F.A.T.C.A. in a Nutshell: Questions and Answers to Tickle the Fancy of a Compliance Officer[1]©

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The following F.A.Q. provides a general overview of the Foreign Account Tax Compliance Act ("F.A.T.C.A."). It has been drafted from the perspective of a compliance officer at a bank.

1. What is F.A.T.C.A.?

F.A.T.C.A. is new legislation that was signed into law on March 18, 2010 with a delayed effective date. It adds a new chapter – Chapter 4 – Taxes to Enforce Reporting on Certain Foreign Accounts – to the Internal Revenue Code ("I.R.C.").

2. Why was F.A.T.C.A. passed?

After investigations by the U.S. Congress, a report on offshore tax evasion was issued. It was found that foreign banks helped U.S. taxpayers hide billions of dollars offshore to avoid paying taxes. Intricate structures were used to hide the identity of the ultimate taxpayer, including holding the financial account through nominee corporations. In response, F.A.T.C.A. was passed into law in order to force foreign banks to disclose U.S. account holders' information to the I.R.S. in order to curb offshore tax evasion.

3. How does F.A.T.C.A. achieve its goal?

F.A.T.C.A. achieves its goal by (i) requiring U.S. residents to report certain specified foreign financial assets (which include foreign financial accounts)[2] and (ii) imposing a withholding tax and reporting obligations on foreign financial institutions ("F.F.I.s") and certain non-financial foreign entities ("N.F.F.E.s"). This article focuses on the latter. More specifically, F.A.T.C.A. requires F.F.I.s to provide information to the I.R.S. regarding its U.S. accounts and N.F.F.E.s to provide information to the I.R.S. regarding its "substantial U.S. owners." If they fail to comply, a withholding tax is imposed on certain payments made to them.

4. What is the withholding tax?

The withholding tax is a 30% tax on "withholdable payments." F.A.T.C.A. also requires participating F.F.I.s ("P.F.F.I.s") to withhold on "passthru payments" made to nonparticipating F.F.I.s ("N.P.F.F.I.s") and recalcitrant account holders.

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[2] See Form 8938, *Statement of Specified Foreign Assets*, which is generally required to be filed annually with an individual's tax return beginning with their 2011 tax return.

5. <u>How does F.A.T.C.A. interrelate with other U.S. withholding regimes? Does it replace those withholding regimes?</u>

No, F.A.T.C.A. does not replace the existing U.S. withholding regimes. Instead, F.A.T.C.A. is a separate and additional withholding regime. However, the proposed regulations provide coordinating rules when a payment is subject to both F.A.T.C.A. and another withholding regime. In general, under these provisions, the withholding agent will be permitted to credit the F.A.T.C.A. tax withheld against its liability for any non-F.A.T.C.A. withholding tax due.

6. <u>What are withholdable payments?</u>

Subject to certain exceptions, a withholdable payment is any:

- Gross proceeds from the sale or other disposition of any property of a type which can produce interest and dividends from U.S. sources; and
- Payment of interest, dividends, rents, wages, premiums, annuities, compensations, remunerations, emoluments, and other and fixed determinable annual and periodical ("F.D.A.P.") income from U.S. sources.

Note that the definition of withholdable payment requires that the payment be from U.S. sources. Whether an item of income is U.S. source is determined by specific rules under the I.R.C. and applicable Treasury regulations. For example, dividends and interest are, sourced according to the residence of the payor.[3] Accordingly, dividends and interest paid by a U.S. corporation are U.S. source and dividends and interest paid by a foreign corporation are foreign source.

7. <u>What are "passthru payments"?</u>

A passthru payment is any withholdable payment or other payment to the extent that is attributable to a withholdable payment.

8. <u>What are "foreign passthru payments"?</u>

As noted above, passthru payments include any withholdable payment or "other payment" to the extent that is "attributable" to a withholdable payment. The second prong of the definition of passthru payments is what is referred to as "foreign passthru payments."

A payment made by a foreign entity on its debt or equity generally will be foreign source and thus will not be a withholdable payment and thus will not be subject to F.A.T.C.A. Thus, in order to prevent the use of "F.A.T.C.A. blockers," F.A.T.C.A. imposes a withholding tax on foreign passthru payments.

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[3] There are limited exceptions to this sourcing rule.

Although the proposed regulations refer to foreign passthru payments, it reserves on the issue and no withholding on such payments will be required until, at the earliest, January 1, 2017. However, under a prior notice (Notice 2011-34), the amount of a payment treated as a foreign passthru payment was to be determined by reference to the percentage of the entity's assets that constitute U.S. assets. This is illustrated in Example 4 under the next question and answer.

9. <u>What are some of the primary exceptions to F.A.T.C.A. withholding?</u>

In general, F.A.T.C.A. does not apply to:

- Foreign source income;
- Amounts effectively connected with a U.S. trade or business;
- Grandfathered obligations; and
- Short-term obligations.

In general, the proposed regulations define grandfathered obligations as those obligations that are outstanding on or before January 1, 2013 (a later announcement – Announcement 2012-42 – extended this deadline for certain obligations, as discussed below). For these purposes the term obligation means any legal agreement that produces or could produce a withholdable or foreign passthru payment other than:

- Instruments treated as equity for U.S. tax purposes;
- Instruments lacking a specified maturity date;
- Brokerage, custodial or other similar agreements to hold financial assets for the account of others; or
- Master agreements that merely set forth general and standard terms and conditions that are intended to apply to a series of transactions. For example, an I.S.D.A. Master Agreement, which provides boilerplate terms subject to a subsequent "confirmation" relating to a derivatives trade, would not constitute an "obligation" for purposes of this rule. Instead, each confirmation, which specifies the exact terms of a particular trade actually executed, would be the "obligation."

In general, the purpose of the limitations with respect to grandfathered obligations is to prevent the instrument from being F.A.T.C.A. exempt in perpetuity. For example, an equity interest in a corporation, if exempt from F.A.T.C.A., renders the corporation F.A.T.C.A. exempt and thus a means to F.A.T.C.A. abuse as the equity interest has no maturity date. Compare a debt obligation with a fixed maturity date, which at maturity will cease to exist.

Announcement 2012-42, released on October 24, 2012, expanded the definition of grandfathered obligations to include:

- Any obligation that produces or could produce a foreign passthru payment and that cannot produce a withholdable payment, provided that the obligation is outstanding as of the date that is six months after the date on which final regulations defining the term "foreign passthru payment" are finalized.

    - For example, assume a P.F.F.I.'s debt interest is held by a N.P.F.F.I. The P.F.F.I. holds U.S. source assets, but is not subject to F.A.T.C.A. withholding because it has entered into the F.F.I. Agreement with the I.R.S. The P.F.F.I.'s debt interest would produce a foreign source payment upon payment of interest. The payment would not be a withholdable payment as it is not from U.S. sources even though all or a portion of the underlying assets produce withholdable payments. In this manner, the N.P.F.F.I. could be said to have converted payments that would be subject to F.A.T.C.A withholding into exempt payments. Under this Announcement, until the definition of "foreign passthru payment" is defined, this debt instrument would be considered a grandfathered obligation even if issued after 2013. This provides relief while the I.R.S. works on a workable definition of foreign passthru payments.

- Any obligation that produces dividend equivalent payments, provided that the instrument is outstanding on the date that is six months after the date on which instruments of its type first become subject to such treatment.

    - Under Section 871(m) of the Internal Revenue Code, certain "dividend equivalent" payments are subject to a 30% non-F.A.T.C.A. withholding tax. Dividend equivalent payments are those payments that are contingent upon, or determined by reference to, U.S. source dividends.

    - Section 871(m) was passed to prevent the use of equity swaps and other derivatives to escape U.S. withholding tax on U.S. equity securities that pay U.S. source dividends if those securities were held directly. The source of payments on equity swaps that referenced U.S. source securities would, in general, be foreign source under prior law and thus not subject to U.S. withholding tax even if a dividend equivalent was paid.

    - In general, Section 871(m) applies to (i) certain specified derivatives immediately upon enactment of the statute and (ii) all other derivatives issued unless specifically exempted by regulations. However, the catch-all clause was promulgated with a delayed effective date. Proposed regulations were issued earlier this year addressing the types of derivatives subject to Section 871(m). The delayed effective date was most recently pushed back to January 1, 2014 by a recent I.R.S. announcement.

    - Accordingly, derivatives not subject to dividend equivalent withholding are also treated as grandfathered obligations and not subject to F.A.T.C.A. withholding, but only if issued during the period when the derivative was not be subject to dividend equivalent withholding plus a grace period of six months.

- Any obligation to make a payment with respect to, or to repay, collateral posted to secure obligations under a grandfathered notional principal contract.

    - This exception provides relief to collateral posted under notional principal contracts as many collateral arrangements typically do not have stated maturities. Thus, collateral posted on an equity swap issued in 2012 would be grandfathered and not subject to F.A.T.C.A. even if the collateral is posted after 2013.

Here are several examples.

- Example 1. XYZ Corp issues a 30-year instrument in the form of a "note" in 2012. It pays interest at 3.5% per annum. The note is treated as debt for U.S. tax purposes. The note would be considered a grandfathered obligation and thus not subject to F.A.T.C.A. withholding on payments of interest.

- Example 2. XYZ Corp issues a 200-year instrument in the form of a "note" in 2012. It pays 3.5% per annum in the form of "interest." Due to the long maturity date, however, it is treated as equity for U.S. tax purposes. Although the instrument has a stated maturity date, is in the form of a note, and makes payments in the form of "interest," it would not be a grandfathered obligation because it is treated as equity for U.S. tax purposes due its long maturity date. Thus payments made under the note would be subject to F.A.T.C.A. withholding.

- Example 3. XYZ Corp issues shares of stock. It has no maturity date. It is treated as equity for U.S. tax purposes. The shares of stock would not be a grandfathered obligation. It has no fixed maturity date and is treated as equity for U.S. tax purposes. Thus payments of dividends on the stock are subject to F.A.T.C.A. withholding.

- Example 4. P.F.F.I. owns 100% U.S. source assets (underlying assets). On January 1, 2014, P.F.F.I. issues a debt instrument to N.P.F.F.I. paying interest at x%. No definition of foreign passthru payment has been finalized under I.R.S. regulations. N.P.F.F.I. is not subject to F.A.T.C.A. withholding on interest payments made under the debt instrument of P.F.F.I. as the debt instrument is a grandfathered obligation because it was issued before the I.R.S. finalized the definition of foreign passthru payment. Note that if N.P.F.F.I. held the underlying assets directly, N.P.F.F.I. would be subject to F.A.T.C.A withholding.

10. <u>Who must withhold?</u>

The withholding obligation is imposed on withholding agents. Withholding agents are those persons who have control, receipt, custody, or payment of any withholdable payment. The term includes U.S financial institutions and P.F.F.I.s.

11. <u>What is an F.F.I.?</u>

An F.F.I. is a foreign entity that is a financial institution. For these purposes, a financial institution is any entity that:

- Accepts deposits in in the ordinary course of a banking or similar business;
- Holds the "financial assets" of others as a "substantial portion" of its business;
- Engages (or holds itself out as being engaged) primarily in the business of "investing, reinvesting or trading in securities, partnership interests, commodities," or interests in the above (hereinafter referred to as a "Foreign Investment Entity" or "F.I.E."); or
- Certain insurance companies that issues or is obligated to make payments with respect to financial accounts, which include certain cash value insurance contracts and annuity contracts.

F.F.I. is a very broad term. It includes foreign hedge funds, mutual funds and private equity funds, banks and brokerage firms, and certain insurance companies.

12. <u>What is a participating F.F.I.?</u>

A participating F.F.I. (P.F.F.I.) is an F.F.I. that enters into an F.F.I. agreement ("F.F.I. Agreement") with the I.R.S.

13. <u>What is a non-participating F.F.I.?</u>

A nonparticipating F.F.I. (N.P.F.F.I.) is an F.F.I. that does not enter into an F.F.I. Agreement with the I.R.S.

14. <u>What entities are excluded from the definition of F.F.I.?</u>

The proposed regulations provide that certain entities are excluded from the definition of "financial institution" ("Excluded Entities") and therefore are classified as N.F.F.E.s. Moreover, such entities will also be "excepted N.F.F.E.s" exempt from F.A.T.C.A. These entities include:

- Certain holding companies;
- Certain start-up companies;

- Non-financial entities liquidating or emerging from reorganization or bankruptcy;
- Hedging/financing centers of non-financial groups;
- Section 501(c)(3) entities.

Investment funds generally do not qualify for these exceptions.

15. What are deemed-compliant F.F.I.s?

Certain types of entities may be treated as "deemed-compliant F.F.I.s." These entities do not have to enter into F.F.I. Agreements in order to comply with F.A.T.C.A. There are three categories of deemed-compliant F.F.I.s under the proposed regulations: registered deemed-compliant F.F.I.s ("R.D.C. F.F.I.s"); certified deemed-compliant F.F.I.s ("C.D.C. F.F.I.s"); and owner-documented F.F.I.s. ("O.D. F.F.I.s"). These categories are very narrow and most F.F.I.s will not qualify for these exceptions.

R.D.C. F.F.I.s

R.D.C. F.F.I.s are generally those F.F.I.s that limit business to their country of incorporation or organization ("home country") and that do not hold U.S. accounts or otherwise properly withhold and report on its U.S. accounts. It must meet several requirements, be included in one of the categories listed below, and must register with the I.R.S. to declare its status and to attest that it meets certain procedural requirements. The categories are:

- Local F.F.I., which is a bank that is licensed in a country that is Financial Action Task Force[4] ("F.A.T.F.")-compliant at the time of registration and has virtually all of its business conducted with local residents of that country.

- Non-Reporting Member of a P.F.F.I Group ("Non-Reporting Member"), which is an F.F.I. that performs due diligence to identify U.S. accounts and either (i) transfers those accounts to an affiliate that is a P.F.F.I. or a U.S. institution or (ii) closes the accounts.

- Qualified Collective Investment Vehicle ("Q.C.I.V."), which limits holders of its accounts in excess of $50,000 to P.F.F.I.s, R.D.C. F.F.I.s, U.S. persons (other than a specified U.S. person), or exempt beneficial owners.

- Restricted Fund, which is, in general, an F.I.E. that limits the distribution of its securities in order to prevent U.S. ownership.

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4 The F.A.T.F. is an intergovernmental organization founded in 1989 that develops policies to combat money laundering and terrorism financing. Their website and recommendations can be found here: http://www.fatf-gafi.org/.

Certified Deemed-Compliant F.F.I.

C.D.C. F.F.I.s are those F.F.I.s that are listed below and certify their status as a C.D.C. F.F.I. to a withholding agent. A C.D.C. F.F.I. does not have to register with the I.R.S.

- Nonregistering Local Bank, which operates and is licensed solely as a bank in its home country and engages primarily in the business of making loans and taking deposits from unrelated retail customers. It cannot have assets in excess $175 million in assets on its balance sheet and if it is a member of an expanded affiliated group, the group cannot have assets in excess of $500 million on its consolidated or combined balance sheet.

- Retirement Fund, which is organized for the provision of retirement or pension benefits under the law of the country in which it is established or operates, provided it meets certain broad participation requirements for the sponsoring employer or if it has limited employee participation, the sponsoring employer is an operating business.

- Non-Profit Organization, which is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural or educational purposes and is exempt from local country tax on its income.

- An F.F.I. with only Low-Value Accounts, which means accounts capped at $50,000. Total assets are capped at $50 million.

An O.D. F.F.I. is treated as a deemed-compliant F.F.I. only with respect to payments received by and accounts held with a designated withholding agent. However, an O.D. F.F.I. cannot act as an intermediary. A designated withholding agent is a withholding agent that agrees to undertake certain due diligence and reporting requirements with respect to the O.D. F.F.I.

16. What are exempt beneficial owners?

Certain types of F.F.I.s are exempt beneficial owners and are exempt from F.A.T.C.A. tax for payments received as beneficial owners (but not as intermediaries). These entities include:

- Foreign governments and their political subdivisions and wholly owned instrumentalities an agencies;
- International organizations and their wholly owned instrumentalities and agencies;
- Foreign central banks of issue;
- Governments of U.S. possessions;
- Certain foreign retirement funds; and

- Certain foreign investment entities that are wholly owned by one or more other exempt beneficial owners.

17. What is an F.F.I. Agreement?

An F.F.I. can comply with F.A.T.C.A. by entering into an F.F.I. Agreement with the I.R.S. (such entity as noted above referred to as a participating F.F.I. or P.F.F.I.). The F.F.I. Agreement requires the P.F.F.I. to:

- Identify its U.S. accounts;
- Comply with verification and due diligence procedures with respect to identification of its U.S. accounts;
- Report to the Treasury on annual basis certain information with respect to its U.S. accounts;
- Provide any other information the I.R.S. may require;
- Obtain a waiver from U.S. account holders if the reporting information is prevented by foreign law or close the account; and
- Withhold the 30% tax on withholdable payments and passthru payments that it makes to "recalcitrant account holders" or to N.P.F.F.I.s.

18. What are the due diligence requirements to identify U.S. accounts?

F.A.T.C.A. requires P.F.F.I.s to identify U.S. accounts. To alleviate burdens with respect to cost of compliance, the proposed regulations distinguish between the diligence expected with respect to individual accounts and entity accounts and between preexisting accounts and new accounts.

Preexisting Individual Accounts

- Accounts with a balance or value that does not exceed $50,000 are exempt from review, unless the F.F.I. elects otherwise.
- Certain cash value insurance and annuity contracts held by individual account holders that are preexisting accounts with a value or balance of $250,000 or less are exempt from review, unless the F.F.I. elects otherwise.
- Accounts that are offshore obligations with a balance or value that exceeds $50,000 ($250,000 for a cash value insurance or annuity contract) but does not exceed $1,000,000 are subject only to review of electronically searchable data for indicia of U.S. status. For this purpose, U.S. indicia include: (1) identification of an account holder as a U.S. person; (2) a U.S. place of birth; (3) a U.S. address; (4) a U.S. telephone number; (5) standing instructions to transfer funds to an account maintained in the United States; (6) a

power of attorney or signatory authority granted to a person with a U.S. address; or (7) a U.S. “in-care-of” or “hold mail” address that is the sole address the F.F.I. has identified for the account holder. No further search of records or contact with the account holder is required unless U.S. indicia are found through the electronic search.

- Accounts with a balance that exceeds $1,000,000 are subject to review of electronic and non-electronic files for U.S. indicia, including an inquiry of the actual knowledge of any relationship manager associated with the account. To minimize burden, review of non-electronic files is limited to the current customer files and certain other documents, and is required only to the extent that the electronically searchable files do not contain sufficient information about the account holder.

<u>New Individual Accounts</u>

- For individual accounts opened after the effective date of an F.F.I.'s agreement, the F.F.I. will be required to review the information provided at the opening of the account, including identification and any documentation collected under A.M.L./K.Y.C. rules. If U.S. indicia are identified as part of that review, the F.F.I. must obtain additional documentation or treat the account as held by a recalcitrant account holder.

<u>Preexisting Entity Accounts</u>

- Preexisting entity accounts with account balances of $250,000 or less are exempt from review until the account balance exceeds $1,000,000.
- For remaining preexisting entity accounts, F.F.I.s can generally rely on A.M.L./K.Y.C. records and other existing account information to determine whether the entity is an F.F.I., is a U.S. person, is excepted from the requirement to document its substantial U.S. owners, or is a passive investment entity.
- In the case of preexisting accounts of passive investment entities with account balances that do not exceed $1,000,000, F.F.I.s may generally rely on information collected for A.M.L./K.Y.C. due diligence purposes to identify substantial U.S. owners.
- In the case of preexisting entity accounts of passive investment entities with account balances that exceed $1,000,000, F.F.I.s must obtain information regarding all substantial U.S. owners or a certification that the entity does not have substantial U.S. owners.

<u>New Entity Accounts</u>

- In general, F.F.I.s will be required to determine whether the entity has any substantial U.S. owners upon opening a new account, which is achieved by obtaining a certification from the account holder.

19. Are there specific forms that a P.F.F.I. may use to certify the status of its U.S. account holders?

Yes. Forms W-9, by which the owner certifies that he or she is a U.S. person, and W-8BEN by which a beneficial owner certifies that he or she is a foreign person, may be used to certify the status of its U.S. account holders.

20. What information must a P.F.F.I. report to the IRS?

The P.F.F.I. must report information to the I.R.S. annually with respect to its U.S. account holders and recalcitrant account holders.

For its U.S. account holders, a P.F.F.I. must report annually information that includes:

- The name, address and T.I.N. of the account holder and the substantial U.S. owner of the entity with respect to U.S. owned foreign entities;
- The account value as of the end of the year; and
- The payments made for such account during the year.

Alternatively, the P.F.F.I. may elect to report under existing Form 1099 reporting as if the P.F.F.I. were a U.S. entity and the account holder was a natural person and citizen of the U.S.

For recalcitrant account holders, the P.F.F.I. must report the aggregate number and value of said accounts. The P.F.F.I. must also specify the portion of said accounts that have "U.S. indicia."

21. What is a U.S. account?

A U.S. account is any "financial account" held by one or more "specified U.S. persons" or "U.S. owned foreign entities." However, depository accounts held by individuals with an aggregate balance or value of $50,000 or less are not treated as U.S. accounts.

22. What is a financial account?

A financial account means:

- Any depository account;
- Any custodial account; and

- Any equity or debt interest in an F.F.I., other than interests that are regularly traded on an established securities market.

23. Who is a specified U.S. person?

A specified U.S. person is any U.S. person, excluding:

- Corporations whose stock is regularly traded on an established securities market or members of the same expanded affiliated group;
- Tax-exempt entities, pension plans, and individual retirement plans;
- The U.S., any possession, state or political subdivision thereof, or any wholly owned agency or instrumentality thereof;
- Banks, real estate investment trusts (R.E.I.T.s) and regulated investment companies (R.I.C.s);
- Common trust funds; and
- Certain trusts exempt from taxation under U.S. law.

24. What is a U.S. owned foreign entity?

A U.S. owned foreign entity is any foreign entity has one or more “substantial U.S. owners.”

25. What is a substantial U.S. owner?

A substantial U.S. owner is any specified U.S. person that owns directly or indirectly more than 10% of the

- Stock (by vote or value) of a foreign corporation;
- Profits and capital interests of the foreign partnership; or
- Beneficial interests of any trust (other than a grantor trust).

For grantor trusts, a substantial U.S. owner is any specified U.S. person that is treated as the owner of any portion of the trust for U.S. federal income tax purposes.

26. Who is a recalcitrant account holder?

A “recalcitrant account holder” is a person who fails:

- To comply with requests by the P.F.F.I. for the documentation or information that is required for determining whether the account is a U.S. account;

- To provide a valid Form W-9 or fails to provide a correct name and T.I.N. combination when the P.F.F.I. has received notice from the I.R.S. indicating that the name and T.I.N. combination reported by the P.F.F.I. is incorrect;
- To provide a valid and effective waiver of foreign law that would prevent such reporting.

27. <u>What is an N.F.F.E.? How does F.A.T.C.A. apply to N.F.F.E.s?</u>

An N.F.F.E. is any foreign entity that does not meet the definition of an F.F.I. It generally includes any foreign entity that is not engaged in the banking or investment management business. Certain N.F.F.E.s are excepted from F.A.T.C.A. and thus are "excepted N.F.F.E.s." In general, those which are not excepted are subject to the F.A.T.C.A. withholding tax on any withholdable payment made to the N.F.F.E. unless the entity certifies that it does not have any substantial U.S. owners or provides the withholding agent the name, address, and T.I.N. of each of the beneficial owner's substantial U.S. owners and the information is reported to the I.R.S.

28. <u>What are passive N.F.F.E.s? What are active N.F.F.E.s?</u>

As noted above, certain N.F.F.E.s are "excepted N.F.F.E.s" not subject to F.A.T.C.A. The proposed regulations exempt "active N.F.F.E.s" from F.A.T.C.A. tax. For these purposes, an active N.F.F.E. is any N.F.F.E. if less than 50 percent of its gross income for the calendar year is passive income and less than 50 percent of its assets are passive assets.

29. <u>What are intergovernmental agreements?</u>

In conjunction with the issuance of the proposed regulations, the Treasury Department released a joint statement with the governments of France, Germany, Italy, Spain and the United Kingdom outlining these countries' intention to combat offshore tax evasion and to explore common approaches to implementing F.A.T.C.A. The joint statement also outlined a possible framework for F.A.T.C.A. implementation based on reciprocal reporting between the U.S. and a country with which the U.S. signs an agreement (an "intergovernmental agreement" or "I.G.A.").

On July 26, 2012, the U.S. Department of the Treasury published two F.A.T.C.A. model I.G.A.s ("Model 1A" and "Model 1B") which provide an alternative means to comply with F.A.T.C.A., one a reciprocal exchange agreement in which both countries agree to exchange information on the financial accounts of each other's tax residents, and the other a nonreciprocal exchange agreement in which only the other country will report information on the accounts held by U.S. tax residents. Both model agreements establish a framework for bilateral agreements with other countries under which F.F.I.s operating in a signatory country may report the required F.A.T.C.A. information to the relevant tax authority of the other country instead of reporting required information to the I.R.S., which then would be transmitted to the I.R.S. under the existing tax treaty or tax information exchange agreement in place between the two countries.

On November 14, 2012, Treasury announced a third model agreement ("Model 2"), which would allow (i) direct reporting from the foreign financial institution to the I.R.S. with respect to its U.S. account holders and (ii) group information requests to the F.A.T.C.A. country partner for information relating to recalcitrant account holders. The Treasury previously had announced that Model 2 agreements had been designed with Switzerland and Japan in mind.

30. Who has signed I.G.A.s?

On September 14, the U.S. and U.K. governments announced that they had signed the first I.G.A. to implement F.A.T.C.A. ("U.K. Agreement"). The U.K. Agreement closely follows the "reciprocal" version of the model I.G.A.s released on July 26, 2012. Several others have been signed, including Mexico and Denmark. Others have been reported to be concluded but not yet signed, including an agreement with Switzerland. Text of the signed agreements may be found at the Treasury's F.A.T.C.A. website, which is available at http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx. s

31. Are there more I.G.A.s being negotiated? If so, how many and what countries are expected to sign?

Yes. On November 8, 2012, the Treasury announced that:

- It is engaged with more than 50 countries in implementing F.A.T.C.A.
- It is in the process of finalizing I.G.A.s with: France, Germany, Italy, Spain, Japan, Switzerland, Canada, Denmark, Finland, Guernsey, Ireland, Isle of Man, Jersey, Mexico, the Netherlands, and Norway.
- It is actively engaged in a dialogue towards concluding I.G.A.s with (possibly by year's end): Argentina, Australia, Belgium, the Cayman Islands, Cyprus, Estonia, Hungary, Israel, Korea, Liechtenstein, Malaysia, Malta, New Zealand, the Slovak Republic, Singapore, and Sweden.
- It is working to explore options for I.G.A.s with: Bermuda, Brazil, the British Virgin Islands, Chile, the Czech Republic, Gibraltar, India, Lebanon, Luxembourg, Romania, Russia, Seychelles, Sint Maarten, Slovenia, and South Africa.

32. What are some of the key differences between the proposed regulations and Model 1 I.G.A.s?

Some of the key differences with respect to Model 1 I.G.A.s include:

- Report to home country. Under the Model 1 I.G.A.s, financial institutions resident in a signatory country and branches of financial institutions that are located in that country are permitted to report information to their country of residence rather than the I.R.S.

- Replace 10% test with control test. The Model 1 I.G.A.s replace the requirement that financial institutions report substantial U.S. owners of N.F.F.E.s with a requirement that they report U.S. persons who are in "control" of those entities. Control for these purposes is determined in a manner consistent with Recommendations of the F.A.T.F. for international standards on combating money laundering and the financing of terrorism and proliferation ("F.A.T.F. Recommendations"). The February 2012 F.A.T.F. Recommendations does not provide a bright line test in determining "control." It does, however, state that "a controlling ownership interest depends on the ownership structure of the company" and that "[i]t may be based on a threshold, e.g., any person owning more than a certain percentage of the company (e.g. 25%)."

- Modified withholding obligations. The Model 1 I.G.A.s do not require signatory country financial institutions to withhold on gross proceeds or "passthru" payments to (and close the accounts of) recalcitrant account holders that fail to provide the required information to the financial institutions. Instead, penalties may be imposed on financial institutions that fail to comply and those who are in significant non-compliance for 18 months will be subject to F.A.T.C.A.

- All-or-none rule inapplicable. The Model 1 I.G.A.s permit signatory country financial institutions to comply with F.A.T.C.A. even if their affiliates or branches outside of the signatory country are prohibited by local law from complying, provided that certain requirements are met. The proposed regulations followed an "all-or-none" rule (subject to temporary limited exceptions) in which, in general, all members of an affiliated group must comply with F.A.T.C.A.

33. What is the timetable with respect to the implementation of F.A.T.C.A.?

Due to the complexity of F.A.T.C.A., the timetables for implementation have been revised several times. The latest revisions were announced in Announcement 2012-42, released on October 24, 2012. Prior to the Announcement, the timetables for implementing F.A.T.C.A. were addressed in the proposed regulations and, before that, a prior I.R.S. notice (Notice 2011-53) issued in July 2011. The following table provides a timeline of F.A.T.C.A. implementation and summarizes the new deadlines.

Date	Action
January 1, 2014	Earliest Effective date of F.F.I. Agreements
January 1, 2014 (or, if later, effective date of F.F.I. Agreement)	Deadline for implementation of new individual and entity account opening procedures
June 30, 2014 (or if later, six months after effective date of F.F.I. Agreement).	Deadline for due diligence on preexisting accounts of prima facie F.F.I.s

December 31, 2014 (or if later, one year after effective date of F.F.I. Agreement).	Deadline for due diligence by F.F.I.s on preexisting high-value individual accounts
December 31, 2015 (or if later, two years after effective date of F.F.I. Agreement).	Deadline for due diligence for all remaining accounts
January 1, 2017	Withholding on gross proceeds
January 1, 2017	Withholding on foreign passthru payments may begin