

Foreign Account Tax Compliance Act Ensuring that banks are FATCA compliant



FATCA addresses perceived abuses by U.S. taxpayers with respect to assets held offshore and requires all banking entities to participate and be compliant. Compliance involves updates of internal processes and may impact relationships with group entities, clients and business partners.

Are you ready for FATCA?

Enacted in 2010, the U.S. Foreign Account Tax Compliance Act ("FATCA") compels certain non-U.S. entities (qualifying as Foreign Financial Institutions ("FFIs") under the Act), including banking entities, to report U.S. account holders (including certain passive non-financial foreign entities held by controlling U.S. persons) to the Internal Revenue Service ("IRS") via local authorities in some Inter-Governmental Agreement ("IGA") countries. Non-compliant entities would be subject to 30% withholding tax on U.S. source income.

Malta signed an IGA with the United States on December 16, 2013. The IGA has been transposed into domestic law by means of legal notice 78 of 2014 and has entered into force on June 26, 2014. As a result, Maltese banking entities need to comply with the FATCA requirements based on this local law and local guidelines to be published.

FATCA requires payers of U.S. source income and gross proceeds to withhold 30% on payments to non-U.S. entities that do not comply with the FATCA obligations

In order to assess your FATCA readiness, you would need to consider the following attention points:

- Did you map your FATCA status?
- Do you know how the local law might enforce FATCA on your business?
- Did you define your FATCA responsible person and who will register the entity?
- Did you collect appropriate documentation on your clients?
- Do you know how to report U.S. accounts where relevant?
- Did you already complete W-8BEN-E/IMY or other self-certification forms as requested by certain business partners?

Main industry challenges

Non-U.S. entities conducting banking or similar business will directly be impacted by the FATCA regulations. All these entities will be subject to the 30% withholding tax in case of non-compliance with the FATCA requirements. This may have severe implications from a reputational, commercial and compliance standpoint.

Banking entities need to act now in order to understand the scale of their compliance requirements and to have the best chance of a coordinated and cost effective implementation of the required process and procedures.

The banking industry faces the following challenges:

- i. Classification of the entities:
 - Reporting Financial Institution ("FI") / Non-reporting FI
 - Categories of FFIs
- ii. Avoid FATCA withholding:
 - Registering with the IRS as an FFI/registered deemed-compliant FI where required, or
 - Checking the application of certified deemed-compliant statuses
- iii. Update of legal documentation and procedures
- iv. Implementation of dedicated clients' due diligence
- v. Communication with counterparties and clients (collect and exchange of W8 forms or self-certification forms)
- vi. Report U.S. reportable accounts under the FATCA IGA
- vii. Coordination with the qualified intermediary ("QI") regime where relevant

Our experience

In collaboration with Luxembourg based experts at Deloitte, our team can support banking entities through all mentioned phases of FATCA implementation.

We believe that compliance with FATCA has both a tax and advisory context. This is the reason why our approach is based on a coordinated, mixed team in order to take into account tax and processes expertise.

Deloitte also has extensive experience working with global and national clients in the banking sector and is well positioned to address a wide variety of other tax and regulatory issues.

Are you ready for FATCA?

How can we help?

Deloitte may assist you on the following steps of your FATCA project:

- Review of your FATCA status classification and W8/self-certification forms communicated to your business partners
- Registration with IRS
- Assistance in reviewing the coordination between QI and FATCA regime where required
- Assistance in defining clients on-boarding procedures and documentation
- Provide guidance towards FATCA required update of your legal documentation and procedures (classification, withholding and reporting procedures)
- Provide technical FATCA expertise through a flexible "Hotline" approach
- Provide health-check services

Contact:

Marc Alden

Tax Service Line Leader

malden@deloitte.com.mt

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