FATCA Compliance Deadlines for December 2014

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What Managers of U.S. and Non-U.S. Investment Funds Should Do Today

FATCA[1] went into effect on July 1, 2014 and will be phased in through January 1, 2017. During that period, varying compliance deadlines apply to different types of U.S. and foreign funds. **Several important deadlines will occur in December 2014.** The following checklists provide investment fund managers with a guide for navigating the FATCA compliance obligations that may apply during December 2014 to the U.S. and foreign investment funds they manage.

At a minimum, investment fund managers should review these recommended action items **immediately** to ensure that the funds they manage are FATCA-compliant on January 1, 2015.

U.S. Funds

1. Review existing investor rosters and identify all existing non-U.S. investors.
2. Obtain a valid IRS Form W-8 from all non-U.S. investors that are **entities**.
    - These forms should be the new, post-FATCA versions of the applicable IRS Form W-8 (W-8BEN-E, W-8ECI, W-8EXP or W-8IMY).
    - Each Form W-8 should include:
        - Certification of the non-U.S. entity's FATCA classification;
        - The non-U.S. entity's GIIN (*i.e.*, FATCA I.D.), if applicable; and
        - Additional, FATCA-related certifications, if applicable.
3. Verify each GIIN on the IRS website.
4. Be prepared to collect a valid IRS Form W-8 or Form W-9 from all new foreign and U.S. investors, respectively, as part of the new investor on-boarding process.
5. Be prepared to withhold U.S. tax from payments (including allocations) of U.S.-source income to non-U.S. entity investors whose FATCA compliance is not certified and/or verified as of January 1, 2015.

Non-U.S. Funds

1. Determine the fund's FATCA classification and whether FATCA registration is required.
2. If registration is required, register the fund (or its sponsor, if applicable[2]) with the IRS by **December 22, 2014**.
    - To prepare for registration, a non-U.S. fund should determine the following:
        - Is the fund a member of an "expanded affiliated group"?[3]
        - If so, will the fund act as the "lead" member of such group?
        - Who will act as the fund's "responsible officer"[4] or otherwise be responsible for the entity's FATCA compliance?
        - What action must the fund undertake to appoint and authorize such person to act in that capacity on behalf of the

entity?

3. Complete a new IRS Form W-8 and provide the updated form to all withholding agents (brokers, custodians, banks, etc.) by **December 31, 2014**.

    - The fund should use the new, post-FATCA versions of the applicable IRS Form W-8 (W-8BEN-E, W-8ECI, W-8EXP or W-8IMY).
    - Each updated Form W-8 should include:
        - Certification of the fund's FATCA classification;
        - The fund's GIIN (*i.e.*, FATCA I.D.), if applicable; and
        - Additional, FATCA-related certifications, if applicable.

4. Review existing investor rosters and identify all non-U.S. entity investors.
5. Obtain a valid IRS Form W-8 from all existing non-U.S. investors that are **entities** (see the additional notes set forth in the sub-bullets under Item 2 in the "U.S. Entities" section, above).
6. Verify each GIIN on the IRS website.
7. Be prepared to collect a valid IRS Form W-8 or Form W-9 from all new foreign and U.S. investors, respectively, as part of the new investor on-boarding process.

Important Note

Investment funds that are subject to FATCA will have additional, more robust compliance obligations going forward. The foregoing lists are only intended to highlight what should be done in December 2014 to meet the imminent deadlines. Additional Foley Advisers will be published in 2015 to address the additional compliance obligations that may apply in 2015 and beyond.

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1. FATCA is a new U.S. tax regime designed to combat offshore tax evasion by U.S. taxpayers. In essence, FATCA is an information-gathering tool. Under the threat of a 30 percent U.S. withholding tax for non-compliance, FATCA requires certain foreign entities to disclose general information about their direct and indirect owners and, in the case of U.S. owners, such U.S. owners' identities and specific information about their respective foreign investments and income. Furthermore, under the growing network of international agreements and local tax law relating to FATCA, non-U.S. entities may have compliance obligations even if they do not receive payments that are subject to FATCA withholding or have information reporting requirements with respect to their investors. In addition, U.S. entities with foreign owners will be required to identify and document such foreign owners and, in certain cases, act as withholding agents with respect to certain types of U.S.-source income paid (or allocated) to foreign owners.↩

2. In certain circumstances, a foreign entity may be a "sponsored" entity, in which case another entity (the "sponsor") registers with the IRS as a sponsoring entity and, in that capacity, handles FATCA compliance for the entities which it sponsors.↩

3. An "expanded affiliated group" is a group of entities linked by chains of more than 50 percent direct ownership. In the case of a corporation, the 50 percent ownership threshold is determined by measuring the percentage ownership of the aggregate voting rights and value of the corporation's stock. In the case of non-corporate entities, the 50 percent ownership threshold is determined by measuring the percentage ownership of the value of beneficial interests in such entity.↩

4. A "responsible officer" is a natural person who is authorized to register the entity with the IRS, administer the entity's FATCA compliance program and correspond with taxing authorities regarding the entity's FATCA compliance.↩

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