



**TAX INFORMATION NOTE**

**Requirement to have a self-certification at account opening under CRS  
and FATCA**

**December, 2015**

## **COMMON REPORTING STANDARD (CRS) - REQUIREMENT TO HAVE A SELF-CERTIFICATION AT ACCOUNT OPENING**

The OECD recently issued updated CRS FAQs, including a clarification of the need for a Financial Institution (“FI”), such as an investment fund, to obtain a self-certification for new accounts at account opening stage. The FAQ (FAQ 20, of the OECD CRS-related FAQs – November 2015)<sup>1</sup> recognises that where “due to the specificities of a business sector it is not possible to obtain a self-certification on “day one” of the account opening process” (in an Irish funds context the only comparable example to those included by the OECD would be, where an investor acquires shares in the ETF on the secondary market), and states that, in such circumstances self-certifications should be obtained and validated “as quickly as feasible” and in any case within a period of 90 days. The FAQ goes on to advise that, in all cases, FIs should ensure that they have obtained and validated the self-certification in time to be able to meet their due diligence and reporting obligations with respect to the reporting period during which the account was opened. However, it should be noted that, in the case of new accounts held by entities, an FI can rely on information in its possession or publicly available to determine if an account is not a Reportable Account (e.g. it is held by an FI or a corporation that is publicly traded).

While FAQ 20 does not state that an undocumented account must be closed or frozen, Irish FIs would be required to report such accounts to the Irish Revenue in respect of the reporting period during which the relevant account was opened. The Irish Revenue recently re-affirmed their expectation that Irish FIs must obtain a self-certification at account opening unless there is an exceptional reason due to the nature of the business as to why a self-certification was not obtained at account opening stage. Failure to meet the above conditions could result in an Irish FI being classified as non-compliant for CRS purposes and this could result in the imposition of monetary penalties on such an Irish FI for failure to meet its due diligence and reporting obligations under Irish CRS legislation. Irish FIs (and their service providers) should give appropriate consideration to the FI's account opening procedures in light of the above and ensure that on-boarding procedures comply with the above requirements.

CRS will apply from 1 January 2016. The Irish Government is currently in the process of finalising the Regulations implementing CRS into Irish law, which are due to be enacted into Irish law in advance of the 1 January 2016 start date.

## **FATCA POSITION ON SELF-CERTIFICATION AT ACCOUNT OPENING**

In the case of FATCA, the US Internal Revenue Service (“IRS”) FAQ 10 (FATCA-FAQs General)<sup>2</sup>, states that in the case of new accounts (accounts opened on or after 1 July 2014) held by individuals, an FI must obtain a self-certification at account opening and if a self-certification cannot be obtained at account opening, the FI cannot open the account.

The Irish Revenue recently clarified their position on this matter in their Supplementary FAQs on FATCA, which were updated on 26 November 2015<sup>3</sup>. In Question 19 of the updated FAQs, the Irish Revenue have confirmed that they do not require Irish FIs to close or freeze such accounts where a self-certification has not been provided.

Notwithstanding this, the Irish Revenue have emphasised that the IRS position on this matter (as outlined in FAQ 10) is that a FI should not open a new individual account without a self-

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<sup>1</sup> <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/CRS-related-FAQs.pdf>

<sup>2</sup> <https://www.irs.gov/Businesses/Corporations/Frequently-Asked-Questions-FAQs-FATCA--Compliance-Legal>

<sup>3</sup> <http://www.revenue.ie/en/business/aeoi/fatca-faqs.pdf>

certification and that in the absence of same the IRS may deem the FI as non-compliant (i.e. recalcitrant). Recalcitrant status could result in an Irish FI being subject to the 30% withholding tax imposed under FATCA on the receipt by it of certain US source income and gross sale proceeds from the sale of relevant US property. As a result, the potential imposition of recalcitrant status on an Irish FI by the IRS which has not received valid self-certifications from all new individual accounts, places a significant importance on the collection of this documentation by Irish FIs at account opening.

Irish domiciled investment funds (and their service providers) should consult their Irish legal or tax advisors if further information is required.

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