

KPMG AEOI Updates & Tracking Service FATCA Alert

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Country: United Arab Emirates

Regime: FATCA

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United Arab Emirates: Issued New FATCA Regulations

On 14 December 2022, the Abu Dhabi Global Market (ADGM) issued FATCA Regulations 2022. The FATCA Regulations were adopted in order to give effect to Cabinet Resolution No. 63 of 2022, which requires the exchange of information between the UAE and the US.

The sections in the Regulations are as follows:

PART 1: Introduction

- Definitions (Section 1): This section defines all references in the FATCA Regulations, including ADGM, ADGM Court, Cabinet Resolution, Designated Officer, Government, Intergovernmental Agreement (IGA), Regulatory Authority, and UAE.
- Applications (Section 2): This section includes the following information:
 - The Cabinet Resolution is applicable in the ADGM in accordance with these regulations.
 - Any Account Holder, Controlling Person, and Financial Institution (FIs) subject to the supervision of the Regulatory Authority should comply with the Cabinet Resolution and these Regulations.
 - Any contravention of the Cabinet Resolution will be considered as a contravention of these Regulations.
- Status of Competent Authority publications and material (Section 3): This section includes information related to use of explanatory material or guidance issued by the Competent Authority to comply with these regulations.

PART 2: Role and Powers of the Regulatory Authority

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- Role and powers of the Regulatory Authority (Section 4): The Regulatory Authority for the ADGM has functions and powers as conferred and expressed by these Regulations, Cabinet Resolution, the instructions issued by ADGM, or by the Competent Authority or Government from time to time. Further, the Regulatory Authority can issue guidance and delegate its duties and powers under these Regulations or the Cabinet Resolution.
- Powers of inspection and investigation (Section 5): The Regulatory Authority may:
 - Require any Account Holder, Controlling Person or FI to give all records, information, explanations and particulars that the Regulatory Authority may require in connection with the administration or enforcement of these Regulations;
 - Request accounting records and all other records held in connection with the information or certifications given to an FI;
 - Appoint Designated Officers to assist in inspections being performed at the premises of FI;
 - Require an FI to produce a report or appoint a skilled person to produce the report;
 - Initiate an investigation in relation to an FI and sections 205 to 215 and section 217 of the Financial Services and Markets Regulations 2015 will be applicable in relation to requiring a report or appointing a skilled person to produce a report.

PART 3: Reporting and Record Keeping

- Collecting and reporting information (Section 6): This section notes the following information:
 - In accordance with the Cabinet Resolution and these regulations, each Reporting Financial Institution (RFI) must collect and report all information.
 - To comply with the Cabinet Resolution and these regulations, each RFI should establish and implement appropriate systems and internal procedures.
- Record Keeping (Section 7): An UAE RFI should keep track of the steps that have been taken to perform due diligence procedures and measures to obtain those records. Further, the RFIs should retain the records under these Regulations for at least 6 years after the date it has been reported to Regulatory Authority.

PART 4: Penalties and contraventions

- Power to prescribe penalties and procedures (Section 8):
 - Penalties, administrative fees, and other sanctions can be prescribed by the Regulatory Authority in addition to the penalties given in the Cabinet Resolution.
 - Forms and additional procedures may be prescribed by Regulation Authority in relation to imposition and recovery of penalties, enforcement of actions, and any objection or right of appeal in respect of any penalties or administrative fees stipulated by the enforcement.
- Penalties, sanctions and appeal (Section 9): An Account Holder, Controlling Person, or FI will be considered to have committed a contravention of the Cabinet Resolution and these Regulations and will be liable to penalties and administrative sanctions set out in the Cabinet Resolution, if they have done any act or thing that was prohibited or if they have not done an act or thing that was required. Further, any appeal raised against any penalty or fee, or sanction imposed should be raised in accordance with the provisions of Cabinet Resolution.
- Directions to comply (Section 10): The Regulatory Authority, or its delegate, can provide a written notice to any Account Holder, Controlling Person, or FI that they consider to have contravened the Cabinet Resolution or these Regulations.
- Anti- Avoidance (Section 11): An RFI will remain subject to obligations under the Regulations even if RFI enters into an arrangement, or engages in practice, under which the main purpose is considered to be to avoid its obligations.

PART 5: Indemnity and effective date

- Indemnity (Section 11): Neither the Regulatory Authority, nor any Designated Officer, can be held liable for non-performance of any functions in connection with these Regulations.
- Effective Date (Section 12): These regulations are effective from the date of enactment.

The regulations came into force on 14 December 2022. Note that the FATCA Regulations apply specifically to the Abu Dhabi Global Market.

References: [FATCA Regulations](#) [PDF 228KB]

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