

US government announces six-month extension to FATCA effective dates

July 12, 2013

In brief

The Internal Revenue Service (IRS) and the US Department of the Treasury (Treasury) issued [Notice 2013-43](#) (Notice) today announcing revised timelines for implementing various provisions under the Foreign Account Tax Compliance Act (FATCA). The Notice also provides additional guidance concerning financial institutions in jurisdictions that have signed an intergovernmental agreement (IGA) but have not yet enacted legislation bringing it into force. By extending the timelines, the Notice also provides (1) the IRS more time to issue the necessary forms, guidance, clarification, and interpretation, (2) Treasury and potential FATCA partners more time to agree to and sign IGAs and (3) entities around the world more time to implement changes in order to be FATCA / IGA compliant.

In detail

FATCA requires foreign financial institutions (FFIs) and US withholding agents to implement new procedures for tax information reporting and withholding, account identification, and documentation. It also requires certain FFIs to enter into an agreement with the US (an FFI Agreement). As an alternative, certain countries have entered into IGAs with the US to overcome legal impediments that prevented FFIs from entering into FFI Agreements with the US.

FATCA's provisions were scheduled to become effective according to a phased implementation schedule beginning January 1, 2014 and

continuing through 2017. Commentators have indicated the schedule did not provide sufficient time to modify current business practices and to make necessary modifications to systems and processes. In addition, they have noted that continued uncertainty about whether a future IGA will be treated as being in effect in a particular jurisdiction further hinders the ability to comply on a timely basis.

In response to these comments, Treasury and the IRS are postponing by six months many of the provisions that were scheduled to become effective in 2014, including the start of FATCA withholding, account documentation, and due diligence requirements, the

earliest effective date of an FFI Agreement and various other requirements. Although no date was provided, Treasury and the IRS plan to publish a list of countries that will be treated as having an IGA in effect, even though local legislation to implement the IGA may not have entered into force by July 1, 2014.

The Notice changes the implementation schedule for the following items:

- **IRS FATCA Registration Portal**- The IRS FATCA Registration Portal was expected to be available to FFIs by July 15, 2013. According to the Notice, the FATCA Registration Portal is

now scheduled to open on August 19, 2013. The Notice also impacts other key provisions around the Registration Portal as follows:

- The IRS will not issue any GIINs in 2013. Instead it expects to begin issuing GIINs as registrations are finalized in 2014.
- The FFI Agreement of a participating FFI (PFFI) that registers and receives a GIIN from the IRS on or before June 30, 2014, will have an effective date of June 30, 2014.
- The IRS will electronically post the first list of FFIs and GIINs by June 2, 2014, and will thereafter update the list on a monthly basis. To ensure inclusion in the June 2014 IRS FFI List, FFIs must finalize their registration by April 25, 2014.
- Between August 19 and December 31, 2013, clients can use the Portal to input preliminary information and organize their registration efforts. No submissions will be treated as final, however, until the registrant finalizes the submission in 2014.
- **Account opening-** Withholding agents generally will be required to implement new account opening procedures by July 1, 2014.
- **Pre-existing obligations-** In general, a pre-existing obligation is redefined to include an account, instrument, or contract maintained, executed, or issued by the withholding agent that is outstanding on June 30, 2014.

This date was previously December 31, 2013; it has been extended six months. There is also a six-month postponement of each of the deadlines for completing due diligence on pre-existing obligations.

Observation- *The effective dates for a PFFI and a registered deemed compliant FFI (RDCFFI) to implement new account opening procedures and to complete due diligence on pre-existing obligations are also affected. For a PFFI, the effective dates commence no sooner than July 1, 2014 or the date on which the FFI Agreement is effective (FFI Agreements are now effective June 30, 2014 or later). Similarly, the effective dates for a RDCFFI will commence no sooner than July 1, 2014 or the date on which it registers as a deemed compliant FFI and receives a GIIN.*

- **Grandfathered obligations.** The definition of grandfathered obligation will be revised to include obligations (and associated collateral) outstanding on July 1, 2014.
- **Information reporting.** The final regulations provide that a PFFI will be required to file information reports on its US accounts with respect to the 2013 and 2014 calendar years no later than March 31, 2015. Treasury and the IRS intend to modify these rules to require reporting on March 31, 2015 only with respect to calendar year 2014 (for US accounts identified by December 31, 2014). This modification to the required reporting will apply automatically in the context of Model 1 IGAs as well.

- **Identification of a PFFI and RDCFFI -**The final regulations provide that generally a withholding agent may treat a payee as a PFFI or RDCFFI, only if the withholding agent has a withholding certificate identifying the payee as a PFFI or RDCFFI and verifies the GIIN contained on the withholding certificate against the IRS FFI List. The Notice provides that, for payments made prior to January 1, 2015, verification of a GIIN is not required with respect to payees that are reporting IGA Model 1 FFIs.
- **Expiration of Form W-8s-** The Notice provides that withholding certificates and documentary evidence that would otherwise expire on December 31, 2013, will expire instead on June 30, 2014, unless a change in circumstances occurs that would otherwise render the withholding certificate or documentary evidence incorrect or unreliable.

The takeaway

Treasury and the IRS continue to listen and respond to stakeholders and to make adjustments to the provisions of FATCA while keeping their primary policy objectives intact. Although the relief provided is welcomed, without additional guidance many of the substantive questions regarding the application of the final FATCA regulations and IGAs remain. As a result of the Notice, companies should adjust their project plans accordingly.

Let's talk

For more information on how FATCA might impact you, please contact a member of the Global GIR Network. To view contacts for over 30 countries worldwide, click [here](#).

Appendix - Notice 2013-43 highlights

Topic	Prior Deadline	New Deadline
Registration		
FATCA Registration Portal opens	July 15, 2013	August 19, 2013
IRS electronically posting IRS FFI List	December 2, 2013	June 2, 2014
FFI finalize registration	October 25, 2013	April 25, 2014
Earliest effective date of FFI Agreement	January 1, 2014	June 30, 2014
Model 1 FFIs obtain GIIN	January 1, 2015	Same
Pre-existing account due diligence		
Prima facie FFIs documentation	June 30, 2014	December 31, 2014
Pre-existing account testing	US financial institutions: Accounts in existence on December 31, 2013 PFFIs/RDCFFIs: December 31, 2013 or as of effective date of FFI Agreement	US financial institutions: Accounts in existence on June 30, 2014 PFFIs/RDCFFIs: June 30, 2014 or as of effective date of FFI Agreement
Due diligence for pre-existing high value accounts	December 31, 2014	July 1, 2015
Due diligence for pre-existing other accounts	December 31, 2015	July 1, 2016
New account due diligence		
New account opening procedures	January 1, 2014	July 1, 2014
FATCA withholding on new accounts begins	January 1, 2014	July 1, 2014
Other provisions		
Expiration qualified intermediary / foreign withholding partnership and foreign withholding trust agreements	December 31, 2013	June 30, 2014
Grandfathered obligations date outstanding	January 1, 2014	July 1, 2014
Reporting US accounts	March 31, 2015 (for calendar years 2013 and 2014)	March 31, 2015 (for calendar year 2014 only)
Chapter 3 documentation expiring	December 31, 2013	June 30, 2014

Addressing the challenges of FATCA compliance

- How is your business planning to manage the complex processes behind **FATCA registration**? How is your business planning to validate withholding certificates? To find out more about how PwC can help, please contact a member of the GIR Network below.
- How do you plan to keep up-to-date with the release of the FATCA IGAs and some of their unique differences? **Access** our **FATCA IGA Website Monitor** that includes:
 - a high-level overview of signed IGAs
 - the latest IGA developments
 - potential actions to think about as you look at the impact of the IGAs to your FATCA program.
- **PwC's FATCA site:** <http://www.pwc.com/us/fatca>

- For additional information regarding FATCA guidance and implementation, please click [here](#) for the ***Global IRW Newsbrief archive***.

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