

July 15, 2013

New Extended FATCA Implementation Dates

On July 12, 2013, the IRS, in Notice 2013-43, and the Department of the Treasury in a Press Release of the same date, extended the implementation dates by six months for many of the withholding and account due diligence requirements under Internal Revenue Code sections 1471-1474, commonly referred to as the Foreign Account Tax Compliance Act (FATCA). Treasury and the IRS intend to amend the regulations under sections 1471-1474 to implement the extensions. According to the Treasury Press Release, the extensions should allow more time for foreign jurisdictions to enter into intergovernmental agreements (IGAs) with the United States before FATCA comes into effect and should provide foreign financial institutions (FFIs) with more time to comply with the complex requirements of FATCA. Prior to the issuance of the amended regulations, taxpayers may rely on Notice 2013-43.

The Notice additionally provides that:

- The 6-month extension does not affect the existing 2017 effective date for withholding on gross proceeds, foreign pass-thru payments, and payments of U.S. source FDAP income with respect to offshore obligations by persons not acting in an intermediary capacity.
- The IRS "FATCA portal" will open on August 19, 2013.
 - The trial period for FFIs to use the portal will extend from August 19, 2013, to January 1, 2014.
 - Global Intermediary Identification Numbers (GIINs) will not be issued until 2014.
- Grandfathered treatment for obligations is extended to those in effect on July 1, 2014.
 - An account that is opened on or before June 30, 2014, will be considered a grandfathered obligation and will not be subject to FATCA withholding requirements for the term of the obligation unless there is a material modification to the obligation.
- Reporting on U.S. accounts for 2013 is eliminated.
- Treasury will maintain on its website a list of IGAs that will be treated as in effect for FATCA purposes, even if they are not officially in effect.

As a result of these extensions, a withholding agent will not be required to withhold on a withholdable payment and should not be subject to any Chapter 4 reporting with respect to withholdable payments until after June 30, 2014. New account opening procedures will not need to be implemented until July 1, 2014, and FFIs can finalize their FATCA registration by April 25, 2014, and still be included on the very first FFI list, which now will be published on June 2, 2014.

Full details of the 6 month extension for FATCA are as follows:

FATCA Rule	Old Dates	New Dates
Withholding Requirement – withholding agent to withhold on withholdable payments made to payees that are not FATCA-compliant with respect to obligations that are not grandfathered obligations.	Payments made after December 31, 2013.	Payments made after June 30, 2014.

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Definition of Grandfathered Obligation	Any obligation outstanding on January 1, 2014.	Any obligation outstanding on July 1, 2014.
New Account Opening Procedures	Implemented by January 1, 2014.	Implemented by the later of July 1, 2014, or the effective date of the FFI agreement.
Definition of Preexisting Obligation <ul style="list-style-type: none"> ▪ With respect to a withholding agent other than a participating FFI (PFFI) or a registered deemed-compliant FFI ▪ With respect to a PFFI ▪ With respect to a registered deemed-compliant FFI 	<p>Any account, instrument, or contract that is:</p> <ul style="list-style-type: none"> Outstanding on December 31, 2013. Outstanding on effective date of the FFI agreement. Issued by the FFI prior to the later of the date that the FFI registers as a deemed-compliant FFI and receives a GIIN or the date the FFI is required to implement its account opening procedures. 	<p>Any account, instrument, or contract that is:</p> <ul style="list-style-type: none"> Outstanding on June 30, 2014. Outstanding on effective date of the FFI agreement. Issued by the FFI prior to the later of July 1, 2014, or the date on which the FFI registers as a deemed-compliant FFI and receives a GIIN.
Completing Due Diligence on Preexisting Obligations <ul style="list-style-type: none"> ▪ PFFIs ▪ Withholding agent other than PFFIs 	<ul style="list-style-type: none"> By June 30, 2014, for any FFI that enters into an FFI agreement on or before December 31, 2013 (within six months after the effective date of its FFI agreement). Required to document payees that are prima facie FFIs by June 30, 2014. 	<ul style="list-style-type: none"> FFI agreement entered into before June 30, 2014 will have an effective date of June 30, 2014 (i.e., an effective 6-month postponement of the deadline). Required to document payees that are prima facie FFIs by December 31, 2014.

Due Date for First Report of a PFFI with Respect to U.S. Accounts	March 31, 2015, for U.S. accounts with respect to the 2013 and 2014 calendar years.	March 31, 2015, for U.S. accounts with respect to the 2014 calendar year only.
Timeline For Registration		
<ul style="list-style-type: none"> ▪ FATCA Registration Site Access ▪ Assignment of GIINs ▪ FFI List 	<p>July 15, 2013</p> <p>October 2013</p> <p>Finalize registration by October 25, 2013, for inclusion on the December 2013 FFI List.</p>	<p>August 19, 2013</p> <p>Expect 2014</p> <p>Finalize registration by April 25, 2014, for inclusion on the June 2014 FFI List.</p>
Chapter 3 Documentation (withholding certificates and documentation)	Last day of third calendar year following the year executed or provided to withholding agent.	Documentation that would expire on December 31, 2013, will now expire on June 30, 2014.
QI, WP, and WT agreements Otherwise Expiring on December 31, 2013	December 31, 2013	June 31, 2014
Foreign-Targeted Registered Obligation Rules	Application to obligations issued in registered form after March 18, 2012, and before January 1, 2014.	Application to obligations issued in registered form after March 18, 2012, and before July 1, 2014.



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