Deloitte.

Query Details

Date Received	16 January 2015
Question Category	FATCA Reporting
Question Details	As far as the FATCA reporting requirements are concerned per year end, do we need to report on the basis of the aggregate amounts (throughout the year) on the account, or maybe on the basis of the average amount on the account? Or do we simply need to look at the amount on the account per December 31 of any given year; if that amount is below the threshold, then no reporting is required.

Response

Source	FATCA Regulations
Response Details	*Summary:* The legislation currently states that the account balance as at 31 December should be reported once it is at or above the threshold. There are some exceptions and these are explained below. *Details (Extract from IGA):* Under the FFI agreement, a participating FFI agrees to report on specified U.S. individuals, specified U.S. owners of accounts held by owner-documented FFIs, and substantial U.S. owners of accounts held by passive NFFEs. Reporting is also required with respect to aggregate payments made to nonparticipating FFIs in 2015 and 2016, and aggregate payment information on payments made to recalcitrant account holders. Except for aggregate payments made to nonparticipating FFIs, information will be reported on the new Form 8966 (FATCA Report) and is generally due by March 31 of the year for the prior year's information (a 90-day automatic extension can be requested along with an additional 90-day extension for certain hardship reasons). For aggregate reporting on payments to nonparticipating FFIs, the participating FFI will use the Form 1042-S which will be due by March 15 of the year for the prior year's information. For accounts held by specified U.S. persons (U.S. accounts), by U.S.-owned foreign entities (i.e., passive NFFE), or by owner-documented FFIs, the participating FFI is generally required to report the following information: • For passive NFFEs or owner-documented FFIs, the name of the entity;

- The name, address and TIN of each specified U.S. person, substantial U.S. owner of a passive NFFE or specified U.S. owner of an owner-documented FFI;
- The account number;
- The account balance or value of the account[1];
- Payments with respect to the account (i.e., FDAP income and gross proceeds)[2]; and
- Any other information as required on the applicable reporting form and instructions.

For recalcitrant account holders, the participating FFI is required to report the aggregate number and aggregate balance or value of accounts held by:

- Recalcitrant account holders classified as passive NFFEs that have not provided information or certifications regarding substantial U.S. owners;
- Recalcitrant account holders classified as U.S. persons that have not provided a Form W-9 and/or privacy waiver when required;
- Recalcitrant account holders that have U.S. indicia other than the above two categories and dormant accounts;
- Recalcitrant account holders that do not have U.S. indicia other than passive NFFEs or dormant accounts; and
- Recalcitrant account holders that are dormant accounts.

If the effective date of the FFI agreement is June 30, 2014, the participating FFI will be subject to phased-in reporting rules for calendar years 2014 through 2016, helping to ease the reporting burden on FFIs. Under this phased-in approach, the first FATCA report is due on March 31, 2015 with respect to the 2014 calendar years, and does not have to include information about payments made with respect to the account. On March 31, 2016, the participating FFI will be required to include FDAP income payments on the FATCA report, and on March 31, 2017, gross proceed payments must be included.

For payments made to nonparticipating FFIs in calendar years 2015 and 2016, the participating FFI must report the aggregate amount of foreign passthru payments and U.S. source FDAP income payments per payee on the Form 1042-S.

In addition to the above reporting obligations, if the participating FFI produces account statements that summarize account activity in the ordinary courses of its business, it must retain a record of such statements for six years or for the period it currently saves such statements (whichever

1 This must be the average balance or value for the year if it is the reporting practice of the participating FFI; otherwise it must be the year-end balance or value and can be in local currency using procedures detailed in the final regulations.
2 For depository accounts this includes the aggregate gross amount of interest paid or credited to the account. For custodial accounts this includes the aggregate gross amount of interest, dividends, and any other income paid or credited to the account as well as gross proceeds paid or credited to the account. For all other financial accounts related to debt or equity interests or insurance products this includes payments made or gross amounts paid or credited, including redemptions.

	is longer). The IRS may request an extension of the retention period by notifying the participating FFI before the expiration of the six year period. Additionally, as the IRS expects many FFIs to face challenges in satisfying these new requirements, the IRS has announced that tax years 2014 and 2015 will serve as transition years. In Notice 2014-33 the IRS confirmed they plan to treat calendar years 2014 and 2015 as a transition period for purposes of IRS enforcement and administration of the due diligence, reporting, and withholding provisions under Chapter 4 (FATCA), as well as the provisions under Chapters 3 and 61, and section 3406, to the extent those rules were modified by the temporary coordination regulations (Coordination Rules). With respect to this transition period, the IRS will take into account the extent to which a participating or deemed-compliant FFI, direct reporting NFFE, sponsoring entity, sponsored FFI, sponsored direct reporting NFFE, or withholding agent has made good faith efforts to comply with the requirements of the Chapter 4 regulations and the temporary coordination regulations. Therefore, it is important for the above entities to develop policies and procedures to show a "best efforts" approach to compliance.
Helpful Links	**Form 8966:** http://www.irs.gov/pub/irs-access/f8966_accessible.pdf **Form 8966 Instructions**: http://www.irs.gov/pub/irs-pdf/i8966.pdf