFI in a Model 2 IGA jurisdiction must do a certification if required by: (i) the terms of the Annex II of the applicable Model 2 IGA or (ii) in the Treasury regulations if the entity's status as a registered deemed-compliant FFI is based on the regulations rather than the Annex II.

In some instances, categories of registered deemed-compliant FFIs set forth in the Annex II of the applicable Model 2 IGA do not match the categories of registered deemed-compliant FFIs in the Treasury regulations. In these instances, the Model 2 FFI should select the certification for the registered deemed-compliant FFI category that most closely matches the category in Annex II of the applicable IGA for which the FFI qualifies. For instance, the Treasury regulations use the term "Local FFI," while the Annex II of the Model 2 IGA uses the term "Registered Financial Institution with a Local Client Base."

[CQ 12:](#) What if an entity that is required to certify fails to do so?

If an entity fails to certify by the due date, the entity will be in breach of its FATCA obligations. Such breach may result in (among others) revocation of the entity's FATCA status and, ultimately, removal of its GIIN from the FFI list.

[CQ 13:](#) When are the FATCA certifications due?

Generally, The RO must submit FATCA certifications no later than December 15, 2018 for the certification period ending December 31, 2017.

FAQ on Upcoming Online FATCA Registration System Update

The IRS added [Q&A 14](#) ("Q14") to the [Registration Update](#) section of the FATCA General FAQs [web-page](#). Q14 states that the IRS will update the online FATCA registration system and user guide in late July 2018 to match the updated FATCA classifications of revised Form 8957.

Q14 states that entities (including Member FIs that must certify on behalf of themselves) that are required to complete FATCA certifications must also update their FATCA classification. These entities may update their FATCA classification either by updating their response to question 4 (Financial Institution's FATCA Classification in its Country/Jurisdiction of Tax Residence) in the registration system ("Question 4") or by answering the corresponding question during the certification process. The Q14 also clarifies that even entities that do not have a certification requirement (for example, certain Reporting Model 1 IGA FIs) should update their FATCA classification to avoid inapplicable certification-related notices in the future.

The Q14 provides the below table with the updated classifications in Question 4 as they relate to the classifications from the June 2017 revision of Form 8957.

June 2017 Classifications	Updated Classifications
Participating Financial Institution not covered by an IGA; or a Reporting Financial Institution under a Model 2 IGA	Participating FFI, including a Reporting Financial Institution under a Model 2 IGA
Registered Deemed-Compliant Financial Institution (including a Reporting Financial Institution under a Model 1 IGA)	Registered Deemed-Compliant FFI that is a Local FFI*
	Registered Deemed-Compliant FFI that is a Non-Reporting Member of a PFFI Group 1
	Registered Deemed-Compliant FFI that is a Qualified Collective Investment Vehicle 1
	Registered Deemed-Compliant FFI that is a Qualified Credit Card Issuer or Servicer 1
	Registered Deemed-Compliant FFI that is a Restricted Fund 1
	Reporting Financial Institution under a Model 1 IGA
None of the above	Direct Reporting NFFE
	Sponsoring Entity of Sponsored Direct Reporting NFFEs
	Sponsoring Entity of Sponsored FFIs
	Sponsoring Entity of Sponsored FFIs and Sponsored Direct Reporting NFFEs
	Trustee of a Trustee-Documented Trust
	U.S. Financial Institution

* If you are a Nonreporting FI registering pursuant to an applicable Model 1 or Model 2 IGA, select the Registered Deemed-Compliant FFI category that most closely matches the category in Annex II of the applicable IGA for which you qualify.

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