

Foreign Account Tax Compliance Act Ensuring that investment entities are FATCA compliant



FATCA addresses perceived abuses by U.S. taxpayers with respect to assets held offshore and requires all investment entities to participate and be compliant. Compliance involves updates of internal processes and may impact relationships with group entities 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 investment funds and certain holding companies, 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 Investment 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 shareholders and debt holders?
- 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

Investment 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 processes and procedures.

Investment entities face the following challenges:

- i. Classification of the entities:
 - Reporting Financial Institution ("FI") / Non-reporting FI
 - Categories of FFIs
 - Active/Passive Non-Financial Foreign Entity
- ii. Avoid FATCA withholding:
 - By registering with the IRS as an FI / registered deemed compliant FI where required or complying with certified deemed-compliant status; or
 - By providing the withholding agent with either: (1) certification that it does not have any substantial specified U.S. owners or (2) information on the identities of its substantial specified U.S. owners
- iii. Update of legal documentation where required (e.g.: prospectus amendments for investment funds)
- iv. Implementation of dedicated investors due diligence
- v. Enable the identification of substantial U.S. owners
- vi. Communication with counterparties (completion of W8 forms or self-certification forms)
- vii. Reporting U.S. reportable accounts under the FATCA IGA where required
- viii. Identifying potential withholding tax issues

Are you ready for FATCA?

Our experience

In collaboration with Luxembourg-based experts at Deloitte, our team can support investment structures 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 investment management industry and is well positioned to address a wide variety of other tax and regulatory issues.

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 defining shareholders and debt holders 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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