FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA)

The United States of America passed new laws and provisions in 2010 commonly known as FATCA (Foreign Account Tax Compliance Act). It targets tax non-compliance by U.S. taxpayers with foreign accounts and focuses on reporting certain foreign financial accounts and assets held by U.S. taxpayers. All U.S. taxpayers, including foreign entities making election to be treated as a U.S. taxpayer (953(d)), fall under the scope of FATCA.

HOW DOES THIS AFFECT WILLIS AND OUR CLIENTS?
U.S. source premium, dividends or interest are subject to FATCA withholding on or after July 1, 2014.

FATCA defines two distinct reporting entity statuses:
- **Foreign Financial Institution (FFI)** - Any financial institution that is a foreign entity, including banks, investment entities and insurance companies issuing cash value insurance or annuity contracts.
- **Non-Financial Foreign Entity (NFFE)** - Essentially, all other foreign entities that are not banks, investment entities and insurance companies not issuing cash value insurance or annuity contracts.

The majority of captives will likely be treated as NFFEs so will have no registration or reporting obligations under FATCA, but this will need to be confirmed by each captive in consultation with its tax advisers and attorneys.

NFFEs will need to confirm, on request, their FATCA status to the entity making the payments (withholding agent) by providing a W-8BEN-E form signed by an authorized representative of the captive. This form will be the sole instrument used by withholding agents to verify that withholding does not apply to the payment.

The W-8BEN-E form expires three years after the December following signature (December +3 years).

FFIs must register with the United States Internal Revenue Service (IRS) and obtain a GIIN (Global Intermediary Identification Number) to avoid the withholding. The GIINs will be available online and updated monthly so that withholding agents can rely on the published list to verify status and not withhold on payments made to the FFI. NFFEs can also register with the IRS to obtain a GIIN as a Direct Reporting NFFE. NFFEs do not have to register, but registration will ensure FATCA status and ensure any payments made to an NFFE that chooses this option will not be subject to withholding.

The IRS has confirmed that calendar years 2014 and 2015 will be considered a transition period for certain FATCA purposes in an effort to facilitate an orderly transition. Reporting entities using good faith efforts to comply should not be penalized for technical failures during this transitional period.
IMPACT OF INTER-GOVERNMENTAL AGREEMENTS (IGA)

The U.S. Government has collaborated with other governments to develop model IGAs to implement FATCA.

MODEL 1 IGAs

Countries in Model 1 IGA jurisdiction agree to report certain information about FFIs in the jurisdiction to the IRS:
- FFIs report certain information to the designated governmental entity in the jurisdiction
- That designated entity periodically reports that information to the IRS on an automatic basis.
- There is no requirement for FFIs in these jurisdictions to directly report to the IRS

NFFEs in these jurisdictions will only provide a W-8BEN-E form to withholding agents on request.

MODEL 2 IGAs

Countries in Model 2 IGA jurisdictions agree to direct and enable FFIs located in the jurisdiction to report certain information to the IRS.

FFIs also report aggregate information to the IRS about holders of pre-existing accounts that do not consent to have their account information reported. The IRS will make a “group request” to the jurisdiction for more specific information based on that information.

NFFEs in these jurisdictions will only provide a W-8BEN-E form, on request, to withholding agents.

A listing of jurisdictions that have entered Model 1 or 2 IGAs is available at the following link.


WHAT IS THE IMPACT OF PLACING INSURANCE WITH ENTITIES THAT HAVE NOT CONFIRMED THEIR FATCA STATUS PRIOR TO JULY 1, 2014?

- Brokers and captive owners will not be able to transact business with any entity that does not confirm FATCA status, or withholding will apply. All payments will need to include an additional 30% in addition to the premium to ensure full payment can still be made to the non-compliant foreign entity.
- U.S. taxpayers will not be able to transact with insurers, banks and investment entities unless FATCA status is confirmed, or withholding will apply.
- The withholding agent will file an annual report to the IRS that may identify the captive and balances held and/or payments made.
- The withholding tax portion of all grossed up payments (premiums and investment income) to non-FATCA compliant foreign entities will be withheld and is payable to the IRS.

NEXT STEPS

Each client captive should determine its FATCA status. We encourage you to work with your internal tax teams and external advisers in order to understand your obligations and the impact of FATCA. Willis has confirmed that all of our affected captive management operations will be classified as NFFEs under FATCA. This is important as the manager’s status under FATCA can influence the FATCA status of any entities under management.

We continue to follow FATCA developments and industry updates on this topic.

CONTACTS FOR FURTHER DETAILS

Aidan Kelly
+1 404 224 5057
aidan.kelly@willis.com

Martin Best
+44 1481 735 627
martin.best@willis.com

Willis North America Inc.
Brookfield Place, 200 Liberty Street, 7th Floor
New York, New York 10281-1003, United States
Tel: +1 212 915 8888

www.willis.com