



The Dbriefs Federal Tax series presents:

Updated Regulations: **Important Considerations for** **Organizations**

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Agenda

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- Final FATCA Regulations Timeline
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Education – FATCA Impact and Guidance

- Classification of Entities
- Expanded Affiliated Group Redefined
- Due Diligence and Account Holder/Payee Identification
- Withholding Certificates
- Withholding
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Introduction and Overview

Overview

What Are We Discussing

Chapter 61

- **Documentation, withholding and reporting on payments to U.S. persons**
- **Form W-9**
- **Form 1099**

Chapter 3

- **Documentation, withholding and reporting on payments of U.S. source income to non-U.S. persons**
- **Forms W-8**
- **Form 1042-S**

Chapter 4

- **Identification of U.S. persons holding accounts at non-U.S. financial institutions or through non-U.S. entities**
- **Form 8966**

FATCA Classifies All Entities

Withholding Agent	<ul style="list-style-type: none">• Foreign or U.S. person that has control, receipt, custody, disposal or payment of any “withholdable payment”• Not limited to financial services industry
Foreign Financial Institution (FFI)	<ul style="list-style-type: none">• Foreign entities that accept deposits, hold financial assets for the account of others as a substantial part of its business, engage primarily in the business of investing or trading in securities, commodities, partnerships or any interests in such positions, or issue cash value insurance or annuities.• Includes non-U.S. employee benefit plans• May include holding companies and treasury centers in certain situations
Non-Financial Foreign Entity (NFFE)	<ul style="list-style-type: none">• Includes any foreign entity that is not a FFI• Excepted NFFEs:<ul style="list-style-type: none">• Publicly traded corporation and its corporate affiliates (more than 50% of vote and value)• Entity organized under the laws of a possession of the U.S.• A foreign government, international organization or any wholly owned agency thereof• Direct Reporting and sponsored NFFEs• Active NFFEs• Passive NFFEs

Final FATCA Regulations Timeline

FATCA Compliance Action Items		2014			2015			2016			2017			2018		
General Compliance	FFI: GIIN registration deadline for first 2014 List (First 2015 list for Model 1 FFIs)	◆ Apr 25			◆ Dec 22 for Model 1 FFI											
	First 2014 GIIN list	◆ Jun 2														
	FFI: Effective date of Agreement for FFIs receiving a GIIN prior to July 1, 2014	◆ Jun 30														
	FFI: End of transition period for affiliated group rule					◆ Jan 1										
New / Pre-existing Accounts	USWA / FFI: Begin new account onboarding	◆ Jul 1														
	USWA / FFI: Begin GIIN Verification for Model 1 IGA FFIs				◆ Jan 1											
	USWA: Complete documenting/classifying preexisting entity accounts				◆ Dec 31	Prima Facie FFIs		◆ Jun 30	All other entity accounts							
	FFI: Complete documenting/classifying preexisting accounts				◆ Dec 31	Prima Facie FFIs		◆ Jun 30	All other accounts							
					◆ Jun 30	High value individuals										
Withholding	USWA/FFI: Grandfathered obligation cutoff	◆ Jul 1														
	USWA/FFI: Begin withholding on U.S. source income (excludes certain offshore payments)	◆ Jul 1														
	USWA/FFI: Begin withholding on offshore U.S. source income payments and gross proceeds								◆ Jan 1							
	FFI: Begin withholding on foreign passthru payments								◆ Jan 1							
Reporting	FFI: Begin U.S. Account/Owner information and balance reporting (for 2014 calendar year)*				◆ Mar 31											
	FFI: Begin U.S. Account/Owner income reporting (for prior year)*							◆ Mar 31								
	FFI: Begin U.S. Account/Owner gross proceeds reporting (for prior year)*								◆ Mar 31							
	FFI: Aggregate reporting on NPFFI account holder payments (only for 2015 and 2016)*							◆ Mar 31		◆ Mar 31						
	USWA: Begin U.S. Owner reporting*				◆ Mar 31											
	USWA/QI FFI: Reporting on withholdable income payments made to recipients**				◆ Mar 15											
	USWA/QI FFI: Begin reporting on gross proceeds made to recipients**													◆ Mar 15		

Highlights

- The new rules clarify definitions, fix technical issues, address industry requests and provide coordination with current documentation, withholding and reporting requirements
- The Regulations are final and temporary and become effective when published in the Federal Register
- They have provided additional time to renew Forms W-8 that expired in 2013
- There are no additional extensions so it is important to keep moving forward
- The IRS has indicated that they will consider issuing transitional relief

Education — FATCA Impact and Guidance

Classification of Entities

Sponsored FFI and Sponsoring Entity

A sponsoring entity will not be jointly and severally liable for the sponsored entity's obligations.

Investment Advisor and Investment Manager

Will be considered a certified deemed-compliant FFI if the entity is an FFI solely because it is an investment entity and the entity does not maintain financial accounts.

U.S. Person

Includes a foreign insurance company that has made a section 953(d) election provided that the company is either not a specified insurance company or is a specified insurance company and licensed to do business in the U.S.

Branches and Disregarded Entities

A disregarded entity of a participating FFI or a registered-deemed compliant FFI is treated like a branch, generally requiring its own Global Intermediary Identification Number ("GIIN"). Further, such disregarded entity may qualify as a limited branch.

Expanded Affiliated Group (“EAG”) Redefined

Members of an EAG

An exempt beneficial owner that is an FFI may be a member of an EAG.

Common Parent Election

A non-corporate entity may elect to be treated as the common parent entity.

Includible Chain of Entities

A corporation owned by a non-corporate entity may be included in the same EAG to which the non-corporate entity belongs.

Ownership

To determine whether an entity is a member of an EAG, indirect and constructive ownership are not considered.

Due Diligence and Account Holder/Payee Identification

Presumption Rules and Preexisting Obligations

A U.S. withholding agent may treat a payee of a preexisting obligation as a U.S. person if the withholding agent has previously established, either through documentation or the application of the “eyeball test,” that the payee is an exempt recipient for purposes of Chapter 61.

Reliance on Documentation on Account-by-Account Basis

For a preexisting account, a withholding agent may rely on documentation for an account at another branch or member even if the accounts are not treated as consolidated obligations, as long as the withholding agent obtains and reviews copies of the documentation supporting FATCA status and has no reason to know that the documentation is unreliable.

Reason to Know Standard

A withholding agent is not required to review for U.S. indicia for a preexisting account previously reviewed and classified as foreign for purposes of Chapters 3 and 61, except that the withholding agent must look for a U.S. place of birth for an individual account holder and must review any additional documentation the withholding agent is relying upon to determine the Chapter 4 status.

Extending Validity of Forms W-8 Expiring in 2013

The durational validity for Forms W-8 that expired at the end of 2013 has been extended to January 1, 2015, unless a change of circumstances occurs prior to that date.

Withholding Certificates

Indefinite Validity of Forms W-8 for Chapter 3 and 4

Permit indefinite validity for withholding certificates from individuals and certain entities provided a treaty claim is not being made.

Electronic Transmission of Forms W-8

Permits a withholding agent to rely on a valid Form W-8 sent electronically by fax or email unless the withholding agent has a reason to know that the form was transmitted by an individual not authorized to do so.

Reliance on Pre-FATCA Forms W-8

Modification to the transitional rule (through January 1, 2017) to require that a participating FFI or registered deemed-compliant FFI provide the withholding agent with a pre-FATCA Form W-8 in addition to a GIIN and FATCA status.

Substitute Forms W-8

A withholding agent may choose to provide a substitute form that does not include all of the Chapter 4 statuses provided on the official Form W-8, but must include any Chapter 4 status for which withholding may apply, such as the categories for a nonparticipating FFI or passive NFFE.

Withholding

Grandfathered Obligations

A modification of an obligation is material only if the withholding agent has actual knowledge of such modification.

FFI Withholding Statement

Clarify the FFI withholding statement requirements, including with respect to rules on when a Chapter 4 withholding rate pool may be used by an FFI to allocate withholdable payments to a class of persons within a particular withholding rate pool.

Escrow Procedures for Withholding

A participating FFI that withholds on a withholdable payment not otherwise subject to Chapter 3 withholding or backup withholding made to a recalcitrant account holder of a dormant account may escrow the amount until dormancy ends, at which time the tax withheld becomes due after 90 days.

Foreign TINs Permitted on Forms W-8

A withholding may rely on a Form W-8 containing a foreign TIN for purposes of allowing a claim for reduced withholding under a tax treaty.

Reporting

Participating FFI U.S. Account Reporting

Permit a participating FFI that is a U.S. payor (other than a U.S. branch) to satisfy its reporting obligations with respect to U.S. accounts or accounts held by owner-documented FFIs either by performing enhanced Form 1099 or Form 8966 reporting; however, if the participating FFI also is required to report payments on Form 1099 it is not relieved of that obligation.

Reporting Options for Participating FFIs

Allow a participating FFI to report on all of its U.S. and recalcitrant accounts or separately with respect to any clearly identified group of accounts, such as by business line or location. However, the participating FFI must include its GIIN, if applicable, to identify the jurisdiction of the FFI that maintains the accounts subject to reporting.

Transitional Reporting for Recipient Copy of Form 1042-S

For calendar year 2014 reporting, a withholding agent will be permitted to include more than one type of income or other payment on the recipient copy of Form 1042-S. However, beginning in calendar year 2015, the Form 1042-S and accompanying instructions will require a separate Form 1042-S for each type of income or other payment.

Form 8966 Filing Extensions

The IRS will grant an automatic 90-day extension to file Form 8966 but a request for extension must be filed no later than the due date of Form 8966 (March 31). The IRS may grant an additional 90-day extension under certain hardship conditions.

Q&A

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