

FATCA Compliance

The Clock Is Ticking For P&C Companies



Property and Casualty insurance carriers need to address FATCA compliance and reporting issues in 2014.

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FATCA was enacted by Congress and signed into law in response to headlines describing wealthy Americans hiding assets in offshore financial institutions in order to avoid paying taxes on the income generated by those assets. As such, FATCA's stated primary focus was to compel foreign banks and asset managers to provide the IRS with information regarding assets in US owned accounts so that the IRS could collect the associated federal income taxes. On the face of it, this would appear to have little impact on the P&C insurance industry.

However, because FATCA withholding applies to certain US source payments, US and foreign P&C companies **ceding US risks** offshore and Foreign P&C companies assuming business on US risks **must** comply with FATCA.

US P&C Companies Ceding US Risks Offshore Forces Compliance with FATCA by Both Parties to the Reinsurance contract

Unfortunately for the industry, **premiums on contracts insuring US based risks** (which includes **ceded reinsurance premium payments**) are **withholdable payments**. Therefore, if you are a US or foreign insurer ceding US based risks to a foreign reinsurer or a foreign reinsurer assuming US based risks and ceding premiums associated with those risks to a foreign reinsurer, you need to assess your operational and reporting processes for FATCA compliance or potentially **be subject to the punitive 30% FATCA withholding** on certain payments, which include reinsurance premiums. The list of companies that are impacted by this particular requirement is long, as many of the largest reinsurers in the industry are not domiciled in the US.

NOTE: Withholding under FATCA (Chapter 4) is **separate and distinct and is in addition** to the current withholding regime under the Code (Chapter 3, Non Resident Alien (NRA) withholding).

Substantial Consequences for Non-Compliance

In the past, the risk of noncompliance with Forms W-9 and W-8 tax documentation and Forms 1099 and 1042-S reporting would not raise a significant alarm at many organizations, in part because US source premiums were previously exempted from NRA withholding if they were subject to the reinsurance excise tax. The risk of being non-compliant with FATCA, on the other hand, could result in significant penalties and deterioration of partner relationships. For instance, if you fail to obtain valid tax documentation (e.g. - Form W-8BEN-E) from a foreign reinsurer you have two unpleasant options:

- 1) Withhold 30% of the gross ceded premium due the reinsurer and hold that for future remittance to the IRS. This will not make your reinsurer happy.
- 2) Remit the full gross ceded premium due the reinsurer. If the IRS discovers that you did not obtain a valid W-8BEN-E from your foreign reinsurer they will hold your company liable for the 30% that you did not withhold. This will not make your Management and Board of Directors happy.

Recommendations to Protect Your Company

The safest route for P&C companies interacting with foreign reinsurers is to collect and validate Forms W-9 or W-8, respectively, from their domestic and foreign counter parties. Foreign reinsurers must accurately prepare Form W-8 and be prepared to provide that to their US counter parties.

As a P&C company, what should you be doing and when should you do it? The below timeline depicts the major FATCA milestones, all of which are coming soon.



FATCA Registration Requirements – Foreign Reinsurers

FATCA Registration for Foreign Financial Institutions (“FFI”) and certain US Withholding Agents is a mostly straight forward, one time activity. You will need to:

- Identify all in scope legal entities that require registration including the applicability of relevant Intergovernmental Agreement (“IGA”)
- Register the in scope legal entities on the IRS FATCA website or via Form 8957
 - **May 5, 2014** filing deadline ensures listing in the first IRS FFI List (to be published monthly) by June 2, 2014
 - Identifies a “Responsible Officer” in each legal entity who will attest to the IRS that the legal entity’s processes are in compliance with FATCA regulations
 - IRS will issue you each legal entity’s Global Intermediary Identification Number (“GIIN”)
- Implement procedures to ensure that all legal entities are registered appropriately and attest as such every three years (only for FFIs subject to the Regulations or Model 2 IGAs)

Essential Due Diligence Considerations – US Cedents

During **Due Diligence** you will need to consider altering existing processes to ensure FATCA compliance. You will need to:

- Collect Tax documentation **from all of your reinsurers**
 - It is important to collect Forms W-9 from domestic reinsurers to identify them as domestic.
 - You will need to develop an information and documentation management policy for tax documentation to:
 - Prevent duplication of activities – requesting the same form multiple times per business line
 - Coordinate with foreign reinsurance excise tax documentation
 - Determination of foreign reinsurer’s Sec. 953(d) status recent changes
 - Prevent duplication of forms – the goal should be one form per reinsurer to guard against obtaining potentially contradictory information that may invalidate the forms
- Validate the incoming Forms W-9 and W-8 to the appropriate “Standard of Knowledge.”
 - These forms cannot simply be rubber stamped and filed away. A person with reasonable knowledge of the reinsurer must validate the information in the form to the best of their knowledge
 - The “Standard of Knowledge” doctrine pushes much of the validation of the form outside of the Tax department into field operations as the Tax personnel do not have the knowledge of the reinsurers necessary to properly validate the form
 - Tax resources should be involved in the validation of tax specific information. This creates a handoff during validation and adds complexity to the process



FATCA due diligence and withholding processes need to be built and in place by July 1st, 2014. If by this time your reinsurers have not provided valid Tax documentation you will be required to withhold on payments due them. Depositing withheld amounts with the IRS begins January 2015. This will require coordination between reinsurance operations, finance and accounting to ensure that these withheld funds are properly accounted for, tracked, and remitted to the IRS.

FATCA reporting and remittance of withheld funds to the IRS will not be required until 2015. However, it is important to lay the infrastructure for these processes in 2014 in order to reduce or eliminate future reconciliation efforts since **withholding begins July 1st, 2014**.

What Does the Future Hold?

Each of these areas needs to be addressed through either enhancing existing processes or designing new ones. There are also technology requirements that will need to be considered throughout FATCA process implementation, as they can radically alter the course of the implementation. Changes in FATCA requirements and revisions to IRS Forms (e.g., W-8BEN-E instructions have not been released) will need to be monitored on a continuous basis. We will address these areas as well as lessons that we have learned from FATCA process implementation in future discussions.

For more FATCA information, please contact:



Robert Cummings, Partner – Financial Services Consulting
(732) 205-2011
Robert.Cummings@WeiserMazars.com



Michael G. Flagiello, Partner – Financial Services Consulting
(212) 375-6539
Michael.Flagello@WeiserMazars.com



Susan Grbic, Partner & Practice Leader – Financial Services Tax
(212) 375-6911
Susan.Grbic@WeiserMazars.com

Or visit www.weisermazars.com/services/tax-services/fatca