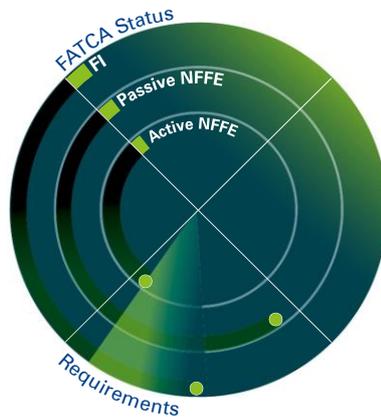


Who is concerned?

FATCA's scope is very large.



**FATCA's scope is large...**

**...and time is running out to be compliant**

The notion of financial institution ("FI") does not only include banks, insurance companies and management companies, for instance, but also, via the notion of Investment Entity, certain entities that one would in principle have thought to be out of FATCA's scope.

While some Luxembourg holding and financing companies (i.e. SOPARFIs) belonging to non-financial groups might qualify as Non-Financial Foreign Entities (NFFEs), there is no general exclusion for SOPARFIs from the definition of Investment Entity and thus FI under FATCA.

So-called active and passive NFFEs are not subject to the same requirements under FATCA. While SOPARFIs classified as active NFFEs have no major requirements to fulfill, those classified as passive NFFEs will be subject to higher constraints. Also, by reason of the concept of Related Entities, all entities in which the group has an interest in have to be taken into account since in the specific case of the qualification as active or passive NFFE the FATCA status of one entity can have an impact on the status of another entity (e.g. of its parent company).

Given the complexity of the FATCA rules, the analysis has to be made on a case by case. In this respect, time is running for FATCA classification since the deadline of 30 June 2014 has passed.

The exact status of each SOPARFI should therefore be confirmed on the basis of an in-depth analysis.

## Your tax advisory team



**Gérard Laures**  
**Partner**

**T:** + 352 22 51 51 5549

**E:** [gerard.laures@kpmg.lu](mailto:gerard.laures@kpmg.lu)



**Emilien Lebas**  
**Senior Manager**

**T:** + 352 22 51 51 5472

**E:** [emilien.lebas@kpmg.lu](mailto:emilien.lebas@kpmg.lu)

## Why should non-financial entities care about FATCA?

---

### *Risk of 30% FATCA Withholding Tax on US Source Income*

Under Luxembourg's Model I IGA, FATCA withholding tax is only imposed after a prolonged period of non-compliance. However, to minimize the risk of a US withholding agent applying the 30% FATCA withholding tax on certain US source payments in error, it makes sense for each NFFE to complete a Form W-8BEN-E or similar self-certification.

### *Compliance with Luxembourg Tax Laws*

Once ratified, the Luxembourg IGA will be part of the domestic law. Given that the Luxembourg tax authorities will conduct FATCA audits in the future, the risk incurred for not being compliant with the Luxembourg law should not be underestimated.

### *Legal Agreements*

FATCA language may appear in agreements entered into with third parties, and an NFFE will need to review and understand the impact of the FATCA language included therein.

In particular, an NFFE should review legal agreements to understand who is taking on the risk and whether the NFFE is taking responsibility for matters outside of its control.

### *Reporting on NFFEs by FIs*

As an FI is required to complete due diligence procedures in respect of certain pre-existing and new Financial Accounts that it maintains on behalf of customers/investors, an NFFE may be required to provide a self-certification to each FI with which it holds an account and/or receives payments.

### *Are you sure that you are not an FI?*

The definitions are complex, so each legal entity within a group should be reviewed and evaluated against the four FI classifications under Luxembourg's IGA to ensure that they do not fall within the scope of FATCA.

## Why KPMG?

---

With the support of our international network, we are able to respond to the complex business challenges faced by our clients. We adopt a global approach spanning professional disciplines, industry sectors and national borders.

To stay up to date and develop knowledge on FATCA, KPMG has been active conducting different initiatives. In particular, KPMG has set up a dedicated team composed of experienced professionals to perform an in-depth analysis of the FATCA rules, with the support of KPMG U.S. and is involved in all relevant industry associations in the various jurisdictions.

Our team is at your disposal to help you develop the right strategy for the implementation of FATCA within your organization.

[www.kpmg.lu](http://www.kpmg.lu)



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2014 KPMG Luxembourg S.à r.l., a Luxembourg private limited company and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.