PayStream ADVISORS

Complying with FATCA in 2015

Are U.S. Corporations Prepared?

Q2 2015 **| Featuring insights on...**

- Foreign Account Tax Compliance Act
- Effects of FATCA on Global Organizations
- U.S. Organizations' Attitudes Towards FATCA
- FATCA-Focused Automated Solutions

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Introduction

A new U.S. law designed to catch tax evaders who hide money in offshore accounts has become one of the most complex measures passed in the last several years. New research shows that even as worldwide governments work to achieve compliance, organizations of all types are confused about the full business implications of the Foreign Account Tax Compliance Act (FATCA).

Although FATCA impacts almost every organization with foreign financial ties, PayStream Advisors' research has found that many U.S organizations believe FATCA has little effect on their own business operations. This disconnect seems to span all departments, titles, industries, and sizes of companies, and it reflects a lack of knowledge about FATCA and its impact on organizations across the United States. Unawareness of these regulations can be costly, because as the Internal Revenue Service (IRS) begins to enforce FATCA provisions, businesses that are found to be noncompliant could face massive penalties.

How can organizations remedy this lack of knowledge? By educating all of their staff who are involved in FATCA-regulated activity—including the accounts payable (AP) department, corporate tax specialists, the treasury team, the chief financial officer, and even the chief executive officer.

What is FATCA?

The Foreign Account Tax Compliance Act is designed to prevent U.S. residents and companies from avoiding taxes by hiding assets in foreign accounts. To enforce FATCA, the U.S. Treasury Department has established a variety of active and developing treaty agreements with more than 110 nations, and registered tens of thousands of financial institutions in those nations to report the interest and earnings on accounts held by U.S. residents and companies. The IRS is enforcing FATCA by using an expanded version of Form 1099 reporting that involves more detailed W-9 and W-8 forms.

FATCA requires U.S. taxpayers to report certain types of payments made to them in foreign accounts, such as interest or dividends on U.S. securities. Foreign financial institutions (referred to as FFIs) are required to report information about this withholdable income and to withhold 30 percent on certain payments to U.S. taxpayers who do not comply with FATCA. FFIs include banks, mutual funds, hedge funds, private equity funds, and insurance companies that provide annuities, and they are assigned a global intermediary identification number (GIIN) when they register with the FATCA program.

FFIs are subject to 30 percent withholding on U.S.-sourced payments as well, if they do not comply with FATCA by registering as FFIs and providing documentation to prove that the U.S. taxpayers they are issuing payments to are either FATCA-compliant or exempt.

The FATCA rules are complicated and hold their own separate section on the IRS website. It is no wonder that U.S. corporations still have not realized the full effects of FATCA, but their lack of preparation could have severe consequences.

Survey Results

In the 2015 FATCA survey, conducted by PayStream Advisors in partnership with cloud-based tax software provider Avalara, organizations were questioned about the effects of the FATCA measure in their daily operations.

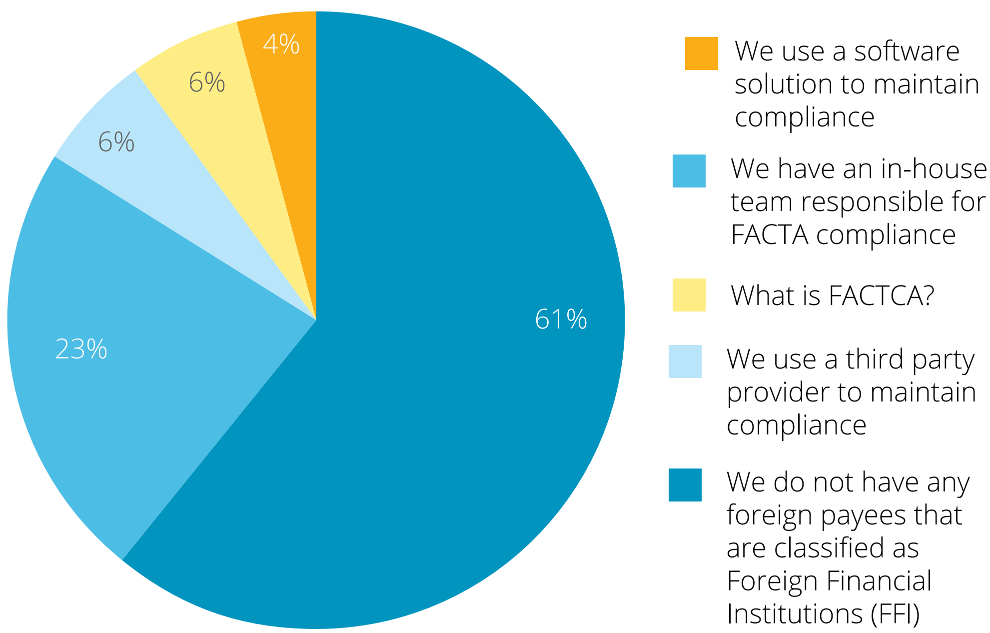
When asked where their organization stands with regard to new FATCA requirements, 61 percent of respondents reported that they do not have any foreign payees that are classified as foreign financial institutions, see Figure 1. Another 6 percent checked the box "What is FATCA?"

These responses also gave insight into how organizations are handling the new FATCA requirements: 23 percent reported that an in-house team handles their FATCA compliance procedures, 6 percent said they use a third-party solution provider, and 4 percent said they automate compliance through the use of a software solution.

Figure 1

Most U.S. Organizations Do Not Have FFIs

"Where does your organization stand with the new Foreign Account Tax Compliance Act requirements?"



Predicting Penalties

FATCA is one of the most stringent tax laws passed in recent years, and has global effects even though it is a U.S. law. There is no way to predict exactly how fiercely the IRS will enforce compliance or whether it will come down harder on U.S. tax evaders or the countries and FFIs that shelter their money, but the agency has outlined penalties that include a 30 percent withholding tax.

"What is most amazing is not its impact on Americans—although that is considerable—but its impact on the world," tax attorney Robert W. Wood wrote in a Forbes article.[1] "Countries must throw their agreement behind the law or face dire repercussions. Even tax havens have joined up."

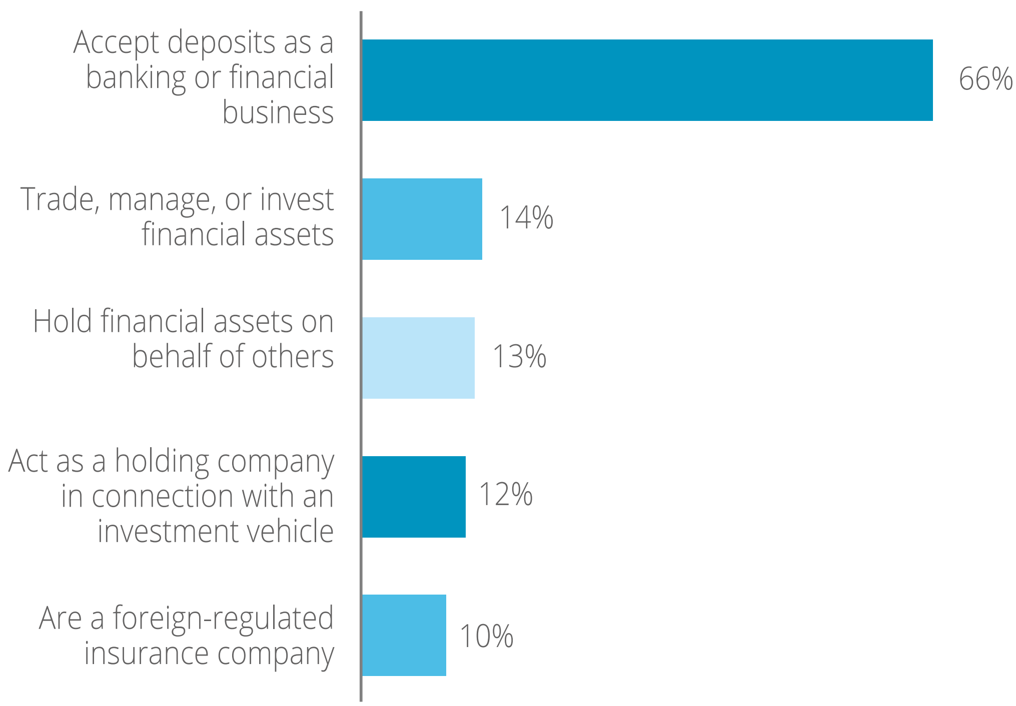
PayStream asked respondents to share which business services their foreign payees provide, see Figure 2. Over one half of respondents (66 percent) said their payees accept deposits as banking and financial businesses. Respondents also said that their payees trade, manage, or invest financial assets (14 percent), hold financial assets on behalf of others (13 percent), act as a holding company in connection with an investment vehicle (12 percent), and qualify as foreign-regulated insurance companies (10 percent). All of these payees potentially fall under FATCA regulations.

It is evident that FATCA affects many areas of organizations' business operations. However, many U.S. corporations seem largely unaware of the enormity of FATCA's consequences.

Figure 2

Much of U.S. Organizations' Foreign Financial Activity Requires FATCA Compliance

"Which of the following business services do your foreign payees provide?"



[1] Robert W. Wood, "10 Facts About FATCA, America's Manifest Destiny Law Changing Banking Worldwide." August 19, 2014.

Simple Fixes

The first step U.S. organizations can take toward complying with FATCA is providing education to their employees and customers. It is better to begin now—while the world is learning about FATCA together and the penalties stand a chance of being more lenient due to of the newness of the regulations—than to wait and see what others do before implementing any changes.

When taking the first steps, it is important to set up protective measures that show a willingness to comply, rather than a disregard for the new law. The IRS historically has shown more leniency to those that are at least making an effort by trying to understand new measures and implementing changes in their policies and procedures to comply.

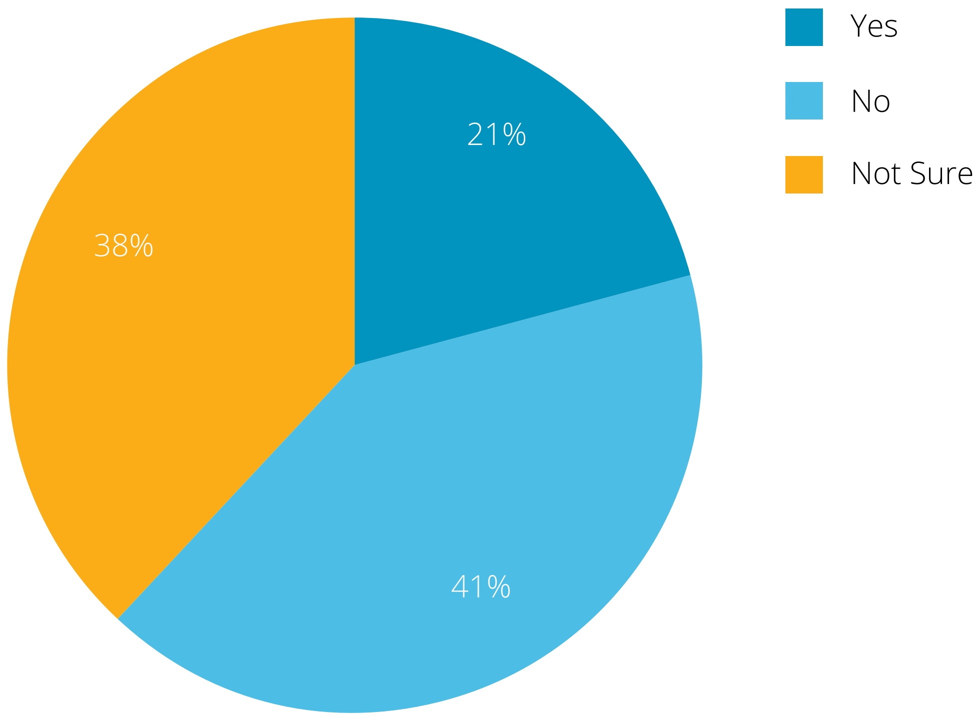
If they have not already, U.S. organizations should immediately begin requiring foreign payees to supply the version of the new W-8 form, the W-8BEN-E. Verbiage about the FATCA changes brought the former W-8BEN from two pages to eight, and people in accounts payable and corporate tax departments who handle tax compliance issues are slowly converting to the new document for their foreign payees. Some organizations have consulted their legal counsel to create a shorter version, which is allowed as long as it still contains the same taxpayer information.

When asked whether their organizations are using the updated W-8 documents, only 21 percent of survey respondents said that they do use the new documents, see Figure 3. Many organizations (41 percent) said they do not, and 38 percent said they are not sure.

Figure 3

Many Organizations Are Unfamiliar With or Do Not Use the Proper FATCA Form

"Does your organization collect the new 2014 Form W-8BEN-E and the new FATCA-aware 2014 Form W-9?"



Once the W-8BEN-E form is collected, it must be validated to be sure the payee's information is accurate and does not appear in another form in the master vendor file, and that a foreign payee doesn't have links to ownership by a U.S. taxpayer. The payee's name cannot appear on the Office of Foreign Assets Control (OFAC) list issued by the U.S. Treasury Department, which issues trade sanctions against any person or organization suspected of unlawful activities.

The W-8BEN-E forms have to be kept up-to-date with any changes made by the foreign payee, and unlike W-9s, the W-8BEN-E forms expire after three years whether the information on them change or not.

Depending on the number of foreign payees in an AP department's files, the responsibility of even keeping up with the W-9 and W-8 work involved in meeting FATCA requirements alone can be incredibly time-consuming.

Complying through Automation

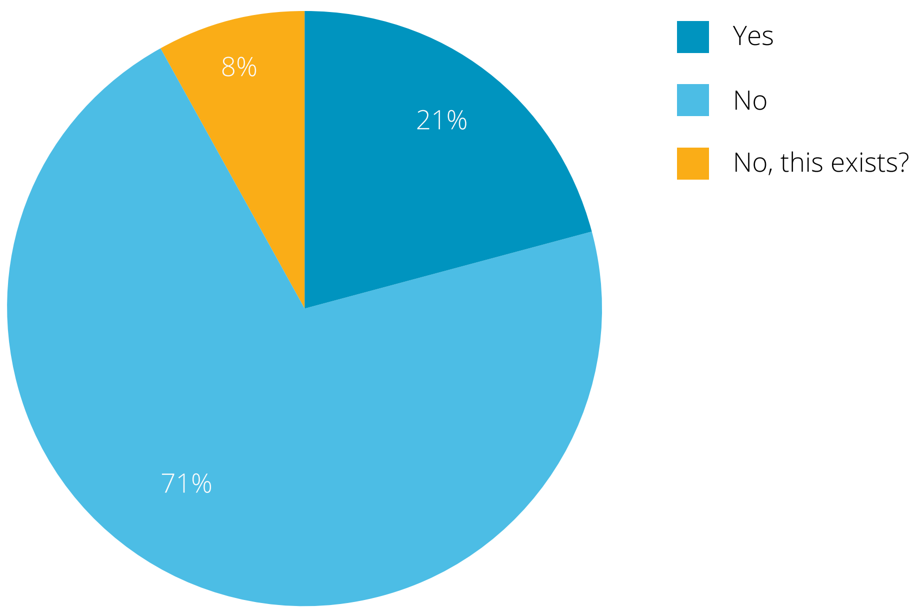
As more solutions arrive on the market to help organizations automate the steps involved in FATCA compliance, companies will become increasingly aware of their options.

However, at this early stage, the survey indicates that few respondents are currently using automation to streamline their FATCA compliance efforts, see Figure 4. Only 21 percent of respondents said they do use automated systems for collecting, validating, and managing W-8 and W-9 forms, while 71 percent said they do not, and 8 percent did not know the system exists.

Figure 4

The Majority of Organizations Do Not Use FATCA Compliance Software

"Does your organization have an automated system for collecting, validating, ,and managing W-8 and W-9 forms?"



Automated solutions can offer numerous benefits in helping organizations deal with FATCA requirements, including:

» **Ensured compliance and reduction of B-notices –** The IRS sends a B-notice, or a Form CP2100 or CP2100A, to notify an organization of an error in a 1099 form filed that year. The organization has 30 days to resubmit the information with a corrected name and taxpayer identification number (TIN) for the payee. The B-notice process costs an organization staff time and comes with financial penalties that could be avoided with better record-keeping—a task made easier by automation.

- **Reduced paperwork –** The correspondence regarding W-8 and W-9 submissions alone, not considering other issues that arise when a taxpayer is noncompliant, takes up staff time and creates more records that need to be retained for legal reasons. Automating the process eliminates much of that paperwork.
- **Streamlined processes –** An automated system can flag any inconsistencies in processes, such as an incorrect or missing TIN that a payee is required to correct before payment is routed for approval.
- **Improved vendor experience –** Payees do not want the hassle of multiple emails requesting information any more than the AP team wants to write them. Automating the process helps:
  - **Accelerate onboarding –** By allowing vendors to register themselves and correct their own information, organizations can better ensure the accuracy and timeliness of the information on file.
  - **Save time –** By eliminating the need for extra communication, automation saves time in emails, letters, phone calls, and other correspondence, and people in different time zones can work at their own convenience.
  - **Reduce frustration –** Automating the process eliminates the possibility of conflicts and delays that can arise in compliance communication.
- **Reduced costs of compliance –** Automating processes can save time in staff hours, paper, international postage and phone calls, and penalties.
- **Preparation for potential FATCA audits –** Sometimes things still do not go as planned, and an organization is audited. When processes are automated, they are much easier for an auditor to evaluate, and the staff doesn't have to spend valuable time tracking down documents and weeding through emails and spreadsheets to find required information.

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What to Look for in a Solution

Choosing the right solution to automates the processes of FATCA compliance can be daunting, especially if the organization does not feel informed enough about the new law to know what it needs to do.

Here are some features to seek in an automated FATCA compliance solution:

- **Automated form request and data capture –** This eliminates the need for personal correspondence from a member of the organization's AP or tax team.
- **Centralized collection –** The information collected should be stored in a central repository that can be accessed via password by people in different departments of the organization, with approval to see certain information as needed.
- **Validation and management –** Any necessary approvals should be automatically routed to the people who handle them, and employees in charge of managing FATCA compliance files should have access to the information they need.
- **Reporting –** Automating the process of reporting the FATCA-required information to the IRS saves staff hours and eliminates human error.
- **Storage retrieval –** In case of an audit or another need, such as creating reports, staff members with access should be able to retrieve information they need easily by logging into the solution and clicking on files, rather than walking to filing cabinets and using keys to unlock sensitive files.
- **Integration –** The solution should be able to be used seamlessly with the existing Enterprise Resource Planning (ERP) and other computer systems in the departments where the FATCA compliance information is handled.
- **Scalability –** As the organization's global interests grow, the solution should allow for easy expansion of the tax reporting tasks without additional staff time or major capital expense.

Looking to the Future

FATCA is not an issue that can be ignored; if anything, it will grow more complicated as additional countries sign treaties and more FFIs register with the U.S. to report taxable information. New rules will develop through trial and error as the IRS and Treasury Department determine how the new guidelines are working.

Organizations that stay ahead of the requirements will be best poised to avoid being penalized under the new law and used as examples of what not to do. The first step is to take proactive measures to comply.