

October 2018

FATCA, CRS and QI News
for Irish FIs

EY's Customer Tax Transparency

Recent Market Developments

Any Questions? Get in touch
with us



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Please see below headlines in relation to
developments in Automatic Exchange of Information
(AEOI) for October 2018:

Foreign Account Tax Compliance Act (FATCA) News:

- 12 October 2018: The Internal Revenue Service (IRS) Office of Chief Counsel stated the plan on issuing regulations related to sponsored entities in Model 1 jurisdictions that do not include sponsored entities in Annex II of the Intergovernmental Agreement (IGA).
- 24 and 29 October 2018: The IRS published the updated Form W-9 (Request for Taxpayer Identification Number and Certification) and Instructions for the Requester of Form W-9 (Rev. October 2018).
- 25 October 2018: The IRS published the updated FATCA Foreign Financial Institution (FFI) list.
- 30 October 2018: The IRS issued the draft Instructions for Forms 1099-R, 5498, 1099-DIV and 1099-B. The IRS also identified and selected FATCA Filing Accuracy as one of its Campaigns addressing issues representing risk of non-compliance.

Organisation for Economic Cooperation and Development (OECD) News:

- 16 October 2018: Results of analysis identifying the Residence/Citizenship by investment schemes (RBI/CBI) that potentially pose high risk to the integrity of Common Reporting Standard (CRS) have been published.
- 22 October 2018: The OECD published further action taken to prevent the misuse of RBI/CBI schemes.

Qualified Intermediary (QI)/Qualified Derivatives Dealer (QDD) News:

- On 25 October 2018, the IRS updated Frequently Asked Questions (FAQs) on the QI, Withholding Foreign Partnership (WP), and Withholding Foreign Trust (WT) by adding Q14 under "FATCA Certifications".

In-depth Analysis

FATCA News

US IRS - Sponsoring entities in certain Model 1 Countries are required to make Responsible Officer (RO) Certifications

On 12 October 2018, the IRS Office of Chief Counsel stated during a tax conference in New York that it is planning on issuing regulations requiring sponsored entities in Model 1 jurisdictions that do not include sponsored entities in Annex II of their IGAs to make a FATCA RO certification no later than 31 March 2019.

The Model 1 jurisdictions where this requirement would apply are: Denmark, France, Germany, Ireland, Italy, Mexico, Netherlands, Norway, Spain and the United Kingdom.

Revised W-9 Form and Instructions are now available on the IRS website (Rev. October 2018)

FFIs are required to use the updated [W-9 Form](#). Instructions to the form are available [here](#). The change applicable to the form is in relation to back-up withholding rate, which is now updated as per the Public Law 115-97 from 28% to 24%

The IRS issued the draft instructions for Forms 1099-R, 5498, 1099-DIV and 1099-B

Draft instructions for the following forms are now available on the IRS website, those remain in draft form and are expected to be revised in 2019.

- [Instructions for Forms 1099-R and 5498, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, Individual Retirement Arrangements \(IRAs\), Insurance Contracts, etc. and IRA Contribution Information](#)

What's new: Payments from IRAs to state unclaimed property funds under escheat laws must be reported on Form 1099-R.

- [Instructions for Form 1099-DIV, Dividends and Distributions](#)

What's new: An increased exclusion percentage does not apply to gains after 2018.

- [Instructions for Form 1099-B, Proceeds from Broker and Barter Exchange Transactions](#)

What's new: New form supports the inclusion of a new checkbox to indicate that the proceeds of the transaction are from a Qualified Opportunity Fund.

IRS published the updated FATCA FFI list

FFIs that have recently applied for Global Intermediary Identification Numbers (GIINs) may now view the updated list up to October 2018 [here](#).

FATCA Filing Accuracy as one of the IRS Campaigns to focus on issues representing risk of non-compliance

Announced by the lead Executive John Cardone, the director of Withholding & International Individual Compliance, FATCA's main goals are to identify, deter and discourage offshore tax avoidance/evasion, through enhancing communications, reporting and imposing sanctions for non-compliance.

Entities including Foreign Financial Institutions (FFIs) and certain Non-Financial Foreign Entities (NFFEs) are generally required to report certain accounts held by U.S. account holders and Substantial/Controlling U.S. owners/persons.

The campaign will address the entities in scope that have FATCA reporting obligations but do not meet all their compliance responsibilities. Termination of the FATCA status is one of the treatments suggested for non-compliance.

OECD News:

RBI/CBI schemes

RBI/CBI schemes allow individuals to obtain citizenship or residence rights through investments or against payment of a fixed fee.

Such schemes, may be potentially misused to avoid reporting under the OECD/G20 CRS.

Documentation under such schemes such as Tax Resident Certificates may be used to misrepresent an individual's jurisdiction(s) of tax residence and so result in CRS due diligence which is not comprehensive or does not identify other tax residence jurisdictions for the account holder that may exist.

Countries identified under those schemes that pose threat of CRS reporting avoidance are: Antigua and Barbuda, Bahamas, Bahrain, Barbados, Cyprus, Dominica, Grenada, Malaysia, Malta, Panama, Qatar, Saint Kitts and Nevis, Saint Lucia, Seychelles, Turks and Caicos Islands, United Arab Emirates and Vanuatu.

The OECD have come up with questions which the FI should ask in relation to the tax residency for jurisdictions identified:

- Did you obtain residence rights under an CBI/RBI scheme?
- Do you hold residence rights in any other jurisdiction(s)?
- Have you spent more than 90 days in any other jurisdiction(s) during the previous year?
- In which jurisdiction(s) have you filed personal income tax returns during the previous year?

CRS is enforced through local legislation. It is therefore important to reach out to your advisor on implementation of additional due diligence requirements, to avoid over compliance or inconsistency in implementation of the law.

QI/QDD News

Addition of Q14 in Section "FATCA Certifications" of the FAQs for QI/WP/WTs

The IRS have added Q14 to indicate the use of 'Not Applicable' while completing the FATCA Certification. Through Q14 the IRS have highlighted the difference between answering a question as 'No' or 'Not Applicable'.

Giving a 'No' as a response in the FATCA Certification indicates the question is applicable, however the response is No.

The IRS have indicated the following example which can also be viewed [here](#):

"For example, where the question states "with respect to any failure to withhold, deposit, or report to the extent required under the FFI agreement, the participating FFI has corrected such failure by paying any taxes due (including interest and penalties) and filing the appropriate (or amended return)", your response should be:

- ▶ *"Yes" if you have identified such failure(s) and have corrected it as stated in the question;*
- ▶ *"No" if you have identified such failure(s) but have not corrected it as stated in the question; or*
- ▶ *"Not Applicable" if you don't have any failures as stated in the question, and therefore the question is not applicable to you."*

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