

A **Global Perspectives** White Paper



4 Essential Tasks to Prepare for FATCA

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Contents

| | |
|---|----------|
| Introduction | 2 |
| Latest Developments | 3 |
| Scope of FATCA | 3 |
| FATCA preparation process:- | 4 |
| 1. Appoint a responsible Officer | 4 |
| 2. IRS registration | 4 |
| 3. Set Up your FATCA programme | 5 |
| 4. Communicate, Communicate! | 6 |
| Conclusion | 6 |

Introduction

Time is marching on and the deadlines for FATCA are getting closer. In July 2013 the IRS postponed FATCA implementation for 6 months. Many companies relegated FATCA to the back of the regulatory queue to focus on Dodd Frank, AIFMD, Solvency II and a myriad other regulatory initiatives demanding their attention.

It's time to focus on FATCA again. The 6 month grace period should be used to prepare for FATCA. fact the delay should serve to underline the scale of the work involved worldwide for both financial institutions and regulators themselves, in order to implement FATCA's requirements.

In this white paper we will look at the 4 essential steps companies need to complete to prepare for FATCA.

This is the first in a series of Global Perspectives white papers which will cover what is required to prepare, implement and maintain compliance with FATCA in your organisation.

If you're lucky enough to be unfamiliar with FATCA you can read all about it in our introductory white paper here -

www.hedgetracker.com/article/FATCA-Simplified--the-Good-the-Bad-the-Ugly

Latest Developments

FATCA is here to stay and its going global. A worldwide web of **Inter-Governmental Agreements (IGA's)** continues to be signed whereby countries are agreeing to swap tax details with the US, and also increasingly with each other.

The **EU** agreed at a summit in May to automatically swap tax details between the 28 countries of the European Union.

Incredibly, in October 2013, even **Switzerland** signed the OECD convention on the exchange of taxation information. FATCA is changing everything.

Scope of FATCA

If you are reading this thinking your non-US financial organisation is outside the scope of FATCA - then we have bad news - it isn't and you aren't.

All Foreign Financial institutions (i.e. all non-US financial organisations - called "FFI's) worldwide will have to take steps to become compliant with FATCA

regardless of whether they have any US income, investments or investors.

Even if your FFI has never received a cent from the US, you will still have to **file your status** to the IRS demonstrating that you are outside the scope of FATCA. Then going forward you will have to **monitor** your FATCA status, to ensure you do not process any US companies or individuals without notifying the IRS.

The **penalties** for not filing are hefty. Ireland - which has signed an IGA with the US - has announced plans to fine FFI's that don't file €2,500 euro per day. Any penalties from the IRS will be in addition to this.

These requirements are something that many non-US financial companies are only now waking up to.

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FATCA preparation process:-

Preparing for FATCA is a complex business. Here are the first 4 essential tasks each FFI's needs to complete.

1. Appoint a responsible Officer

One of the first things every FFI needs to do is to appoint a person to manage FATCA compliance. FFI's will need to discuss and decide internally who will be most suitably appointed as their FATCA responsible officer. This must be an individual - it cannot be a company or commercial entity.

This process will take time to be discussed and agreed internally. FFI's need to review their organisation chart and decide who this person should be - the Chief Compliance Officer, the head of taxation or an internal attorney - either way this is the person whose name will go down on the FATCA registration as the companies contact at the IRS, with responsibility for ensuring FATCA compliance.

An important point here is that the IRS has **not** clarified the limit of the Responsible Officer's liability. Are they personally liable for the FFI's FATCA compliance or is the burden on the company? We don't know yet. It's a frightening prospect for many.

2. IRS registration

All FFI's have to register on the IRS's web portal. The website went live on August 19th and FFI's can input and modify their data up until the end of 2013.

The registration process is substantial and will take an FFI some time to complete. It is not something that can be done in an hour and must be planned accordingly to allow you to gather all the information required to answer each question.

Once registered the website enables FFI's to create their own homepage which they will use going forward.

Crucially, after completing your IRS registration you will be awarded a **Global Intermediary Identification Number** ("GIIN") number. This long number is a series of country and category identifiers and is your unique FATCA registration identifier.

We expect GIIN number's to be required and requested by most large financial companies in the future when you try and do business.

Businesses will be asked to submit their GIIN number when opening a banking or brokerage account (just like your existing tax number). We expect possessing a GIIN number to rapidly become a standard part of due diligence processes.

This means you will have to be FATCA complaint to do business.

On June 2nd 2014 the IRS will publish its first FATCA list of globally compliant FFI's.

FFI's have until April 25th next year to finalise their IRS registration and ensure they will appear on this list. You really want to be on this list.

3. Set Up your FATCA programme

FFI's need to prepare for FATCA by putting in place a holistic FATCA programme within the organisation.

This will include completing a detailed assessment of the likely impact of the regulations. Completing this will allow a more accurate estimation of the resource, time and cost that the FFI will have to budget to become compliant.

This process is well underway at most large FFI's but may have slowed down at some smaller organisations due to the 6 month delay and the many other regulatory initiatives taking place.

The FATCA programme will likely include the preparation of new compliant processes and procedures. Service agreements with clients will have to be updated to inform them that any US information or insignia will be given to the IRS or your home tax authority (if it has an IGA in place).

The IRS wants you to be able to demonstrate to them that you are complying with FATCA – not just declare that you are. A properly documented FATCA programme sets up a clear audit trail and this is increasingly important in the eyes of the IRS's eyes.

This is a change from when the regulation was launched. The IRS now wants to see evidence of processes and controls in place to monitor for US persons or companies (i.e. "don't tell me, show me"). Now is the time to think and prepare for how those controls and processes can be best implemented in your organisation.

4. Communicate, Communicate!

Tax is boring. FATCA is boring. People are busy and do not want to know. There is no upside for your organisation. FATCA is the epitome of Kafkaesque bureaucratic pain for very little, if any, gain.

Nevertheless it is vital that your FFI is FATCA compliant on time and in accordance with the rules. This means that the FATCA must be led – and communicated – regularly and continually, from the executive level right through to client facing staff and the lowest associate.

FFI's need to embark on internal FATCA training programmes now, while they still have time. Staff must be able to inform your customers and speak to your

clients about what you will need from them, when FATCA is implemented shortly.

This all lays the groundwork for FATCA implementation, which we will discuss in more detail in our next FATCA Global Perspectives white paper

Conclusion

To repeat – every non-US financial institution in the world will be impacted by FATCA. They all have to file their status with the IRS – regardless of if they have ever had a US investment or investor.

By following the steps above FFI's can prepare the essential groundwork to ensure a smooth implementation within their organisation.

Our next FATCA white paper will cover the substantial task of actually implementing FATCA in your organisation. This will include reporting requirements, procedures for on-boarding clients and the identification of payments in the new FATCA compliant world.

Global Perspectives provides extensive practical advice and consulting expertise at financial organisations implementing FATCA across the world. Contact us for more details.

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<http://www.amazon.com/AIFMD-Cheat-Sheet-Shane-Brett/dp/1490996354>



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