

# Client Alert

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## IRS Releases Draft FATCA FFI Agreement

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On October 29, 2013, the Internal Revenue Service (“IRS”) released Notice 2013-69 (the “Notice”), which includes a draft of the long-awaited “FFI Agreement” that a foreign financial institution (“FFI”) seeking to comply with the Foreign Account Tax Compliance Act (“FATCA”) must sign with the IRS.

FATCA generally imposes a 30 percent withholding tax on U.S. source payments to an FFI unless such FFI enters into an agreement with the IRS (an “FFI Agreement”) to collect and report substantial information regarding its U.S. account holders. The Notice provides guidance for FFIs and includes a draft FFI Agreement that sets forth the requirements for an FFI to be FATCA compliant. In particular, the draft FFI Agreement requires FFIs to (a) conduct due diligence to determine which of its accounts are U.S. accounts, accounts held by recalcitrant account holders, or accounts held by nonparticipating FFIs, (b) report information to the IRS with respect to such accounts, and (c) withhold a 30 percent tax with respect to U.S. source payments to recalcitrant account holders or nonparticipating FFIs. According to the Notice, the draft FFI Agreement is expected to be finalized by December 31, 2013.

The draft FFI Agreement is also relevant for FFIs in jurisdictions that have signed “Model 2” intergovernmental agreements. FFIs in these jurisdictions are required to enter into an FFI Agreement with the IRS in order to be FATCA compliant; however, the terms of the FFI Agreement may be altered by the relevant intergovernmental agreement.

FFIs seeking to enter into an FFI Agreement must register with the IRS on Form 8957 or via the FATCA registration website. FATCA registration will begin January 1, 2014 and withholding under FATCA will begin July 1, 2014.

For more information on FATCA, including a copy of the Notice, please visit our website at [www.KNOWFatca.com](http://www.KNOWFatca.com).

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