



U.S. TREASURY DEPARTMENT OFFICE OF PUBLIC AFFAIRS

FACT SHEET: FATCA AMENDMENTS AND COORDINATION REGULATIONS 2/20/2014

The U.S. Department of the Treasury and Internal Revenue Service (IRS) today issued the last substantial package of regulations necessary to implement the Foreign Account Tax Compliance Act (FATCA), a provision that targets the illicit activities of some wealthy individuals who use offshore accounts to evade millions of dollars in taxes. International tax evasion is illegal, adds to the federal debt, and contributes to the perception that the tax system is unfair because the wealthy can avoid the taxes other Americans pay.

To combat evasion, Congress enacted FATCA in 2010, and the IRS and Treasury issued final regulations in January 2013. Since then, Treasury and the IRS have received numerous comments with respect to those regulations and have continued active discussions with stakeholders in preparation for FATCA withholding, which will go into effect on July 1, 2014. The regulations issued today make additions and clarifications to the previously issued FATCA regulations and provide guidance to coordinate FATCA with preexisting due diligence, reporting, and withholding requirements under other provisions of the Internal Revenue Code.

Key Elements of Today's Regulations

Amendments to FATCA Regulations to Take Into Account Stakeholder Comments

Today's regulations contain over 50 discrete amendments and clarifications to the FATCA regulations issued in January 2013 to provide clarifications and to take into account certain stakeholder suggestions regarding ways to further reduce burdens consistent with the compliance objectives of the statute. Key amendments and clarifications include those relating to (i) the accommodation of direct reporting to the IRS, rather than to withholding agents, by certain entities regarding their substantial U.S. owners; (ii) the treatment of certain special-purpose debt securitization vehicles; (iii) the treatment of disregarded entities as branches of foreign financial institutions; (iv) the definition of an expanded affiliated group; and (v) transitional rules for collateral arrangements prior to 2017.

Coordination of FATCA with Pre-Existing Reporting and Withholding Rules

Today's guidance also harmonizes the requirements contained in pre-FATCA rules under chapters 3 and 61 and section 3406 of the Internal Revenue Code with those under FATCA. Chapter 3 contains reporting and withholding rules relating to payments of certain U.S. source income (e.g., dividends on stock of U.S. companies) to non-US persons. Chapter 61 and section 3406 address the 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.** Documentation requirements are central to identification of payees under the chapter 3 and FATCA reporting and withholding regimes. The documentation requirements for withholding agents and foreign financial institutions (FFIs) under FATCA differ in certain respects from the corresponding documentation requirements for withholding agents under chapter 3. Today's regulations remove inconsistencies in the chapter 3 and FATCA documentation requirements (including inconsistencies regarding presumption rules in the absence of valid documentation) based, in part, on stakeholder comments.
- **Coordination of the Withholding Requirements under Chapter 3, Section 3406, and FATCA.** Chapter 3, section 3406, and FATCA require a payor to withhold under certain, potentially overlapping, circumstances. These temporary regulations provide rules to ensure 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.** FATCA generally requires FFIs to report certain information with respect to their U.S. accounts. In some cases, this reporting may be duplicative of the information required to be reported on Form 1099 with respect to the same U.S. accounts when the holders of such accounts are U.S. non-exempt recipients or the benefits of Form 1099 reporting to increasing voluntary compliance is not outweighed by the burden of overlapping information reporting requirements with respect to the same accounts.
 - Under existing FATCA regulations, certain 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. This election, however, is not expected to relieve burden for FFIs that are required to report on U.S. accounts pursuant to local laws implementing a Model 1 intergovernmental agreement (IGA). As previewed in Notice 2013-69, to further reduce burdens and mitigate instances of duplicative reporting under FATCA and chapter 61, today's temporary regulations generally 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. While some of the information reported by FFIs under FATCA on Form 8966 and under chapter 61 on Form 1099 may overlap, there are also significant differences. Most notably, the requirement under chapter 61 to furnish a copy of Form 1099 to the payee facilitates voluntary compliance, and there is no equivalent requirement for payee statements under FATCA. Moreover, U.S. payors generally have well-established systems for reporting and are subject to reporting on a broader range of payments under chapter 61 than non-U.S. payors. In light of these differences, the benefits of chapter 61 reporting by U.S. payors to the voluntary compliance system outweigh the reduction in burden that would be achieved by eliminating this reporting for U.S. payors that report on the same account under FATCA or an applicable IGA.
- 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, the IRS and Treasury believe that reporting under chapter 61 should be 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.** Today's regulations also make numerous conforming changes, including (i) revising the examples in chapters 3 and 61 to take into account that payments in those examples may now be subject to FATCA; (ii) ensuring that defined terms in the FATCA regulations that are used in chapters 3 and 61 are appropriately cross-referenced; and (iii) unifying definitions of terms used in chapters 3, 4 and 61.

For more information, see our fact sheet ([link](#)), temporary and proposed regulations ([link](#)), and visit the Treasury FATCA page ([link](#)).

