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IRS FATCA Guidance, Round 3



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If you're a fan of [FATCA](#)—the Foreign Account Tax Compliance Act that adds **even more** foreign account disclosure rules—you and the IRS may be alone. Most hate it, including banks and other institutions. See [Oh Canada! Hating FBARs And FATCA](#). But if it isn't [repealed](#)—and repeal seems unlikely—you'll need to start

slogging through compliance.

FATCA becomes effective Jan. 1, 2013, but the IRS and Treasury Department are phasing it in, trying to smooth out a pretty bumpy road. [Notice 2011-53](#) is the third IRS missive providing preliminary guidance on FATCA. See [Notice 2010-60](#), [2010-37 IRB 329](#) and [Notice 2011-34, 2011-19 IRB 765](#).

Notice 2011-53 provides timelines to phase in the requirements for certain foreign financial institutions (FFIs) with respect to their U.S. accounts. It includes:

- Entering an FFI agreement.
- Performing due diligence on U.S. accounts.
- Reporting U.S. accounts.

- Withholding on payments.
- Issuing regulations, the FFI agreement, and reporting forms.

Entering an Agreement. The IRS has given itself a deadline of Jan. 1, 2013, to begin accepting applications from FFIs through its electronic submissions process. See [Please Sir, Can I Have Some More FATCA?](#)

U.S. Account Diligence. A participating FFI will be required to put in place account-opening procedures for new individual accounts and new entity accounts. The idea? To identify U.S. accounts from here on.

Pre-existing Accounts. Under Notice 2011-34, bankers are required to identify any client they know is a U.S. person and request a [Form W-9](#) (Request for Taxpayer Identification Number and Certification). Within a year of the effective date of the FFI agreement, FFIs must complete due diligence procedures described in Notice 2011-34 for pre-existing accounts associated with a private banking relationship with a balance of at least \$500,000.

First Reporting. FFIs must file IRS reports by Sept. 30, 2014. At first, FFIs must report only:

- Name, address, and U.S. taxpayer identification number of U.S. account holder. For U.S.-owned foreign entities, the name, address, and U.S. [TIN](#) of each substantial U.S. owner is required.
- Account balance as of Dec. 31, 2013.
- Account number.

Recalcitrant Account Holders? If the participating FFI is unable to report an account because the account holder won't come forward, the FFI must report it as a recalcitrant account holder with U.S. ties. Recalcitrant account holders identified by June 30, 2014, must be reported to the IRS by Sept. 30, 2014.

Withholding. For payments after Dec. 31, 2013, FFIs are required to withhold on U.S.-source FDAP payments. After Dec. 31, 2014, withholding agents must withhold on all withholdable payments.

For more, see:

[Analysis: Critics say new law makes them tax agents](#)

[International Council of Securities Associations Letter Regarding Implications of FATCA](#)

[Beware Foreign Trust Reporting to IRS](#)

[Are You Getting Enough FBAR?](#)

[Expats Call For FATCA Repeal](#)

[Stripping FATCA From Our Diet](#)

[FBAR And FATCA Haters Unite](#)

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