



What you need to know about the latest FATCA guidance

Including the draft FFI agreement and anticipated modifications to final FATCA regulations

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On 29 October 2013, the IRS issued [Notice 2013-69](#) its latest guidance under the Foreign Account Tax Compliance Act (FATCA). The Notice generally provides guidance to foreign financial institutions (FFIs) entering into FFI agreements (FFIA) with the IRS to be treated as participating FFIs (PFFIs), including FFIs in Model 2 IGA countries (e.g., Switzerland and Japan). The Notice contains a draft of the FFIA. While greatly anticipated, the FFIA does not contain many surprises and is consistent with the requirements described in Treas. Reg. Section 1.1471-4. However, the Notice does explain some intended modifications to the final FATCA regulations.

Executive summary

FFIs in Model 1 IGA countries will not be required to enter into FFIA. The “Model 1 IGA” allows FFIs in a partner jurisdiction to satisfy their FATCA requirements by reporting specified information about US accounts to their government, which will furnish that information to the IRS. The “Model 2 IGA” allows FFIs in a partner jurisdiction to report directly to the IRS according to the final regulations (as modified by the applicable Model 2 IGA). The FFIA clarifies how FFIs with branches in various types of jurisdictions (i.e., Model 1 countries, Model 2 countries, jurisdictions in which FFIs will be able to enter into FFIA, jurisdictions in which FFIs will not be able to enter into FFIA due to local law limitations and in the United States as US branches) must operate. The Notice indicates that the IRS expects to finalize the FFIA by 31 December 2013.



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Anticipated modifications to the final FATCA regulations announced in the Notice include provisions that will:

- ▶ Allow a non-US payor or middleman that is a PFFI or a Model 1 or Model 2 FFI to satisfy their Form 1099 reporting obligations with FATCA reporting (unless the payor applies back up withholding).
- ▶ Clarify that, if a withholding agent has imposed FATCA withholding on a payment that would otherwise also be subject to backup withholding, that no backup withholding will be required.
- ▶ Provide that a PFFI will not be required to report foreign reportable amounts paid to a non-participating FFI for 2015 and 2016 when the payment was not associated with a financial account.
- ▶ Create two new types of passive non-financial foreign entities (NFFEs). Passive NFFEs must generally provide information about their direct and indirect substantial US owners to withholding agents or PFFIs with which they hold accounts. However, “direct reporting NFFEs” and “sponsored direct reporting NFFEs” will be able to report information about their substantial US owners directly to the IRS, instead of providing that information to their withholding agents. These NFFEs will be treated as “excepted NFFEs” and will be required to register with the IRS and obtain a global intermediary identification number (GIIN), which they will furnish on Forms W-8BEN-E, *Certificate of Status of Beneficial Owner for United States Withholding and Reporting (Entities)*, to their withholding agents, who will be required to validate the NFFEs’ GIINs, just as they will verify GIINs received from FFIs.
- ▶ Provide that NFFEs that are qualified intermediaries (QIs), withholding foreign partnerships (WPs) and withholding foreign trusts (WTs) will not be classified as passive NFFEs.
- ▶ Recognize certain foreign insurance companies that have made elections under Section 953(d) to be treated as US insurance companies for FATCA purposes (the final regulations generally classify these entities as foreign entities).

- EY Observes: Many captive insurance companies make Section 953(d) elections, but would have been treated as foreign entities for FATCA purposes.

The intent of this summary is to highlight significant points from the Notice and FFIA that are either new requirements or noteworthy provisions in the FFIA.

General responsibilities and related updates to regulations and forms

PFFIs and Reporting Model 2 FFIs

The Notice describes the general responsibilities of a PFFI and states that a PFFI must periodically certify to the IRS about its compliance with the requirements of the FFIA. The FFIA requires each member of the FFI group other than an exempt beneficial owner to be a participating FFI (including a Reporting Model 2 FFI), limited FFI, registered deemed-compliant FFI (including a Reporting Model 1 FFI), or Non-reporting Model 1 or Model 2 FFI. A Reporting Model 2 FFI must comply with the terms of an FFIA. The FFIA incorporates the Model 2 IGA modifications, which include, for example, the suspension of withholding on a non-consenting US account if the US account is properly reported by the PFFI.

- EY Observes: Excluding exempt beneficial owners that are members of an FFI group from the requirement to register as a PFFI corrects Treas. Reg. Section 1.1471-4(e)(1), in which this exclusion was missing. Section 11 of the FFIA, which defines the FFI group, specifically provides that exempt beneficial owner members of the FFI group do not need to maintain PFFI status.

Related updates to regulations (aka “coordinating” or “conforming” regulations)

The Chapter 61 (Form 1099 reporting) and Section 3406 (backup withholding) regulations will be modified to better coordinate with the Chapter 4 (FATCA) requirements.

Form 1099 reporting: A non-US payor that is either a PFFI or a Reporting Model 1 FFI will satisfy its Form 1099 reporting obligations if it reports with respect to US non-exempt recipients pursuant to the FFIA or the applicable

Model 1 IGA. However, to the extent that backup withholding is required under Section 3406, Form 1099 reporting will be required.

- EY Observes: If a PFFI or Reporting Model 1 FFI is also a US payor, then this provision will not apply to them. Thus, the term, “US payor;” as defined for Form 1099 reporting purposes, will continue to include certain non-US persons.
- EY Observes: Keep in mind that the definitions of a “specified US person” and a “US non-exempt recipient” are not the same.
- EY Observes: This Form 1099 reporting requirement will apply to all types of reporting under Chapter 61, including gross proceeds reporting on Forms 1099-B, *Proceeds from Broker and Barter Exchange Transactions*, and therefore, basis reporting.

Section 3406 (backup withholding): A participating FFI has the option to follow either of the following alternative approaches to satisfy its withholding obligations:

- ▶ Subject the payment to FATCA withholding. In this case, backup withholding will not apply to a reportable payment. However, a reportable payment that is not subject to withholding under FATCA remains subject to backup withholding.
- ▶ Elect to backup withhold on recalcitrant account holders who are known US persons by withholding at the backup withholding rate.

Transitional reporting of foreign reportable amounts paid to non-participating FFIs

Regulations to be issued will modify FATCA’s transitional reporting requirements for calendar years 2015 and 2016 for foreign reportable amounts paid to non-participating FFIs (NPFFIs). The modified rules will narrow the requirement in the final regulations under which a PFFI must report the aggregate amount of foreign reportable amounts paid to each NPFFI, even when the payments are not associated with an account. Instead, a PFFI will only be required to report foreign reportable amounts paid with respect to a financial

account that it maintains for an NPFFI. This reporting will be required on a Form 8966, *FATCA Report*, instead of a Form 1042-S, *Foreign Person’s U.S. Source Income Subject to Withholding*. Also, a PFFI will be permitted to report the aggregate number of accounts held by all such NPFFIs and the aggregate amount of foreign reportable amounts paid to those accounts.

Direct Reporting NFFES or Sponsored Direct Reporting NFFEs and NFFEs that are QIs, WPs and WTs

The FATCA regulations will be modified to narrow the definition of a passive non-financial foreign entity (NFFE) by excluding an NFFE that meets either the new FATCA status of a Direct Reporting NFFE or a Sponsored Direct Reporting NFFE. An entity may elect such status, thereby enabling it to report directly to the IRS, rather than to its withholding agents.

- ▶ A Direct Reporting NFFE will be an NFFE that elects to report its direct or indirect substantial US owners to the IRS on Form 8966, instead of providing information regarding its owners to withholding agents or PFFIs with whom it holds accounts, and will be treated as an excepted NFFE, meaning that payments made to it will not be subjected to withholding.
 - A Direct Reporting NFFE will be required to register with the IRS directly, obtain a global intermediary identification number (GIIN) and agree to comply with certain provisions, but it will not be required to enter into an FFIA.
 - Withholding agents and participating FFIs will confirm a Direct Reporting NFFE’s status by verifying that any GIIN provided is published on the IRS FFI list.
 - An account held by a Direct Reporting NFFE will not be treated as a US account and will not be reported to the IRS by a PFFI with which the Direct Reporting NFFE has a financial account.
- ▶ A Sponsored Direct Reporting NFFE will be an NFFE sponsored by another entity, which (on behalf of the NFFE) will report on Form 8966 directly to the IRS information about each sponsored direct reporting NFFE’s direct or indirect substantial US owners.

Also, future regulations will narrow the definition of a passive NFFE by excluding an NFFE that is acting as a QI or that is a WP or WT. Reporting substantial US owners directly to the IRS will also be required by NFFEs that are QIs, WPs and WTs. These entities will be required to report directly to the IRS information about the passive NFFE and its substantial US owners under their agreement with the IRS, in addition to the entity's other obligations as a withholding agent under Chapters 3 and 4.

- EY observes: The modified regulations will create two new Chapter 4 statuses, Direct Reporting NFFE and Sponsored Direct Reporting NFFEs and will require an NFFE that is acting as a QI, a WP or WT to perform direct reporting to the IRS for FATCA purposes, in addition to its other Chapter 3 and 4 obligations. The ability to keep the list of owners of an NFFE from being shared widely among withholding agents was requested by the fund and asset management community.

Section 953(d) entities

A change in the regulations will simplify FATCA compliance for the insurance industry and many captive insurance companies. A foreign insurance company that elects under Section 953(d) to be taxed as a US insurance company and that is not a specified insurance company, (i.e., does not issue and is not required to make a payment on a cash value insurance or annuity contract) will be treated as a US person. This will be a change to the definition of the term, "US person," under the final regulations, which excludes an insurance company that has elected under Section 953(d) to be treated as a US person if the company is not licensed to do business in any state.

- EY observes: In the Notice, the IRS announced its intention to update all relevant IRS forms to the extent required to incorporate and implement the changes described above, including Form W-8BEN-E.

Registration for Participating FFIs and Reporting Model 2 FFIs

An FFI may register on Form 8957, *Foreign Account Tax Compliance Act (FATCA) Registration*, through the FATCA registration website on behalf of its branches

(including its home office) so that each such branch may be treated as a PFFI. A Reporting Model 2 FFI may also register on behalf of one or more of its branches (including its home office) to obtain a GIIN and to agree to comply with the terms of an FFIA, as modified by an applicable Model 2 IGA. Each such branch that is registered, other than a limited branch, will be issued a GIIN to be used in complying with the FFIA and to identify itself to withholding agents.

The IRS intends to update the FATCA registration User Guide to provide information on the registration process for sponsored entities. An entity that agrees to perform the due diligence, withholding and reporting obligations of one or more FFIs may register with the IRS through the FATCA registration website to be treated as a sponsoring entity. If the sponsoring entity seeks to obtain status as a PFFI or Reporting Model 2 FFI for itself, it must separately register via the web site.

Draft FFI agreement

The draft FFI agreement applies to PFFIs and Reporting Model 2 FFIs, as modified by the Model 2 IGA. The draft agreement sets forth a few new definitions not in the final regulations and the meaning of the new terms are consistent with the final regulations and Chapters 3 and 4. The agreement will not actually be signed, but an FFI will agree to the terms of the FFIA by completing Part 4, Signature, on Form 8957. Unless renewed, the FFIA will expire on 31 December 2016. Certain noteworthy sections of the draft FFIA are highlighted below.

Section 3. Due diligence requirements for documentation and identification of account holders and non-participating FFIs

Reporting Model 2 FFI due diligence

The Notice provides additional guidance in relation to the due diligence responsibilities of Reporting Model 2 FFIs. If permitted by the jurisdiction's IGA, a Reporting Model 2 FFI will have the option to apply either the due diligence procedures as set forth in Annex 1 of the applicable IGA or the due diligence procedures as set forth under the final regulations. The Notice reiterates that, once a Reporting Model 2 FFI chooses to apply the due diligence rules under the regulations to identify US accounts,

recalcitrant account holders and non-participating foreign financial institutions, it must continue to do so every year thereafter. The Notice provides that a Reporting Model 2 FFI may choose which due diligence rules it will apply (e.g., the pre-existing account rules) by groups of accounts (e.g., by business line).

Whether a Reporting Model 2 FFI chooses to apply the due diligence rules in the final regulations or in Annex 1, it must document the FATCA status of any entity payees who are not account holders.

- EY observes: While a Reporting Model 2 FFI does not have to take an all-or-nothing approach, once it chooses to follow the due diligence procedures under the FATCA regulations, it cannot choose to revert back to the due diligence requirements imposed by an IGA in subsequent years, absent a material modification. As a result, Reporting Model 2 FFIs should carefully consider both options before making a determination as to which due diligence standards it will apply.

Additional requirements for identifying and documenting account holders and payees

These rules generally apply the documentation requirements in the regulations. They also add additional rules.

Under a provision that applies if a PFFI is unable to obtain the required documentation within 90 days of the expiration date of the documentation or a change in circumstances, the participating FFI must apply the presumption rules of the agreement with respect to the account or payee until the FFI obtains valid documentation on which it may rely. The presumption rules include a special rule under which, following a change in circumstances, a participating FFI may continue to treat otherwise valid documentation previously provided by an account holder or payee as valid and rely on such documentation until the earlier of 30 days following the change in circumstances or the date new documentation is obtained on which the PFFI may rely. Additionally, a PFFI may choose to escrow amounts withheld (in lieu of depositing such amounts as

tax withheld) with respect to an account holder or payee after the date of a change in circumstances until the earlier of the date that is 90 days after the date the first withholdable payment is made to the account following the change in circumstances or the end of the calendar year in which such withholdable payment is made.

- ▶ EY observes: In the case of a change in circumstance, the text does not clearly relate the two time periods (90 days and 30 days). The one item that is clear is that a PFFI can rely on the previously valid documents for 30 days.
- ▶ EY observes: The Notice appears to treat expired tax forms in the same manner as a change in circumstance (i.e., withholding is not required on Day 1 after a form expires, but will begin on Day 31). This provision appears to conflict with the final regulations.
- ▶ EY observes: The escrow procedure when a change in circumstance occurs is a new provision and it is not clear if withholding should begin on Day 31 after a change in circumstance (as allowed under the presumption rules) or Day 1 (which in accordance with the escrow rule).

Also, under a provision that applies either to a payee or an account held by an entity, a PFFI must apply the presumption for entities under the regulations in the absence of valid documentation. This rule does not apply to an individual payee or account holder. In the absence of documentation for an individual account, the PFFI must treat the account as held by a recalcitrant account holder.

Section 4. Withholding requirements

Option to elect backup withholding or FATCA withholding

An alternative option for a PFFI to satisfy its withholding obligations is introduced in the Notice, allowing a PFFI to elect to perform either Chapter 4 withholding or backup withholding under Section 3406. The Notice provides that, if a PFFI has an account holder who is recalcitrant and is known to be a US person, it may elect to backup withhold at a rate of 28 percent on any withholdable payment, so long as it is a reportable payment under Section 3406.

If the payment is a withholdable payment, but is not a reportable payment, withholding under Chapter 4 must be applied. It is important to note that, while a Reporting Model 2 FFI is not required to perform Chapter 4 withholding on withholdable payments made to non-consenting US accounts, it must still apply backup withholding to the extent the payment is also a reportable payment under Section 3406.

If a non-withholding QI or non-withholding WP/WT who is a PFFI elects to perform backup withholding in lieu of FATCA withholding on recalcitrant account holders who are known US persons, the PFFI must provide the withholding agent with the information necessary to determine what portion of the payment is allocated to the recalcitrant account holders subject to backup withholding. When a payment is not subject to withholding under FATCA, but is subject to withholding under Section 3406, the PFFI must not only provide the withholding agent with information needed for purposes of Chapter 3, but must also provide the Chapter 4 status of the payees to the withholding agent.

Withholding

If a PFFI knows or has reason to know that a withholding agent has under-withheld in regards to a withholdable payment it receives, or if the PFFI failed to provide the withholding agent with enough information to make the appropriate determination, the PFFI is responsible for withholding and deducting such tax.

PFFIs are not required to perform Chapter 4 withholding on recalcitrant account holders or NPFFIs in its pre-existing account population until the prescribed due diligence dates have expired.

- EY Observes: It appears that a withholding agent will not be required to perform FATCA withholding on its pre-existing account population, even if an account holder documents itself as a NPFFI before the prescribed deadlines. We anticipate that the final regulations will specifically include the same language as in the Notice so withholding agents will have clarity on this issue.

- EY Observes: Section 4.01(A) only requires a PFFI to withholding on “payees” that are NPFFIs. There is no reference to withholding on “payees” that are recalcitrant account holders.
- EY Observes: Section 4.01(B) includes a new requirement for a Reporting Model 2 FFI to withhold on withholdable payments made to NPFFIs that are “payees” that are not account holders. Again, the draft agreement is silent if withholding is required on recalcitrant “payees” that are not account holders.

Section 6. Information reporting and tax return obligations

This section of the FFIA provides the reporting requirements of a PFFI and a Reporting Model 2 FFI following the final regulations and Model 2 IGA. However, certain changes or updates are made to the following reporting requirements:

1. Reporting with respect to a US Account

- ▶ A PFFI is required to report each substantial US owner of an entity treated as a passive NFFE with respect to an account maintained for a territory FI that is acting as an intermediary. This applies only to the extent that the territory FI provides sufficient information to the PFFI to report such account but does not apply when the territory FI agrees to be treated as a US person.
- ▶ A PFFI that is the trustee of a trustee-documented trust (defined in an applicable Model 1 or 2 IGA) must report each US account maintained by the trust.
- ▶ If a PFFI (including a US branch that is not treated as a US person) elects to report an account under Chapter 61, the PFFI must report the information required to be reported under the following domestic reporting sections: 6041, 6042, 6045 and 6049. A PFFI that is a non-US payor must determine the payments subject to reporting under the applicable section by reporting as if it were a US payor (reporting as a US payor may include reporting of certain-foreign source income). The

requirement to report a specified US person applies irrespective of whether a reportable payment is made to the account during the calendar year with respect to any financial instrument, investment, or contract held in such account. If no reportable payment is made to the account of a specified US person, the reporting will be performed on a Form 1099-MISC, *Miscellaneous Income*.

2. *Reporting with respect to recalcitrant account holders*

- ▶ A PFFI is required to report on Form 8966 certain aggregate information regarding accounts held by recalcitrant account holders, irrespective of whether a withholdable payment was made to such accounts during the calendar year.
- ▶ A Reporting Model 2 FFI is required to report on Form 8966 certain aggregate information regarding accounts treated as non-consenting US accounts whether or not a withholdable payment was made to such accounts during the calendar year.

3. *Special transitional reporting of payments to NPFFIs*

- ▶ The FFIA provides for an alternative method by which a PFFI (including a Model 2 FFI) that is prohibited from reporting on a specific payee basis under domestic law, absent the consent of the account holder, may report on Form 8966 the aggregate number of accounts held by any non-consenting NPFFIs, as well as the aggregate amount of foreign reportable amounts paid to such non-consenting NPFFIs for calendar years 2015 and 2016. In either case, the PFFI may report all income, gross proceeds and redemptions paid to the NPFFIs accounts by the participating FFI during the calendar year instead of reporting only foreign reportable amounts.

4. *Reporting of withholdable payments and tax withheld*

- ▶ A PFFI may report on Form 1042-S with respect to Chapter 4 reportable amounts paid to recalcitrant account holders and NPFFIs in a Chapter 4 reporting pool. It must also report payees of US accounts that it reports under the FFIA in a Chapter 4 reporting pool.

- ▶ For a Reporting Model 2 FFI, the Chapter 4 reporting pool of payees that are US persons also includes account holders of non-consenting US accounts that are not subject to Chapter 4 withholding under the applicable Model 2 IGA, but only to the extent such account holders do not receive payments subject to withholding under Chapter 3 and are not known US persons subject to backup withholding under Section 3406.
- ▶ A US branch of a PFFI (regardless of whether it is treated as a US person) must report separately on Forms 1042-S or 1099 with respect to amounts paid or received by the US branch during the year on behalf of its account holders. Certain exceptions apply to a US branch of a PFFI that is not treated as a US person.
- ▶ A PFFI making a payment of US-source fixed or determinable income comprising a reportable amount under both Chapters 3 and 4, but that is not subject to withholding under Chapter 4, will be required to report a code on Form 1042-S, identifying the payment as exempt for Chapter 4 purposes.
- ▶ A PFFI must report (or provide sufficient information to its withholding agent to report) withholdable payments that it receives on behalf of a limited branch or limited FFI.

5. *Tax return filing requirements*

- ▶ A PFFI that applies backup withholding, instead of withholding under Chapter 4, with respect to recalcitrant account holders that are known US persons, must file Form 945, *Annual Return of Withheld Federal Income Tax*, in addition to any Forms 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, and 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, that may otherwise be required to be filed with respect to the transaction.

- ▶ A US branch of a PFFI that is required to report on Form 1042-S Chapter 4 reportable amounts must file a separate Form 1042 to report the Chapter 4 reportable amounts that it has paid to account holders and payees.
- EY Observes: The reference to Treas. Reg. Section 1.1474-1(i)(2)(i) in Section 6.02(A)(2) of the FFIA appears incorrect. The intended section appears to be Treas. Reg. Section 1.1474-1(i)(2). Also, the reference to Treas. Reg. Section 1.1471-4(d)(4)(i)(B) in Section 6.02(B) appears incorrect and the correct reference should be to Treas. Reg. Section 1.1471-4(d)(5)(i)(B).

Section 7. Legal prohibitions on reporting US accounts and on withholding

This section of the FFIA provides specific requirements for Model 2 FFIs that need to obtain the consent of US account holders opening new accounts. This section also provides the procedures for reporting changes in status from that of a limited branch of a PFFI or a limited branch of a Reporting Model 2 FFI.

- ▶ A Reporting Model 2 FFI must request the account holder's consent to report any change in its status to a US account.
- ▶ If a limited branch maintained by a PFFI or a Reporting Model 2 FFI is no longer prohibited from complying with the requirements of the FFIA or otherwise being treated as a deemed-compliant FFI, the participating FFI must notify the IRS on the FATCA registration website by the beginning of the third calendar quarter following the date that the branch ceases to be a limited branch.

Section 8. Compliance procedures

The FFIA is silent with respect to the terminology with which the PFFI must certify compliance with the FFIA. It only discloses that the IRS will issue future guidance or other instructions on the topic.

When a Reporting Model 2 FFI reports aggregate information regarding its non-consenting US accounts and accounts held by non-participating FFIs, the US Competent Authority may request underlying information regarding those accounts.

Section 9. Participating FFI withholding certificate

This section describes the documentation a PFFI will be required to provide to its withholding agents. These provisions are generally consistent with the final regulations. However, the allocation of a withholdable payment of US-source, FDAP income presented on a withholding statement attached to a Form W-8IMY will differ from the final regulations in order to take into account an option provided in the Notice under which a PFFI may elect to apply backup withholding instead of withholding under Chapter 4 for recalcitrant account holders who are known US persons.

Under this election, the withholding statement must indicate the portion of the withholdable payment subject to backup withholding that is allocated to the Chapter 4 withholding rate pool of recalcitrant account holders that are known to be US persons. A Chapter 4 withholding rate pool of US payees should include only those holders of US accounts that the PFFI reports under Chapter 4. Also, if a payment is subject to withholding or reporting under Chapter 3 or Chapter 61, and not under Chapter 4, the PFFI must allocate the payment to each recipient and include on the withholding statement information necessary to allow the withholding agent to report the payment on Forms 1042-S or 1099.

Allocation of payment on withholding statement for Reporting Model 2 FFIs

A Reporting Model 2 FFI must also include in its Chapter 4 rate pool of US payees any account holder of a non-consenting US account that is not subject to Chapter 4 withholding, but only to the extent that the payment is not subject to withholding under Chapter 3 or backup withholding under Section 3406 (and, presumably, reported elsewhere).

A PFFI may provide specific recipient information on a withholding statement instead of pooled Chapter 4 withholding rate information for recalcitrant accounts holders or NPFFIs, so long as the withholding statement includes information necessary to allow the withholding agent to report the payments on Forms 1042-S or 1099.

Section 11. FFI group

This section addresses the requirements imposed on an “FFI group,” which is a new term under the Notice. An “FFI group” means an expanded affiliated group, as defined in the final regulations, that includes one or more PFFIs or, in the case of a Reporting Model 2 FFI, a group of related entities as defined in an applicable Model 2 IGA.

Each FFI that is a member of an FFI group, other than an exempt beneficial owner, must obtain its FATCA status as a PFFI, registered deemed-compliant FFI, or limited FFI as a condition for any member of the FFI group obtaining any such FATCA status. Also, the PFFI and each FFI that is a member of the PFFI’s FFI group must meet the requirements of its FATCA status.

After the expiration of the transitional rule for limited FFIs and limited branches:

- ▶ A PFFI will cease to have PFFI status unless each limited FFI in the group becomes a PFFI or registered deemed-compliant FFI and no member of the FFI group (including the PFFI) maintains a limited branch.
- ▶ However, a Reporting Model 2 FFI that has a limited branch or is a member of an expanded affiliated group that includes a limited FFI or FFI member with a limited branch will not cease to be a Reporting Model 2 FFI solely due to the expiration of the transitional rule for limited branches or limited FFIs if the Reporting Model 2 FFI continues to comply with the requirements of the applicable Model 2 IGA with respect to such limited branches and limited FFIs.

A PFFI that is a member of an FFI group that includes one or more limited FFIs must treat such FFIs as NPFFIs for withholding and reporting purposes.

Lead FI for expanded affiliated groups

If the PFFI designates a lead FFI to initiate its FATCA registration, the PFFI must authorize the lead FI to fulfill the responsibilities listed below:

- ▶ Identify itself as the lead FI as part of the registration process
- ▶ Remove its status as Lead FI as part of the registration process once that status is terminated
- ▶ Identify, as part of the PFFI’s registration process, all FFIs that have designated the PFFI as their lead FI
- ▶ Access the FFI’s group information within the IRS registration portal every six months to review the information provided and, if needed, update it with respect to any members of the FFI group
- ▶ Inform the IRS within 90 days that a member has been sold or acquired by updating the FFI group information on the FATCA registration website to add or delete the member
- ▶ Inform the IRS within 90 days of a change affecting the Chapter 4 status of any member of the group, including when any member ceases to comply with the requirements of either a PFFI or a registered deemed compliant FFI by updating the member’s FFI Chapter 4 status on the FATCA registration website
- ▶ Inform the IRS within the required time that a member of the FFI group ceases to be a limited FFI and designate on the FATCA registration website the status for which such FFI will register

Section 12. Expiration, modification, termination, default, and renewal of the FFI Agreement

The FFIA is valid beginning on its effective date through 31 December 2016. The FFIA will only be modified through published guidance by the IRS. No modifications to expand the types of payments subject to withholding and reporting or to include additional requirements for a PFFI will be made before 2017.

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SCORE No. CM3940

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