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FATCA FAQ for banking industry

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Changes impacting the industry

Has much changed?

The draft regulations have provided some relief provisions which will be welcomed by the banking industry.

Which changes will benefit banking?

The previously announced de minimis threshold for individual accounts remains at 50,000 $, however, the draft regulations remove the private banking requirements and replace these with a 1,000,000 $ account balance threshold for manual paper reviews.

The requirement to update customer due diligence procedures has been relaxed to reduce the compliance burden. The regulations now rely on an FFI's existing customer intake procedures, however documentation requirements will change depending on the FATCA status of the particular customer. Accordingly, the proposed regulations generally do not require an FFI to make significant modifications to the information collected on customer intake, other than with respect to account holders identified as FFIs, as passive investment entities, or as having US indicia.

Some changes to the deemed compliance rules may benefit banks which do not have multinational operations.

What exclusions are available?

Have any areas of banking been carved out of FATCA?

Previously, the IRS indicated that it intended to deem local banks to be compliant with the FATCA regulations subject to certain conditions being met.

The draft regulations set out two categories of deemed compliance (registered and certified) along with the criteria for meeting them.

Banks can qualify as registered deemed compliant FFI if they (or their group) meet certain legal requirements, have no fixed place of business in other jurisdictions, do not solicit customers outside of its jurisdiction and 98% of the accounts must be in its country of organisation (this includes accounts in other EU member states where the bank is organised in an EU member state).

The draft regulations also introduces the category of non-registering local banks which includes banks offering basic banking services operating in one jurisdiction that have balance sheet assets of 175,000,000 $ or less.

Where the local bank is part of an expanded affiliated group, the group members must all be in the same country and the group's combined balance sheet must not exceed 500,000,000 $.

Are any banking products excluded?

Yes. There is exclusion for tax efficient savings accounts. However, it is not as broad as hoped. It is conditional on the product meeting certain criteria, including contributions limited by reference to income, annual contribution limit, and limits or penalties by law for withdrawals.