

KPMG International Alert

FATCA Alert

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FATCA - Text of final regulations on information reporting, withholding, and backup withholding

February 20: The Treasury Department and IRS today announced the release of a package of regulations to implement provisions under the Foreign Account Tax Compliance Act (FATCA).

The package of regulations concerns information reporting by foreign financial institutions (FFIs) and withholding payments to FFIs and other foreign entities; withholding of tax on certain U.S. source income paid to foreign persons; information reporting; and backup withholding on payments made to U.S. persons.

- Read text of the 229-page [final and temporary regulations](#)
- Read text of the corresponding 336-page [final and temporary regulations](#)

A transmittal Treasury release states that proposed regulations are also being issued today; however, text of the proposed regulations was not made available (this package of regulations was issued in advance of release via the *Federal Register*).

Treasury's summary

According to a [Treasury "fact sheet"](#) [PDF 259 KB] the key elements of these regulations include:

- Amendments to the FATCA regulations (January 2013) with over 50 amendments and clarifications that take into account certain comments and suggestions regarding ways to further reduce burdens consistent with the compliance objectives of the statute—such as clarifications of:
 - The accommodation of direct reporting to the IRS, rather than to withholding agents, by certain entities regarding their substantial U.S. owners
 - The treatment of certain special-purpose debt securitization vehicles

- The treatment of disregarded entities as branches of foreign financial institutions
- The definition of an expanded affiliated group
- Transitional rules for collateral arrangements prior to 2017
- Coordination of FATCA with pre-existing reporting and withholding rules, to harmonize the requirements contained in pre-FATCA rules under chapter 3 (i.e., reporting and withholding rules relating to payments of certain U.S. source income to non-U.S. persons) and under chapter 61 and section 3406 (reporting and withholding requirements for various types of payments made to certain U.S. persons (U.S. non-exempt recipients)). Today's regulations coordinate these pre-FATCA regimes with the requirements under FATCA to integrate these rules, reduce burden (including certain duplicative information reporting obligations), and conform the due diligence, withholding, and reporting rules under these provisions to the extent appropriate in light of the separate objectives of each chapter or section. The changes relate to four key areas:
 - Rules for identification of payees—removing inconsistencies in the chapter 3 and FATCA documentation requirements (including inconsistencies regarding presumption rules in the absence of valid documentation)
 - Coordination of the withholding requirements under chapter 3, section 3406, and FATCA—providing rules so that payments are not subject to withholding under both chapters 3 and FATCA, or under both section 3406 and FATCA
 - Coordination of chapter 61 and FATCA regarding information reporting with respect to U.S. persons—under existing FATCA regulations, certain foreign financial institutions (FFIs) may be able to mitigate duplicative reporting under FATCA and chapter 61 by electing to satisfy their FATCA reporting obligations by reporting U.S. account holders on Form 1099 instead of reporting the account holder on the Form 8966 as required under FATCA, and, generally to relieve non-U.S. payors from chapter 61 reporting to the extent the non-U.S. payor reports on the account in accordance with the FATCA regulations or an applicable IGA

Today's regulations do not provide a similar exception to reporting under chapter 61 for U.S. payors.

Today's regulations provide a new, limited exception to reporting under chapter 61 for both U.S. payors and non-U.S. payors that are FFIs required to report under chapter 4 or an applicable IGA with respect to payments that are not subject to withholding under chapter

3 or section 3406 and that are made to an account holder that is a presumed (but not known) U.S. non-exempt recipient. FFIs that are required to report under chapter 4 or an applicable IGA will provide information regarding account holders who are presumed U.S. non-exempt recipients. Moreover, such presumed U.S. non-exempt recipients may not actually be U.S. persons for whom the recipient copy of Form 1099 would be relevant to facilitate voluntary compliance. As a result, reporting under chapter 61 is being eliminated on payments to account holders who are presumed U.S. non-exempt recipients and for whom there is FATCA reporting.

Today's regulations provide a new, limited exception from reporting under chapter 61 for U.S. payors acting as stock transfer agents or paying agents of distributions from certain passive foreign investment companies (PFICs) made to U.S. persons. This exception is based, in part, on comments suggesting ways to reduce duplicative reporting with respect to PFIC shareholders. This exception would reduce burden while not significantly impacting taxpayer compliance.

- Conforming changes to the regulations implementing the various regimes—numerous conforming changes include (1) revising the examples in chapters 3 and 61 to take into account that payments in those examples may now be subject to FATCA; (2) defining terms in the FATCA regulations that are used in chapters 3 and 61 are appropriately cross-referenced; and (3) unifying definitions of terms used in chapters 3, 4 and 61.