


FAHTCAweekly

Your snapshot of the week



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[Summary of changes arising from the new QI agreement and overview of the on-going efforts to align the existing and on-going requirements of the QI regime with the incoming ones of FATCA.](#)

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Editor's Note on our Subsequent Publication Schedule and the Transition of the Newsletter

As a reminder, this edition will be the final publication for the newsletter in its current format. Starting in September, we will transition to a monthly newsletter with a sharper technical focus and a more expansive scope. In aid to this transition, we ask our readers to click on the **survey link** at the bottom of this email and complete and submit the survey available on the Deloitte website. We will apply the information obtained from the survey results to craft a revised strategic approach to the newsletter, better-suited to the developing needs and interests of our readership. We thank you in advance for your help in this matter.

Paul Millen
Editor, FAHTCAweekly Newsletter

The View from Deloitte

On 27 June 2014, the IRS released Revenue Procedure 2014-39 ("Rev. Proc. 2014-39"), containing the new Qualified Intermediary ("QI") agreement ("QIA"). The primary purpose of

the new agreement is to coordinate the Chapter 3 (QI) and Chapter 4 (FATCA) obligations for QIs and hence a significant portion of Rev. Proc. 2014-39 focuses on coordination between the QIA and FATCA, in particular key provisions on documentation, withholding and reporting obligations for QIs.

Importantly, the new QIA permits both foreign financial institutions (“FFIs”) and non-financial foreign entities (“NFFEs”) to hold QI status going forward, subject to meeting certain conditions.

Timelines set by the new QIA

The new QIA sets out a variety of effectiveness dates for the new QIA, including:

- In the case of an FFI that registered and obtained a Global Intermediary Identification Number (“GIIN”) for FATCA purposes on or before 30 June 2014, the new QIA became effective as of 30 June 2014;
- For an FFI not yet registered, the QIA becomes effective as of the date its GIIN is issued;
- For a direct reporting NFFE acting on behalf of its shareholders or an NFFE that acts as a sponsoring entity, the new QIA became effective either as of 30 June 2014, where a GIIN had been obtained prior to that date or otherwise as of the date the GIIN is issued;
- For an NFFE not required to register for FATCA, but renewing its QIA, the effective date is the later of 30 June 2014 (if its QI renewal is before that date), or the date of the IRS QI renewal notice (if not renewed before 30 June 2014); and
- For an NFFE not required to register for FATCA, but initiating a status as a QI by means of the new QIA, the effective date is the date the QI-EIN is issued.

Additional key timing and logistical elements of the new QIA include the following:

- Any QIA in effect before 30 June 2014 expired on that date;
- Rev. Proc. 2014-39 supersedes the provisions of the QIA contained in Rev. Proc. 2000-12;
 - As Rev. Proc. 2014-39 eliminated the external audit procedures required under the previous QIA (discussed in section 2.6 below), Rev. Proc. 2002-55 that detailed such audit procedures has also been revoked;
- The new QIA expires on 31 December 2016, which aligns it with the FFI agreement;
- A QI that submitted an application for QI status before 31 July 2014 and is approved during 2014 may act as a QI from 1 January 2014 until 30 June 2014 in accordance with Rev. Proc. 2000-12; and
- Separately, the IRS released new agreements covering obligations for withholding foreign partnerships and withholding foreign trusts in Rev. Proc. 2014-47 on 8 August 2014.

Specific changes highlighted in the new QIA

The QIA introduces a variety of changes, the anticipated impacts of which are highlighted below:

Status of QIs: QIs may be FFIs or NFFEs under FATCA. For FFIs, in order to maintain QI status, the FFI is required to satisfy the requirements and obligations of a participating FFI (including a reporting Model 2 FFI), registered deemed-compliant FFI (including a reporting Model 1 FFI and a non-reporting Model 2 FFI treated as a registered deemed-compliant FFI), registered deemed-compliant Model 1 intergovernmental agreement (“IGA”) FFI or, for a transitional period, a limited FFI. In order for a certified deemed-compliant FFI, a central bank of issue, a non-U.S. branch of a U.S. financial institution, or an NFFE to obtain QI status it must assume additional FATCA obligations.

Coordination of QI and FATCA obligations: An FFI that has entered into a QIA will be subject to the FATCA requirements for every account it maintains, regardless of whether it is a QI-designated account.

- The QIA seeks to coordinate QI and FATCA reporting and withholding. Therefore the extent to which a QI is required to file separate Forms 1042-S, is partly dictated by whether the payments are ultimately being made to recalcitrant account holders, nonparticipating FFIs or certain U.S. payees. In accordance with the Form 1042-S instructions, a QI that is an FFI is required to file all Forms 1042-S electronically.
- The documentation requirements under the new QIA are similar to the previous provisions so that a QI (that is an FFI) can continue to rely on the documentary evidence listed in the applicable attachment to the QIA (as an alternative to Forms W-8) for its non-U.S. direct account holders. These requirements do not extend to a QI that is an NFFE, which is required to obtain Forms W-8 and W-9 from its account holders.
- The new agreement provides that Forms W-8BEN and W-8BEN-E have a validity period generally of three full calendar years, consistent with the coordination regulations released by the IRS earlier in 2014. In certain circumstances, Forms W-8BEN and W-8BEN-E that are not being used to claim treaty benefits may be valid indefinitely.

QIs acting as Qualified Securities Lenders (“QSLs”): The new QIA provides that a QI acting as a QSL is required to act as a QSL with respect to all U.S. source substitute dividends that it receives as either an intermediary or dealer. Therefore, in effect, all transactions for which QSL status is assumed now fall within the scope of the QIA (including the new compliance procedures mentioned below). In addition, it is worth noting that the revised Form W-8IMY envisages a QSL documenting itself by means of this Form going forward, whether acting as an intermediary or as a dealer.

Restricted use of Private Arrangement Intermediaries (“PAIs”): The new QIA provides that only a QI that is an FFI (other than a limited FFI) may enter into an agreement with a PAI. More interesting, as it currently stands, the PAI itself must be a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI), which seems to restrict the use of PAIs going forward. In order to maintain PAI status, a PAI is also prevented from having direct account holders that are QIs, withholding foreign partnerships and withholding foreign trusts, participating FFIs, registered deemed-compliant FFIs or registered deemed-compliant Model 1 IGA FFIs.

Continued use of joint account and agency options to document certain partnerships and trusts: The new QIA limits the FATCA status of non-withholding foreign partnerships and non-withholding foreign trusts eligible for joint account treatment to certified deemed-compliant FFIs (excluding registered deemed-compliant Model 1 IGA FFIs), exempt beneficial owners and excepted NFFEs (joint account option) or NFFEs (agency option). This rule change, similar to the one for PAI arrangements, restricts the availability of an important provision.

Compliance procedures: Perhaps the most substantial change introduced by the new QIA is the replacement of the external audit requirement with an internal compliance program overseen by a Responsible Officer (“RO”), consistent with FATCA. As a result the QI is required to designate a RO to oversee compliance with the agreement and to make periodic certifications to the IRS. The periodic certifications are required to be made every three years. The compliance program must include the following areas:

- Written policies and procedures to enable the QI to comply with its obligations;
- Training program covering said policies and procedures for all business lines that are responsible for reviewing documentation, withholding and reporting;
- Systems and processes covering the documentation of account holders and recording information required for reporting;
- Monitoring system for business practices and business changes (e.g. acquisitions), which may impact the QI’s compliance with the QIA;
- Independent auditor to perform a periodic review of compliance; and
- Periodic certifications to the IRS as required under the QIA.

The IRS is expected to provide additional guidance with respect to the scope of these procedures.

With the release of the new QIA, the IRS published the final piece in the coordination puzzle, aligning the existing QI processes with the newly-mandated FATCA ones.

Regards,

André Kuhn
Robin King

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FAHTCAweekly Feedback Survey

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