

Implications and Insights for Non-Financial Groups



Introduction

The Foreign Account Tax Compliance Act (FATCA) is a new information reporting regime from the US with hefty penalties for non-compliance.

Aimed at identifying US tax evaders, FATCA obligations are triggered when certain US source payments are made to foreign payees. Although FATCA's primary impact is on foreign financial institutions (FFIs), non-financial groups and entities are also subject to FATCA in their role as a US payor/withholding agent or as a foreign payee/recipient of payments subject to FATCA. As such, FATCA will impose significant compliance requirements on non-financial groups. For instance, FATCA requires foreign non-financial payees to disclose their involvement with substantial US investors (i.e., foreign payees' that have substantial US owners or accountholders). The disclosures are collected by the payors, who,

as withholding agents, must report information to the US Internal Revenue Service (IRS) or, in cases where insufficient disclosures are made, withhold a 30 percent tax from the payment. Non-compliant withholding agents are secondarily liable for the 30 percent tax.

Challenges and Implications

FATCA's obligations are phased in, with withholding and reporting starting on 1 July 2014 for payments on new obligations (i.e., payments to new vendors, as well as payments on new contracts with pre-existing vendors and any pre-existing obligations that are amended). Therefore, withholding agents will need an effective system in place for new vendor and new contract intake, payment and payee classification, and reporting.

Timelines are tight, so prioritization of steps is vital. Immediate actions include:

- Identifying in-scope foreign group entities (e.g., entities that currently provide Forms W-8BEN to, and receive Forms 1042-S from, related or unrelated payors) for FATCA purposes (e.g., Excepted NFFEs, FFIs).
- Classifying payments for FATCA purposes (e.g., withholdable payments, non-financial payments).
- Identifying and classifying relevant counter-parties/payees for FATCA purposes.
- Communicating and implementing collection of FATCA information and necessary documentation from counterparty payees and investors.
- Identifying and closing gaps in current (§1441) US withholding regime processes, since FATCA compliance leverages many of the same operating mechanisms.
- Updating written withholding procedures to address FATCA issues.
- Creating reporting mechanisms for US ownership disclosures received.
- Reviewing and updating third party agreements (e.g., transfer agent services, loan facilities) to address FATCA-related risks.
- Analyzing reporting capabilities and systems and expanding data systems so 1042/1042-S forms capture required FATCA information.

How KPMG Can Help

We recognize that FATCA is one of several regulatory requirements being addressed by many multinationals. KPMG has developed a flexible methodology to address the complexities of the FATCA regime in a pragmatic manner. Our methodology is tailored to your compliance and business needs.

Our tailored service offerings include:

- **Impact Assessment Remediation** – Conduct detailed analysis of FATCA's potential impact on your payments,

entities, customers, suppliers, systems and governance. KPMG can also assist with remediation of exposure items identified during the impact assessment process.

- **Target State Design** – Help clients understand alternatives to address material FATCA impacts and select a sustainable operating model.
- **Implementation** – Facilitate system and documentation readiness, project manage technology, process and governance changes.
- **Monitor and Sustain** – Evaluate the effectiveness of FATCA and global information reporting compliance programs and identify opportunities to enhance efficiencies.

Why KPMG

Solid understanding of a company's business

KPMG's professionals bring deep client and industry knowledge to FATCA engagements, providing the platform for efficient and time and cost-saving integration projects.

Established methodology and process

KPMG's methodologies allow clients to measure, design and implement changes, as well as help organizations with the monitoring of such changes, reducing the chance for costly mistakes that can occur with new, complex cross-functional initiatives.

Combined, global, cross-functional approach

KPMG member firms' multidisciplinary, sequenced approach combines relevant subject matter experience in tax, IT systems, and business strategy and project management services to facilitate a coordinated FATCA integration.

Deep understanding of the FATCA regulations

KPMG's leading FATCA professionals, including former IRS professionals, are in active dialogue with current rule drafters, helping identify and address technical complexities while supporting effective compliance.

Global network of FATCA professionals

KPMG has a long-established global information reporting network, supported by “academy-trained” professionals, to deliver consistent global FATCA services, project management and methodologies.

Technology and tools

KPMG’s FATCA methodology applies technology and tools including surveys, analysis and design, traceability matrices

reports, remediation and project management, providing efficiency and powerful information throughout the program. Our methodology also offers a detailed audit trail to assist you during internal and external audits, as well as regulatory examinations.

Simple approaches

KPMG’s practice cuts through complexity to help you identify what needs to be done, formulate a plan, and help implement that plan.



Contact us

KPMG is a leading services provider across the financial and non-financial industry arenas. Our FATCA practice has put in place an experienced, multidisciplinary team of tax and advisory professionals who can help you meet your FATCA obligations with minimal disruption to your business. If you would like to discuss any aspect of FATCA, please contact:

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