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THE TAX LAWYER

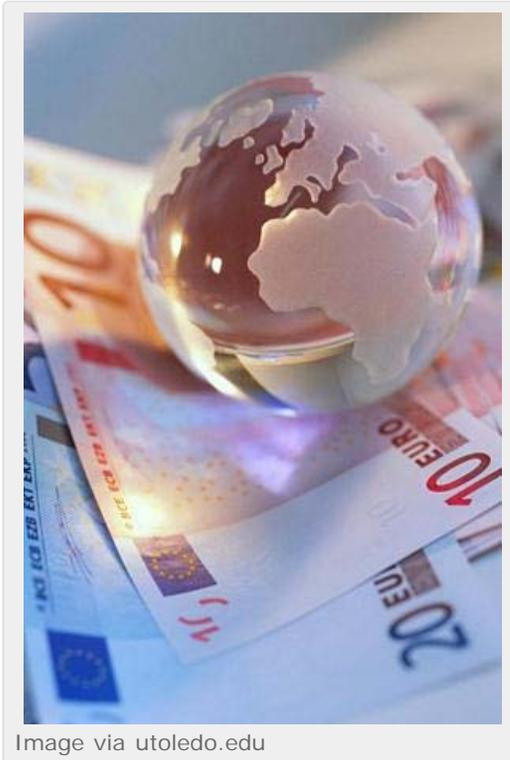
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### Fat New Regs Trim FATCA Down to Size

The Foreign Account Tax Compliance Act ([FATCA](#)) is about disclosure and transparency, but in part is to catch Americans trying to stash money overseas. Controversially, it enlists the aid of foreign financial institutions (FFIs) to do it, requiring them to identify their U.S. account holders, name names and even to withhold when Americans don't fess up. In concept, that's been a tough sell internationally, with foreign institutions and governments, not to mention U.S. persons, taking some umbrage.

But despite [early signs](#) FATCA might fail, FATCA is looking fat and happy.

In fact, it got a big boost from the announcement that France, German, Italy, Spain and the United Kingdom were on board. See [5 Nations Join U.S. In Tax Evasion Crackdown](#). And with that news, came nearly 400 pages of [proposed regulations](#). See [Treasury, IRS Issue Proposed Regulations for FATCA Implementation](#).



These regulations are only proposed and aren't technically effective until they are finalized. Yet they contain important new details how this massive effort is likely to play out across the world. Here's what seems noteworthy.

**More Grandfathering.** The proposed regulations would exclude from the definition of withholdable payment and passthru payment any payments under an obligation outstanding on January 1, 2013, and any gross proceeds from disposing of such an obligation. This gives many some breathing room.

**Latitude for Legal Prohibitions.** One of the major stumbling blocks to FATCA was the seemingly irreconcilable conflict if FATCA ***required*** you to disclose but your own country ***prohibited it***. The proposed regulations provide a two-year transition until January 1, 2016, for the full implementation of this requirement. Time heals all.

**"Deemed-Compliant" FFIs.** FFIs are looking for ways to sidestep the massive compliance efforts FATCA entails. They are in luck, for the proposed regulations cut them some slack with deemed compliance rules.

For preexisting individual accounts:

- Manual review of paper records is limited to accounts over \$1 million; and
- Accounts of \$50,000 or less are excluded.

For preexisting entity accounts:

- Accounts of \$250,000 or less are excluded; and
- Much of the due diligence for anti-money laundering and "know your customer" rules counts, plus simplified procedures to identify the FATCA status of preexisting entity accounts.

**New Accounts.** FFIs will be able to use their existing customer intake procedures, including the usual data collected at customer intake.

**Verifying Compliance.** It looks like the responsible officers of FFIs will be able to simply certify that they comply. That means verification through third-party audits would not be mandated. Plus, as long as the FFI complies with its obligations in an FFI agreement, it would not be held strictly liable for failure to identify a U.S. account.

**Financial Account Defined.** The proposed regulations would refine the definition of financial accounts to focus on traditional bank, brokerage, money market accounts, and interests in investment vehicles. Fortunately, most debt and equity securities issued by banks and brokerage firms, will be excluded

**Information Reporting Transition.** Reporting on income is to be phased in beginning in 2016. Reporting on gross proceeds is to begin in 2017.

**Passthru Payments.** The proposed regulations would provide that withholding is not required with respect to foreign passthru payments before January 1, 2017. Until withholding applies, to reduce incentives for nonparticipating FFIs to use participating FFIs to block the application of the FATCA rules, the proposed regulations would require participating FFIs to report annually to IRS the aggregate amount of certain payments made to each nonparticipating FFI.

For more, see:

[5 Nations Join U.S. In Tax Evasion Crackdown](#)

[Treasury, IRS Issue Proposed FATCA Rule](#)

[IRS and Treasury Propose New FATCA Rules](#)

[IRS: Expect Even More Transparent Foreign Accounts](#)

[With Indictments, IRS Will Get More Data From Swiss](#)

[IRS Exempts Many Expats From FATCA](#)

[Happy FATCA Filing Season](#)

## [IRS FATCA Guidance, Round 3](#)

### [Oh Canada! Hating FBARs And FATCA](#)

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