



FATCA Alert

The U.S. Treasury and the IRS published the final FATCA regulations (“Regulations”) on January 17, 2013. While the Regulations contain many useful clarifications and modifications, there are many new changes we must digest and incorporate into our applications. This note highlights some key changes, outlines important effective dates for the implementation efforts, and provides CTI’s targeted release dates. For a more extensive review of the regulations, please review our client letter (http://www.bsmlegal.com/PDFs/Client_Letter_re_Final_FATCA_Regulations_Issued.pdf).

Important Effective Dates:

	ACTIVITY	DATE
Governance		
	FATCA Portal opens for FFI Registration	July 15, 2013
	IRS assigns initial GIINs (FFI Only)	October 15, 2013
	FFI Registration deadline for inclusion on December 2013 IRS FFI Listing (FFI Only)	October 25, 2013
	Initial Publication of IRS FFI Listing	December 2, 2013
	Initial FFI Agreement Effective Date (FFI Only)	January 1, 2014
	Initial Responsible Officer Certification (FFI Only)	February 29, 2016
Due Diligence		
	Deadline for implementation of new account procedures	January 1, 2014
	Deadline for documenting prima facie FFIs	June 30, 2014
	Deadline for review of preexisting high value individual accounts (FFI Only)	December 31, 2014
	Deadline for review of all other preexisting accounts	December 31, 2015
Reporting		
	Initial FATCA Form 1042-S Reporting	March 15, 2015
	Initial Deadline for U.S. Account Reporting (Tax Years 2013 & 2014)	March 31, 2015
Withholding		
	Applicable to payments of U.S. source FDAP income to documented NPFFIs	January 1, 2014
	Begin withholding on undocumented prima facie FFIs	July 1, 2014
	Begin withholding on undocumented preexisting high value individuals (FFI Only)	January 1, 2015
	Earliest potential date for withholding on gross proceeds	January 1, 2017
	Earliest potential date for withholding on foreign passthru payments	January 1, 2017

FFI Registration: All FFIs registering through the IRS’s FATCA Portal will be assigned a “global intermediary identification number” (“GIIN”). FFIs will provide their GIIN to withholding agents to avoid FATCA withholding and identify themselves to the IRS. Model 1 and 2 “reporting” FIs and “registered deemed-complaint FFIs” will need to register through this process and get a GIIN. An FFIs Responsible Officer (“RO”) is responsible for initiating the registration process and managing the FFI’s account online through the Portal. However RO’s can designate an Authorized Third Party (“ATP”) to manage the process and ongoing communication on the FFI’s behalf.

“Ordinary Course Business Payments” Now “Excluded Non-Financial Payments”: The Regulations clarify which payments (ordinarily handled by the accounts payable department) are carved out of FATCA as withholdable payments. This was of particular concern to FIs since it appeared many of their ordinary course payments were subject to FATCA withholding – a huge headache. The Regulations address this concern by providing a specific list of payments both requiring withholding and those not requiring withholding.



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Documentation Rules: The Regulations retain the approach of specifying specific documentation requirements for different kinds of payees depending on whether the account is onshore or offshore and preexisting or new. It is important to note there are many changes to these different characterizations in the Regulations from the proposed rules – some of which are useful liberalizations. The only practical way to reduce this dizzying set of rules to a comprehensible form is to create a matrix capable of being incorporated into relevant systems and procedures.

Some key developments include increased reliance on information collected for local AML purposes, reliance of standard industrial codes to help identify preexisting accounts, reliance on documentation from other parties such as a third-party data provider, and reliance on pre-FATCA Forms W-8 until January 1, 2017. This increased reliance should encourage many withholding agents to begin re-solicitations of forms before the new Forms W-8 are released with FATCA relevant information all of which require new validation procedures to process.

The Regulations replace the proposed rule requiring documentation expires after 3 years, unless the documentation has an earlier expiration date, and replace that requirement with a much more workable rule: documentation is valid for the longer of three years or until expiration, provided there is not treaty claim. Forms and documentation for certain “low risk accounts” can remain valid indefinitely, subject to a number of restrictions and conditions. Examples of documentation able to remain valid indefinitely include withholding certificates, written statement or documentary evidence furnished by a foreign government or a government of a U.S. territory, as well as documentary evidence not generally renewed or amended, such as a certificate of incorporation. Certain other categories of documentation will remain valid indefinitely subject to enhanced verification such as the annual GIIN re-verification or if the withholding certificate is supported by additional documentary evidence. The Regulations provide multiple options for documenting account holders; however it will be critical for withholding agents to develop policies and processes capable of being audited to facilitate the RO certification process.

In additional good news, the “Eyeball Test” was partially reinstated. Withholding agents may apply the “eyeball” presumption rules under the section 6049 regulations to treat the payee as other than a specified U.S. person so long as the withholding agent has documentary evidence. If the U.S. withholding agent does not have documentary evidence to support the client’s U.S. status, the client will still be presumed to be a NPFFI under the Regulations.

Reporting: The IRS intends to publish Form 8966 (“FATCA Report”) for reporting payments made to specified U.S. persons, substantial U.S. owners of a non-exempted NFFE and U.S. owners of an owner-documented FFI. The IRS will be publishing XML schemas for electronic filing of Forms 8966 and 1042-S. An FFI may elect to meet its U.S. account reporting obligation by completing Form 1099 reporting. The same transition rules that apply to IGA’s phased implementation and in the proposed regulations apply.

Payment reporting on Form 1042-S has subtly changed from what was proposed. Reporting on Form 1042-S is required for FATCA if it would otherwise be required under Chapter 3 or if Chapter 4 withholding was actually applied. Thus, gross proceeds, foreign passthru payments, and interest paid by foreign branches of U.S. persons are generally not reportable on Form 1042-S until (or unless) regulations are issued requiring withholding on these amounts. In addition foreign reportable amounts paid by a PFFI to an NPFFI are reportable on Forms 1042-S.



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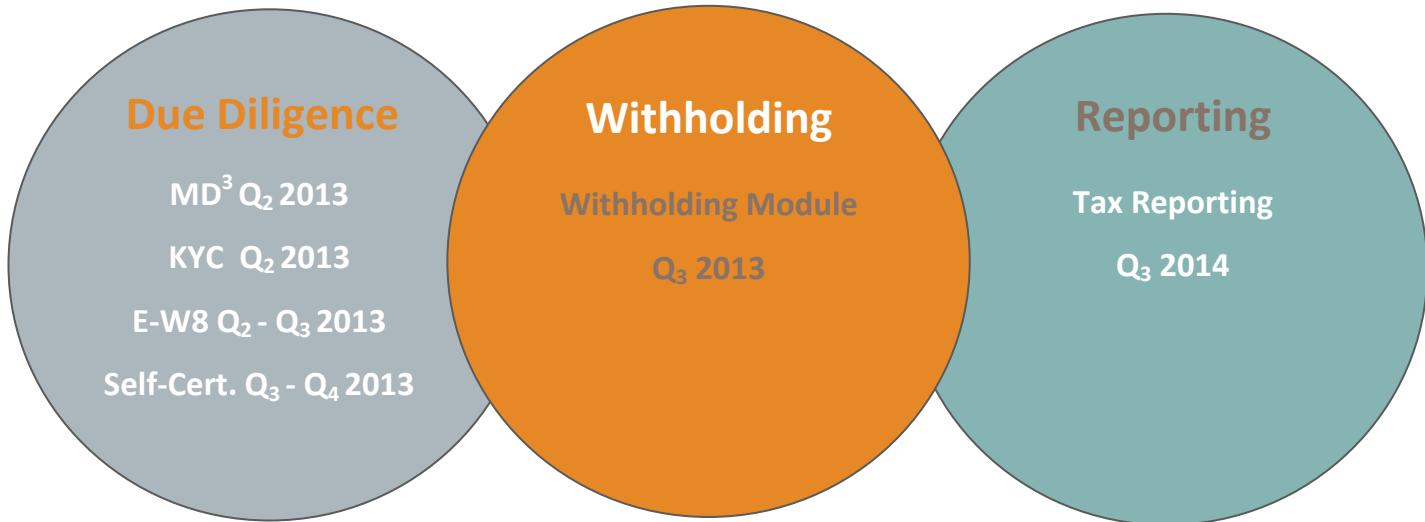
Important Guidance Still Missing! The Preamble to the Regulations promises the following over the coming months and hopefully before the FATCA Portal goes live in July: (1) the FFI Agreement; (2) Form 8966; (3) Updated drafts Form W-8, as well as draft Forms 1042 and 1042-S; (4) Proposed regulations coordinating FATCA with existing withholding rules (Chapter 3 and Chapter 61 rules).

Next Steps: FFIs and USFIs face a daunting task to be ready for FATCA in just 11 months. FATCA implementation plans must be reviewed and modified to reflect the Regulations. Most importantly, different efforts must be prioritized in consideration of the phased in effective dates. Developing compliance plans is the key next step for withholding agents. Tactical implementation will vary depending on whether you are a USFI or an FFI. Critical considerations include identifying FFI compliance group(s), engaging AML/KYC, IT, Account Onboarding, and Tax Operations, and making strategic decisions regarding due diligence and withholding. These strategic decisions are crucial, as while the Regulations provide an array of options for documenting clients, ROs will have to develop auditable due diligence strategies to which they can ultimately certify compliance.

How CTI is enhancing our Solutions to facilitate your FATCA Compliance Needs:

CTI is expanding its Outsourcing Service in order to offer a robust FATCA Service Bureau (“FSB”) to support any FATCA requirements. The FSB can serve as an Authorized Third Party, support due diligence efforts, calculate FATCA, Chapter 3, and Chapter 61 withholding, and complete any required FATCA, Form 1042-S, or Form 1099 reporting.

With regard to our products, now that the final Regulations have been released, CTI is working hard to finalize the logic in our various tools. Although we are still waiting for final Forms W-8 and instructions, Forms 8966, Forms 1042-S, CTI will develop the logic based on the regulations and provided patches to modify any changes the subsequent guidance provides. The chart below provides our targeted released dates for each product.



Due Diligence

KYC – Completed by Q₂ 2013 (currently coding logic)

MD³ – Paper Form W-8s completed by Q₂ 2013 (coded based on draft forms, currently in QA)

Self-Certifications – Q₂ - Q₄ 2013 (logic under review and coding)

E-W8 – Q₂ - Q₃ 2013 (logic drafted waiting for Final Forms, instructions, MOU requirements)

Withholding

Withholding Module – Q₃ 2013 (logic completed – awaiting draft Forms 1042-S)

Reporting

CTI Tax Reporting – Q₃ 2014 (awaiting further guidance from IRS)

For further information about our products or to request one of our product sheets, please contact **Cyrus Daftary**.

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