

## FAHTCAweekly Your snapshot of the week

Issue number 65  
22 January 2014

In this issue:

**The View from Deloitte**

**News Switzerland**

**Swiss IGA Referendum Effort Fails to Collect Sufficient Signatures**

**Swiss Court Blocks Transfer of Account Information**

**News Europe**

**Italy Signs FATCA IGA**

**News U.S.**

**Justice Department to Examine AML/KYC Controls at U.S. Banks**

**Reason for the Spelling of our Title**

**FATCA-in-a-Box for Trusts is Here**

**Related links**

Dear Reader,

The View from Deloitte section in the FAHTCAweekly newsletter distributed this morning contained a link to the original version of the FFI Agreement, rather than to the revised version of the **FFI Agreement**. **The link is now correct.**

Please accept our apologies for any inconvenience this may have caused you.

### **The View from Deloitte**

Dear Reader,

On 13 January, the IRS published an updated version of the FFI Agreement in Revenue Procedure 2014-13 containing certain minor corrections to the original 27 December release. Specifically, the updated version contained the following changes:

- **Section 3.03(B)(1):** Removed erroneous allowance of a 90 day grace period to obtain FATCA documentation upon the expiration of existing FATCA documentation.
- **Section 4.02(C):** Clarified that if a Participating FFI (PFFI) (a term including, hereafter, a Reporting Model 2 FI) is directed to make a payment to another PFFI or Registered Deemed-Compliant FFI (RDCFFI) to an address outside the jurisdiction of such PFFI or RDCFFI, the PFFI must treat the payee as a limited branch unless proper documentation is obtained to treat the payment as made to a PFFI or

RDCFFI (e.g. a valid W-8 for the branch located in the other jurisdiction where the payment was sent certifying that such branch is a PFFI or RDCFFI).

- **Section 5.01:** Clarified that a PFFI is to follow U.S. Treasury Regulations (Treas. Regs.) § 31.6302-4 for deposit deadlines if the payment is withheld pursuant to section 4.01(D) of the FFI agreement (backup withholding provisions applied to recalcitrant account holders in lieu of FATCA withholding).
- **Section 6.07:** Inserted clarifying language regarding a PFFI's satisfaction of its chapter 61 reporting obligations (Form 1099 reporting) by reporting pursuant to sections 6.02 and 6.03 of the FFI agreement (Form 8966 reporting). If the PFFI elects to back-up withhold under Internal Revenue Code (IRC) § 3406, the PFFI is directed to §1.6049-4(b)(6) for the applicable rules on reporting a payment under chapter 61 to which backup withholding applies.
- **Section 9.02(B):** Corrected citation regarding how a PFFI can report payments subject to backup withholding under IRC § 3406.
- **Section 9.02(D):** Clarified that, for a payment received by a PFFI acting as a flow-through entity or an intermediary, the PFFI may choose to provide information on specific payment recipients in lieu of pooled information as long sufficient information for reporting purposes is provided to the withholding agent for each payee in the withholding statement.
- **Section 10.03:** Clarified that a participating FFI (and not the branch of such PFFI) may refund erroneously withhold amounts based on the procedures in Treas. Regs. § 31.6413(a)-3.

A copy of the FFI Agreement is available [here](#).

Regards,

**Brandi Caruso**

FATCA Leader, Switzerland

Please feel free to forward this newsletter to your colleagues who may also wish to subscribe to our service ([click here](#) to subscribe).

## News Switzerland

### Swiss IGA Referendum Effort Fails to Collect Sufficient Signatures

The campaign to subject the Swiss IGA to a popular referendum ended last week with the announcement from the campaign committee that it had not collected enough signatures. Prior to Christmas, a spokesperson from the committee expressed confidence publicly that the signature collection campaign would succeed, but preliminary reports leading up to the 16 January deadline date indicated that the campaign had stalled short of the 50,000 signature needed to compel a public vote. While two members of the Swiss People's Party (SVP) head the anti-FATCA coordinating committee, the SVP itself did not conduct the campaign. Instead, the committee consisted of many regional political parties, as well as a few groups from either edge of the political spectrum. **Your Deloitte contact: Markus Weber**

### Swiss Court Blocks Transfer of Account Information

On 6 January the Swiss Federal Administrative Court, the highest court in the land for most administrative and tax-related topics, issued a decision blocking the transfer of client data from a major Swiss bank to the United States. In response to a petition of one of the implicated account holders, the Court ruled that the Swiss Federal Tax Administration had improperly granted the U.S. request for group administrative assistance because the

basis for the request, alleging the bank's employees abetted U.S. clients to conceal undeclared taxable assets, did not meet the 'tax fraud or the like' standard set out under the Double Tax Agreement between the two countries. In certain circumstances, where the facts or ruling of the case bears special importance, rulings from the Swiss Federal Administrative Court on tax matters are appealable to the Swiss Federal Supreme Court.

**Your Deloitte contact: David Fidan**

## News Europe

### Italy Signs FATCA IGA

Becoming the final of the five EU countries that announced their intent in February 2012 to negotiate bilateral accords to facilitate the implementation of FATCA for their domestic financial institutions, Italy announced that it had signed an intergovernmental agreement (IGA) with the U.S. Treasury Department. The Italian Model 1 IGA is substantially similar to the Model 1 IGAs signed by the other four European countries, including intermediation between Italian financial institutions and the IRS by the Italian tax authority and the imposition of reciprocal reporting obligations on the U.S. **Your Deloitte contact: Markus Weber**

## News U.S.

### Justice Department to Examine AML/KYC Controls at U.S. Banks

According to reports in the media, the United States Department of Justice (DOJ) intends to enhance enforcement of Anti-Money Laundering and Know Your Customer (AML/KYC) requirements in an effort to prevent further high-profile money laundering incidences linked to U.S. banks. Traditionally, money laundering charges supplemented accusations of other non-financial crimes, such as drug dealing or racketeering, but the DOJ increasingly aims to prosecute it as a standalone offense. Moreover, under the Bank Secrecy Act, financial institutions may incur punishments for deficient AML/KYC processes and other inadequate controls, even where not directly tied to concrete acts of money laundering. **Your Deloitte contact: David Fidan**

## 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.

## 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 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 a series simple steps. For more information, please visit the Deloitte **FATCA-in-a-Box webpage** or contact **Brandi Caruso, Paul Millen** or **Kaitlin Barbier** directly.

## Related links

[FATCA Switzerland](#)

[FAHTCAweekly Archive](#)

[Deloitte Financial Services Blog](#)

[Home](#) | [Security](#) | [Legal](#) | [Privacy](#)

General Guisan-Quai 38  
P.O. Box 2232  
8022 Zurich

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](http://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 recognized as auditor by the Federal Audit Oversight Authority and the Swiss Financial Market Supervisory Authority.

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.

© 2014 Deloitte AG. All rights reserved.

[Unsubscribe](#)