



FStaxworld Your June snapshot

In this month's FStaxworld, we relay the highlights from the EEI tax conference held on 9-10 June in New York.

**Jump to:
The View from Deloitte**

**Tracking CRS
Agreements and Local
Lists**

Related Links

Authors

The View from Deloitte

Dear Reader,

On 9 and 10 June, the 28th Annual Forum on International Tax Withholding & Information Reporting, generally referred to as the Executive Enterprise Institute or EEI Conference, took place in New York. This year's EEI Conference consisted of eleven panels, ranging across the multiple U.S. withholding and reporting regimes



as well as targeted updates on the Department of Justice's investigations into an array of tax-related activities. Panelists included representatives from industry (primarily, large custodial banks with U.S. operations), professional tax advisors and software vendors as well as IRS officials.

Highlights from the event are set forth below, segmented by topic.

IRS Forms and Publications

- **Revised Form W-BEN-E:** The IRS clarified that the revised Form will not become mandatory until 1 November (and that date may be deferred as well). Accordingly, they indicated that the new sections (notably, the new Limitation on Benefits section) need not be validated until that date. Versions of the new Form submitted prior to that date need only be validated for fields and sections on the expiring version of the Form. The IRS representatives also indicated that the treaty statements under the new QI Agreement (see below) would include similar sections.
- **New QI Agreement:** The release of the new Qualified Intermediary (QI) Agreement is imminent. In addition to detailing the mechanics of withholding for 871(m) (see below for further specifics), it will set forth more prescriptive rules around the QI "audit" requirements.
- **Revised Form W-8IMY:** An updated version of the Form W-8IMY (along with accompanying instructions) will be released in the near term with the foremost purpose of modifying the Form for use with 871(m) (see below for further specifics).
- **Sponsoring guidance:** The IRS will prepare a set of guidance for sponsoring entities, covering, inter alia, the sponsor RO certification process and default implications for both the sponsored and sponsoring entities.

FATCA

- **2014 Form 8966 and Model 1 equivalent reports:** All reports submitted for tax year 2014 were validated for formatting purposes and prepared for content review, but not yet reviewed for content. Presumably, therefore, Reporting Financial Institutions (FIs) may still be subject to follow-up questions and group administrative requests for account information submitted last year.
- **De-registered GIINs:** Where an entity is liquidated or otherwise dissolved, it must de-register on the IRS FATCA Portal, thereby decommissioning its Global Intermediary Identification Number (GIIN) for purposes of self-certification. The IRS, however, maintains an historical archive of GIINs so that any de-registered Reporting FIs with residual reporting obligations may still submit a Form 8966 using their GIIN. Whether Model 1 IGA jurisdictions allow for reporting under historical GIINs is, according to the IRS officials, a matter for the local competent authority and ought to be discussed with them.
- **Deemed active IGAs:** Jurisdictions with an intergovernmental agreement (IGA) agreed in substance will continue to be treated as having an active IGA so long as the jurisdiction continues to take positive steps towards the signing of an IGA.

- **Reporting schema:** A representative from the IRS IT team asserted that the IRS works with peers from the relevant OECD team to ensure harmonization between the FATCA reporting schema and the one used for the OECD Common Reporting Standard (CRS).

OECD CRS

- In light of the on-going U.S. absence from the OECD CRS regime, the EEI Conference devoted less time to the topic than would a similarly-situated non-U.S. event.
- However, one panel focused on the current hot topics in the area, addressing such issues as the treatment of the U.S. as a Participating Jurisdiction via inclusion on white lists, alternative Financial Account identification and documentation techniques and the vibrant concerns around data security that dominate many OECD CRS discussions.

871(m)

- No extension is currently under consideration for any parts of the 871(m) regulations, but few attendees seemed to believe that the industry could develop widespread compliance by 1 January 2017.
- **QDD status:** The forthcoming QI Agreement will detail the role and mechanics of the Qualified Derivatives Dealer (QDD) status. From IRS comments around the topic, a clearer picture emerged of the IRS's conception of the role as one that straddles the hedge side of a derivative product and the investor or product side. Thus, it seems that the revised Form W-8IMY role will permit a QDD to document itself to its hedge parties and, in return for withholding on the investor side, receive gross payments on any dividend or dividend equivalent payments that will be offset by subsequent payments on in-scope derivative products. In exchange for this advantageous treatment, the QDD will be subject to IRS oversight to ensure proper and timely withholding (including self-withholding in the case of, say, an over-hedge with no offsetting payment), the correct Form 1042-S reporting and compliance with the maintenance and certification obligations of the status.
- **Combination rules:** The combination transaction rules elicited the fiercest questioning from Conference attendees, but unfortunately, as the specific branch of the IRS that drafted the 871(m) regulations did not attend the panels, complete and satisfying answers were not always forthcoming. Topics of concern included the correct standard of knowledge to apply, the definition of an account in respect of the presumption rules available to short party broker/dealers and the proper delta to use in the withholding calculation following a payment on a product subject to the combination transaction rules.

Many questions were settled at the EEI Conference this year; many emerged from it. As one co-organizer of the event noted, at the first event, no one anticipated a need for nearly three decades' worth of follow-up events. However, the QI Regime and its withholding and reporting offspring continue to multiply, breeding more regimes and novel complexities and, thus, unless the rules and operations around

these regimes suddenly become simple, the next EEI Conference will take place this winter in New York, as scheduled.

Regards,

[Markus Weber](#)

[Paul Millen](#)

Tracking CRS Agreements and Local Lists

Without a doubt, the implementation of the OECD Common Reporting Standard (CRS) is extremely costly and complex for Financial Institutions (FIs). The additional complexity compared to FATCA is mainly due to the multilateral nature of CRS. A key element in this regard is the scope of Participating and Reportable Jurisdictions. If a Professionally Managed Investment Entity (PMIE) Account Holder is resident in a Participating Jurisdiction, for example, no look-through to Controlling Persons is required, whereas an FI must identify and potentially report the Controlling Persons of PMIE Account Holders resident in Non-Participating Jurisdictions. Reportable Jurisdictions, on the other hand, are the ones relevant for the indicia search and the monitoring of changes in circumstances (unless a wider approach is applied). In addition, typically FIs strictly report Account Holders and Controlling Persons resident in Reportable Jurisdictions, but some CRS jurisdictions adopted different reporting requirements.

Whether a jurisdiction is treated as a Participating and/or Reportable Jurisdiction from the FI's perspective depends on the existence of a CRS agreement between the two jurisdictions and whether the FI's jurisdiction unilaterally declares the Account Holder's jurisdiction as having such status. Several jurisdictions have already published such lists of Participating Jurisdictions (also known as "white lists") and Reportable Jurisdictions. Interestingly, even though the approaches taken by different jurisdictions are similar, they are far from identical.

In order to avoid any shortfall on their CRS compliance, FIs must closely monitor CRS agreements and relevant lists published by local authorities. However, these monitoring efforts are burdensome, in particular for FIs with operations in multiple jurisdictions. Accordingly, Deloitte is developing a web-based solution tracking relevant information. If you wish to get further details, please contact [Brandi Caruso](#) or [Michael Grebe](#).

Related Links

[FATCA Switzerland](#)

[FStaxworld Archive](#)

[FAHTCAweekly Archive](#)

[Deloitte Switzerland Banking Blog](#)

Authors



Markus Weber
FSI Tax Leader

[Send email](#)



Paul Millen
FStaxworld's Editor

[Send email](#)



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/ch/about for a detailed description of the legal structure of DTTL and its member firms.

Deloitte AG is a subsidiary of Deloitte LLP, the United Kingdom member firm of DTTL.

Deloitte AG is an audit firm recognised and supervised by the Federal Audit Oversight Authority (FAOA) and the Swiss Financial Market Supervisory Authority (FINMA).

This publication has been written in general terms and therefore cannot be relied on to cover specific situations; application of the principles set out will depend upon the particular circumstances involved and we recommend that you obtain professional advice before acting or refraining from acting on any of the contents of this publication. Deloitte AG would be pleased to advise readers on how to apply the principles set out in this publication to their specific circumstances. Deloitte AG accepts no duty of care or liability for any loss occasioned to any person acting or refraining from action as a result of any material in this publication.

[Home](#) | [Terms of Use](#) | [Privacy](#) | [Cookies](#)

© 2016 Deloitte AG. All rights reserved.

Not interested anymore? [Unsubscribe](#) from all email communications. Please be aware that this will unsubscribe you from all Deloitte marketing and events communications.