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FATCA, CRS and QI News for Irish FIs

EY's Customer Tax Transparency

Recent Market Developments

Any Questions? Get in touch
with us



Amanda Murphy
Associate Partner

T: +353 1 221 1160
E: Amanda.murphy@ie.ey.com



Magda Eskander
Assistant Manager

T: +353 1 221 1713
E: Magda.eskander@ie.ey.com



Bruna Costa
Assistant Manager

T: +353 1 221 2476
E: Bruna.costa@ie.ey.com

Introduction

Irish Revenue continue to emphasize the importance of internal controls and compliance programs for the implementation of FATCA and CRS by Financial Institutions (FIs) in Ireland. Recently they have raised that enforcements will be heightened, especially under the current ongoing peer reviews where members of different jurisdictions have reviewed legal and regulatory frameworks, as well as looking into the implementation in practice.

Recent Updates on the FATCA IRS Portal and Certification Requirements

Key Takeaway for Irish FIs

The FATCA Registration portal changes have occurred to create efficiency in controlling the requirements of each Foreign Financial Institution (FFI) based on its country of domicile and its classification. Accordingly, Irish FIs are encouraged to act immediately and update their registration selecting one of the thirteen classifications as applicable to ensure the System is capturing correct statuses for each FFI.

The obligations in relation to providing certifications will vary depending on the country/jurisdiction of tax residence selected as well as the FATCA Classification - in order for FFIs to ensure they do not reach events of default on their FATCA obligations their statuses need to be accurate, and any certification due made in a timely manner.

The section related to Period Certification of this article is also relevant for Irish US Qualified Intermediaries.

The Global Intermediary Identification Number (GIIN) assigned to each FFI will not change while updating the registration portal provided the country/jurisdiction of tax residence remains the same, otherwise registration is re-processed and the last three characters of the GIIN will change.

Other Market updates impacting Irish FIs:

- **Mandatory Disclosure Rules (MDR):** OECD model MDR as well as the EU Directive (DAC 6) requires disclosure of structures that are designed to circumvent CRS reporting and identify opaque structures where beneficial owners are unknown. Legislation is due to be finalized by last quarter of 2019. The DAC 6 has come into force 25 June 2018.
- **Her Majesty's Revenue and Customs (HMRC) Corporate Criminal Offence (CCO):** Extra-territorial legislation came into force toward the end of last year and aims to identify relevant bodies who would be criminally liable where they fail to prevent facilitating tax evasion. The CCO applies to UK tax evaded anywhere in the world (e.g. helping a UK tax resident customer hide their status) as well as non-UK tax if the FI has a UK presence. A detailed Article on how your company can comply with HMRC CCO and the steps that need to be taken in the business operations to confirm not facilitating tax evasion may be found here: <https://taxinsights.ey.com/archive/archive-articles/uk-sets-new-tax-evasion-benchmark-for-businesses.aspx>
- **AML / Beneficial Owner Registers:** The Department of Finance has advised that a Statutory Instrument is expected to be made in the coming months assigning separate legal responsibility to the Registrar of Companies for the establishment and maintenance of the central register of beneficial ownership of corporates. Similarly the Revenue Commissioners are expected to host a register of beneficial owners of trusts. Companies will be required to make their beneficial ownership filings. The information included in the registers is expected to be used to give government a clearer picture of compliance with CTT regimes.
- **GDPR:** There is a significant link between the customer data impacted by FATCA/CRS reporting and GDPR requirements - the alignment is addressed previously in our Thought Gallery: <https://eyfinancialservicesthoughtgallery.ie/turning-regulatory-and-tax-burden-into-a-sustainable-business-model/>

In-depth Analysis of recent Internal Revenue Service (IRS) Notices in relation to the Foreign Account Tax Compliance Act (FATCA)

During the months of July and August of 2018, the IRS have issued the following notices and made the following updates with respect to FATCA, US Qualified Intermediaries (QIs), Withholding Foreign Partnerships (WP) and Withholding Foreign Trusts (WT):

- 19 July 2018: Issue Number: 2018-8 Announcement of upgrades in relation to the FATCA Registration process along with an updated user guide to support the changes, as well as the publication of FATCA Registration System Frequently Asked Questions (FAQs).
- 24 July 2018: the publication of FAQs with respect to FATCA Status, Certifications of Pre-existing Accounts (COPA) and periodic certifications.
- 31 July 2018: Issue Number: 2018-9 on availability of COPA and periodic certifications on the FATCA Registration System.
- 21 August 2018: Issue Number: 2018-11 Final reminder for all US QIs, WP and WT with a certification period ending in 31 December 2017: such QI/WP/WTs must select the periodic review year in the IRS Application and Account Management System by 1st September 2018

- Prior to the system upgrade, entities were required to provide three options for their FATCA classification. The upgrade now allows thirteen Entity Types for selection depending on the entity type selected i.e. Sponsoring, Lead, Member or Single Entity. If registration status is approved, entities are required to edit their information to update the entity status in line with the new options.

Responsible Officers (ROs) are required to make a certification with regard to FFIs compliance with FATCA requirements i.e. ROs of certain FFIs that are considered Participating Foreign Financial Institutions (PFFIs) and Reporting Model 2 Intergovernmental Agreement (IGA) FIs.

A Reporting FI in a Model 1 IGA must submit FATCA Certifications only if it is doing so on behalf of a branch that operates in a Model 2 or Non-IGA Jurisdiction.

Based on the Entity Type selected and its domicile, the FI may have to comply with Certification requirements as applicable to each entity type. Accordingly, the update of the registration is important for the IRS to identify whether the FI has complied with its obligations or not.

Certifications of Pre-existing Accounts:

The COPA is a one-time certification required by the RO to confirm compliance with pre-existing due diligence requirements. The COPA status for each FI may be "not required", "overdue" or "submitted" based on the FIs Country/Jurisdiction of Residence and FATCA Classification. The system will therefore determine if a COPA is required or not. If the FI is not required to submit a COPA the process ends here.

Key date mentioned on the FAQs

FAQs announced 15 December 2018 as the extended deadline for the COPA and periodic certifications for entities registered on/before 1 January 2015

Once the certification is completed the COPA status will be updated to "Submitted" and a message board message will confirm the results based on the following:

- a) Due Diligence: This result will be displayed when the RO completes the certification of pre-existing accounts without failure by the FI to comply with any of the requirements.
- b) Failure to Certify: This result is displayed when the RO selects the option indicating that they are unable to complete the certification at this time. This status will result in event of default that could cause termination of the entity's FATCA Status.
- c) Not Required: This result will be displayed when the RO confirms they are not required to complete the certification.
- d) Qualified Certification: This result indicates that the FFI failed to comply with one (or more) of its requirements but that is working on correcting such failure.

All US QI/WP/WT with a certification period ending in 31 December 2017 must select the periodic review year in the IRS Application and Account Management System by **1st September 2018**.

- For QI/WP/WTs selecting 2015 or 2016 as review year, the certification due date is **1st September 2018**.
- For QI/WP/WTs applying for a waiver of the periodic review, the waiver application must be submitted by **1st September 2018** and the entity must select 2015 as review year in the IRS Application and Account Management System.
- For QI/WP/WTs selecting 2017 as review year, the certification due date is 31st December 2018 but the IRS will grant an extension until **1st March 2019** for this certification.

Periodic Certification and US QI requirements

Similar to the COPA certain FIs based on their country/jurisdiction of tax residence and FATCA classification are required to submit periodic certifications.

- Periodic Certification periods cover three full calendar years from January 1st of year one to December 31st of year three.
- Periodic Certification status will reflect, due, not required, overdue or submitted.
- Failure to submit a periodic certification is considered an event of default and it could cause termination of the entity's FATCA Status and result in removal of the FFI from the published FFI list.
- After selecting the periodic certification link the FI is required to confirm or modify its FATCA classification. Changing the FI classification will change the classification identified in the registration portal as well.
- The system will determine whether the certification is required.

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Ernst & Young, Harcourt Centre, Harcourt Street, Dublin 2, Ireland.

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