



FATCA Basics
A White Paper

May 2015

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Abstract

Foreign Account Tax Compliance Act - FATCA

FATCA was enacted in 2010 by U.S. Congress to target non-compliance by U.S. taxpayers using foreign accounts. FATCA requires foreign financial institutions (FFIs) to report to the IRS information about financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest.

In summary:

- FATCA targets tax non-compliance by U.S. taxpayers with foreign accounts.
- FATCA focuses on reporting:
 - By U.S. taxpayers about certain foreign financial accounts and offshore assets.
 - By foreign financial institutions about financial accounts held by U.S. taxpayers or foreign entities in which U.S. taxpayers hold a substantial ownership interest.
- The objective of FATCA is the reporting of foreign financial assets; withholding is the cost of not reporting.

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Introduction

The Foreign Account Tax Compliance Act (FATCA) is a United States federal law requiring United States persons (including those living outside the U.S.) to have yearly reported themselves and their non-U.S. financial accounts to the Financial Crimes Enforcement Network (FINCEN), and requires all non-US (Foreign) Financial Institutions (FFI's) to search their records for suspected US persons for reporting their assets and identities to the US Treasury.

Congress enacted FATCA to make it more difficult for (resident and non-resident) U.S. persons to have financial assets which are not located in the United States, by adding further asset-reporting law with consequences, and thus to enable further federal tax revenues and penalties from a wider global population of newly discovered US persons and their partners, at the expense of non-US banks.

The FATCA is the revenue-raising portion of the 2010 domestic jobs stimulus bill **Hiring Incentives to Restore Employment**.

What organizations does it concern?

- All Foreign - non U.S. Financial Institutions.
- All U.S. Financial Institutions.

When does it start?

U.S. Department of Treasury announced on July 12th, 2013 a six month extension to the FATCA withholding requirement starting on **July 1st, 2014** that is **December 31st 2014**.

However for many countries and jurisdictions the deadline has been postponed based on intergovernmental agreements. Check with your local financial authorities to obtain the deadlines for your jurisdiction.

Obligations of Foreign Financial Institutions

There are three categories of obligations:

- Identification
- Reporting and
- Withholding

About Identification

1. What is to identify?

All accounts held by U.S. taxpayers (U.S. persons and U.S. entities) and by foreign entities in which U.S. taxpayers hold a substantial ownership interest.

2. Are there specific identification criteria?

Yes, the basic criterion for identifying an account is that its' beneficiary (institution's customer) is a U.S. citizen or resident, has a U.S. mailing or resident address, or has an unambiguous U.S. place of birth.

3. How to identify U.S. accounts?

- By electronic search.
- For high value accounts, by electronic search and paper search.

4. Can the electronic search be done by a third party service provider?

Yes, but the FATCA obligations shall remain the responsibility of the Reporting Financial Institution.

5. When do the FFIs have to conduct the search and identification?

- All participating and reporting FFIs, for existing accounts (accounts opened before January 1st 2013), search has to be conducted “now” and before December 31st.
- All participating and reporting FFIs, for new accounts (accounts opened after January 1st, 2014) each account has to be identified, as a FATCA reporting account, on account opening by implementing new account opening procedures similar to anti-money laundering (AML) know your customer (KYC) policies and requirements.
- However for many countries and jurisdictions the deadline has been postponed based on intergovernmental agreements.

About Reporting

1. What are the reporting obligations?

- For U.S. citizen or resident, and for each U.S. entity holding an account, the name, address and U.S. TIN (Tax Identification Number) has to be reported.
- For each U.S. person having a control in a foreign entity, the name, address and TIN has to be reported.

- For each foreign entity having one or more controlling persons being a U.S. person, the name, address and TIN of the foreign entity and the name, address and TIN of each controlling U.S. person has to be reported.
 - For of the above categories, the account number or functional equivalent has to be included.
 - For each account, the account balance or value and other financial information have to be included.
2. Who has to report?
- All participating and reporting Foreign Financial Institutions have to report to the corresponding authorities (IRS or the local competent tax authority)
3. When?
- Direct participating FFIs before **March 31st, 2015**.
 - FFIs covered by a reciprocal Intergovernmental Agreement before **September 30th, 2015**.
4. To whom?
- Direct participating FFIs covered or not by a non-reciprocal Intergovernmental Agreement report to the Internal Revenue Service (IRS).
 - Participating FFIs covered by a reciprocal Intergovernmental Agreement report to the local competent tax authority.

About Withholding

1. What is withholding?

Withholding is a 30% tax on certain payments of U.S. source income when paid to non-participating FFIs and account holders who are unwilling to provide the required information.

2. Who has to withhold?

Responsible for withholding are:

- All U.S. withholding agents and
- All participating FFIs.

3. When does the withholding process begin?

Withholding process begins:

- For existing accounts (accounts opened before January 1st, 2013) of Prima Facie¹ FFIs by **December 31st, 2014**.
- For existing High Value accounts for individuals by **December 31st, 2014**.
- For existing accounts of individuals other than High Value accounts and of entities other than Prima Facie FFIs by **December 31st, 2015**.

¹ Prima Facie (Latin) means first encounter or at first sight. The literal translation would be "at first face" or "at first appearance". The term prima facie is used in modern legal English (including both Civil Law and Criminal Law) to signify that upon initial examination, sufficient corroborating evidence appears to exist to support a case. In common law jurisdictions, prima facie denotes evidence that, unless rebutted, would be sufficient to prove a particular proposition or fact.

Obligations of U.S. Financial Institutions

There are three categories of obligations:

- Withholding,
- Identification and
- Reporting in case of an Intergovernmental Agreement.

About Withholding

All U.S. Financial Institutions and generally foreign branches of U.S. FIs are withholding agents.

About Identification

1. What is to identify?

All accounts held by taxpayers of a country which signed with the Government of the USA a reciprocal Intergovernmental Agreement.

2. Are there specific identification criteria?

Yes, the basic criterion of identifying an account is that its' beneficiary (institution's customer) is not a U.S. citizen or resident as defined from its identification documents, or has a mailing or resident address in a country outside U.S. or has an unambiguous place of birth in a country outside U.S.

3. How to identify these accounts?

Mainly by electronic record search.

4. Can the electronic record search be done by a third party service provider?

Yes, but the FATCA obligations shall remain the responsibility of the Reporting U.S. FI.

5. When does the U.S. FIs have to conduct the electronic record search?

- For existing accounts (accounts opened before January 1st 2013), search has to be conducted "now" and before December 31st 2014.
- For new accounts (accounts opened after January 1st, 2014), search has to be conducted before September 30th, 2015.

About Reporting

▪ What are the reporting obligations?

- The name, address and Tax Identification Number for each account held by an IGA citizen or resident, or entity.
- The account number or functional equivalent.
- The accounts balance or value and other financial information.

- **Who has to report?**
All U.S. FIs have the obligation to report.

- **When?**
 - For calendar year 2014 before September 30th, 2015
 - For each subsequent calendar year, nine months after the end of the year (December 31st)

- **To whom?**
All U.S. FIs report to the U.S. Internal Revenue Service.

FATCA Registration Process

The Form 8957 for FATCA Registration for participating and reporting FFIs to obtain a Global Intermediary Identification Number (GIIN) is open from August 19th, 2013 up to May 5th, 2014 to ensure inclusion in the June 2nd, 2014 IRS FFI list, list to be updated on a monthly basis.

On October 29th, 2013, IRS issued additional guidance regarding FATCA including a draft of the agreement FFI, other than those under an IGA Model 1, will enter into with IRS. The FFI agreement is finalized by December 31st, 2013.

The IRS published on June 2nd, 2014 the first list of all FFI's and branches that obtained a GIIN and are in approved status. The list concerns all FFI's in countries that signed an IGA, in countries that reached an agreement in substance and all Participating FFI's. For example, 212 Chinese banks are registered, and although IGA discussions with Russia are frozen, 515 Russian Federation banks registered.

For more information, please visit: <http://apps.irs.gov/app/fatcaFfiList/flu.jsf>

About Intergovernmental Agreements (IGA)

The US Department of the Treasury offers the possibility for countries to sign an IGA in order to facilitate the exchange of FATCA information and to reduce burdens on financial institutions and streamline the reporting process.

There are three types of IGA:

- IGA Model 1A: reciprocal automatic exchange of information between tax authorities
- IGA Model 1B: automatic exchange of information
- IGA Model 2: direct reporting by participating FFIs to the US Internal Revenue service.

IGA Model 1A: reciprocal automatic exchange of information between tax authorities

- The partner jurisdiction agrees to report to the IRS specified information about the U.S. accounts maintained by all relevant FFIs located in the jurisdiction.
- FFIs identify U.S. accounts pursuant to due diligence rules contained in Annex I of the IGA.
- FFIs report specified information about their U.S. accounts to the partner jurisdiction.
- The partner jurisdiction, in turn, reports such information to the IRS on an automatic basis.
- The exchange of information under a Model 1 IGA may be on a reciprocal or nonreciprocal basis.
- **Data Safeguarding:** Jurisdictions signing a reciprocal Model 1A IGA with the United States will be asked to complete an International Data Safeguards & Infrastructure Workbook. The information in this workbook will facilitate the evaluation of safeguards and provisions regarding confidentiality, use, and infrastructure effectiveness prior to exchanging information.
- The United States' response to data safeguards is included in this workbook.

[See Data Safeguarding](#)

IGA Model 1B: automatic exchange of information

- The partner jurisdiction agrees to direct and enable all relevant FFIs located in the jurisdiction to report specified information about their U.S. accounts directly to the IRS.
- FFIs identify U.S. accounts pursuant to due diligence rules contained in Annex I of the IGA.
- FFIs report specified information about their U.S. accounts to the IRS.
- FFIs also report to the IRS aggregate information with respect to holders of pre-existing accounts who do not consent to have their account information reported, on the basis of which the IRS may make a “group request” to the partner jurisdiction for more specific information.

IGA Model 2: direct reporting by participating FFIs to the US Internal Revenue service.

- Each FFI under IGA Model 2 agrees to reports directly to IRS.
- FFIs identify U.S. accounts pursuant to due diligence rules contained in Annex I of the IGA.
- FFIs report specified information about their U.S. accounts to the IRS.
- FFIs also report to the IRS aggregate information with respect to holders of pre-existing accounts who do not consent to have their account information reported, on the basis of which the IRS may make a “group request” to the FFI for more specific information.
- U.S. IRS Revenue [Procedure 2014-38](#) provides an updated IRS - FFI Agreement for Participating FFIs and Reporting Model 2 FFIs.

Additional information

U.S. Department of Treasury

Foreign Account Tax Compliance Act (FATCA)

- [Foreign Account Tax Compliance Act Home Page](#) (start here)
- [Resource Center](#)
- [FATCA - Current Alerts and Other News](#)
- [FATCA Information for Governments](#)
- [FATCA Information for Foreign Financial Institutions and Entities](#)

CubelIQ Offering

CubelIQ is an IT company specialized in Business Process Re-engineering focused in the Banking, financial and Electronic Transaction Processing Market. Our leading-edge software solutions can transform business processes in a more efficient, more productive and cost saving way.

CubelIQ is offering a full Anti-Money Laundering system, covering all U.S., E.U. and international AML legislation and regulations, including the following functional modules:

1. Detection, analysis (rules and peering) and reporting on suspicious transaction activity.
2. Enhanced due diligence, customer profiling (risk item, risk scores, risk models & classes, customer categories) and Know Your Customer - KYC.
3. Names filtering against Specially Designated Nationals lists.
4. *Names filtering against National / Regional / Private - NRP Black lists.*
5. Customer Due Diligent on Boarding (on account opening).
6. CIF (Customer Information File) filtering and Violation Review.
7. Client Interfaces (Real time names filtering interface) and Violation Review.
8. Case and Case Routing Management, Rules, Peering and Reporting.
9. *Reporting Localization Service.*
10. SDN List provision (37 lists can be provided including optimized OFAC/EU/UN, PEP and FEP).
11. Legal reporting (for U.S. institutions).
12. *Legal & Audit Management (for non-U.S. institutions).*
13. *F.I.U. and Local AML Authorities Reporting (for non-U.S. institutions).*
14. Personnel AML Training Management.
15. *FATCA Reporting.*
16. Web Browser User Interface.

For more information please visit www.amlinfo.eu

