

December 2018

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



Bruna Costa
Manager

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



Magda Eskander
Assistant Manager

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



Alvaro Martinez
Senior Tax Advisor

T: +353 1 479 2173
E: Alvaro.martinez@ie.ey.com



James Keane
Assistant Tax Advisor

T: +353 1 479 2164
E: James.keane@ie.ey.com

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

Foreign Account Tax Compliance Act (FATCA) News:

- 3 and 8 November 2018: The Internal Revenue Service (IRS) published instructions for forms 1099-DIV ('Dividends and Distributions'), 1099-INT ('Interest Income') and 1099-OID ('Original Issued Discount'), issuing also the form 1099-OID.
- 19 November 2018: The IRS updated the FATCA Registration System Frequently Asked Questions (FAQs) by updating 17 questions in several categories.
- 21 November 2018: The IRS published updated version of the 1042 Form (Annual Withholding Tax Return for U.S. Source Income of Foreign Persons).
- 27 November 2018: The IRS announced that the public/private key pairs used for encryption for FATCA filing will expire on 30 November 2018.
- 29 November 2018: The IRS issued a reminder to submit FATCA certifications by 15th December 2018 (Entities with FATCA Certification ending 31st Dec 2017).
- 30 November 2018: The IRS updated the FATCA General FAQs on FATCA Certifications to include Q15.
- 30 November 2018: The IRS issued a notice on the Federal Register inviting the public to comment on IRS forms 8957, 8966, 8966-C and 8809-I concerning FATCA.
- 30 November 2018: The IRS published Form 1042-s (Foreign Person's U.S. Source Income Subject to Withholding) for 2019.

Organisation for Economic Cooperation and Development (OECD) News:

- 20 November 2018: The OECD updated the list of Residence By Investment (RBI)/Citizenship By Investment (CBI) Schemes potentially posing risk to the integrity of CRS.
- 28 November 2018: The OECD updated the status commitments of jurisdictions regarding AEOI.

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

- 19 November 2018: The IRS updated FAQs on the QI, Withholding Foreign Partnership (WP), and Withholding Foreign Trust (WT) by updating Q5 and Q6 under "Provisions for 2017 Agreement".

In-depth Analysis

FATCA News

The IRS issued instructions for forms 1099-DIV, 1099-INT and 1099-OID

On 3 and 8 November 2018, the IRS issued instructions for the 1099-DIV, 1099-INT and 1099-OID (Original Issue Discount) forms. In addition to the instructions, also forms 1099-MISC (Miscellaneous Income) and 1099-OID were published.

Form 1099-INT has to be completed and issued by payers of interest income to investors at year end including a breakdown of all types of interest income and related expenses. Form 1099-DIV has to be completed and issued by investment platforms to all the investors who have received distributions from any type of investment during the calendar year of holdings held at those investment platforms. Finally, 1099-OID will have to be completed by those individuals holding debt instruments (such as bonds, notes, or certificates) which were discounted at purchase to report the taxable difference between the instruments' actual value and the discounted purchase price. More information can be found at the [IRS Website](#).

FATCA Registration System FAQs update

On 19 November 2018, the IRS issued an update on the FATCA Registration System FAQs, updating various questions in different categories.

These questions are trying to facilitate the registration process for the Financial Institutions ('FIs') on the IRS System under FATCA. The updated questions can be found on the below categories:

- FATCA Registration System - Overview (Q1)
- General System Questions (Q12)
- FATCA Account Creation and Access (Q1 & Q3)
- Registration Status and Account Notifications (Q1)
- Expanded Affiliated Groups ('EAG') (Q6 & Q7)
- Registration Updates (Q1, Q2, Q6 & Q8)
- Sponsoring Entity (Q5 & Q6)
- FFI List (Q1)
- Certification (Q1, Q2, Q3, Q4, Q5 & Q6)
- Global Intermediary Identification Number (GIIN) - Overview (Q3, Q4 & Q5)

The IRS announced the expiration of the public/private key pairs used for the encryption FATCA filing by 30 November 2018

On 27 November 2018, the IRS announced the expiration of the public/private keys used for the encryption of FATCA filing by 30 November 2018.

The IRS Public Key is a Certificate that can be downloaded by the FI Administrator from the IDES Enrollment site and needs to be included in the FATCA Transmission to the IRS. This Certificate is a trusted instrument to show the recipient that the sender is truly who they say they are and provides proof of ownership of the public key, verified by the Certificate Authority ('CA').

FATCA Certification Deadline by 15 December 2018

On 29 November 2018, the IRS issued a reminder for those Foreign FIs with certification period ending December 31, 2017, to complete their FATCA Certifications no later than 15 December 2018. This deadline would not be applicable for trustees of trustee-documented trusts and Sponsoring Entities, whose deadline will be 31 March 2019. In this regard, Participating Foreign FIs including Reporting FIs under Model 2 IGAs and certain Registered Deemed Compliant will have to complete their FATCA certification by then.

On the Notice, the IRS highlighted the importance of submitting FATCA Certifications by the due date. If an entity is not compliant with their FATCA obligations, the consequences may include the revocation of the entity's FATCA status, and ultimately, the entity's GIIN being removed from the FFI List.

FATCA Certifications FAQs update

On 30 November 2018, the IRS Published an update of the FATCA Certifications FAQs including a new question (Q15) regarding the loss of information while completing a certification on saved mode to be submitted at a later time. It has been raised to the IRS that when users resumed their certifications, in the cases of Consolidated Compliance Group certification, Registered Deemed Compliant Collective certification, or Sponsoring Entity certification, the members/sponsored entities selected originally by the users disappear and are no longer associated to the previously saved certification.

The IRS have responded by publishing Q15 advising that the certification system was designed to refresh the entity's list of applicable members/sponsored entities when resuming a previously saved certification, ensuring that the most updated list is reflected and it contains all applicable members and sponsored entities. Additional information regarding Q15 can be found [here](#).

The IRS notice inviting the public to comment on IRS forms 8957, 8966, 8966-C and 8809-I

On 30 November 2018, the IRS issued a notice on the Federal Register inviting the public to comment on the IRS form 8957. The form is used by Foreign FIs to apply for status of a Foreign FI as defined in IRC 1471(b)(2).

Form 8966 is used by Foreign FIs to report foreign reportable amounts paid to their current account holders that are Non-Participating Foreign FIs as well as used by withholding agents to report US owners of certain foreign entities regarding withholdable payments made to these entities.

Form 8809-I is used to apply for an extension of time to file form 8966 and form 8966-C is a cover sheet for those submitting a paper version of Form 8966.

For those Foreign FIs interested in submitting their comments to the IRS, the deadline is 31 December 2018.

Forms 1042 (Annual Withholding Tax Return for U.S. Source Income of Foreign Persons) and 1042-S (Foreign Person's U.S. Source Income Subject to Withholding) published

On 30 November 2018, the IRS published the updated version of forms 1042 and 1042-S. These forms are used to report payments of applicable US source income and any withholding of such US source income under the Internal Revenue Code Chapter 3 (NRA Withholding) and Chapter 4 (FATCA Withholding).

Every withholding agent or intermediary who receives, controls, has custody of, disposes of, or pays a withholdable payment (to which FATCA withholding applies) or an amount subject to withholding must file a 1042 and 1042-S. This will include QIs, WPs, WTs, Participating Foreign FIs, and Reporting Model 1 Foreign FIs making a claim for a collective refund under agreement with the IRS.

The deadline for submitting both forms is 15 March 2019.

OECD News

Updated list of RBI/CBI schemes potentially posing risk to the integrity of CRS published

The RBI/CBI schemes, which allow individuals to obtain citizenship or residence rights through investments or against payment of a fixed fee, may be potentially misused to avoid reporting under the OECD/G20 CRS, which represents a risk for the integrity of this regime.

On 20 November 2018, the OECD updated the list of potentially high-risk RBI/CBI schemes, which are those that provide access to a low personal income tax rate on offshore financial assets and do not require an individual to spend a significant amount of time in the location offering the scheme.

The OECD analysed over 100 RBI/CBI schemes offered by CRS-committed jurisdictions identifying the schemes that potentially pose a high-risk to the integrity of CRS. Additional information about this can be found [here](#).

Updated AEoI status of commitments published

On 28 November 2018, the OECD updated the status of commitments of jurisdictions regarding AEoI. In the new document, Ghana and Oman have been added to the list of jurisdictions undertaking first exchange by 2019/2020. Kuwait has also confirmed that it will be undertaking its first exchange by 2018.

QI/QDD News

Addition of Q5 and Q6 in Section "Provisions for 2017 Agreement" of the FAQs for QI/WP/WTs

The IRS added on 19 November 2018 two additional questions to the QI/WP/WTs FAQs (Q5 and Q6) to provide further clarification on QI merges, offering a different scenario on each question.

As per Q5 of the QI FAQs, if a QI merges into an entity already operating as a Non-QI, the QI's QI designated accounts will remain under the QI only if the Non-QI applies for the QI status at the time of the merger, according to Section 5 of the QI Agreement. Additional steps listed on the QI FAQs will have to be completed.

Q6 was updated to provide additional information about the procedures to be followed when a QI in one country re-domiciles into another country after merging with a newly-formed entity. In this case, the QI must report its new name and the new address of its registered office, but does not need to re-apply for QI status.

Additional information regarding the updated questions can be found [here](#).

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organisation and may refer to one or more of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organisation, please visit ey.com.

© 2018 Ernst & Young. Published in Ireland. All Rights Reserved. Produced by BSC (Ireland). 08/18. ED none. Image from Shutterstock.

The Irish firm Ernst & Young is a member practice of Ernst & Young Global Limited. It is authorised by the Institute of Chartered Accountants in Ireland to carry on investment business in the Republic of Ireland.

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

Information in this publication is intended to provide only a general outline of the subjects covered. It should neither be regarded as comprehensive nor sufficient for making decisions, nor should it be used in place of professional advice. Ernst & Young accepts no responsibility for any loss arising from any action taken or not taken by anyone using this material.

ey.com