

AMERICAN BANKERS ASSOCIATION BRIEFING/WEBCAST

FATCA 101: Basics for U.S. Financial Institutions (USFIs) and Foreign Financial Institutions (FFIs)

Wednesday, June 25, 2014 ▪ 2:00 – 3:00 p.m. ET

Post-program Questions and Answers

QUESTION	ANSWER
If we have a certified W-9 (old form) for an existing client and they open a new account, are we required to obtain an updated W-9?	Yes. The Form W-9 is valid indefinitely or until there is a substantial change in circumstances. Thus, if you know or should have known of a change in circumstances of any of the accounts for which you have a W9 on file, you must have them provide an updated form (which would be the new form).
If a foreign citizen has a TIN and so is receiving a 1042s do we have to prove foreign citizenship?	No
Does this apply to consumer wires only or does it apply to commercial as well?	Applies to all wires
Foreign remittances. If the transfer is going to a non-compliant entity, is the 30% withholding to be shown as a deduction on the disclosures provided to the customer?	The 30% withholding is a tax.
If I am a US-only bank, do I need to worry about Foreign Financial Institutions (as defined in the regs) receiving payments from my bank as well as foreign individuals?	You need to worry about FFIs. Your FATCA obligations do not include reporting/withholding on foreign individual. Chapter 3 withholding /reporting will continue to apply for foreign individuals
For FATCA withholding when the intermediary is non-compliant, if the ultimate beneficial owner has a GIIN is withholding required?	Yes
The W8-BEN-E is dated February 2014, does that mean it has been effective since February 2014 and we should have utilized this form since then? Do we need to go back and have the form re-signed by these foreign entities?	No. You do not need to go back and require the use of the Form. You will need to use the new BEN-E going forward. The form is intended to help you make FATCA-compliance determinations.
Do the deadlines apply to foreign ‘individuals’ as well?	No. I assume you mean the July 1 deadline for USFIs
If we only have foreign individual account holders, we only need to	You should be using the new W8 BEN going forward

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start using W-8BEN after January 1, 2016?	
As a U.S. savings bank without any foreign branches, if we open a savings account (which pays monthly interest) for a resident of Australia and get the normal completed W-8BEN from the individual, does FATCA affect our bank?	No – but look at the wire transfer rules
Will reciprocal reporting be handled by the IRS?	Yes
Tax Exempt, would this include non-profit?	Yes
We have a U.S. entity, paying individuals for services in a foreign country. Example Manufacturer in US, has foreign country employees making products, we pay them...is this FATCA applicable?	No. FATCA does not impact payment for services.
We listened to an ICBA webinar last week. The speaker announced that if we are sending a wire transfer to a non-compliant FFI (as determined by checking the IRS website) then WE would have to withhold 30% prior to sending the wire transfer. He also said it didn't matter if it was a consumer sending money to a relative OR a business paying a bill to a foreign company. It all boils down to the recipient bank. Please comment on this topic.	There are certain factors that would determine whether a U.S. bank making wire transfer to a foreign entity is required to withhold. Please see the ABA 2-pager on wire transfer.
Not only will we have to get a W-8BEN E for any FFI we are wiring a withholdable payment too?	You will have to get a W8 BEN-E where there is a determination that you are required to hold (assuming you are making a withholdable payment). See ABA 2-pager on wire transfers
If a FI does not allow for any foreign entity accounts to be opened, is it still required to register for a FFI agreement?	USFI does not need to register, unless it is a member of an EAG and is registering as the lead FI for the EAG
Can you provide authorities for slide 12, re: preexisting obligations?	The proper date is July 1, 2016. Se sec. 1.1471-2T(a)(4)(ii)

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Please restate EXACTLY what a U.S. Bank needs to do.	See ABA "Simple FATCA Flow Chart for USFIs"
Please define limited FFI and how we treat them since they did not provide us with the GIIN number.	Please see presentation slides
How do you define 'certain trusts' on slide 20?	A common trust fund as defined in sec 584(a) of the Code and a trust that is exempt from tax under section 654(c) or described in sec. 4947(a).
We have wires going overseas for a US Trust organization which aggregates funds for its clients. What are our FATCA responsibilities?	
Can you explain the requirements a financial institution that has no foreign entities, branches, etc.? What should these banks look for in existing relationships and new relationships?	See ABA "Simple FATCA Flow Chart for USFIs"
For the reciprocal iGA models, will the U.S. Bank be obligated to report, even if we do not hold accounts for taxpayers in that country?	Unclear at this time
I'd like to confirm that sole-proprietor is considered individual and W-8 BEN form should be used	Yes
I understand that for wires remit to beneficiaries at foreign countries that derived from dividends and interest payments, then bank needs to withhold 30%, how are we going to submit the 30% payments to IRS?	In the manner described in reg. sec. 1.6302-2(a) or by electronic transfer as prescribed in reg. sec. 1.6302-1(a)
Will our current W8 or W8 BEN satisfy the requirement?	For individuals, you should start using the new form
For an individual that has not submitted a valid W-8BEN in 2014 is the withholding rate 28% or 30%?	Backup withholding rate is 28%

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Planning an audit for FATCA processes coming up, any specific issues to be looking out for or any advice on this?	See ABA “Simple FATCA Flow Chart for USFIs”
Where on the IRS website do you verify a GIIN?	IRS will provide a list on IRS.gov
Can you give some examples of withholdable payments?	Dividends and interest payments by US companies
What is the obligation of the PFFI to report on his foreign financial institution’s clients? Must he collect and validate GIIN FATCA?	Yes. FFI’s can also be withholding agents –and thus, must collect the form w8 BEN-E and verify GIINs
Will you please give us a SIMPLE definition of a withholdable payment?	Generally includes passive payments from US sources
Is the foreign branch of USFI under FATCA?	Not sure what this question is asking, but see second to last answer
A customer of ours wires funds to individuals overseas and receives other funds by wire as well. What do FATCA rules say we must do?	Please see ABA 2-pager on wire transfers
If we have a foreign citizen with a certificate of deposit and we wire the redemption—which includes earned interest—would we need to withhold in that situation?	Please see ABA 2-pager on wire transfers
We are not an FFI but do have several a/c’s with Non-resident Aliens as beneficial owners of which we have current W-8BEN’s. I have read that it is suggested we distribute the new W8-BEN form to our existing customers.	Not sure about that – However, they should be using the new form after the expiration of the old one.
Do existing non-US customers have to provide us with the new W-8 BEN? What is the deadline to do so?	Yes - after the expiration of the old one.

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How does this affect vendor payments?	Vendor payments are generally not impacted by FATCA
Does entity include individuals (including NRA and customers with ITIN), or just businesses?	Does not include individuals
Just want to clarify what was said about checking GIINS after every crediting of interest to an account, is that what you meant to say?	You have to verify GIIN every year. You can't check GIIN after every crediting as the list is updated every year by the IRS
e.g. Barclays Hoco is in UK and the Bank is sending payment to Barclay HK. In this case, should we collect w-8 BEN-E from the HoCo or Barclays HK or both?	
Can you clarify Trusts and Insurance companies?	Unclear question
In what form do we report us substantial ownership in NFFE?	The same form you report your U.S. reportable accounts
Can you please elaborate on slide seven as to when an investment entity constitutes an FFI? Would a US based trust with a foreign grantor qualify?	See reg. sec. 1.1471-5 (e)(4)
If a US Non-depository Trust Company is sending money to a FFI for a US citizen, do we need to worry about FATCA?	Yes. See the ABA 2-pager on wire transfers
FATCA is only concerned with the type of payments, right? We would need to withhold from individuals as well as from foreign financial entities?	No withholding for individuals under FATCA that have provided proper documentation– just foreign entities that meet the definition of FFI/NFFE that are non-participating
Does interest paid on sanctions-blocked funds qualify as “withholdable” under FATCA?	Unclear question

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How can we validate a ‘certified deemed compliant’ status?	You don’t need to do so unless you have reason to believe a form is incorrect
Where do we find the most recent W8BEN and W8BEN-E? What dates were these released?	IRS.gov (forms and pub). Both were issued early this year
What types of FFIs will have to report on FATCA withholding on IRS Form 1042-S?	Generally any FFI that makes payments of chapter 4 reportable payments
So all business accounts need a W9	All U.S accounts need a W9
Is Fran stating that all entities should have a W9 on file at the FI?	Yes – all U.S. entities
For a USFI that only has foreign customers who are not considered a FFI besides obtaining the w-8 forms and only withholding wires if there is knowledge that the money is FDAP include, what else is needed?	See ABA “Simple FATCA Flow Chart for USFIs”
Do payments under a letter of credit or a collection (interest, payments, etc.) qualify as withholdable under FATCA?	Generally, Yes – if paid by or on behalf of a U.S. obligor
Before any wire transfer can be processed for our client, must the U.S. bank verify with the IRS website that the GIIN for foreign bank is valid and current?	Not all wire transfers. See ABA 2-pager on wire transfers
Does FATCA apply to foreign ‘individuals’ or ‘entities’ only?	US withholding agents’ obligations under FATCA relates to foreign entities.
We are a USFI and are sending a wire to a foreign FI that has a GIIN. The beneficiary of the wire is a foreign partnership we have to have a GIIN for the FFI and the partnership FFI?	Yes, if the payment is a withholdable payment.

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Back to the foreign wires conversation, say again under what circumstances would a U.S. bank with no foreign branches need to watch foreign wires?	Please see ABA 2-pager on wire transfers
If we pay FADAP income to a foreign branch of a USFI, do we obtain a w9 form from the USFI here in the US or should we be getting a w9 or w8 from the actual foreign branch? We are under the understanding that we would get the W9 from the USFI in the US provided it is a direct branch of the USFI.	Generally, the foreign branch will provide a Form W-9. If the branch is a QI and is located outside an IGA jurisdiction, you would need to collect a Form W-8IMY for FATCA purposes
When does the W-8BEN take effect for new customers?	You should start using it now for new customers.

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