

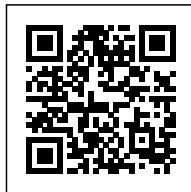
# FACTA III

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The schedule for the implementation of FATCA advances: April 25<sup>th</sup>, 2014, which is almost there, is the last day for [registering](#) with the Internal Revenue Service (IRS) for those Foreign Financial Institutions (FFIs) that want to appear on the first list of FATCA-compliant FFIs to be published by the IRS in July 2014.

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**by the IRS in July 2014. Notwithstanding, this list will be updated monthly, so it will also be possible to register after that date.**

After registering, the FFIs will receive a Global Intermediary Identification Number, or GIIN, issued by the IRS, that will allow them to be identified as FATCA-compliant in the financial traffic.

FATCA, which requires FFIs to [identify their U.S. Accounts](#) through a specific process of due diligence, is an internal U.S. legislation with extraterritorial scope which many countries have decided to apply by signing intergovernmental agreements or IGAs with the United States, including Spain, who signed its IGA on May 14<sup>th</sup>, 2013.

After several delays, it appears that FATCA will finally enter into force on July 1<sup>st</sup>, 2014. As from that date, FFIs may have to apply a withholding tax on the periodic payments they make to their recalcitrant clients/investors, i.e. to those who have not given to the FFI the information required by the IRS. In any case, as of January 1<sup>st</sup>, 2015, all the FFIs are supposedly obliged to have a GIIN.

However, and despite the imminent enforcement of FATCA, the IGAs have not yet been ratified by the United States Congress, among [statements by the Republican Party](#) saying that they will repeal this legislation if they win the next elections. This leaves the FFIs with the uncertainty of which rules they should apply, since if on one hand the IGAs have not yet been ratified, on the other hand the direct application of the U.S. FATCA rules can be illegal under the local data-protection rules. All without prejudice of the relevant differences existing between the IGAs and the U.S. FATCA original rules.

Meanwhile, the OECD keeps working on its *Common Reporting Standard Initiative*, a multilateral automatic exchange of information system similar to FATCA. For these purposes, ahead of the last G20 finance ministers meeting, it published on February 13<sup>th</sup> its [OECD Global Standard](#), which follows closely the rules set out in the IGAs.

In view of the above uncertain scenario it should be expected that when FATCA comes into force the IGAs have been ratified and their implementation has been harmonized. In the meanwhile, financial operators should prepare for registering with the IRS and for starting the corresponding due diligence process.

**Information source: King & Wood Malleons (<https://www.sjberwin.com/es#> )**