

**Deloitte.**

Unsure about your  
FATCA compliance?  
Discover our Deloitte  
first aid kit



### The cause of possible non-compliance - difficulties around FATCA implementation

A broad range of Financial Institutions, including banks, funds, life insurers, but also certain non-supervised holding companies and certain service providers needed to implement the obligations under the Luxembourg FATCA law of 24 July 2015, transposing the Luxembourg-US Intergovernmental Agreement, however many actors struggled with the implementation of FATCA obligations in view of:

- The evolving framework from, initially, the application of US Regulations issued by the IRS, to applying the Luxembourg-US Model 1 Intergovernmental Agreement provisions, which was only transposed in July 2015 into Luxembourg legislation, and actors needed to move ahead with implementation in the absence of a confirmed legal framework
- Certain complexities in the FATCA definitions and methodologies, such as, for example, the variety of FATCA statuses applicable to entities
- Evolving timelines, where, for example, registration deadlines, withholding deadlines, and due diligence rules have evolved during the implementation process
- Evolving interpretations, both at the level of the IRS and other authorities (e.g. the evolving FAQs posted by the IRS, and evolving positions of the UK HMRC on the FATCA classification of holding companies, the applicability of zero reporting obligations, etc.)
- The fact that, until recently, sponsoring entities could technically not register their sponsored entities through the IRS website
- The fact that yet clients of financial institutions, fund investors insured persons, investors in, or debt claim holders of non-supervised investment structures, struggle themselves with determining and certifying their respective FATCA statuses
- The fact that groups are responsible to implement FATCA throughout the group, with increased complexity (and a possible impact of non-compliance of certain entities on the FATCA status of other entities) in a non-IGA context

### Certain timelines already expired – did you meet them?

Meanwhile, time ticked away, and **certain FATCA deadlines already expired:**

- Financial institutions that qualify as Reporting FI needed to register and obtain their GIIN number before the end of 2014
- New on-boarding rules for new clients/investors needed to go live (on 1 July 2014 for individuals, respectively 1 January 2015 at the latest for entities)
- The FATCA due diligence on pre-existing individual clients/investors needed to be completed by 30 June 2015 (while the FATCA due diligence for all other clients/investors needs to be completed by 30 June 2016)
- Though exceptional under an IGA Model 1, FATCA punitive withholding technically needed to go live as from 1 July 2014
- A first automatic exchange of information needed to be performed with the Luxembourg tax authorities by 31 August 2015, the year 2014 (henceforth, the annual deadline will be 30 June of the following year)

### Sanctions in case of non-compliance

**Non-compliance is sanctioned:**

- Through the Luxembourg FATCA law of 24 July 2015, imposing fines up to 250.000€ and additional fines of 0,5% on non-declared amounts (as well as possible sanctions under the Data Protection Law should the specific obligations in this respect not have been met)
- In a worst-case scenario, based on the Luxembourg-US IGA, non-remediated issues during a certain period of time may give rise to requalification as a Non-Participating FFI (with all related consequences of undergoing the punitive FATCA withholding and commercial risks of being ejected as a business partner)
- Finally, those actors having the status of a QI should be aware that the new QI Agreement imposes the responsible officer to periodically certify compliance, not only with the obligations under the QI regime, but also with those under the FATCA regime, which means the responsible officer has direct responsibility towards the IRS and consequently direct exposure to financial and criminal law sanctions under US law

**Deloitte provides emergency help**

Actors questioning their FATCA compliance, or aware of certain aspects of non-compliance should, of course, remediate the situation as soon as possible.

Our Deloitte first aid kit consists in:



**Health checks**

In case of doubt about the level of FATCA compliance, we recommend to carry out a health check to identify any possible implementation gaps. Further to the health check, we will be in a position to recommend further remediation assistance.

The extent of the health check can be tailored to your needs in respect of the level of detail (see diagram below).

Additionally, a health check is an ideal occasion to make the link with upcoming obligations as to the automatic exchange of information obligations according to the Common Reporting Standard (CRS).

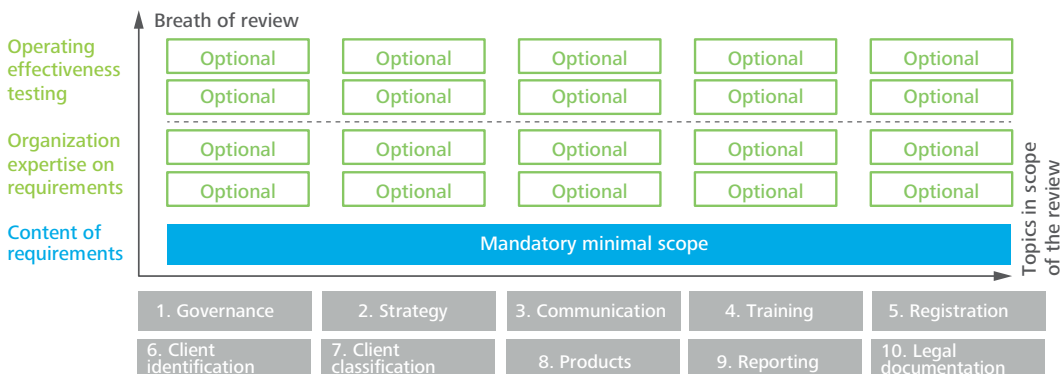
This has already been concretised through the EU Directive of 9 December 2014 on mandatory automatic exchange of information (applicable as from 1 January 2016), the modified savings taxation agreements between, amongst others, the EU and Switzerland, incorporating the CRS reporting principles (applicable as from 1 January 2017), that will be followed soon by other similar legal instruments in relation with other CRS partner jurisdictions, that will become applicable as from 2016, 2017 or later.



**Remediation assistance and disaster recovery**

In case of non-compliance with FATCA obligations, we can help to remediate the situation through, amongst others, assistance:

- In respect of determining or rectifying the FATCA classification of an entity (albeit a bank, fund, management company of a fund, insurer, non-supervised investment entity, service provider or other entity)
- Regarding registration of entities that should have registered, or de-registration of entities that should not have registered with the IRS
- With the remediation of shortcomings in FATCA classification procedures, and/or classification obligations of clients or investors; e.g. in case of late or non-application of new on-boarding procedures, late application of due diligence obligations, or incorrect application of classification rules
- With the remediation of data capture and systems issues, as well as resolving situations of non-reporting or over-reporting to the Luxembourg tax authorities;
- With the remediation of shortcomings in withholding procedures, and resolving situations of under-withholding, or over-withholding



# Contacts



**Pascal Eber**  
Partner - Advisory & Consulting-  
FATCA Leader  
+352 451 452 649  
peber@deloitte.lu



**Eric Centi**  
Partner - Financial Services Tax  
+352 451 452 162  
ecenti@deloitte.lu



**Alain Verbeken**  
Director - Cross-Border Tax  
+352 451 452 513  
alverbeken@deloitte.lu



**Maxime Heckel**  
Director - Advisory & Consulting  
+352 451 452 837  
mheckel@deloitte.lu

Deloitte is a multidisciplinary service organisation which is subject to certain regulatory and professional restrictions on the types of services we can provide to our clients, particularly where an audit relationship exists, as independence issues and other conflicts of interest may arise. Any services we commit to deliver to you will comply fully with applicable restrictions.

Due to the constant changes and amendments to Luxembourg legislation, Deloitte cannot assume any liability for the content of this leaflet. It shall only serve as general information and shall not replace the need to consult your Deloitte adviser.

**About Deloitte Touche Tohmatsu Limited:**

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) for a more detailed description of DTTL and its member firms.

Deloitte provides audit, consulting, financial advisory, risk management, tax and related services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries and territories, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte's more than 220,000 professionals are committed to making an impact that matters.