



Tax Laws Amendment (Implementation of the FATCA Agreement) Act 2014

No. 67, 2014

**An Act to implement the FATCA Agreement, and
for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Tax Laws Amendment (Implementation of the FATCA Agreement) Act 2014

No. 67, 2014

An Act to implement the FATCA Agreement, and for related purposes

[Assented to 30 June 2014]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Tax Laws Amendment (Implementation of the FATCA Agreement) Act 2014.

No. 67, 2014 Tax Laws Amendment (Implementation of the FATCA Agreement) Act 2014 1

2 Commencement

This Act commences on the day this Act receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—FATCA

Income Tax Assessment Act 1997

1 Subsection 995-1(1)

Insert:

FATCA Agreement has the meaning given by section 396-15 in Schedule 1 to the *Taxation Administration Act 1953*.

Taxation Administration Act 1953

2 After Division 394 in Schedule 1

Insert:

Division 396—FATCA

Guide to Division 396

396-1 What this Division is about

This Subdivision gives effect to the FATCA Agreement between the Government of Australia and the Government of the United States of America.

Reporting Australian Financial Institutions must give the Commissioner certain information about U.S. Reportable Accounts. For the 2015 and 2016 calendar years, they must also give the Commissioner information about payments made to Nonparticipating Financial Institutions.

This Subdivision also creates record-keeping obligations in relation to the requirements to give the Commissioner information.

Table of sections

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396-5 Statements about U.S. Reportable Accounts

- (1) Subsection (2) applies if:
 - (a) an entity is a Reporting Australian Financial Institution (within the meaning of the *FATCA Agreement) at any time in a calendar year; and
 - (b) the entity maintains a U.S. Reportable Account (within the meaning of the FATCA Agreement) at any time in the year.
- (2) The entity must give the Commissioner a statement that contains the information in respect of that U.S. Reportable Account that the Australian Government is required to obtain in order for it to fulfil its obligations under the *FATCA Agreement in respect of that U.S. Reportable Account.
- (3) The information contained in the statement must be determined by the entity by applying the due diligence procedures required under the *FATCA Agreement.

Note: Those due diligence procedures are specified in Annex I to the FATCA Agreement, subject to the application of Article 7 of that Agreement (consistency in the application of FATCA to partner jurisdictions).

- (4) A statement under subsection (2) must be in the * approved form.
- (5) More than one statement under subsection (2) may be included in the same document.
- (6) The statement must be given to the Commissioner no later than the first 31 July after the end of the year.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

396-10 Statements about payments to Nonparticipating Financial Institutions

- (1) Subsection (2) applies if:
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- (a) an entity is a Reporting Australian Financial Institution (within the meaning of the *FATCA Agreement) at any time in a calendar year; and
- (b) the calendar year is the 2015 or 2016 year; and
- (c) the entity makes a payment to a Nonparticipating Financial Institution (within the meaning of the FATCA Agreement) at any time in the year.
- (2) The entity must give the Commissioner a statement that contains the information in respect of that payment that the Australian Government is required to obtain in order for it to fulfil its obligations under the *FATCA Agreement in respect of that payment.
- (3) The information contained in the statement must be determined by the entity by applying the due diligence procedures required under the *FATCA Agreement.

Note: Those due diligence procedures are specified in Annex I to the FATCA Agreement, subject to the application of Article 7 of that Agreement (consistency in the application of FATCA to partner jurisdictions).

- (4) A statement under subsection (2) must be in the *approved form.
- (5) More than one statement under subsection (2) may be included in the same document.
- (6) The statement must be given to the Commissioner no later than the first 31 July after the end of the year.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

396-15 Meaning of the *FATCA Agreement*

The *FATCA Agreement* is the Agreement between the Government of Australia and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA, done at Canberra on 28 April 2014.

Note: The text of the Agreement is set out in Australian Treaty Series [2014] ATNIF 5. In 2014, the text of the Agreement in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

396-20 Permissions and elections

- (1) This section applies, for the purposes of this Division:
 - (a) in determining whether the conditions in subsections 396-5(1) and 396-10(1) are satisfied; and
 - (b) in determining which information the Australian Government is required to obtain in order for it to fulfil its obligations under the *FATCA Agreement.
- (2) To the extent that the *FATCA Agreement gives Australia the ability to permit an entity to use or rely on matters provided for in U.S. Treasury Regulations in determining obligations under the FATCA Agreement, assume that the permission has been given.
- (3) To the extent that the *FATCA Agreement gives Australia the ability to provide for an entity to make an election in determining obligations under the FATCA Agreement, assume that the entity may make the election.

396-25 Record keeping

- (1) If an entity is obliged to give the Commissioner a statement under subsection 396-5(2) or 396-10(2), the entity must keep written records that:
 - (a) correctly record the procedures by which the entity determines the information that is required to be contained in the statement; and
 - (b) are in English, or readily accessible and easily convertible into English.
- (2) The entity must retain the records until the expiration of 5 years after the entity gives the Commissioner the statement under subsection 396-5(2) or 396-10(2).

Note: Section 288-25 imposes an administrative penalty if an entity does not keep and retain records as required by this section.

3 Application

Application rules

- (1) Subject to subitem (2), the amendments made by this Schedule apply in relation to a U.S. Reportable Account that is maintained by a Reporting Australian Financial Institution on or after 1 July 2014.
- (2) The following provisions apply in relation to a payment that is made by a Reporting Australian Financial Institution on or after 1 July 2014:
 - (a) section 396-10 in Schedule 1 to the *Taxation Administration Act 1953* (as inserted by this Schedule);
 - (b) any other provision inserted in that Schedule by this Schedule, to the extent that the provision relates to the section mentioned in paragraph (a).

Permissions and elections

- (3) For the purpose of subitems (1) and (2), subsections 396-20(2) and (3) in Schedule 1 to the *Taxation Administration Act 1953* (as inserted by this Schedule) apply in determining the meaning of a term used in those subitems.

[Minister's second reading speech made in—
House of Representatives on 29 May 2014
Senate on 16 June 2014]

(122/14)
