cutting through complexity

FATCA: Technical analysis and implications for insurers

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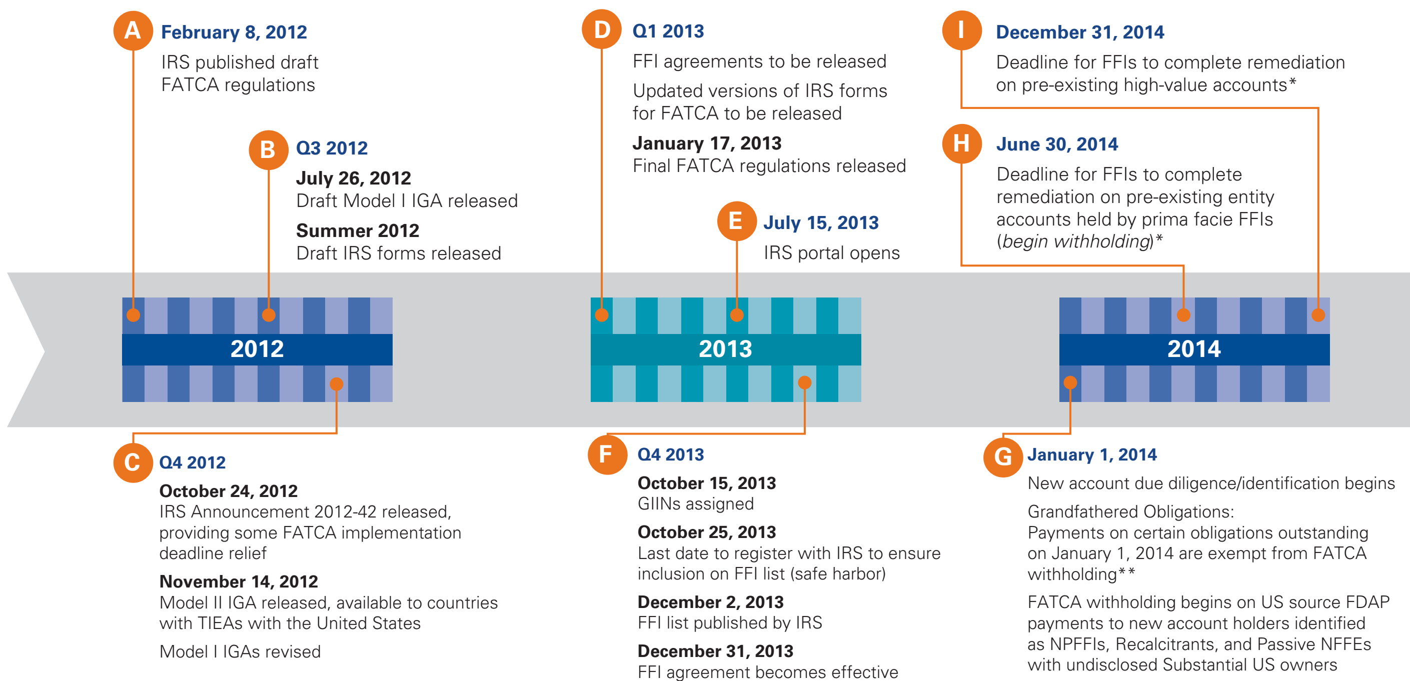
On January 17, 2013, the final regulations were released implementing the Foreign Account Tax Compliance Act ("FATCA").[1] The Proposed Regulations,[2] which were published for comment in February 2012, included a number of provisions specific to insurance companies. These provisions spurred multiple comments from insurance companies and industry groups, especially around practical considerations in implementing the rules, grandfather status, entity status, and various product definitions. Over the last year, Treasury and the Internal Revenue Service ("IRS") have engaged in extensive dialogue with the industry, and have gained a better understanding of the FATCA issues unique to insurance companies. The Final Regulations address many of the concerns expressed by the insurance industry, although they do not adopt all of the changes suggested by the industry.[3]

The Final Regulations address many industry concerns, but a number of open issues persist.

The Final Regulations adopt a "risk-based approach" to effectively address policy concerns, eliminate unnecessary burdens and, where possible, build on existing practices and obligations. The Final Regulations include a number of simplifying rules; for example, non-US insurers now may generally rely on their respective countries' classifications of annuity and life insurance products when determining whether an entity is a foreign financial institution ("FFI") and whether a contract gives rise to a reportable financial account – instead of having to pigeonhole these products into US tax law definitions and concepts. In some areas, however, the Final Regulations do little to reduce the complexity or ease the burdens inherent in the FATCA implementation and compliance exercise that insurance companies face. For example, the Final Regulations treat a non-US insurance company that makes an election under section 953(d) to be taxed as a US company as a non-US entity, unless the company is authorized to do business in a state of the US, but provide an election for such companies to do reporting "similar to" reporting under section 6047(d).

FATCA time line for foreign financial institutions



* These dates assume that the PFFI's FFI agreement is approved by the IRS and effective on December 31, 2013.

** Payments treated as dividend equivalents, under section 871(m), may be treated as Grandfathered up to six months after the publication of regulations implementing section 871(m). Payments treated as foreign passthru payments may be treated as Grandfathered up to 6 months after the publication of implementing regulations.

Source: KPMG International, 2013

[1] Treas. Reg. §§1.1471-1 through 1474-7, 301.1474-1, 78 Fed. Reg. 5874-5995 (Jan. 28, 2013) ("Final Regulations").
[2] Prop. Regs. §§1.1471-0-1.1474-7, 301.1474-1, 77 Fed. Reg. 9022 (Feb. 15, 2012) ("Proposed Regulations").
[3] A grid highlighting key provisions of the Final Regulations and how these provisions compare with the provisions of the Model I IGA can be found at the end of this pamphlet.

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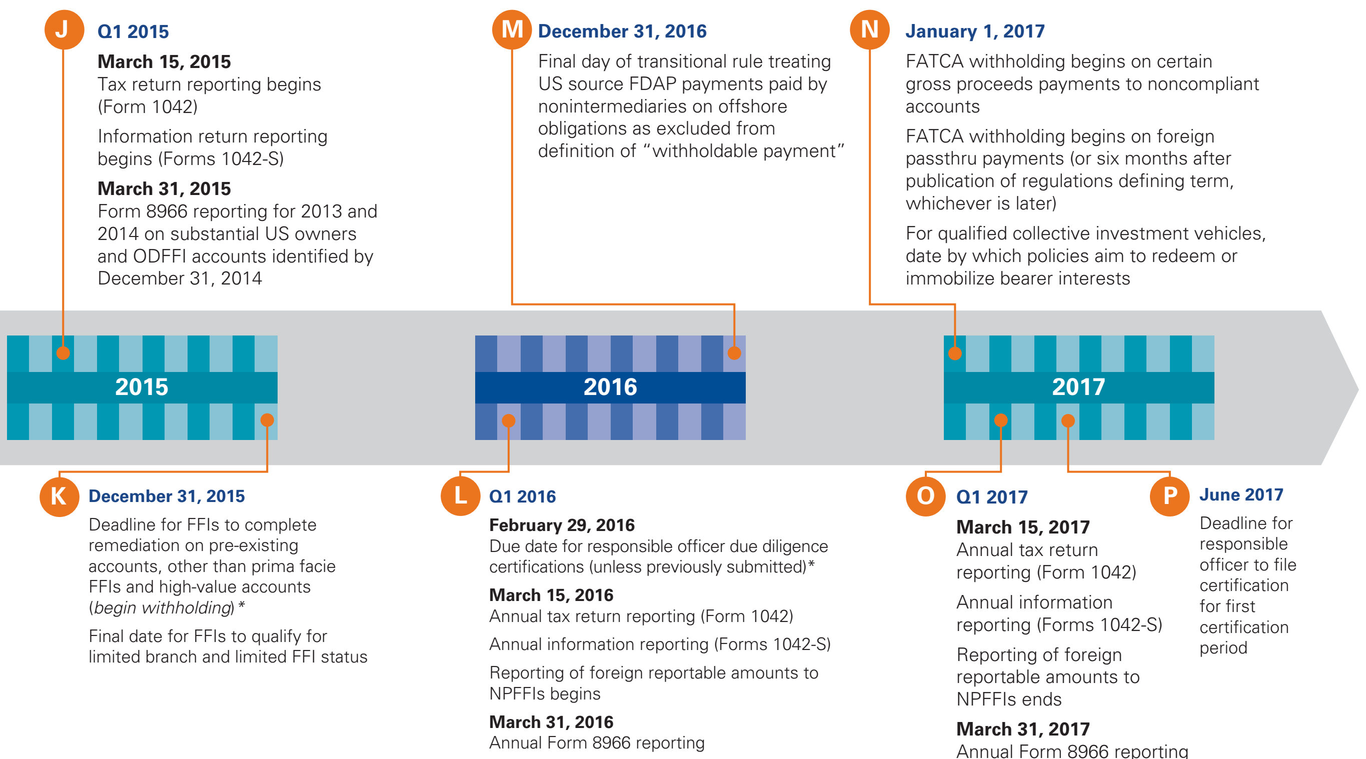
Until now, global and US insurance groups have taken varied approaches to tackling their FATCA obligations. Some companies, especially in the US, have adopted a "wait and see" approach – due to other priorities and/or limited resources, or even with the hope that the final regulations would simplify their analysis and implementation tasks. Others, especially large global insurers, may have already established their FATCA governance structure, provided training to affected personnel, completed in-depth impact assessments, identified affected entities, products, and payment streams, and/or developed and started implementing an overarching FATCA work plan with the goal of putting in place a workable FATCA operating model and ongoing FATCA compliance structure.

For global insurers, Treasury's pursuit of, and entry into, intergovernmental agreements ("IGAs") with partner countries to ease compliance burdens provides some relief but also introduces complexity, as there are now three possible FATCA regimes to contend with: the Final Regulations (for US insurers), the Model 1 IGA, and the Model 2 IGA (which generally follows the Final Regulations but may have superseding provisions as well).

Regardless where an organization is in its FATCA "life cycle," the Final Regulations crystallize the timelines for key FATCA implementation tasks. Due to practical considerations raised by taxpayers and identified by the government, previous guidance has generously pushed back the FACTA effective date timeline. At this point, however, it is unlikely that the various start dates for withholding, FFI registration, and reporting, among others, will slip any further.

Global and US insurance companies will need to assess the impact of the Final Regulations on their groups and develop a comprehensive workplan and FATCA governance structure.



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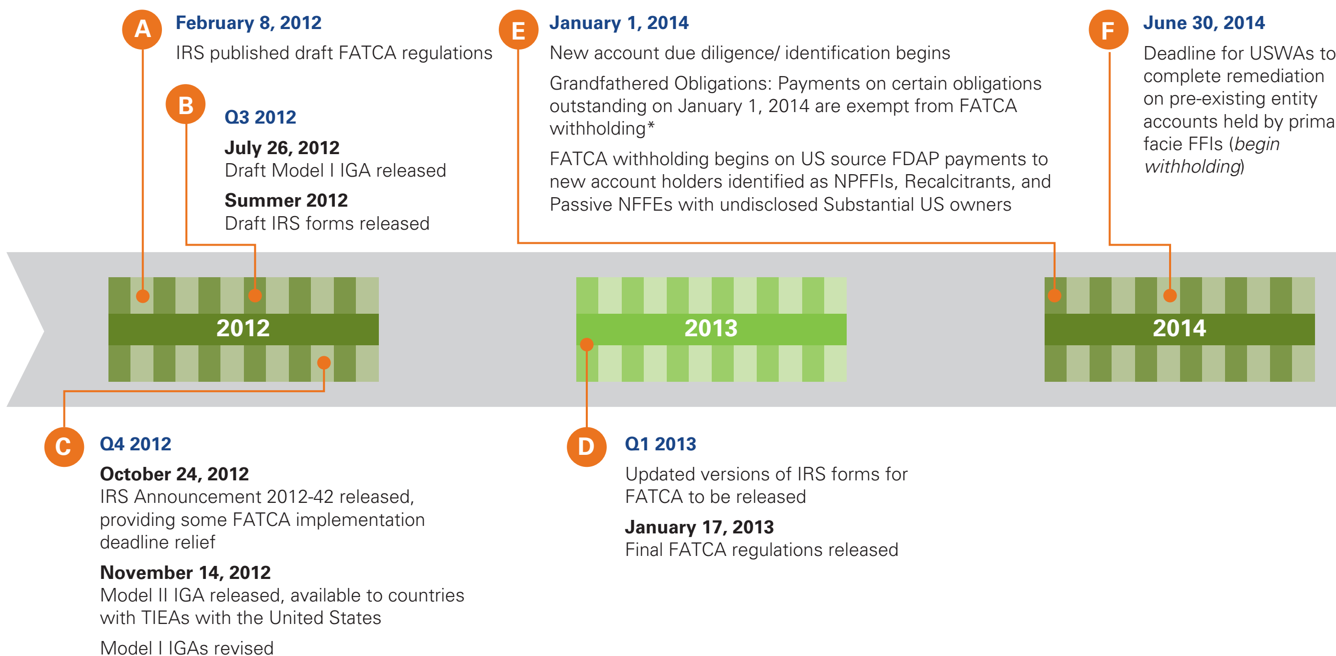
FATCA time line for US withholding agents



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Putting FATCA in perspective, there are a few basic tasks that all insurance companies must accomplish to position themselves to meet the FATCA timeline set forth in the Final Regulations:

- **For US and Non-US insurers**
  - Establish a FATCA project infrastructure and responsible individuals
  - Sensitize affected business units and individuals within the organization to their FATCA compliance responsibilities
  - Identify "withholdable payments" made and received by each entity
  - Assess current onboarding and chapter 3 reporting and withholding procedures and capabilities; identify and remedy gaps
  - Review product distribution channels and clarify each party's FATCA roles and responsibilities
  - Review cross-border reinsurance agreements
  - Develop and implement a FATCA work plan, which may include implementation of procedural and information technology systems changes.
- **Insurance groups with non-US entities also will need to**
  - Define the organization's expanded affiliated group[4]
  - Identify the group's (or entities') responsible officer(s)
  - Determine which non-US entities and businesses are FFIs and whether any of these entities qualify for an exemption from the requirement to become a "participating" FFI
  - Decide which entities must or will become participating FFIs, register these companies using the IRS portal, and put in place FFI Agreements as needed
  - Identify US financial accounts and obtain and retain appropriate documentation for each account
  - Possibly identify substantial US owners (for nonfinancial foreign entities ("NFFEs") and obtain appropriate documentation regarding these owners, or certify that no such owners exist.

[4] An "expanded affiliated group" is an affiliated group as defined in section 1504(a) substituting a more than 50 percent ownership threshold for the 80 percent ownership threshold and ignoring certain exclusion rules. Treas. Reg. §1.1471-5(i)(2).

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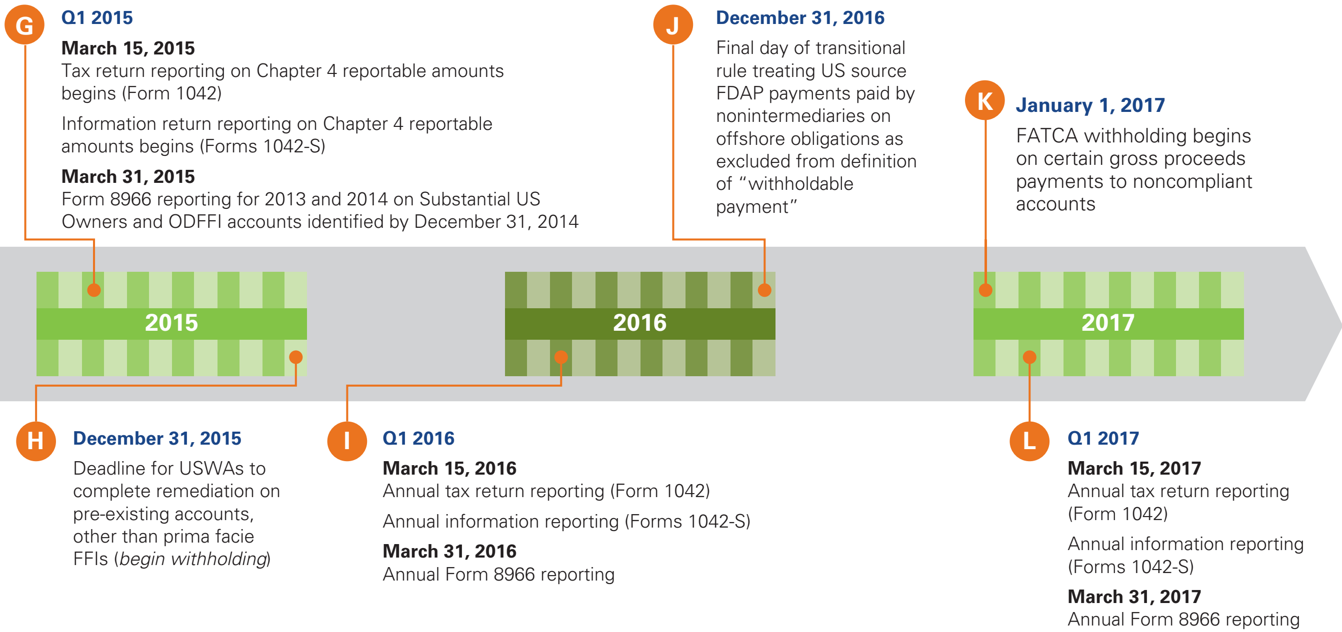

This pamphlet provides an overview of selected insurance-specific provisions in the Final Regulations, discusses some of the practical considerations that arise for companies as they plan for FATCA implementation, and provides insights for approaching FATCA implementation projects.

The FATCA Focus for US Insurance Companies: Withholdable Payments Trigger Inquiries and Documentation

A US insurance company or other entity that makes a "withholdable payment" to a payee that is an FFI or other foreign entity on or after January 1, 2014 must withhold 30 percent unless (1) appropriate documentation is obtained that demonstrates the entity is compliant with FATCA, or (2) the payment is made under a "grandfathered obligation."[5] Withholdable payments include US source fixed, determinable, annual, or periodical ("FDAP") income. For sales or dispositions occurring on or after January 1, 2017, gross proceeds from the sale or disposition of property of a type that can produce interest or dividends that is US source FDAP income also are withholdable payments.[6]

The Final Regulations clarify that insurance and reinsurance premiums are withholdable payments.[7] Commentators requested an exclusion from the definition of a "withholdable payment" for reinsurance premiums, which are business-to-business payments made in the ordinary course, but the Final Regulations do not provide such an exception.[8] Although, as discussed below, indemnity reinsurance does not trigger a "financial account" on the non-US side, the payment of US-source insurance and reinsurance premiums triggers an inquiry into the FATCA status of the non-US insurer or reinsurer as well as a diligence and/or documentation requirement. To simplify things, the payor generally will want to collect an IRS Form W-8-BEN-E or W-8 IMY before paying 100 percent of a withholdable payment, including an insurance or reinsurance premium, to a non-US entity.

Regardless where an organization is in its FATCA "life cycle," the Final Regulations crystallize the timelines for key FATCA implementation tasks.

[5] Treas. Reg. §1.1471-2(a)(1).
[6] Treas. Reg. §1.1473-1(a)(i)-(ii).
[7] Treas. Reg. §1.1473-1(a)(4)(iii).
[8] Preamble to Final Regulations, 78 Fed. Reg. 5874, 5895.

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The Final Regulations specifically include "premiums for insurance contracts or annuity contracts" and "amounts paid under cash value insurance or annuity contracts" in the definition of withholdable payments.[9] The "amounts paid" language is fairly broad. But, withholdable payments must, as an initial matter, constitute either FDAP income or gross proceeds from certain sales or dispositions.[10] FDAP income does not encompass amounts that are not included in the recipient's income.[11] Accordingly, FDAP income does not include policy loans on life insurance contracts unless they are taxable under section 72. Nor does FDAP include death proceeds, unless there has been a transfer for value, in which case the FDAP income amount is net of the contract owner's basis in the contract.[12] Amounts paid on the surrender of a life insurance or annuity contract, on the other hand, likely are withholdable payments to the extent they exceed the contract owner's basis in the contract.[13] Payments under an annuity contract also are withholdable payments to the extent they constitute income under section 72.[14]

As predicted in light of discussions with the IRS and Treasury, insurance and reinsurance premiums are withholdable payments under the Final Regulations. Many reinsurers, however, will be excepted NFFEs because they are publicly traded entities.

The definition of a withholdable payment in the Final Regulations generally is consistent with Article I(jj) of the Model IGA, but the IGA is less cumbersome than the Final Regulations in that it does not define a payment of gross proceeds on sale or disposition of certain property as a withholdable payment. Furthermore, while the Final Regulations do not adopt the exemptions from withholding in the section 1441 regulations, the IGA does refer to these regulations for exclusions from withholdable payment status.

Payments made under "grandfathered obligations" are not withholdable payments and, thus, are not subject to withholding.[15] The grandfather rule applies to obligations outstanding on January 1, 2014.[16] An obligation is any legally binding agreement or instrument – unless such obligation is expressly excluded from being an "obligation" in Treasury Regulation section 1.1471-2(b)(2)(ii)(B). The Final Regulations define certain insurance and annuity contracts as grandfathered obligations: a life insurance contract under which the "entire contract value is payable no later than upon the death" of the insured individual,[17] and an immediate annuity payable for a period certain or for the life of an annuitant[18] can be grandfathered – this is a helpful change from the Proposed Regulations. If, however, the terms of a life insurance or annuity contract allow a change of the individual insured or the annuitant, such contract will not qualify for grandfather status.[19] Moreover, "investment linked" insurance and annuity contracts, which are cash value insurance contracts, do not qualify as "obligations" for purposes of the grandfather rule.[20]

Separate account contracts are not eligible for grandfathered status for purposes of withholding.

9 Treas. Reg. §1.1473-1(a)(4)(iii).
10 Treas. Reg. §1.1473-1(a)(1).
11 Treas. Reg. §1.1441-2(b). The regulations provide that FDAP income includes all income included in gross income under section 61 except for certain items specified in the regulations, and that "items of income that are excluded from gross income under a provision of law without regard to the US or foreign status of the owner of the income, . . . shall not be treated" as FDAP income.
12 Rev. Rul. 2009-14, 2009-1 C.B. 1031, situation 3 (concluding that US source death benefits received by a non-US transferee for value were FDAP to the extent that the benefits received exceed the contract owner's basis in the contract).
13 Rev. Rul. 2004-75, 2004-2 C.B. 109 (concluding that annuity payments and withdrawals of cash value that constitute gross income under section 72 are FDAP; noting that "FDAP income generally includes all US source income included in income under section 61"; excluding "amounts received under life insurance contracts by reason of the death of the insured" from the ambit of this ruling).
14 Id.
15 Treas. Reg. §1.1471-2(b)(1).
16 Treas. Reg. §1.1471-2(b)(2)(i)(1). An obligation is "outstanding" on a given date if a legally binding agreement establishing the obligation was executed between the parties to the agreement before such date. Treas. Reg. §1.1471-2(b)(2)(iii).
17 Treas. Reg. §1.1471-2(b)(2)(ii)(A)(4).
18 Treas. Reg. §1.1471-2(b)(2)(ii)(A)(5).
19 Treas. Reg. §1.1471-2(b)(2)(ii)(B)(2).
20 Treas. Reg. §1.1471-2(b)(2)(ii)(B)(3). Separate account products generally are "investment linked" contracts. An "investment-linked annuity contract" is an annuity contract under which benefits or premiums are adjusted to reflect the investment return or market value of assets associated with the contract. Treas. Reg. §1.1471-1(b)(65). An "investment-linked insurance contract" is an insurance contract under which benefits, premiums, or the period of coverage are adjusted to reflect the investment return or market value of assets associated with the contract. Treas. Reg. §1.1471-1(b)(66).

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The Final Regulations clarify that if a contract is grandfathered the premiums paid on that contract also are grandfathered – unless a "material modification" occurs.[21] A withholding agent may rely on a written statement by the issuer of a grandfathered obligation that no material modification has occurred.[22] In light of this reliance rule, insurance companies that issue life insurance and annuity contracts may be called upon to provide statements regarding the grandfather status of the contracts that they issue, and/or that no "material modification" of a contract has occurred.

Indemnity reinsurance contracts are not addressed by the grandfather rules, but they are not excluded from the definition of an "obligation" and so should be eligible for grandfather status. Reinsurance treaties that are renegotiated periodically likely become new contracts at the renewal date. Also, certain payments on funds-withheld reinsurance contracts may be considered withholdable payments because such payments are equivalent to payments of interest on a loan.

For US insurers, determining what types of withholdable payments are made, and to whom, is a critical step in assessing what needs to be done to start FATCA information collection and possibly withholding as of January 1, 2014.[23] There are three broad categories of payees: (1) investors and creditors, (2) policyholders and customers, and (3) vendors and service providers. The first category may generate US FDAP in the form of dividends and interest; the third category may generate mostly non-withholdable business-to-business payments for non-financial services and other items.[24] The second category of insurance and annuity contract-specific payments must be identified and sorted into withholdable payments and other payments.

The most straightforward way to approach FATCA compliance for withholdable payments made to non-US payees on or after January 1, 2014 may be to request the appropriate IRS Form W-8 from each payee, and obtain IRS Forms W-9 for US customers and payees.[25] If a W-8 is provided and reflects participating FFI ("PFFI") status, deemed compliant FFI ("DCFFI") status, or another status that exempts the payee from withholding (e.g. territory financial institution, exempt beneficial owner, effectively connected income), no withholding is required.[26] While such an approach may be overbroad in some instances, it simplifies what would otherwise be an elaborate identification and categorization exercise.

With regard to the validity of withholding certificates, the Final Regulations include special rules for reliance on pre-FATCA Forms W-8,[27] and generally follow the current (three-plus year) validity period for Forms W-8.[28] In some situations, payee documentation may remain valid until a "change in circumstances," such as the addition of a US address or phone number, occurs.[29] Insurance companies may need to alter customer onboarding procedures and/or add certain fields to their documentation systems to accommodate these requirements.

The Final Regulations address many industry concerns, but a number of open issues persist.

Many companies will be able to build upon their existing chapter 3 (i.e. section 1441 et. seq.) documentation and reporting procedures to implement FATCA. A review of these procedures and accompanying information technology systems, as well as a review of new customer onboarding and Anti-Money Laundering/Know Your Customer ("AML/KYC") policies and procedures, generally is in order as part of a thorough FATCA work plan.

[21] Treas. Reg. §1.1471-2(b)(1) and (b)(2)(iii)-(iv). For all obligations other than debt obligations, the Final Regulations impose a "facts and circumstances" test for material modification, which would cause the obligation to be treated as newly issued as of the date of the modification. Commentators requested clarification regarding what constitutes a "material modification," but no additional guidance was provided in the Final Regulations.
[22] Treas. Reg. §1.1471-2(b)(4).
[23] At a later date, non-U.S. insurers will need to identify, document, and possibly withhold upon, passthru payments. For now, the Final Regulations have refrained from providing rules specific to "passthru payments."
[24] Treas. Reg. §1.1473-1(a)(4)(iii).
[25] The IRS has released draft Forms W-8-BEN, W-8-BEN-E, and W-8 IMY, which are expected to be finalized prior to January 1, 2014. Other potentially applicable forms are W-8ECI and W-8EXP.
[26] "Prima facie FFIs" may require additional diligence and documentation.
[27] Treas. Reg. §1.1471-3(d)(1).
[28] Treas. Reg. §1.1471-3(c)(6)(ii).
[29] Treas. Reg. §1.1471-3.

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Payments to US Branches of Foreign Insurance Companies

Under the Final Regulations, payments to US branches of non-US insurance companies are treated as made to a US person if the branch is treated as a US person under the section 1441 regulations. Nonetheless, the US branch of a foreign insurance company must furnish a Form W-8, not a Form W-9.[30] A payment to a US branch of a foreign insurer is made if it is credited to an account in the US in the name of the US branch, or the payment is made to a US address where the branch is located and the branch's name appears on documents associated with the payment, for example, a check mailed to the branch.

The Final Regulations provide that payments to US branches of foreign insurers are effectively connected income and, thus, not withholdable payments if the withholding agent, for example, the US payor, obtains a valid Global Intermediary Identification Number ("GIIN") for the home office establishing that the US branch is a branch of a PFFI or registered deemed compliant FFI, and an employer identification number ("EIN") for the US branch.[31]

The Final Regulations' treatment of section 953(d) companies contradicts the Code.

Payments to Foreign Branches of US Insurance Companies

Under the final regulations, payments to a foreign branch of a US insurance company are treated as payments to a US payee. That is, unless the foreign branch is a qualified intermediary ("QI") acting as an intermediary with respect to the payment. Accordingly, a QI branch of a US insurance company must provide an intermediary withholding certificate, and the withholding agent must report the payment as a payment to a foreign branch on IRS Form 1042-S.[32]

The Status of Section 953(d) Companies

A controlled foreign corporation that is an insurance company and elects under section 953(d) to be taxed as a US insurance company is a US company for all purposes of Title 26. Despite the language of the Code, however, the Final Regulations treat companies not licensed to do business in any State as non-US persons for FATCA purposes, i.e. they are treated as foreign entities.[33] The Preamble to the Final Regulations explains that "[h]ow a foreign insurance company and its United States shareholders are taxed is immaterial to the need for reporting with regard to insurance or annuity contracts issued by the insurance company to its customers"[34] – apparently highlighting the differences between income taxation and information reporting. A section 953(d) company that is licensed to do business in a State, however, is treated as a US person and is subject to reporting requirements under section 6047(d) rather than FATCA.

As an apparent concession to various industry commentators, the Final Regulations do allow an insurance company participating FFI that is not licensed in any State to elect to report its chapter 4 account information in a manner similar to section 6047(d) reporting. Under the election, an insurance company participating FFI would report the sum of a life insurance contract's cash value or an annuity contract's account balance or value and any amount paid under the contract as a "gross distribution" in Box 1 of Form 1099-R. The participating FFI can then check box 2b to indicate that the taxable amount is not determined.

The Final Regulations provide three independent tests for "insurance company" status.

FATCA Considerations for Non-US Insurers

Non-US insurers must determine whether they are FFIs, because FFI status triggers registration, due diligence, reporting, and possibly withholding requirements. Consistent with the Model 1 IGA, a "specified insurance company" is an FFI.[35] A "specified insurance company" is an insurance company or a holding company that is a member of an expanded affiliated group that includes an insurance company,

[30] Treas. Reg. §1.1471-3(a)(3)(vi).
[31] Treas. Reg. §1.1471-3(f)(6).
[32] Treas. Reg. §1.1471-3(a)(3)(vii).
[33] Treas. Reg. §1.1471-1(b)(132).
[34] 78 Fed. Reg. 5874, 5884.
[35] Treas. Reg. §1.1471-5(e)(1)(iv).

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and which issues, or is obligated to make payments with respect to, a cash value insurance contract or annuity contract.[36]

The Final Regulations refine the definition of "insurance company" from the Proposed Regulations to incorporate three distinct tests. First, an entity is an insurance company if it is regulated as an insurance business under the laws, regulations, or practices of any jurisdiction in which the company does business ("regulatory test"). Second, an entity is an insurance company if greater than 50 percent of its gross income for the year immediately preceding the year that its FFI status is determined arises from insurance, reinsurance, and annuity contracts ("gross income test"). Third, an entity is an insurance company if greater than 50 percent of the total value of its assets is "associated with" insurance, reinsurance, and annuity contracts.[37] This refinement clears up any issues regarding which indicators should be used to measure whether more than half of an entity's business is insurance or reinsurance for FATCA entity classification purposes.

Under the Final Regulations, a "cash value insurance contract" is an insurance contract (other than an indemnity reinsurance contract and certain term life contracts)[38] that has an aggregate cash value greater than US$50,000 at any time during the calendar year.[39] "Cash value" is the amount, unreduced by any charge or policy loan, that (1) is payable under the contract to any person upon surrender, termination, cancellation, or withdrawal or (2) any person can borrow under or with regard to the contract.[40] Cash value does not include death benefits, personal injury or sickness benefits, certain refunds of premium, certain policyholder dividends, and return of certain advance premiums or deposits.[41] Because testing for the US$50,000 threshold may add complexity to a company's FATCA compliance plan, some companies may decide to disregard the de minimis threshold and track and report all cash value amounts.

Could a holding company of a pure property-casualty company be an FFI?

"[A]n insurance company that is not a specified insurance company must independently determine whether it is a depository institution, custodial institution, or investment entity."[42] For certain insurance companies that do not issue cash value insurance contracts or annuities, have minimal underwriting income, or are in runoff, these tests do not yield clear results, and this fact was pointed out to IRS and Treasury under the Proposed Regulations. The Final Regulations provide that in determining whether an insurance company is an FFI under these other categories, its "reserving activities" with respect to its insurance and annuity contracts are not taken into consideration.[43] This rule may provide some relief to insurance companies in that the "reserving activities" of an insurance company do not, alone, trigger FFI status.[44] The term "reserving activities," however, is not defined in the Final Regulations. Presumably, the investment activities of an insurance company, which are associated with its "reserving activities" also are disregarded in determining FFI status.

Unlike the Proposed Regulations, the Final Regulations allow certain insurance companies to be "local" FFIs.

Holding companies and treasury centers that are part of an expanded affiliated group that includes, inter alia, an insurance company are FFIs.[45] The wording of this rule appears inconsistent with the overall "specified insurance company" rule that requires that an insurance company or the holding company of an insurance company make payments with respect to cash value insurance contracts to be an FFI.[46] Even though this seems like a drafting error that might capture holding companies of pure property-casualty insurance companies and reinsurers and we do not think such a result was intended, an entity that has no "financial accounts" at the holding company level should not have any additional reporting requirements due to this rule.

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[36] Id.
[37] Treas. Reg. §1.1471-1(b)(60).
[38] Term life contracts with periodic, non-decreasing premiums to age 90, no accessible contract value, and return premium that doesn't exceed premiums paid less mortality, etc. charges (whether or not imposed) are not cash value insurance contracts. Treas. Reg. §1.1471-5(b)(3)(vii)(A) and (b)(2)(ii).
[39] Treas. Reg. §1.1471-5(b)(3)(vii)(A).
[40] Treas. Reg. §1.1471-5(b)(3)(vii)(B).
[41] Treas. Reg. §1.1471-5 (b)(3)(vii)(C)(1)-(5).
[42] 78 Fed. Reg. 5874, 5887.
[43] Treas. Reg. §1.1471–5(e)(6).
[44] Id.
[45] Treas. Reg. §1.1471-5(e)(1)(v).
[46] Treas. Reg. §1.1471-5(e)(1)(iv).

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Expanding upon the Proposed Regulations, the Final Regulations allow insurance companies to attain registered deemed compliant status as "local FFIs" if they have a place of business outside the local country, but only if the second location (1) is not publicly advertised and (2) performs solely administrative support functions (back office functions).[47]

An insurance company that is not a financial institution is a nonfinancial foreign entity ("NFFE"). Most insurance companies that issue only property-casualty insurance or reinsurance will be NFFEs. No withholding is required on withholdable payments to "excepted NFFEs" that are beneficial owners of such payments. Excepted NFFEs include: publicly-traded companies (or affiliated companies of publicly traded companies); companies that are residents of a US territory (i.e. American Samoa, Guam, Northern Mariana Islands, Puerto Rico, US Virgin Islands); and active NFFEs. Many non-US insurance companies and reinsurers that are NFFEs (i.e. property-casualty insurers and reinsurers) are publicly traded and, thus, will be excepted NFFEs.[48] For non-publicly traded companies, the "active NFFE" exception likely will not be available, as passive income for purposes of the active NFFE test includes "amounts earned by an insurance company in connection with its reserves for insurance and annuity contracts."[49] NFFEs that are not excepted NFFEs will need to report their "substantial US owners"[50] or certify that they have no such owners.

An FFI that is not a deemed compliant FFI or exempt entity is subject to 30 percent withholding on withholdable payments received, unless it becomes a "participating" FFI ("PFFI"). If the FFI is located in a Model 1 IGA country or Model 2 IGA country, it will need to comply with the terms of the applicable IGA. If the FFI is not in one of the US's partner countries, it will need to enter into an "FFI Agreement" with the IRS.

US Branches of PFFIs

The Final Regulations clarify that a US branch of a compliant head office, i.e. PFFI, can elect to be treated as a US person. When the US branch elects such treatment, it will satisfy its withholding obligations on accounts that are held by US nonexempt recipients by satisfying its backup withholding obligations under section 3406(a).

Global insurance groups need to classify their entities (i.e. FFI versus NFFE), which involves classifying the products that are issued by each entity (i.e. cash value contracts, annuities, non-cash value contracts). This exercise generally is complicated by the fact that entities are not synonymous with business units, and FATCA classification focuses solely on entities. Companies generally identify their most highly impacted business units and entities. Again, once FFIs are identified, insurance groups will want these FFIs to become "participating" FFIs within the FATCA regime.

Overview of PFFI Obligations under an FFI Agreement

FFIs, other than those in Model I IGA countries, will need to register with the IRS on or before October 25, 2013, enter into an FFI Agreement, and obtain a GIIN. Expanded affiliated groups with multiple FFIs may identify a lead FFI, or compliance FFI, to be responsible for this registration process.

Under an FFI Agreement, the insurance company will need to (1) conduct due diligence to identify and document US accounts and account holders, (2) report on certain accounts annually to the IRS, (3) adopt a compliance program, (4) have a "responsible officer" certify to the IRS triennially that the company is complying with the FFI Agreement, and (5) beginning with payments made on January 1, 2014, perform withholding on certain payments made to "recalcitrant" account holders and nonparticipating FFIs.

The IRS registration portal for FFIs is expected to streamline the FATCA compliance process for non-US and US companies alike.

[47] Treas. Reg. §1.1471-5(f)(1)(i)(A)(2).
[48] Treas. Reg. §1.1472-1(c)(1)(i)-(ii).
[49] Treas. Reg. §1.1472-1(c)(1)(iv)(A)(11).
[50] A "substantial U.S. owner" of an NFFE generally is a specified US person that owns a more than 10 percent interest in the NFFE. Treas. Reg. §1.1473-1(b)(1). For insurance companies, however, the threshold is reduced to more than a zero percent interest. Treas. Reg. §1.1473-1(b)(5). Significantly, the term "specified U.S. person" excludes regularly traded US corporations and their affiliates. Treas. Reg. §1.1473-1(c)(1)-(2).

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The due diligence requirements for insurance companies that are FFIs vary based on whether the accounts are pre-existing or new, and whether the accounts are individual or entity accounts. Companies do not need to document pre-existing depository accounts held by individuals with a balance or value of US$50,000 or less. For pre-existing accounts held by entities, the threshold for identification and documentation increases to greater than US$250,000.[51] Importantly, for cash value insurance contracts and annuity contracts, an across-the-board minimum of US$250,000 applies. Aggregation rules apply in testing for these thresholds.[52] High-value accounts, with a balance or value greater than US$1,000,000, attract heightened due diligence requirements.

A participating FFI may presume that an individual beneficiary (other than the owner) receiving a death benefit with respect to a life insurance contract that is a cash value insurance contract is a foreign person, and is therefore not required to retain a record of documentation from such person, unless the participating FFI has actual knowledge or reason to know that the beneficiary is a US person.[53] A PFFI has reason to know that a beneficiary of a cash value insurance contract is a US person if the information collected by the PFFI and associated with the beneficiary contains US indicia.

Certain documentation rules have been relaxed for individual beneficiaries and certain group contracts.

The Final Regulations provide that each person who is entitled to access an insurance or annuity contract's value, i.e. through a loan, withdrawal, or surrender, or change a beneficiary under the contract, is an "account holder."[54] If these rights are not available under the contract, then the named owner of the contract, as well as any person who is entitled to receive a future payment under the contract, are the account holders. Upon payment, "each person entitled to receive a payment" is treated as an account holder for FATCA reporting purposes.[55]

The Final Regulations include a relaxed rule for accounts that are employer-sponsored group cash value insurance contracts or a group annuity contracts, which provides that a PFFI may treat such an account as a non-US account until an amount is payable to an employee or certificate holder or beneficiary, so long as the employer has provided a certificate that no employees or certificate holders are US persons. This rule applies to a contract that is issued to an employer covering 25 or more employees or certificate holders, under which the employees/certificate holders are entitled to the cash value of the contract and to name beneficiaries for the benefit payable upon their death, and under which the aggregate amount payable to any one employee or certificate holder does not exceed US$1 million.[56]

Guaranteed investment contracts are reportable "depository accounts" for FATCA purposes.[57] Amounts held by an insurance company under a similar agreement to pay or credit interest thereon also are reportable depository accounts. Accordingly, contracts such as certain types of funding agreements may be reportable.

GICs and certain funding agreements are "depository" accounts for FATCA reporting purposes.

A PFFI must report identifying information (name, address, Taxpayer Identification Number, account number), the account balance or value, and payments made with respect to its reportable insurance and annuity contracts held by specified US persons.[58] The account balance or value reported may be based upon either the account value at calendar year end or the account value at each contract anniversary date.[59] In the case of an immediate annuity contract with no minimum benefit guarantee for which no value is reported to the account holder, the account value is the sum of the net present values of the amounts reasonably expected to be payable in future periods. For immediate annuities with minimum guarantees, the

[51] Treas. Reg. §1.1471-4(c)(3)(iii)(A).
[52] Treas. Reg. §§1.1471-4(c)(3)(iii)(B) and (c)(5)(iii)(B).
[53] Treas. Reg. §1.1471- 4(c)(4)(iii)(B).
[54] Treas. Reg. §1.1471-5(a)(3)(v).
[55] Id.
[56] Treas. Reg. §1.1471- 4(c)(4)(iii)(A).
[57] Treas. Reg. §1.1471-5(b)(3)(i)(2).
[58] Treas. Reg. §1.1471-4(d)(3)(ii).
[59] Treas. Reg. §1.1471-5(b)(4)(i).

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account value or balance is the sum of expected non-guaranteed amounts and guaranteed amounts.[60] The PFFI reporting rules on payments made suggest that death proceeds on life insurance and annuity contracts would be reportable on the account of the beneficiary – although they are not "withholdable payments" for FATCA purposes because they are not FDAP income (absent a transfer for value).[61]

Elective Reporting

Under the Final Regulations, an insurance company that is a PFFI and not licensed to do business in the US (including a section 953(d) company) may elect to report its chapter 4 account information with respect to its life insurance and annuity contracts in a manner similar to section 6047(d) reporting.[62] Under this election, an insurance company participating FFI reports the sum of: (1) a cash value or annuity contract's account balance or value; and (2) any amount paid under the contract as a "gross distribution" in Box 1 of Form 1099-R.[63] The participating FFI would then check box 2b to indicate the taxable amount is not determined. The IRS and Treasury's interest in receiving such reporting is obvious, but the incentive for a company to voluntarily capture and report such information is less clear.

Quick Tips for Moving Forward on FATCA

- Insurance groups need to assemble their internal FATCA project teams and outline their FATCA infrastructure. Some companies may choose a centralized FATCA implementation and compliance structure; others may function better with a less centralized structure that is more aligned with its business units, products, or countries of operation.
- Company leadership must be "on board" with FATCA as a serious compliance project. With the January 1, 2014 withholding start looming, this should be less difficult than it may have been for some organizations back in 2010 when FATCA was passed.
- Tax is but one function that should be represented in a company's FATCA team. Controllers, back office professionals, compliance and chapter 3 reporting groups, legal representatives, information technology, and other professionals will help round out the team and should be "at the table" early in the process.
- Sensitizing your organization to the basics of FATCA is essential. This may be done by an internal training, or a facilitated workshop.
- Gain a picture of your FATCA soft spots by conducting an impact assessment. Some companies attempt the assessment internally; others employ consultants. This assessment will help you identify gaps in current procedures and systems, and facilitate development of a "target" FATCA operating model.
- Develop a work plan to reach your FATCA "targets." Project management may be done in-house or contracted out.
- Remember that FATCA is not a "one and done" project; it will involve ongoing monitoring and compliance activities.

[60] Treas. Reg. §1.1471-5(b)(4)(ii)(A)-(B).
[61] Treas. Reg. §1.1471-4(d)(4)(iv)(C).
[62] Treas. Reg. §1.1471-4(d)(5)(i)(B).
[63] 78 Fed. Reg. 5874, 5884.

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FATCA Overview of Issues for Insurers:

Comparison of Key Insurance-related Provisions (Regulations v. Model I IGA)

Key Issues for US Insurers	Treasury Regulations	IGA Provisions
What is a withholdable payment? Why it Matters: US entities making withholdable payments to certain non-US entities may be required to withhold 30 percent.	• Amounts paid under cash value insurance and annuity contracts are withholdable payments.[64] • Insurance and reinsurance premiums are withholdable payments.[65] • Although indemnity reinsurance will not trigger a "financial account," non-US reinsurers will need to comply with the FATCA regime or face 30 percent withholding on US-sourced premium.	• The IGA does not refer specifically to amounts paid under cash value insurance and annuity contracts as withholdable payments. • Unlike the regulations, the IGA does not treat certain gross proceeds as withholdable payments. The IGA provisions related to passthru payments and gross proceeds are under development by the US and partner countries.[66]
Which insurance-related payments are excluded from withholdable payments? Why it Matters: Payments made under a grandfathered obligation are not withholdable payments.[67]	• The final regulations clarify that premiums paid on grandfathered contracts are grandfathered.[68] • Under the proposed regulations, payments under life insurance contracts payable upon the **earlier of** attaining a stated age or death were subject to grandfathering.[69] The final regulations expand the definition of grandfathered life insurance contracts to include contracts payable **no later than upon the death** of the insured.[70] • "Investment linked" insurance contracts, i.e. separate account life products, are not eligible for grandfathered status.[71] • The final regulations add immediate annuities (both period certain and life contracts) to the types of obligations that may be grandfathered.[72] • Deferred annuity contracts are not eligible for grandfathered status.[73] • "Investment linked" annuity contracts, i.e. separate account annuity products, are not eligible for grandfathered status.[74] • A contract that allows for substitution of a new individual as the insured individual or as the annuitant does not qualify for grandfather status.[75]	• The IGA adopts (incorporates by reference) the exceptions to the definition of withholdable payment in the regulations.[76]

[64] Treas. Reg. §1.1473-1(a)(4)(iii).
[65] Treas. Reg. §1.1473-1(a)(4)(iii); 78 Fed. Reg. 5874, 5895.
[66] Model Intergovernmental Agreement to Improve Tax Compliance and to Implement FATCA ("Model 1 IGA"), Articles I(jj) and 6.2.
[67] Prop. Reg. §1.1471-2(a)(1); Treas. Reg. §1.1471-1(b)(53); Treas. Reg. §1.1471-2(b)(2)(ii)(A)(4); 78 Fed. Reg. 5874, 5878.
[68] Treas. Reg. §1.1471-2(b)(1).
[69] Prop. Reg. §1.1471-2(b)(2)(ii)(C).
[70] Treas. Reg. §1.1471-2(b)(2)(ii)(A)(4).
[71] Treas. Reg. §1.1471-2(b)(2)(ii)(B)(3).
[72] Treas. Reg. §1.1471-2(b)(2)(ii)(A)(5).
[73] Treas. Reg. §1.1471-2(b)(2)(ii)(B)(2).
[74] Treas. Reg. §1.1471-2(b)(2)(ii)(B)(3).
[75] Treas. Reg. §1.1471-2(b)(2)(ii)(B)(2).
[76] Model 1 IGA, Article I(jj).

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Key Issues for US Insurers	Treasury Regulations	IGA Provisions
What is the cutoff date for grandfathered status? Why it Matters: Withholding obligations begin when the grandfather period ends. To avoid duplicative work, FATCA-compliant "onboarding" procedures for new accounts should be in place by this date.	• The proposed regulations defined grandfathered obligations as certain obligations outstanding on 1/1/2013. • The final regulations push back the date for grandfathered obligations and withholding to 1/1/2014.[77]	• The 1/1/2014 date is consistent with the IGA definition of a pre-existing account.[78]
What constitutes a "material modification," which can jeopardize grandfathered status? Why it Matters: Withholding obligations arise when a previously grandfathered obligation loses grandfather status.	• Payments under a grandfathered contract lose their exemption from withholding when a "material modification" occurs. • Whether a contract modification is "material" is based on all relevant facts and circumstances.[79] The final regulations do not clarify the facts and circumstances test as it applies to life insurance and annuity contracts – just as it applies to debt. • A withholding agent, i.e., a US payor, may rely on a written statement by the issuer of a grandfathered obligation that no material modification has occurred.[80]	• The IGA does not specifically address this issue.
How can a withholding agent avoid withholding on a withholdable payment? Why it Matters: From a relationship perspective, withholding is to be avoided. From a risk perspective, however, appropriate justification for not withholding must be documented.	• Generally, the withholding agent must identify the payee, document the payee's status as a PFFI or other deemed compliant FFI or NFFE, and have no reason to know that such status is incorrect. • The most straightforward way approach is to obtain an IRS Form W-8 or W-9. • The IRS will finalize new withholding certificates, i.e., Forms W-8BEN and W-8BEN-E, to be used for documentation of withholding exceptions.	• FFIs in Model 1 IGA countries will report to their respective government authorities. Annex I of the IGA provides due diligence and reporting procedures. • FFIs in Model 2 IGA countries will provide documentation directly to the IRS.

[77] Treas. Reg. §1.1471-2(a).
[78] Model 1 IGA, Aritcle I(aa).
[79] Treas. Reg. §1.1471-2(b)(2)(iv).
[80] Treas. Reg. §1.1471-2(b)(4).

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Key Issues for US Insurers	Treasury Regulations	IGA Provisions
Are payments to US branches of non-US insurance companies withholdable payments? Why it Matters: If a US branch is treated as a non-US entity, additional requirements, such as registration, may apply.	• Payments to US branches of non-US insurance companies are treated as made to a US person if the branch is treated as a US person under the chapter 3 (section 1441 et. seq.) regulations. • Nonetheless, the branch must furnish a Form W-8, not a Form W-9.[81] • Payments to US branches are effectively connected income (ECI) and, thus, not withholdable payments, if the withholding agent obtains (1) a Global Intermediary Identification Number ("GIIN") that confirms the FFI is FATCA-compliant or exempt, and (2) an EIN from the US branch.[82]	• The IGA does not specifically address this issue.
Is a non-US insurance company that is a controlled foreign corporation and elects under section 953(d) to be treated as a US corporation for US tax purposes a US entity? Why it Matters: Whether an entity is a US person affects FATCA compliance requirements.	• The proposed regulations did not address the status of section 953(d) companies; the final regulations provide that section 953(d) companies not licensed to do business in any State are not US persons, i.e., are foreign entities.[83] • If a section 953(d) company is licensed to do business in a state, then it is treated as a US person and is subject to reporting requirements under section 6047(d) rather than FATCA. • A section 953(d) company that is not licensed in any state may elect to report under section 6047(d).[84]	• The IGA does not specifically address this issue.

[81] Treas. Reg. §1.1471-3(a)(vi).
[82] Treas. Reg. §1.1471-3(f)(6).
[83] Treas. Reg. §1.1471-1(b)(132).
[84] Fed. Reg. 5874, 5884.

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Key Issues for Non-US Insurers	Treasury Regulations	IGA Provisions
What types of non-US insurance companies are "financial institutions"? Why it Matters: Companies that are not FFIs have fewer and different FATCA compliance tasks to complete than FFI insurance companies. Purely property-casualty and reinsurance companies generally are not FFIs; life insurers and issuers of annuity contracts typically are FFIs.	• The final regulations provide that a "financial institution" includes a "specified insurance company,"[85] which is an insurance company or a holding company that is a member of an expanded affiliated group that includes an insurance company and that issues, or is obligated to make payments with respect to, a "cash value insurance contract" ("CVIC") or annuity contract.[86] • An insurance company that is not a "specified insurance company" must "make an independent determination" whether it is a depository institution, a custodial institution, or an investment entity.[87] • Reserve activities of an insurance company will not cause the company to be a depository, custodial, or investment entity.[88] • An insurance company that is not an FFI is an NFFE.[89]	• The IGA also defines a "specified insurance company" as an FFI.[90]
What type of entity is an "insurance company"? Why it Matters: Only "insurance companies" can be "specified insurance companies," which are FFIs.	• The proposed regulations did not provide specific tests for whether an entity is an insurance company for FATCA purposes. The final regulations, however, provide three tests: (1) a regulatory test; (2) a >50% gross income test; and (3) a >50% asset test.[91]	• The IGA does not define "insurance company." Presumably, an entity that is regulated as an insurance company under the laws of the IGA country would be an insurance company for FATCA purposes.
Is the holding company of an insurance company an FFI? Why it Matters: Insurance companies that are not FFIs have different FATCA compliance requirements than FFIs.	• A non-US holding company that is a member of an expanded affiliated group that includes an insurance company is an FFI if it or the insurance company "issues or is obligated to make payments with respect to a CVIC or annuity contract."[92] • A non-US holding company that is a member of an expanded affiliated group that includes, inter alia, an insurance company that issues or is obligated to make payments with respect to a CVIC or annuity contract, is an FFI.[93] This rule appears inconsistent with the immediately preceding rule, which seems to require that, to be an FFI, the holding company itself or the insurance company subsidiary must issue CVICs or annuity contracts.	• The IGA appears consistent with the final regulations on the holding company issue.

[85] Treas. Reg. §1.1471-5(e)(1)(iv).
[86] Treas. Reg. §1.1471-5(e)(1)(iv).
[87] 78 Fed. Reg. 5887.
[88] Treas. Reg. §1.1471–5(e)(6).
[89] 78 Fed. Reg. 5887.
[90] Model I IGA, Article I(g), (k), (y).
[91] Treas. Reg. §1.1471-1(b)(60). An "insurance company" is an entity or arrangement (1) that is regulated as an insurance business under the laws, regulations, or practices of any jurisdiction in which the company does business, (2) for which greater than 50 percent of gross income in the immediately preceding calendar year is from insurance, reinsurance, and annuity contracts, or (3) for which the aggregate value of assets associated with insurance, reinsurance, and annuity contracts at any time during the preceding year is greater than 50 percent of total assets.
[92] Treas. Reg. §§1.1471-5(e)(1)(iv); 1.1471-5(e)(5); 78 Fed. Reg. 5888.
[93] Treas. Reg. §1.1471-5(e)(1)(v).

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Key Issues for Non-US Insurers	Treasury Regulations	IGA Provisions
Is there a local FFI exclusion available to insurance companies? Why it Matters: DCFFIs and regular FFIs are subject to different FATCA requirements.	• The final regulations provide registered deemed compliant status as "local FFIs" for companies that have a place of business outside the local country, but only if the second location (1) is not publicly advertised and (2) performs solely administrative functions (back office functions).[94]	• Annex II of the IGA includes a listing of "non-reporting" financial institutions, including exempt beneficial owners and deemed compliant financial institutions, which may or may not include a local insurance company exception.
What constitutes a cash value insurance contract? Why it Matters: Companies that issue or are obligated to make payments with respect to CVICs are "specified insurance companies" and, thus, FFIs.	• A CVIC is an insurance contract (other than an indemnity reinsurance contract and certain term life contracts) that has an aggregate cash value greater than US$50,000 at any time during the calendar year.[95] • "Cash value" is the amount, unreduced by any charge or policy loan, that (1) is payable under the contract to any person upon surrender, termination, cancellation, or withdrawal, or (2) any person can borrow under or with regard to the contract.[96] • PFFIs may elect to disregard the US$50,000 threshold and report all CVICs with cash value greater than zero.	• The IGA de minimis cash value rule preceded, and is consistent with, the final regulations.
What products are expressly excluded from the definition of a CVIC? Why it Matters: Contracts with these features may not be CVICs and, thus, may not cause FFI status.	• Indemnity reinsurance contracts are not CVICs • Certain term life insurance contracts are not CVICs: contracts with at least annual, periodic premiums which do not decrease over time, that are payable to maximum age 90, and with no contract value that can be accessed without terminating the contract, and which offer return of premium upon termination that is no greater than premiums paid, less mortality, morbidity, and expense charges for the period of the contract, and which are not held by a transferee for value.[97]	• The IGA excludes indemnity reinsurance from the definition of a CVIC.[98] • Other specific accounts, products, or arrangements may be excluded from the definition of "financial account" in Annex II of the IGA. • The IGA also excludes certain pension or disability immediate life annuities.[99]

[94] Treas. Reg. §1.1471-5(f)(1)(i)(A)(2).
[95] Treas. Reg. §1.1471-5(b)(3)(vii)(A).
[96] Treas. Reg. §1.1471-5(b)(3)(vii)(B).
[97] Treas. Reg. §1.1471-5(b)(2)(ii).
[98] Model I IGA, Article I(y).
[99] See Annex II of the IGA.

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Key Issues for Non-US Insurers	Treasury Regulations	IGA Provisions
What product features are excluded from "cash value" in determining whether an insurance contract is a CVIC? Why it Matters: Contracts with these features may not be CVICs and, thus, may not cause FFI status.	• Cash value does not include an amount payable: – solely by reason of the death of the insured – as a personal injury or sickness benefit, or a benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against – as a refund of a previously paid premium (less cost of insurance charges) under an insurance contract (other than a life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract – as a policyholder dividend (other than a termination dividend) on an insurance contract under which the only benefits payable are personal injury or sickness benefits or indemnification benefits for an economic loss incurred upon the event insured against, or – as a return of advance premium or premium deposit for an insurance contract for which the premium is payable at least annually and the advance premium or deposit does not exceed the next annual premium payable.[100]	• The IGA does not address death benefits, or return premiums.
Are non-US companies in runoff FFIs? Why it Matters: FFI status imposes additional FATCA obligations.	• The final regulations do not specifically address run-off company status. They do provide, however, that the "reserve activities of an insurance company will not cause the company to be a depository, custodial, or investment entity."[101]	• The IGA does not specifically address this issue.
Are payments to non-US branches of US insurance companies withholdable payments? Why it Matters: Payments to US payees and non-US payees attract different requirements.	• Under the final regulations, payments to foreign branches of a US person are treated as payments to a US payee, **unless** the foreign branch is a QI acting as an intermediary with respect to the payment. • Accordingly, a QI branch of a US company must provide an intermediary withholding certificate (W-8 IMY), and the withholding agent must report the payment as a payment to a foreign branch on Form 1042-S.[102]	• The IGA does not specifically address this issue.
How does an FFI insurance company identify the account holder of a CVIC? Why it Matters: Account holder type affects documentation type.	• The final regulations allow a PFFI to presume that individual beneficiaries of CVICs who receive death benefits are foreign, not US, persons.	• The IGA definition of an "account holder" is consistent with the regulations.[103]
What amounts must be reported by an FFI? Why it Matters: Compliant FFIs will need to locate, gather, store and/or report this information.	• The final regulations provide that the balance or value of an insurance or annuity contract generally is the balance or value reported to the contract holder. This balance or value may be reported by the FFI as of year end, or as of the most recent contract anniversary date.[104] • Special rules apply for immediate annuities.[105] • Payments made with respect to the contract are also reportable.[106]	• IGA requirements for CVICs are consistent with the regulations.[107]

[100] Treas. Reg. §1.1471-5(b)(3)(vii)(C).
[101] Treas. Reg. §1.1471--5(e)(6).
[102] Treas. Reg. §1.1471-3(a)(vii).
[103] Model I IGA, Article I(ee).
[104] Treas. Reg. §1.1471-5(b)(4)(i).
[105] Treas. Reg. §1.1471-5(b)(4)(ii).
[106] Treas. Reg §1.1471-4(d)(3)(ii)(D).
[107] Model I IGA, Article 2(a)(4) & (7)

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Definitions and Product Issues	Treasury Regulations	IGA Provisions
Annuity	An "annuity contract" is (1) a "contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals," or (2) a "contract that is considered to be an annuity contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years."[108] It is immaterial whether a contract satisfies US tax law rules.	The IGA definition is consistent with the final regulations.[109]
Deferred annuity contract	A "deferred annuity contract" is an annuity contract other than an immediate annuity contract.[110]	The IGA does not provide a definition of "deferred annuity contract."
Group annuity contract	A "group annuity contract" is an annuity under which the obligees are individuals who are affiliated through an employer, trade association, labor union, or other association or group.[111]	The IGA does not provide a definition of "group annuity contract."
Group insurance contract	A "group insurance contract" is an insurance contract that (1) provides coverage on individuals who are affiliated through an employer, trade association, labor union, or other association or group, and (2) charges a premium for each member that is determined without regard to individual health characteristics other than age, gender, and smoking habits.[112]	The IGA does not provide a definition of "group insurance contract."
Immediate annuity	An "immediate annuity" is an annuity that (1) is purchased with a single premium or annuity consideration and (2) no later than the purchase date of the contract, commences to pay annually or more frequently substantially equal periodic payments.[113]	The IGS does not provide a definition of "immediate annuity".
Insurance contract	The final regulations provide that an "insurance contract" is a contract other than an annuity contract under which the issuer in exchange for consideration agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.[114]	The IGA is consistent with the regulations.[115]
Investment-linked annuity contract	An "investment-linked annuity contract" is an annuity under which benefits or premiums are adjusted to reflect the investment return or market value of assets associated with the contract.[116]	The IGA does not provide a definition of "investment linked annuity contract".
Investment-linked insurance contract	An "investment-linked insurance contract" is an insurance contract under which benefits, premiums, or the period of coverage are adjusted to reflect the investment return or market value of assets associated with the contract.[117]	The IGA does not provide a definition of "investment linked insurance contract".
Life annuity contract	A "life annuity contract" is an annuity that provides for payments over the life or lives of one or more individuals.[118]	The IGA does not provide a definition of "life annuity contract".
Life insurance contract	A "life insurance contract" is an insurance contract "under which the issuer, in exchange for consideration, agrees to pay an amount upon the death of one or more individuals." Payments in addition to a death benefit, i.e., endowment or disability benefits, do not change a contract's status as a life insurance contract.[119] It is immaterial whether a contract satisfies US tax law rules.	The IGA does not provide a definition of "life insurance contract."

[108] Treas. Reg. §1.1471-1(b)(5).
[109] Model I IGA, Article I(x).
[110] Treas. Reg. §1.1471-1(b)(25).
[111] Treas. Reg. §1.1471-1(b)(56).
[112] Treas. Reg. §1.1471-1(b)(57).
[113] Treas. Reg. §1.1471-1(b)(58).
[114] Treas. Reg. §1.1471-1(b)(61).
[115] Model I IGA, Article I(w).
[116] Treas. Reg. §1.1471-1(b)(65).
[117] Treas. Reg. §1.1471-1(b)(66).
[118] Treas. Reg. §1.1471-1(b)(68).
[119] Treas. Reg. §1.1471-1(b)(69).

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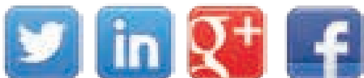

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Designed by Evalueserve.

Publication name: FATCA: Technical analysis and implications for insurers

Publication number: 121631

Publication date: April 2013