
FATCA: COMPLIANCE BY FOREIGN JURISDICTIONS



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The Foreign Account Tax Compliance Act ([FATCA](#)), enacted in 2010, is an information reporting and withholding regime for payments made by U.S. citizens and U.S.-based companies to foreign financial institutions. The goal of the law is to increase transparency into unreported, taxable income of U.S. taxpayers (both individuals and business entities) with foreign-held accounts.

As of April 1, 2017, 113 countries have signed an Intergovernmental Agreement (IGA) or have reached “agreements in substance” with the U.S. to comply with FATCA. More than 189,000 financial institutions have registered with the IRS.

Foreign jurisdictional compliance with FATCA requires more than entering into an agreement with the IRS. Financial institutions also must ensure they have proper processes, systems and controls in place to comply with the intent and scope of the law. As some countries develop similar versions of the law and others take actions toward the development of a global standard, financial institutions need flexible processes and IT architectures to adapt to the evolving landscape.

This report outlines some of the steps being taken by different foreign jurisdictions to ensure that U.S. taxpaying entities are properly complying with FATCA guidelines.

EUROPE

JERSEY

Despite its small size geographically, Jersey—a five-mile wide, nine-mile long island that is part of the Channel Islands between England and France—is considered one of the world’s biggest offshore banking centers. In December 2013, Jersey signed an agreement with the IRS to implement FATCA. The island’s financial institutions subsequently started to provide the Jersey Taxes Office with required information on U.S. taxpayers, which then forwards this information to the IRS.

Jersey also was an early champion of the Common Reporting Standard (CRS), a global standard for the automatic exchange of financial account information among participating tax authorities. Formulated by the OECD (Organization for Economic Cooperation and Development), the CRS is designed to build upon and be consistent with FATCA. The standard requires all individuals and entities opening a new account with a financial institution in a participating country to provide “self-certifications” affirming their residency for tax purposes.

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As of January 1, 2016, the CSR has been effective in Jersey, as well as the Cayman Islands, Bermuda, the British Virgin Islands, Guernsey, and other jurisdictions that are part of the “Early Adopters Group.”

UNITED KINGDOM

The U.K. was the first country to sign the IGA (with the U.S. in September 2012) to implement FATCA. The following May 2013, Her Majesty’s (HM) Treasury and HM Revenue and Customs (HMRC) released the International Tax Compliance Regulations 2013 to implement the Agreement to Improve International Tax Compliance and to implement the U.K.’s version of FATCA, which is based on the U.S. model.

The subsequent release of the [U.K. Regulations and Guidance Notes](#) clarified the proposed regulation with regard to compliance by financial institutions, particularly how to identify and report on “specified U.S. persons” beginning in 2014. The U.K. also established an IGA regime similar to FATCA and CRS with its Crown Dependencies and Overseas Territories (CDOT), which will eventually roll up into the CRS regime.

[Reporting under U.K. FATCA](#) began in 2016. As this year drew to a close, tax reporting under CRS was expected to commence in 2017, and FATCA was [nearly fully phased in](#).

IRELAND

Ireland signed the IGA with the U.S. in December 2012, requiring financial institutions to establish requisite systems and procedures to provide needed reporting to Irish Tax & Customs by June 30, 2015. Such entities must review and determine if their account holders and investors have U.S. reportable accounts in the prior year. During 2015, this information was exchanged with U.S. tax authorities.

As elsewhere, Ireland has subsequently issued [Guidance Notes](#) clarifying the meaning of such terms as what constitutes a “Relevant Treasury Company” and “Relevant Holding Company.” The country also was among the early adopters to implement the CRS, which the Irish Parliament approved in December 2015.

Ireland has adopted the so-called “wider approach” to CRS, with regard to compliance with due diligence and reporting. The wider approach requires financial institutions to collect the country of residence and tax identification number for all non-resident customers and not just the residents of

jurisdictions with which the country has an exchange of information agreement.

NETHERLANDS

Another member of the CSR “Early Adopters Group” is the Netherlands, which drafted the CSR into domestic law for application beginning in January 2016. Three years earlier, the Netherlands reached an agreement with the U.S. to facilitate the implementation of FATCA. In January 2015, the Dutch Ministry of Finance issued a FATCA guideline providing clearer definitions to financial institutions of such technical terms as “customer,” “investment entity,” “custodial institution,” “payment,” and “deposits.”



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Clarification also was provided on what constitutes a reportable financial account (and what does not) to the Dutch Tax and Customs Administration, which in turn provides this information to the IRS. In June 2016, the government translated the guideline and other FATCA provisions into English. Recently, the Dutch Ministry of Finance also published a revised decree on tax transparency rules governing limited liability partnerships and has developed a central register of the beneficial or real owners of companies for public disclosure, indicating stepped up efforts against tax evasion.

LUXEMBOURG

Similar willingness to become fully transparent in the exchange of information for tax purposes can be found in the Grand Duchy of Luxembourg, which signed an Intergovernmental Agreement with the U.S. government in 2014 to comply with FATCA. A bill of law was subsequently introduced to the Luxembourg Parliament in March 2015. More than 8,500 financial firms in the country have since registered with the IRS to comply with FATCA, a figure that is surpassed only by Great Britain and the Cayman Islands.

FATCA reporting began in August 2015. The penalties for missing, late or fraudulent reporting are stiff—a maximum of 0.5 percent of the amount that should have been reported. This

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penalty is in addition to the IRS's 30 percent withholding tax on a financial institution's U.S. income.

In 2015, Luxembourg created a dedicated Tax Ruling Commission to assume a central role as the country complies with FATCA, in addition to the CSR and various cross-border initiatives predicated on information exchange. To apply toward implementation of CSR in 2017, the country implemented rules in 2016 requiring financial institutions to begin capturing data on income earned by individuals and organizations.

On March 31, 2017, the ABBL (Luxembourg Bankers Association) published [technical guidance](#) on the CRS to assist consistent implementation of the tax transparency rules. This guidance broadly addresses such issues as which jurisdictions in the country are recognized as Reportable Jurisdictions, which accounts qualify as Excluded Accounts, and how to treat dormant accounts and handle multiple tax residences.

GERMANY

In 2012, Germany joined other countries in signing a statement endorsing a bilateral intergovernmental approach to FATCA implementation. The agreement would address the legal impediments to compliance, simplify practice implementation and reduce costs for foreign financial institutions.

In May 2013, Germany and the U.S. signed an IGA for FATCA implementation, which was published in the languages of both countries. In March 2017, the German Ministry of Finance issued official guidance on the application of the automatic exchange of information under the CRS. This [guidance](#) comprises a user guide, integration test and other detailed reporting information for financial institutions and their advisors to maintain compliance with both CRS and FATCA.

ASIA-PACIFIC

HONG KONG

Long considered one of the world's easiest places to do business, Hong Kong signed an Intergovernmental Agreement with the U.S. in May 2014 to implement FATCA. Registration by local financial institutions started off slowly, due to FATCA's complexity, with just a fraction of the tens of thousands of financial institutions operating in Hong Kong registering by the first deadline for tax reporting in July 2014.

Although the IRS issued a notice in May 2014 to relax its penalties through the end of 2015 for Hong Kong financial institutions deemed to be making "good faith" efforts to

comply with the law, this "transition period" has now drawn to a close. Non-complying banks may now be exposed to FATCA penalties, particularly if they receive U.S. source payments or deal with participating foreign financial institutions.

In March 2017, the [Hong Kong government](#) announced that it would expand the list of reportable jurisdictions under the CRS from 2 to 74 jurisdictions in 2017. Reports indicate the plan was developed in the face of pressure by the European Union to avoid being labeled a non-compliant tax jurisdiction. The same month, Hong Kong signed IGAs with six jurisdictions (Belgium, Canada, Guernsey, Italy, Mexico and the Netherlands) to conduct the automatic exchange of financial account information on a reciprocal basis. The countries join Japan, Korea and the U.K., which had previously signed the agreement with Hong Kong.

SINGAPORE

Singapore signed an IGA with the U.S. in May 2014 to implement FATCA the following March 2015. As elsewhere, Singapore-based financial institutions will need to perform due diligence checks to identify financial accounts held by U.S. persons.

On January 5, 2017, Singapore issued amendments to the 2015 FATCA regulations. The purpose of the new regulations is to align the description of accounts or investments under the Central Provident Fund (CPF) rules with recent [amendments](#) made to the CPF Act that became effective on January 1 of the year. CPF is the country's mandatory social security savings program funded by employer and employee contributions.

The CRS became effective in Singapore in January 2017. Singapore-based financial institutions like banks, certain types of insurance companies, investment entities and custodial institutions are now required to establish the tax residency status of their account holders, and report their financial account information to the Inland Revenue Authority of Singapore (IRAS).

THAILAND

Thailand signed an Intergovernmental Agreement with the U.S. to implement FATCA in June 2014. As part of the agreement, the country has required local financial institutions to report information to the Thai Revenue Department and bank signatories to be physically present at the institutions. Following implementation in July 2014, all Thai commercial banks have indicated their intention to comply with FATCA, and

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have begun collecting information supporting the identification of U.S. individuals and businesses that are customers or are opening an account for the first time.

Once identified, customers are asked to complete a self-identification questionnaire to determine their status as either a U.S. or non-U.S. citizen. For individuals, this includes providing evidence of U.S. citizenship, place of birth and permanent residence (among other data); for businesses, this includes evidence on incorporation location and whether or not the corporation comprises U.S. shareholders owning in excess of 10 percent. Like financial institutions in several other countries, Thai banks have been given additional time by the IRS to comply with the law, given the costs involved in changing IT systems.

In January 2017, the [OECD announced](#) that Thailand had joined the Global Forum on Transparency and Exchange of Information for Tax Purposes as its 139th member. The Global Forum seeks to ensure that all jurisdictions maintain similar high standards of international cooperation in tax matters, via a rigorous monitoring and peer review process. Membership in the forum is thus perceived as reinforcing Thailand's commitment to implement the international standard for the automatic exchange of financial account information for tax purposes.

VIETNAM

In July 2016, the IGA signed by Vietnam and the U.S. for implementing FATCA entered into force. In October of the year, both countries' "competent authorities" had entered into a Competent Authority Arrangement (CAA) to implement FATCA in Vietnam. The agreement addresses procedures for the registration of Vietnamese financial institutions and the timing and manner of the automatic exchange of information.

AUSTRALIA

Australia and the U.S. signed an IGA to implement FATCA in April 2014. The following September 2015, Australia signed the first CAA with the U.S. and the U.K. United Kingdom and Australia. The IRS considers the signing of the agreement to be a significant milestone in the international effort to gain proper reporting of offshore accounts and income.

In March 2016, the CRS legislation was approved by the Australian government and took effect the following July 2017, with the [first exchange of information](#) set to occur in 2018.

THE CARIBBEAN CAYMAN ISLANDS

The Cayman Islands entered into an intergovernmental agreement with the U.S. to implement FATCA, although as a British Overseas Territory of the United Kingdom, it also adheres to that country's version of FATCA, called the UK CDOT, referencing the Crown Dependencies and Overseas Territories.

Both rules are quite similar, although there are different documentation requirements in each country. For example, the U.K. does not need to provide the IRS with taxation information on Cayman residents, as the island has no taxation. Nevertheless, Cayman funds must identify U.K. residents and U.S. residents to both UK CDOT and FATCA. Other differences involve the definition of what constitutes a financial institution for compliance purposes. As progress continues toward the development of a more uniform global standard, these differences will become less in future.

In December 2017, the Cayman Islands issued the second tranche of the CRS to ensure effective implementation of the standard. The [second tranche](#) establishes the notification requirements for financial institutions, requiring the entities to provide a principal point of contact authorized to provide required information under CRS to the islands' Tax Information Authority. Penalties for failure to comply with the CRS regulations also were outlined.

LATIN AMERICA BRAZIL

Brazil and the U.S. signed an IGA to implement FATCA in September 2014. The agreement came into full force the following June 2015.

The country's tax authority (Receita Federal do Brasil—RFB) released updated FATCA reporting guidance in April 2016. The new version clarifies filing deadlines in instances of corporate reorganizations, establishes rules governing a person who is considered to own 10 percent or more of the total combined voting power of classes of stock, and makes clear that a financial institution with no reportable accounts is no longer required to submit nil income tax returns (a nil return with tax authorities to indicate the person fell below the taxable income and did not pay taxes during the year). Other revisions concern the fields "reportable/abroad" and "country" in a closing event.

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MEXICO

Mexico and the U.S. signed an IGA to implement FATCA in November 2012. The rule came into full effect in April 2014. The following November 2015, Mexico published an amendment to its Federal Tax Code to provide for the automatic exchange of information in tax matters and implemented the CRS.

Most recently, Mexico issues amendments to its FATCA regulations to align the rules with additional provisions concerning the CRS, and to assist the country's financial institutions with implementation. Known as Anexo 25, the amendments followed the earlier publication by Mexico's tax authority (Servicio de Administración Tributaria or SAT) of technical guidance. Among the changes was clarity from SAT that a financial institution with no reportable accounts is no longer required to submit a nil income tax return.

NORTH AMERICA

CANADA

Canada signed an IGA with the U.S. in February 2014. The wide-ranging agreement requires Canada Revenue Agency (CRA) to act as a "buffer" between the IRS and Canadian banks. Financial institutions in Canada will provide account data to the CRA, as opposed to providing it to the IRS.

In April 2017, CRA issued technical guidance clarifying its reporting rules. Affected financial institutions must have procedures in place to identify accounts held by residents of jurisdictions outside of Canada and the United States by July 2017 and to provide this information by the beginning of 2018.

In April 2016, Canada's Department of Finance announced legislation to [implement the CRS](#), effective July 2017.

CONCLUSION

In the past year, the speed of global acceptance of FATCA and the CRS has been remarkable, affirming the importance of tax transparency and the exchange of information on financial accounts across the world. The international embrace of both standards that began with the U.S. government's enactment of FATCA and has culminated with governments adopting similar provisions under the CRS should lead to significant reductions in tax evasion schemes worldwide.

Nevertheless, the new requirements are considered complex by many financial institutions, given their required due diligence and reporting obligations. For instance, a March 2017 survey indicates that only 20 percent of financial institutions are "fully prepared" for the impact of CRS and most firms are only "somewhat familiar" with their responsibilities under the standard. In complying with CRS, many financial institutions also expect to rely on the same systems, resources, and processes used for FATCA compliance. However, the differences in report formats and extensible markup language (XML) schemas to comply with both rules are likely to increase costs.

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