

## FATCA: Crunch Time (April 25th Deadline is Imminent)

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Every foreign entity must take steps **immediately** to determine whether FATCA will apply to it and, if so, whether FATCA registration will be required by April 25, 2014.

FATCA<sup>i</sup> will go into effect on July 1, 2014. Foreign entities that must be FATCA-compliant by July 1, 2014 must register with the IRS by April 25, 2014. Beginning on July 1, 2014, non-compliant foreign entities that receive payments or allocations of certain U.S.-source income generally will be subject to a new 30 percent U.S. withholding tax on such income.

Many types of foreign entities (i) are subject to deferred registration deadlines, (ii) are not subject to registration requirements, but have other compliance obligations under FATCA, or (iii) are exempt from FATCA altogether. At a minimum, **every** foreign entity should undertake a self-analysis **now** to determine (1) its FATCA classification, (2) whether it must register with the IRS and (3) if required, whether registration must be completed by April 25, 2014 or a later date.<sup>ii</sup>

For those foreign entities that must register with the IRS, additional preliminary questions include:

- Will the foreign entity be sponsored by another entity for purposes of FATCA?<sup>iii</sup>
- Is the foreign entity a member of an “expanded affiliated group”?<sup>iv</sup>
- If so, will the foreign entity act as the “lead” member of such group?
- Who will act as the foreign entity’s “responsible officer”<sup>v</sup> or otherwise be responsible for the entity’s FATCA compliance?
- What action must the foreign entity undertake to appoint and authorize such person to act in that capacity on behalf of the entity?

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i. 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 “encourages” 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.<sup>↵</sup>

ii. FATCA will be phased-in between July 1, 2014 and January 1, 2017. During that period, varying registration and compliance deadlines will apply to different types of foreign entities. Notwithstanding the possibility that the registration deadline for a particular foreign entity may be later than April 25, 2014, each foreign entity should undertake its preliminary FATCA classification analysis before April 25, 2014 in order to know whether registration will be required and, if so, whether it must be completed by April 25, 2014, or some later date. In any case, entities that have undertaken a self-analysis and determined that FATCA registration will be required may consider completing their respective registrations by April 25, 2014.<sup>↵</sup>

iii. 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 its sponsored entities’ FATCA compliance.<sup>↵</sup>

iv. 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.<sup>↵</sup>

v. A “responsible officer” is a natural person appointed as an officer of the entity 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.<sup>43</sup>

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