

FAHTCAweekly

Your snapshot of the week

Issue number 64
8 January 2014

In this issue:

FATCA-in-a-Box for Trusts is Here

The View from Deloitte

News Switzerland

Swiss Regulator Encourages Banks to Set Aside Expected Costs of U.S. Programme

Swiss IGA Opponents Confident of Securing a Referendum

News U.S.

IRS Releases XML Reporting Schema

News International

Number of FATCA IGAs up to 20

Reason for the Spelling of our Title

Related links

FATCA-in-a-Box for Trusts is Here

FATCA-in-a-Box for Trusts merges the tax knowledge of Deloitte's FATCA specialists and the expertise of a major Swiss Trust Company with software technology to deliver a unique and ingenious FATCA compliance product for the Trust industry.

Deploying interpretations and methodologies developed with external Swiss trust experts over the past year, FATCA-in-a-Box reduces the compliance process for trust administrators to the following simple steps:

- FATCA-in-a-Box is installed on a client's internal server (no external connections)
- Users input basic information concerning the trust or other similar fiduciary entity to be classified
- By a series of Yes/No questions, FATCA-in-a-Box directs users through the classification process, identifies potential compliance paths and helps the user select the preferred compliance path for the entity
- For each compliance path, FATCA-in-a-Box guides users through each stage of the FATCA compliance process
- FATCA-in-a-Box stores all the information in a secure database with a full audit trail for subsequent review
- FATCA-in-a-Box is certified by the quality assurance reputation of Deloitte

For more information, please visit the Deloitte [FATCA-in-a-Box webpage](#) or contact **Brandi Caruso, Paul Millen** or **Kaitlin Barbier** directly.

The View from Deloitte

Dear Reader,

On 26 December the IRS released Revenue Procedure 2014-13 (originally released on 26 December as Revenue Procedure 2014-10 and then re-named on 27 December; available [here](#)), featuring the final FFI Agreement to be entered into by Participating FFIs (PFFIs) and complied with by Reporting Model 2 FIs. In most respects, the Final FFI Agreement resembles the draft FFI Agreement released on 29 October (for prior coverage, please refer to *FAH_TCAweekly* issue number 61, available [here](#) and the text of the draft FFI Agreement, available [here](#)). However, the final version of the agreement provides the following noteworthy updates:

- The introduction of a two-year due diligence transition period for Reporting Model 2 FIs (i.e. an FI in a Model 2 IGA jurisdiction such as Switzerland, Japan or Bermuda) during which time, for every discrete grouping of like accounts (as clustered by, *inter alia*, FATCA due diligence treatment, type of account or location of account maintenance), the Reporting Model 2 FI may elect to apply either the due diligence requirements set out in the Treasury Regulations or those set out in Annex I of the governing IGA.
 - While the election itself is not novel, the final FFI Agreement permits Reporting Model 2 FIs to reconsider the election and switch to the other option during the two-year period, whereas previously the determination was permanent, absent a material change in circumstance for the account.
 - The election is not dependent on a grant of permission from the domestic authorities as previously mooted.
- The correction of certain technical and typographical errors identified in the draft FFI Agreement (e.g., an incorrect reference to a 30-day period following a change in circumstances has been corrected to refer to the correct 90-day period).
- The conformity of the FFI Agreement with two sets of “temporary regulations” to be released by the IRS in “early 2014”, the substantive corrections and the FATCA-QI harmonization guidance.
 - Please note that due to this linkage between the final FFI Agreement and the as-yet unpublished amendments to the Treasury Regulations, citations in the final FFI Agreement refer to provisions in a version of the Treasury Regulations that has not yet been issued.

The layout of the final FFI Agreement mirrors that of the draft FFI Agreement and is thus as follows:

Section 1. **Purpose and scope**

- a. The opening paragraphs set out the general obligations undertaken by a PFFI or Reporting Model 2 FI under the FFI Agreement.

Section 2. **Definitions**

- a. Typically, the definitions reference the Definitions section of the Treasury Regulations, but the section also affirms that Reporting Model 2 FIs must abide by the definitions set out in their governing IGA, unless the Model 2 IGA domestic authorities grant them access to the definitions in the Treasury Regulations.

Section 3. **Due diligence requirements for documentation and identification of account holders and nonparticipating FFI payees**

- a. The due diligence procedures described in the FFI Agreement are generally based on the procedures for the documentation of account holders and other payees described in the Treasury Regulations.

- b. This section also sets forth special rules for Reporting Model 2 FIs, including the aforementioned two-year transitional period.

Section 4. **Withholding requirements**

- a. Withholding requirements described in the FFI Agreement are generally based on the provisions of the Treasury Regulations.
- b. The FFI Agreement specifies that a PFFI is also required to deduct and withhold 30% of withholdable payments made to a payee that is (or is presumed to be) a nonparticipating FFI (NPFFI) with respect to obligations that are not an account.
- c. The FFI Agreement does not address the requirement to withhold on foreign passthru payments because the requirement to withhold will not begin before January 1, 2017 and the FFI Agreement expires on 31 December 2016.
- d. Modification of withholding requirements for a Reporting Model 2 FI:
 - i. A Reporting Model 2 FI is not required to withhold on any withholdable payment made to non-consenting U.S. accounts, if the conditions regarding the suspension of withholding established in Model 2 IGA are met.
 - ii. A Reporting Model 2 FI is required to withhold on any withholdable payment made to an NPFFI that is an account holder or that is a payee other than an account holder.
- e. The withholding section sets out special withholding requirements for a U.S. Branch of a PFFI treated as a U.S. Person.
- f. An election to apply backup withholding under Section 3406 on recalcitrant account holders that are known U.S. persons is permitted to the extent that the FATCA withholdable payment also constitutes a reportable payment.
- g. The withholding section sets out provisions for the coordination of FATCA with other existing withholding regimes (the elaboration of which is expected in the “temporary regulations” mentioned above).

Section 5. **Deposit requirements**

- a. This section explains the basic deposit procedures for withheld taxes and provides an escrow alternative for withholding on dormant accounts of recalcitrant account holders.

Section 6. **Information reporting and tax return obligations**

- a. Information reporting and tax return obligations described in the FFI Agreement are generally based on the provisions of the Treasury Regulations. However, it sets forth a few changes and clarifications to the following topics:
 - i. Special reporting of account holders of Territory FIs;
 - ii. U.S. account reporting requirement for a trustee of a trustee-documented trust;
 - iii. Modifications to Chapter 61 reporting;
 - iv. Special reporting rules for U.S. Branches treated as U.S. Persons;
 - v. Recalcitrant account holder reporting;
 - vi. Withholdable payment reporting and reporting of tax withheld; and
 - vii. Tax return filing requirements.

Section 7. **Legal prohibitions on reporting U.S. accounts and on withholding**

- a. In general, the provisions in the FFI Agreement regarding legal prohibitions on reporting U.S. accounts and on withholding are the same as in the Treasury Regulations. However, a few

new points with respect to Reporting Model 2 FIs are set forth.

Section 8. Compliance procedures

- a. Similar to the Treasury Regulations, the FFI Agreement requires a PFFI to adopt a compliance program under the authority of a Responsible Officer (RO), which must include policies, procedures and processes sufficient for the PFFI to satisfy the requirements of the FFI Agreement.
- b. This section also describes the preliminary certification and periodic re-certification obligations of the RO.

Section 9. Participating FFI withholding certificate

- a. According to this section, by registering via the IRS FATCA Portal, a PFFI or Reporting Model 2 FI additionally pledges:
 - i. To furnish a valid withholding certificate to each withholding agent from whom it receives a withholdable payment and to each PFFI or deemed-compliant FFI with whom the PFFI or Reporting Model 2 FI holds an account; and
 - ii. To provide to each withholding agent an FFI withholding statement, containing the information necessary to perform the allocation of payments to each payee of U.S. source FDAP income that the PFFI or Reporting Model 2 FI has received on behalf of its account holders or other persons.
 1. Additionally, a Reporting Model 2 FI is required to include non-consenting U.S. account holders subject to Chapter 3 or back-up withholding on its withholding statements.

Section 10. Adjustments for overwithholding, underwithholding and refunds

- a. The provisions of this section set forth the mechanics and the timelines for any reimbursements for overwithholding, including the possibility of set-offs against other withholding activities, and the procedures following any episodes of underwithholding.

Section 11. FFI group

- a. In general, the FFI Agreement contains the same provisions as the Treasury Regulations regarding the requirement that each FFI that is a member of an FFI group (i.e. an expanded affiliated group or EAG), other than an exempt beneficial owner, adopts a status as a PFFI, registered deemed-compliant FFI or Limited FFI and complies with the FATCA requirements, as a condition for any member of such group to be considered a PFFI, registered deemed-compliant FFI or Limited FFI. However, it adds non-Reporting Model 1 and Model 2 FIs to the list of acceptable FFI group members.
 - i. The FFI Agreement includes a special section with respect to Lead FIs. The FFI Agreement indicates that a PFFI that is designated as the Lead FI must agree to meet a set of responsibilities with respect to the FFIs that have designated it as a Lead FI in addition to its other obligations under the FFI Agreement.

Section 12. Expiration, modification, termination, default and renewal of the FFI Agreement

- a. This section presents the conditions under which an FFI Agreement may be modified, terminated or renewed and provides that, unless otherwise terminated, the FFI Agreement will expire on 31 December 2016.
- b. For Reporting Model 2 FIs, it also explicitly states that the FFI Agreement is non-binding.

Section 13. **Miscellaneous provisions**

- a. This section specifies certain contract law issues governing the FFI Agreement.

We strongly urge our readers who expect to register any of their entities as a PFFI or Reporting Model 2 FI to scrutinize the final FFI Agreement with the support of their legal departments in order to ensure that no unwanted but foreseeable consequences result from such registrations.

Regards,

Brandi Caruso

FATCA Leader, Switzerland

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News Switzerland

Swiss Regulator Encourages Banks to Set Aside Expected Costs of U.S. Programme

In line with a 19 December announcement by a large cantonal bank that it had decided to set aside over USD 100M for 2013 to cover costs anticipated from its participation in the U.S. Programme, the Swiss financial markets regulator (FINMA) urged the other financial institutions it regulates to adopt a similar accounting approach. On 24 December, a FINMA spokesperson encouraged Swiss banks to allocate provisions in their 2013 ledgers intended for the legal and punitive costs expected to emerge from the settlement process in 2014. FINMA offered no guidance or suggestions to the banks on the calculation of the allocations. End of year reports indicate that over 60 banks have agreed to participate in the U.S. Programme so far. **Deloitte contact: David Fidan**

Swiss IGA Opponents Confident of Securing a Referendum

According to reports in the Swiss media, the leadership of the committee behind the effort to compel a national referendum on the Swiss IGA is confident that it will obtain the necessary 50,000 signature in time for the deadline of 16 January. A spokesperson from the committee estimated that the campaign had obtained 25,000-30,000 signatures by Christmas, approximately 75 days following the 8 October onset of the 100-day countdown to the deadline date, leaving nearly half of the signatures to be collected over the remaining roughly 25 days. While two members of the Swiss People's Party (SVP) head the anti-FATCA coordinating committee, the SVP itself is not conducting the campaign. Instead, the committee consists of many regional political parties, as well as a few groups from either edge of the political spectrum. **Your Deloitte contact: Markus Weber**

News U.S.

IRS Releases XML Reporting Schema

According to an announcement of 19 December, the IRS finalized the reporting schema that will be used for the exchange of data between the U.S. and countries with which it has signed a FATCA Model 1 IGA, committing the FATCA Partner jurisdiction and, where a reciprocal Model 1 IGA, the U.S. as well, to transparent tax information exchange. The schema selected by the IRS employs components of reporting schema endorsed by the OECD and EU, which should allay some of the burden on the domestic tax authorities of those countries. The IRS also touted the modifiability of XML in case subsequent legislative or regulatory changes require an

update to the schema. The XML schema will also be used by PFFIs and Reporting Model 2 FIs for their FATCA reporting. **Your Deloitte contact: Markus Weber**

News International

Number of FATCA IGAs up to 20

With the announcement by the U.S. embassy in Mauritius on 2 January of a signed IGA with the country, the number of confirmed IGAs reached 19 with another 10 more imminent according to the Treasury Department. On 20 December, the Treasury Department published the previously-announced IGAs with Bermuda, the Isle of Man, Guernsey, Jersey, Malta and the Netherlands. **Your Deloitte contact: Paul Millen**

Reason for the Spelling of our Title

The unusual spelling of our title indicates that the newsletter covers more than FATCA, encompassing all the current and upcoming issues concerning **F**oreign **A**ccount **H**olders by condensing key developments in all pertinent tax and regulatory matters into a compact, up-to-date and easily accessible digest of critical information.

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