

Foreign Account Taxation Compliance Act Services

Assessing the impact to Financial Institutions in Azerbaijan



Foreword

Foreign Account Tax Compliance Act (FATCA) is a United States of America (US) Federal law which was introduced as part of the Hiring Incentives to Restore Employment (HIRE) Act in 2010. The act is designed to increase the level of tax transparency and revenues. The regulation requires all Financial Institutions (FI) (which includes but is not limited to banks, funds, brokers, custodians, asset managers and insurers) outside of the US to search their records for any listed US citizens and report their assets and identity to the US Treasury.

According to studies, there is a significant number of US citizens with non-US assets, such as astute investors, dual citizens, or legal immigrants. FATCA is aimed at obtaining information for these US citizens and ensuring they are subjected to US tax.

Following the initial discussion to sign a agreement between the Government of the United States of America and the Government of Azerbaijan to improve International Tax Compliance and to implement FATCA, all FI(s) operating within Azerbaijan will eventually be required to comply with the FATCA requirements, in addition to reporting the required information to the relevant regulators.

Implementation of FATCA has evolved since the enactment of the statute, but it is clear that the complications surrounding this new regime are wide-ranging for FI(s). In this document we outline the challenges which your organization may face or are currently facing and how Grant Thornton can help your institution to comply with requirements of FATCA.



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FATCA within Azerbaijan

Azerbaijani government has already taken steps towards implementation of the FATCA in the Republic of Azerbaijan. On 22 April 2014, the Cabinet of Ministers of the Republic of Azerbaijan passed Order No 103 for implementing FATCA in Azerbaijan. Intergovernmental agreement between US and Azerbaijan is agreed in substance, however, it has not been finalized yet.

Elements	Requirements
Registration of FI(s) under the agreement	FI(s) in Azerbaijan are required to register as Registered Deemed-Compliant Financial Institution (a Reporting Financial Institution under a Model 1 IGA).
Obligations under the agreement	<p>According to the agreement, the Azerbaijan should obtain and share the following information to the US each year for all accounts held by a US citizen or a non-US entity with one or more controlling who is a specified US citizen:</p> <ul style="list-style-type: none"> • Name of US citizen/ entity; • Address; • US Tax Identification Number (TIN); • Account number; • Name and identifying number of reporting FI; • Account balance or value; • Gross interest/ dividend/ other income generated during the calendar year (for a custodial account); • Gross proceeds from sale/ redemption of property paid during the calendar year (for a custodial account); and • Gross interest paid during the calendar year (for a depository account).
Supplementary information	Further information with regards to the reported accounts of the US citizen may be sought by the IRS which may include the account statement prepared for that account summarizing the activities i.e. withdrawals, deposits, transfers and closures.
Exemptions under the agreement	<p>Azerbaijan FI(s) should be treated as compliant and are not subject to penal withholding if Azerbaijan complies with required obligations and Azerbaijan FI(s):</p> <ul style="list-style-type: none"> • identify and report the information required; • report name and aggregate amount of payments made to the non-participating financial institution(s); • complies with registration requirements; and • if required, provide information or withhold 30 per cent of any US source 'withhold able payment'. <p>It is pertinent to note that under IGA Model 1 agreement, FI(s) within Azerbaijan are not required to withhold tax with respect to an account held by recalcitrant account holder if the US receives the required information. Whilst, non-reporting Azerbaijan FI(s) will be treated as a deemed-compliant FFI or as an exempt beneficial owner, as appropriate</p>
Non-compliance with the agreement	Any non-compliant identified by the IRS shall be reported to Azerbaijan and will be dealt under the domestic laws (including any penalties) of Azerbaijan. If the non-compliant identified is not resolved within 18 months of the first report, the US shall treat the FI non-participating financial institution
The way forward	With respect to US Reportable Accounts maintained by FI(s) in Azerbaijan, TIN of each specified US Person should be obtained and should be reported to USA in 2017 and subsequent years.

Operational challenges

There are a number of practical implications which FI(s) may face in performing a due diligence and reporting the information to the relevant authorities under FATCA. Some of the implications in these phases are listed below:

Difficult identification criteria of US person and indicia

A Financial Institution may need to follow one or more of the following three processes for the identification of an account holder:

- Indicia search, in which a complex criteria has been identified under the Annex 1 of IGA Model 1 agreement for pre-existing accounts below USD 50,000, above USD 50,000 but under USD 1 million and above USD 1 million;
- Self-certification where FI(s) may obtain a self-certification from an account holder or controlling person of a passive NFFE where applicable. However, the same can be obtained under strict criteria with corroborative evidence; and
- Publicly available information which may be used only in the case of entities to identify the FATCA status of account.

Data privacy and legal aspects of FATCA

According to FATCA regulations, FI(s) must report some of the personal information of its clients to the relevant regulator. Legal consultants of the institution will be required to amend/ update/ modify the terms and conditions of various service offerings to include specific terms which allow the FI to disclose their information to the regulator and then to IRS. Information about holders of bank accounts in Azerbaijan is protected by Azerbaijani secrecy rules.

In light of this, Azerbaijan is to fulfil a task of legitimizing the disclosure of the information about the bank accounts in local banks. Such would probably be achieved through making an international agreement (such as Intergovernmental Agreement) a prevailing part of Azerbaijani law, and making changes to any existing laws.

In particular, amendments are expected/ required in the following;

- 1) Law No 590-IIQ of the Republic of Azerbaijan on Banks, dated 16 January 2004 (Bank Law),
- 2) Tax Code of the Republic of Azerbaijan (the Tax Code),
- 3) Law No 519- IIIQ of the Republic of Azerbaijan on Insurance Activity, dated 25 December 2007, and
- 4) Law No 998-IIIQ of the Republic of Azerbaijan on Personal Data, dated 11 May 2010.

Tight deadline and complex guidelines from regulator

Financial Institutions are required to report certain information to the local regulatory authority for reporting various returns. This information will be channeled through an online portal(s). These portal(s) will be standardized for use by all financial institutions regulated by the relevant regulatory authority. As of now, no guidance has been issued by the Government in this regard.

However, the main concern in this phase will be the complexity of the guidance coupled with the limited time period available for financial institutions to understand and implement the guidance.

Training

Training of client representative/ compliance/ risk management and other relevant members of the institution will be required on a continuous basis. Training will be required to ensure technical advice on FATCA and subsequent developments are understood and disseminated appropriately across the entity/ group.

FIs will be required to develop awareness programs and implement procedures to ensure that training is provided to all requisite staff across the entity/ group. In addition, the nominated responsible officer will need to ensure that training sessions are held regularly, as appropriate, and for all relevant new staff.

Impact on information systems

FATCA has an impact on almost every activity/ function of FI and information technology (IT) is no exception to this. FATCA will have a significant impact on the IT system of the FIs. As the basic data capturing documents will evolve the IT systems need to be modified to capture related information of customers. Databases will need modification to store related data and produce reports as per the requirements of relevant forms and relevant Government Authority.

The FIs will have to assess and address the FATCA implications on IT systems keeping in view the following abilities of the system to:

- comprehend new information requirements and on-boarding requirements
- withhold able payments when required
- report certain information to IRS and local authority
- accommodate changes necessitated by other global tax regulations.

How can Grant Thornton support your FATCA implementation needs

FATCA is a complicated regulation which must be implemented in accordance with the requirements of the US and Azerbaijan. Grant Thornton has a wealth of experience and insight in both implementing FATCA and providing support for financial institutions.

The Grant Thornton team can work with you to determine the FATCA status of your institution and assist in your compliance with FATCA requirements, specially in relation to due diligence, reporting and the ongoing assistance and support which maybe required. We can also work with you to determine which payments will be subject to FATCA withholding (if any) and ensure that your organization fulfills the new documentation and withholding requirements. This may require a review and analysis of your 'accounting systems' ability to capture the relevant information as well as improving processes and procedures to ensure you are fully compliant.

Our team has worked with institutions in different regimes to develop systems and processes to identify and evaluate US citizens according to the US indicia search under the FATCA regulations. With our expertise in the due diligence procedures under FATCA regulations we can help your organization to evaluate and identify the accounts to be reported to the regulators.

Taking into account the extremely tight deadlines which are in place, we can assist you to gather the relevant information to ensure you are fully compliant with the requirements of FATCA and support you with information on how to report to the relevant authorities. Our team has assisted a number of financial institution in a number of countries in respect of reporting under different models including IGA Model 1 and Foreign Financial Institutions Model.

We have been providing awareness and training sessions to various institutions including central banks, commercial banks and other financial institutions. We have invested significantly in our training programs which can support your organization when training your client facing and back-office staff on the rules of the regulation.

With a dedicated Information Systems team at Grant Thornton which is already working with a number of Financial Institutions, we can update your systems according to the requirements of the regulation, alongside supporting with the change management which will be required in order to implement the associated changes.

As a global firm providing compliance services Grant Thornton stays at the forefront of FATCA developments. Our approach has evolved significantly through our work regionally and globally. This vast experience has allowed us to calibrate our approach, focusing efforts on priority areas.

We have developed an integrated approach specifically tailored to perform FATCA engagements. Our approach is outlined overleaf.



Appendix 1:

Supporting your implementation needs – our approach

*Phase 1:
Entity
classification and
impact assessment*

- Identify entities – capture a complete list of related legal entities and perform a entity analysis.
- Impact analysis on policies, procedures, documents and systems of the financial institution to identify the impact.
- Conduct product analysis: Identify products and groupings.
- Analyze the role of the Business Units and FATCA impacts on them.
- Assessment of on-boarding requirements for FATCA and FIs existing capabilities.
- Assessment of FIs existing information system against the FATCA requirements.
- Assessment of FIs existing withholding capabilities against FATCA requirements.

*Phase 2:
Recommendations
to cater gaps
identified in the
impact assessment
report*

- Recommendations on the possible implementation options with pros and cons of each option presented.
- Assist in the creation of processes to achieve the appropriate level of client documentation for new accounts
- Help create processes to remediate gaps in existing client documentation.
- Help create/review business requirements for technology solutions.
- Document new processes and develop staffing and training plans.
- Create communications for both US and non-US citizens in order to explain the rules.

*Phase 3:
Implement
operating model
and achieve
compliance*

- Development of the required documents in order to ensure compliance with the FATCA regulation
- Development of FATCA Policy.
- Updating certain documents (if required)
 - Account opening Form
 - KYC
 - Terms & Conditions
 - Hold Mail
 - Standing Instruction
 - Power of attorney
- Assist in enhancing the information systems.
- Assist in implementing documentation programs for new clients/investors.

*Phase 4:
Monitor the
FATCA
Implementation &
Report to IRS*

- Ongoing program monitoring for project implementation with continued support on an unforeseen issues which may arise in the future.
- Assisting FIs on reporting the required information to IRS.
- Assistance to register on IDES/ relevant regulator's portal, test reports and submission of final report.

*Phase 5:
Provide training to
relevant staff and
keep the FIs aware
of latest develop-
ments in FATCA*

- Update the management team on the latest developments in regulations.
- Assist in preparing communication information to clients and internal staff.
- Conduct workshops for end users, managerial and technical staff, assisting them in understanding FATCA requirements and implementing new processes.

Grant Thornton can assist Foreign Financial Institutions with the full implementation of FATCA. We can also provide expertise in specific phases and/or review certain aspects of the project where institutions may wish to seek expert advice.

Contact us

The compliance landscape for financial institutions is rapidly changing. Our dedicated team of specialists have worked with a broad range of financial services institutes and are therefore positioned to offer in-depth industry insights.

We offer a blend of our technical knowledge, global reach and local market presence to support you in the development of best practice compliance strategies.

To find out more or to discuss your FATCA implementation needs contact us:

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Over the last three years we have been the fastest growing large accounting organization, with the ongoing commitment to continue evolving and developing alongside our clients.

We have the scale to meet your changing needs, but with the insight and agility that helps you to stay one step ahead. Privately owned, publicly listed and public sector clients come to us for our technical skills and industry capabilities but also for our different way of working. Our partners and teams invest the time to truly understand your business, giving real insight and a fresh perspective to keep you moving.

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