

Global IRW Newsbrief

Information reporting and withholding (IRW)

October 26, 2012

IRS extends effective dates for certain provisions of FATCA and modifies a number of key concepts

In brief

On October 24, the Internal Revenue Service (IRS) released [Announcement 2012-42](#) (the Announcement) relating to the implementation of various provisions under the Foreign Account Tax Compliance Act (FATCA). FATCA was enacted to prevent and detect offshore tax evasion by US taxpayers. The FATCA regime imposes substantial new due diligence requirements on foreign financial institutions (FFIs) related to holders of financial accounts, and requires reporting and withholding in certain circumstances.

The IRS and the US Department of Treasury (US Treasury) released proposed FATCA regulations on February 8, 2012 (Proposed Regulations) which adopt a phased approach to implementation of various provisions of FATCA with effective dates beginning January 1, 2013. See [Global IRW Newsbrief](#). In a number of jurisdictions FATCA compliance is hampered by certain legal impediments such as data privacy, and thus an alternate intergovernmental approach was identified. On July 26, 2012, the US Treasury and five other jurisdictions, released two model intergovernmental agreements (Model IGAs) which address these legal issues and also contain implementation dates that differed from the Proposed Regulations. See [Global IRW Newsbrief](#).

The IRS and US Treasury received numerous comments on the practical issues related to the phased implementation timeline in the Proposed Regulations and the timeline in the Model IGA. In response, the IRS issued the Announcement, which adjusts some of the effective dates and clarifies certain key concepts. This Newsbrief



summarizes the **key highlights** from the Announcement. Ultimately the US Treasury and IRS intend to incorporate this guidance into the final regulations. The Announcement:

- aligns effective dates described in the Proposed Regulations for client onboarding and pre-existing accounts review to the Model IGA dates
- delays the withholding on gross proceeds
- pushes back the earliest effective date of FFI agreements
- modifies certain concepts around grandfathered obligations.

Detailed discussion

1. Execution of FFI agreements

The earliest effective date of an FFI agreement will be **January 1, 2014**. Under the Proposed Regulations, the earliest effective date of an FFI agreement was July 1, 2013.

***PwC observation:** With the revised effective date, it remains to be seen whether the FFI registration website will still be available on January 1, 2013 or will be delayed. A delay would allow the IRS additional time to modify the registration system to address industry comments such as the request to upload registration data. However, the new timelines should also provide for a more efficient compliance approach for partner jurisdiction FIs with subsidiaries and branches in non FATCA partner countries.*

2. New account and due diligence procedures

The Proposed Regulations and the Model IGAs imposed a number of different deadlines on US withholding agents (USWAs) and participating FFIs (PFFIs) to implement new account opening procedures and review pre-existing accounts. The Announcement aligns many of the timelines so that similar dates apply to USWAs, FFIs covered by an IGA, and FFIs not covered by an IGA.

Key changes to the timeline for new account opening and reviewing pre-existing accounts are as follows:

- Due diligence for new accounts. **January 1, 2014** is the implementation date for new account opening procedures for USWAs, PFFIs, registered deemed compliant FFIs, and FFIs covered by an IGA. Entities that enter into an FFI agreement or countries that enter into an IGA after January 1, 2014 will have an implementation date that is based on the effective dates of their agreements.

***PwC observation:** Under the Proposed Regulations, January 1, 2013 and July 1, 2013 were the target dates for USWAs and FFIs respectively to apply new account opening procedures. The harmonization of the implementation dates to January 1, 2014 should generally ease the preparation timeframes, but this is dependent on when the final regulations are released.*

***PwC observation:** The Announcement also provides relief for registered deemed compliant FFIs (e.g., restricted funds) as they now have until*

January 1, 2014 to implement any required account opening procedures. Under the Proposed Regulations, the implementation procedures would have had to have been in place on or before the date on which the FFI registered for deemed compliant status.

- Due diligence on pre-existing prima facie FFIs. USWAs must conduct due diligence and document pre-existing prima facie FFIs by **June 30, 2014**. Previously that date was January 1, 2014. With the new effective date, USWAs are required to document pre-existing entity accounts not held by prima facie FFIs by January 1, 2016.

PFFIs will need to complete their due diligence and document pre-existing prima facie FFIs within six months after the effective date of their FFI agreement (which could be no earlier than **June 30, 2014**, based on a revised January 1, 2014 FFI agreement effective date).

***PwC observation:** From a technical perspective, the time period as measured from the effective date of the agreement for PFFIs has been reduced from one year to six months. However, as a practical matter, this results in no change from a due date perspective. Ultimately, the issue will be that the shorter time period requires that more accounts will be subject to the review within a shorter time frame. This could be mitigated if the proper procedures are in place to identify such accounts between now and the due date.*

- Account due diligence for all other pre-existing accounts. For PFFIs, the one-year period for completing due diligence and documenting individual accounts with a balance or value of more than one million US dollars is now based on the new effective date of **January 1, 2014** (or the effective date of the FFI agreement, if later). The two-year period for all other accounts of an FFI is also based on the new effective date.

The IRS released a helpful [chart](#) that shows the new deadlines as they relate to the type of entity (PFFIs, deemed compliant FFIs, and registered deemed compliant FFIs) as well as the type of account.

3. FATCA withholding

Gross proceeds withholding

Under the Proposed Regulations, FATCA withholding on gross proceeds from the sale of property that produces US source interest or dividends was effective for sales and dispositions after December 31, 2014. Under the Announcement, FATCA withholding on gross proceeds is deferred until **January 1, 2017**.

***PwC observation:** The dates for gross proceeds withholding and the earliest date for withholding for foreign passthru payments are now aligned. However, the effective date for FATCA withholding on US-source fixed, determinable, annual, or periodic (FDAP) income on new accounts remains unchanged at January 1, 2014. Many financial institutions should work to establish the withholding capabilities for these accounts in parallel.*

***PwC observation:** With the alignment of these dates, some PFFIs may consider whether they need to build a withholding system prior to 2017. The Proposed Regulations provide that the withholding on FDAP income is based on the 'look through' concepts already applicable under chapter 3. Under the look-through approach, with the exception of PFFIs that have*

assumed primary withholding responsibility, FATCA withholding on US source FDAP income is generally passed from PFFIs to an upstream withholding agent, while FATCA withholding on gross proceeds remains the sole responsibility of the PFFI. The delay in the gross proceeds withholding alleviates, until at least 2017, the growing concern in the securities industry that proceeds paid between brokers (e.g., DVP/RVP transactions) may be subject to FATCA withholding.

Clarification on pre-existing accounts

The Announcement clarifies that USWAs and PFFIs are expected to commence FATCA withholding and reporting once the status of a particular account has been determined, rather than when the time period for identifying and documenting a pre-existing account expires. In other words, if the due diligence is completed for an account before the one-year and two-year time frames, the withholding and reporting requirements will begin at that time.

4. Reporting obligations for PFFIs

The Proposed Regulations provide for a phased implementation for reporting by PFFIs related to US accounts and recalcitrant account holders. Under the Proposed Regulations, the first reporting on US or recalcitrant accounts is due by September 30, 2014. Under the Announcement, the information reported for both 2013 and 2014 remains unchanged, however the reporting is now due no later than **March 31, 2015**.

5. Scope of grandfathered obligations

According to the Announcement, the cut-off date for most grandfathered obligations will remain January 1, 2013, however the final regulations will modify the concept of grandfathered obligation to include the following additional categories:

- any obligation that produces or could produce a foreign passthru payment and cannot produce a withholdable payment, provided the obligation is outstanding six months after the date that final regulations defining the term 'foreign passthru payment' are issued
- any instrument that gives rise to a withholdable payment solely because the instrument is treated as giving rise to a dividend equivalent payment under section 871(m) of the Code, providing the instrument is outstanding six months after the effective date of that provision
- any obligation to make a payment with respect to, or to repay, collateral posted to secure obligations under a notional principal contract that is itself a grandfathered obligation.

***PwC observation:** The Announcement increases the number of obligations that qualify for grandfathered status compared to the Proposed Regulations.*

Some actions to think about

Companies and stakeholders should proactively analyze how these new effective dates and revised concepts may affect their preparation for FATCA compliance. The following is a non-exhaustive list of items to consider:

- the convergence of multiple FATCA deadlines on January 1, 2014 creates a 'FATCA Cliff' that requires a higher degree of integrated planning and resource loading for 2013 (FATCA due diligence, reporting and withholding are now 'live' within the same year)
- monitor and analyze IGA and local law restriction impacts with regard to withholding and reporting
- initiate pre-existing analysis (e.g., locate, stratify, and profile) in preparation for release of FATCA final regulations
- identify and resolve current information reporting issues (i.e., chapter 3/61) impacting FATCA compliance
- revisit tactical/short-term approaches for operations and technology (including third party service providers) planned for the previous timelines
- refocus approach for identifying grandfathered obligations and monitoring material modifications
- continue analyzing legal agreements to identify FATCA responsibility (i.e., contractual vs. regulatory requirement)

For more information about FATCA, please visit our web site at <http://www.pwc.com/us/fatca>.

If you have any questions, please contact your usual PwC contact or any the following persons:

Anthony Tong	(852) 2289 3939	anthony.tong@hk.pwc.com
Angelica Kwan	(852) 2289 3966	angelica.kwan@hk.pwc.com
Timothy Clough	(852) 2289 1955	tim.a.clough@hk.pwc.com
Duncan Fitzgerald	(852) 2289 1190	duncan.fitzgerald@hk.pwc.com
Dominick Dell'Imperio	(646) 471 2386	dominick.dellimperio@us.pwc.com
Jon Lakritz	(646) 471 2259	jon.w.lakritz@us.pwc.com

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