

## IRS Publishes Final 2014 Form 1042-S

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Global Financial Services Industry



#### IRS Publishes Final 2014 Form 1042-S for Chapter 3 and FATCA

On March 10, 2014, the IRS published the final version of the Form 1042-S. The prior draft version was originally published in April 2013. The updated final version of the form includes several changes necessary because of changes in the recently released temporary and final FATCA (Chapter 4) regulations. Based on the latest FATCA regulations, withholding agents will use the new Form 1042-S for reporting under both Chapter 3 (current non-resident alien withholding tax regime) and FATCA.

The changes to the Form 1042-S from the prior April 2013 draft version include the following:

- Form 1042-S Reporting Form
  - Added new lines 13g and 13h to provide the name and employer identification number (“EIN”) of a primary withholding agent if different than the withholding agent provided on line 12a;
  - Added line 14b to input the Recipient’s Global Intermediary Identification Number (“GIIN”);
  - Added line 23 to input the Payer’s GIIN;
  - Added line numbers to the Ch.3 and 4 status code fields; and
  - Several lines have been renumbered due to the various line additions and the additions to line numbers to the Ch. 3 and 4 status code fields

- Exemption Codes and Status Codes
  - Removed the FATCA exemption code for foreign reportable amounts given that such amounts are no longer reportable on the Form 1042-S. Foreign Financial Institutions (“FFIs”) that have to report on foreign reportable amounts paid to non-participating FFIs will now report on the Form 8966;
  - Removed the term “Recalcitrant account holders” from the beginning of the “Exempt from withholding under IGA” FATCA exemption code. The change takes into account the different terminology under Model 2 IGA jurisdictions where recalcitrant account holders are referred to as non-consenting account holders. A footnote was also added to clarify that the code is used to report a U.S. reportable account or non-consenting account receiving a Chapter 3 withholdable payment;
  - Added a FATCA exemption code called “Excluded Offshore Payment” for offshore payments of U.S. source FDAP payments made prior to January 1, 2017 (such payments are exempt from withholding if they meet the regulatory requirements);
  - The following Chapter 3 status codes have been added:
    - 31 – Nonqualified Intermediary;
    - 32 – Hybrid entity making Treaty Claim;
  - The following Pooled Reporting Codes have been added:
    - PAI<sup>1</sup> Withholding Rate Pool – General;
    - PAI Withholding Rate Pool – Exempt Organization;
    - Agency<sup>2</sup> Withholding Rate Pool – General;
    - Agency Withholding Rate Pool – Exempt Organization;
  - The following Chapter 4 (FATCA) Status Codes have been added reflecting certain entity types in the latest FATCA regulations and Intergovernmental Agreements (“IGAs”):
    - Certified Deemed-Compliant FFI – Investment Advisor or Investment Manager;
    - Direct reporting NFFE;
    - Non-consenting U.S. account;
    - Sponsored direct reporting NFFE;

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<sup>1</sup> Private Arrangement Intermediary (“PAI”) – a private agreement entered into by a qualified intermediary (“QI”) with another intermediary under whom the other intermediary generally agrees to perform all of the obligations of the QI.

<sup>2</sup> It is unclear what this is used for but it could be for an agent of the withholding agent similar to the PAI between a QI and another intermediary.

- Excepted inter-affiliate FFI
- Undocumented preexisting obligation (likely used when an account holder is subject to chapter 3 but has an undetermined FATCA status due to the preexisting account documentation grace period); and
- Some exemption and status codes have been renumbered to do the removal/addition of codes.

Although final Form 1042-S instructions have not been published yet, the final Form 1042-S will help withholding agents and service providers begin coding systems and building requirements to report on the new format. Accordingly, withholding agents and service providers should analyze the new form and begin preparing for the first reporting due date on March 16, 2014. To the extent coding or requirements have already begun based on the draft Form 1042-S, withholding agents and service providers should make the necessary updates to reflect the new fields and new numbering codes. We will provide updated guidance on the definition or use of the new terms or codes added to the Form 1042-S once the IRS publishes instructions to the final Form 1042-S.

A Final Form 1042-S along with an annotated version is attached.

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