

KPMG REG FATCA Alert

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On 10 July 2015, Iceland issued guidance related to the U.S. FATCA regime on the implementation of FATCA with an emphasis on due diligence requirements.

The guidance contains detailed information on the FATCA due diligence requirements. The requirements differ depending on whether the account holder is an individual or a legal entity and whether the account was opened before 30 November 2014 or later. As the guidance is only available in Icelandic this alert has more detailed information on the guidance than could otherwise be expected.

Individuals: Account opened before 30 November 2014

If the account is opened before 30 November 2014 the Icelandic financial institution (FI) is obliged to go through existing information for the account holder and check if there are indications that the account holder is a US citizen or US resident. Such indications could be if place of birth of the account holder is in the US, a US address, a US phone number or if instructions are in place for transfer of funds to US accounts. The Icelandic FI can choose to request additional information from those account holders or all the same information as account holders of accounts opened after 30 November 2014 are obliged to give (see below).

Review of accounts, with balance lower than USD 100,000 shall be finished 30 November 2016.

Review of accounts, with balance over USD 100,000 on 30 November 2014 or at year end 2014, shall be finished 30 September 2015. If balance exceeded USD 100,000 after those dates, review should be concluded within 6 months from the date the balance reached the USD 100,000 amount.

Icelandic FI have the option not to report accounts with year-end balance below USD 50,000.

Further requirements are for accounts with balance exceeding USD 1,000,000 on 30 November 2014. The client database in the Icelandic FI shall include information such as nationality of the account holder, home address or mailing address, telephone number of the account holder, all documented instructions on transfer of funds, information on c/o recipient and information on who hold POA for the account if the individual has a US Address.

If information are not available electronically a criteria has been set for which documents to review.

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Individuals: Account opened 30 November 2014 or later

If the account is opened after 30 November the Icelandic FI is obligated to gather certain information from the account holder. The account holder should give the Icelandic FI a statement whether they are US taxable persons or not. Such a statement shall be documented. The Icelandic FI will then need to evaluate if the information are likely to be correct or not. If the account holder refuses to provide the information requested, the Icelandic FI shall notify the Icelandic Directorate of Internal Revenue (DIR).

Account holder with evidence of US connections

New account applicants which evidence imply is a US tax person with residence in the US shall give W-9 form to the Icelandic FI with information on the Individuals Tax Identification number (ITIN). The account holder can give the Icelandic FI a confirmed statement that the account holder is neither a US citizen nor has tax residency in the US for evidence of US connections to lack relevance. If such a statement is not given by the account holder the account holder shall be considered to be a US taxable person (recalcitrant account holder).

Even if an account holder is born in the US, or other evidence imply he is a US tax person, the account shall not be labelled as a US account if the account holder presents the Icelandic FI with one of the following:

- ❖ IRS form W-8
- ❖ a copy of a passport stating that he is a citizen of another country than the US;
- ❖ a copy of confirmation from the account holder stating that he has revoked his citizenship or explanation on why the account holder is no longer a US citizen;
- ❖ a Certification of Residence issued by tax authorities in the account holders resident country stating that the account holder is not a US person.

If an account holder is identified as a US individual taxpayer the account shall be labelled with US as a country code and is to be reported. ITIN shall be acquired from those account holders before 1 January 2017.

Icelandic FI have the option not to report accounts with year-end balance below USD 50,000.

Legal entities: Accounts opened before 30 November 2014

The Icelandic FI can choose not to review accounts with balance less than USD 250,000 on 30 November 2014 until the balance reaches or exceeds USD 1,000,000 at year end 2015 or later. The account shall then be reviewed within six months from that date.

The Icelandic FI shall examine existing information in their client database such as information relating to money laundering. Account holders should be deemed to be US account holder if they have US Address, registered or established in the US according to US laws. In such cases the Icelandic FI needs to request a statement from the account holders e.g. by requesting IRS form W-8 or W-9 confirming whether or not the account holder has US Tax residence. If one or more evidence suggests that the account holder is a Specified US person information on US TIN shall be obtained before 1 January 2017.

US Legal entities and Financial entities shall be categorized as follows:
FATCA101 = Owner documented FI with specified US Owner(s)

FATCA102 = Passive Non-Financial Entity with substantial US owner(s)
FATCA103 = Non-Participating FFI
FATCA104 = Specified US Person
FATCA105 = Direct reporting NFFE

An account holder, which is a Financial Institution neither resident in Iceland nor in another IGA country, shall be treated as a Non-Participating FFI unless the FFI is listed as a participating FFI and has a registered GIIN or if the FFI presents IRS form W-8 or W-9 to the Icelandic FI stating that the FFI is Deemed Compliant FFI, Exempt Beneficial Owner or an excepted FFI.

For other legal entities, considered to be Non-Financial Foreign Entity (NFFE), the Icelandic FI will need to determine if the NFFE is Active or Passive. For that purpose an IRS form W-8 or W-9 should be obtained. If the legal entity is a Passive NFFE the Icelandic FI shall examine if the beneficial owner is a Specified US person or US resident. If the account balance is less than USD 1,000,000 and there are evidence of US connections it will suffice to apply the same method as for a review of individual accounts. For accounts with balance exceeding USD 1,000,000 a statement (W-8 or W-9) shall be obtained from the account holder or beneficial owner. If the beneficial owner is a Specified US Person the account shall be labeled a US account and a TIN should be 1 January 2017 at the latest.

Legal entities: Accounts opened 30 November 2014 or later

For all new accounts, without regards to the balance, the Icelandic FI shall both examine existing information and perhaps request a statement from account holders in order to properly categorize the account holders.

If opened before 30 November 2014 the Icelandic FI can choose not to review account with a balance below USD 250,000 if/until the accounts balance reaches or exceeds USD 1,000,000 at year end 2015. A review then needs to be executed within 6 months.

Exchange rate

When calculating the FATCA reference amounts the exchange rate to be used is the official registered exchange rate issued by the Central Bank of Iceland.

Documentation

Icelandic FI's will need to keep records of the documents behind the account status decided. Documents need to be kept for at least five years after the year end of the year when the account status was decided. It is sufficient to register which documents were used as a basis for the status. Statements received from account holders can either be copies or originals. If additional documents were requested, such as Certificates of residence, copies of passports etc., a scanned copy of such documents should be kept.

For accounts with balance exceeding USD 1,000,000 the documents shall also state which electronic data searches were performed and show questions and answers sent and received from service representatives.

Affiliated entities

If an Icelandic FI has connections to another FI which is a Non-participating FFI the reporting Icelandic FI must report payments to that FFI. Entities are affiliated if one

entity is controlled by the other or if both entities are controlled by the same (third) entity. Control means direct or indirect ownership based on value or votes.

New information

Icelandic FI's shall have in place procedures to actively monitor changes indicating that the account holder might have US connections such as if the address is changed to a US address. If changes occur with evidence of US connection, the Icelandic FI has 90 days to gather further information and review the account status. If the account holder does not provide necessary information the account should be labelled as a US account and reported.

Notice 2014-33 – Interim provision

The Icelandic Directorate of Internal Revenue consider the Notice to apply to Iceland allowing Icelandic FI to delay review of accounts owned by legal entities opened during the period 30 November 2014-31 December 2014 – Deadline for the review is 30 November 2016. This does not apply to accounts held by individuals.

Reporting dates

Deadline for reporting in the year 2015 was 15 August but has now been extended to **6 September 2015**.

Icelandic FI shall report who are the account holders as well as information on the account balance at year end 2014. RSK will send the information to the IRS in September 2015.

Reporting dates for income years 2015/2016 have not been decided.

For income year 2015 the reporting shall include the same information as for the year 2014 but also information on dividend income, interest income and sales value if financial instruments have been sold.

For income year 2016 the reporting shall include the same as for 2014 and 2015 and in addition information on payments to financial institutions which are not FATCA compliant.

If indications are found that an account holder is a US tax person the Icelandic FI is required to request the account holders Tax Identification number (Form W9) or request Form W-8 stating that the account holder is not a us Tax person. This applies both to individuals as well as legal entities. Tax Identification numbers should be obtained on 1 January 2017 at the latest.

Read the text of Instructions for Due Diligence (only available in Icelandic) [here](#).

For information on KPMG's global AEOI network professionals, please email KPMGREGqueries@kpmg.com.