



April 13, 2012

IRS Proposal on “Foreign Account Tax Compliance Act”

Executive Summary Prepared by World Council of Credit Unions (WOCCU)

The Internal Revenue Service (IRS) has proposed a regulation to implement the Foreign Account Tax Compliance Act (FATCA) that will affect non-U.S. credit unions as well as U.S. credit unions. The proposed FATCA rules would regulate U.S. credit unions as well as “foreign financial institutions” (FFIs)—including non-U.S. credit unions—and would subject international electronic funds transfers that involve not-yet-taxed income attributable to U.S. income sources (such as income earned by a U.S. citizen or U.S. resident or from an investment located in the U.S.) to a 30% “withholding” for tax compliance purposes. Additional information about the proposal can be accessed at this [link](#).

The proposed regulation, if finalized as proposed, would require non-U.S. credit unions to register with the IRS or be possibly blacklisted by major financial institution and the U.S. government as a “nonparticipating FFI” because the FATCA proposed regulations would not permit financial institutions that agree to be FATCA compliant to hold accounts by “nonparticipating FFIs.” Internationally active non-U.S. credit unions and U.S. credit unions would also face additional requirements, as detailed below.

In General, FATCA Applies to “Withholdable Payments” Involving Untaxed Investment or Interest Income Earned by “Specified U.S. Persons” Who Do Not Live in a Non-U.S. Credit Union’s Home Country: FATCA only requires tax withholding from “withholdable payments” (as defined below in sections 2 and 5 of the Summary) involving income that has not yet been subject to U.S. income tax “withholding” (in general, this means income from dividends or interest, or from the sale of U.S. investments or investment property) which was earned by “specified U.S. persons” who are not residents of an FFI’s home country. The FATCA withholding rules, as proposed, are not geared towards wage income.

- **U.S. Citizens and U.S. Residents:** In the context of credit unions, a “specified U.S. person” is usually “a citizen or resident of the United States,” as further defined below in section 2 of the Summary (“Definitions”) unless that person is a resident of the credit union’s home country if the credit union is a “Local FFI,” as defined in section 3 of this Summary, below. (U.S. credit unions would be required to comply with the FATCA withholding and other rules in the case of any “specified U.S. person” regardless of the individual’s place of residence.) Under U.S. law, a person can have more than one legal “residence,” meaning that a “U.S. resident” can also be considered a “resident” of another country simultaneously depending on factors such as the amount of time spent in each country.

Most Non-U.S. Credit Unions Can Qualify as Partially Exempt “Local FFIs:” Most non-U.S. credit unions would be partially-exempt from the FATCA regulations as “Local FFIs” and would need to only comply with streamlined FATCA requirements that involve primarily registering with the IRS using an online registration form. The “Local FFI” exemption is discussed in greater detail in section 3 of this Summary (“Non-U.S. Credit Unions as Partially-Exempt “Local FFIs”), below. A non-U.S. credit union would meet the “Local FFI” definition if it:

- a) Does not have physical offices outside of its home country;
- b) Has at least 98% of its accounts held by residents of the home country (which in the European Union (EU) includes residents of any EU country) – these local residents can also be U.S. citizens or U.S. residents so long as they have not ceased to be legal residents of the home country;
- c) Meets other requirements listed in section 3 of this Summary, such as a set of streamlined “due diligence” requirements to determine whether it has large accounts (generally accounts larger than US\$ 50,000) that are held by “specified U.S. persons” who are not residents of the credit union’s home country and being located in a country that meets international anti-money laundering (AML) minimum standards; and
- d) Registers with the IRS using the online form discussed in section 3, below.

Non-U.S. Credit Unions That Do Not Meet the “Local FFI” Definition Would Not Be Exempt and Would Need to Act as “Withholding Agents:” Non-U.S. credit unions that do not meet the “Local FFI” exemption or a similar exemption would be required to act as “withholding agents” (as defined in section 2 and further discussed in section 5).

U.S. Credit Unions Would Need to Act as FATCA “Withholding Agents” If they Provide International Electronic Payments Services: U.S. credit unions would be included in the proposed rule’s definition of “withholding agent,” would be required to withhold taxes on certain transactions members make with FFIs, and would need to identify members’ accounts held by FFIs and determine those accounts’ status for tax compliance purposes using primarily AML information collected pursuant to the Bank Secrecy Act’s “know your customer” rules. See sections 5 and 6 of this Summary for more information about the proposed compliance requirements for “withholding agents” and U.S. credit unions.

[Click here](#) for the complete comment call prepared by WOCCU, and [click here](#) for the *Federal Register* notice.

The IRS is accepting public comments on the proposal until April 30, 2012. Please send comments to CUNA ([Mary Dunn](#) & [Luke Martone](#)) and WOCCU ([Michael Edwards](#)) by April 26.