

Foreign Account Tax Compliance Act

Ensuring that insurance
undertakings are FATCA compliant



FATCA addresses perceived abuses by U.S. taxpayers with respect to assets held offshore and requires all insurance undertakings to participate and be compliant. Compliance involves updates of internal processes and may impact relationships with group entities, policyholders 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 insurance undertakings, 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 insurance companies 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 policyholders?
- 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

Depending on the FATCA status of the considered insurance company, different obligations and consequences will arise.

Insurance companies 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 processes and procedures.

The insurance industry faces the following challenges:

- i. Classification of the entity:
 - Reporting Financial Institution ("FI") / Non-reporting FI
 - Categories of FFIs
 - Active/Passive Non- Financial Foreign Entity ("NFFE")
- ii. Avoid FATCA withholding:
 - By registering with the IRS as an FFI / registered deemed compliant FI where required; or
 - By complying with the requirements of a certified deemed-compliant status
- iii. Update of legal documentation and procedures
- iv. Implementation of dedicated due diligence on policy holders and insurance beneficiaries where relevant
- v. Enable the identification of NFFEs U.S. controlling persons
- vi. Communication with counterparties (collection and issue of W8 forms or self-certification forms)
- vii. Report U.S. reportable accounts under the FATCA IGA

Our experience

In collaboration with Luxembourg-based experts at Deloitte, our team can support insurance undertakings 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 insurance industry 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 where required
- Assistance in due diligence on policy holders and beneficiary and defining documentation standards
- Provide guidance towards FATCA required update of your legal documentation
- Provide technical FATCA expertise through a flexible "Hotline" approach
- Provide health-check services

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