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IRISH FUNDS
INDUSTRY
ASSOCIATION



FATCA AND ITS IMPACT ON THE IRISH FUNDS INDUSTRY

29 July 2014 – 11am
Questions and Answers from the Webinar

Q 1: If an account was opened in 2011, and had a nil balance at the 30th June 2014 and then reinvested on the 21st July 2014, should this client be seen as a pre-existing client or is it seen as a new on-boarding client as they reinvested after 1st July 2014?

A: If the account is closed as at 30 June 2014, then the reinvestment as at 21 July 2014 should be treated as a new account and new onboarding procedures should be followed. However, to the extent the account is not actually closed but just has a nil balance then it should be treated as a pre-existing account as at 30 June 2014 and appropriate due diligence procedures should be followed (bearing in mind the elections to apply thresholds for accounts below a certain value).

Q 2: Who are you seeing as taking on the role of the Responsible Officer for registration purposes?

A: Generally a member of the tax team at the investment manager or the compliance officer for example, sometimes a director of the fund. The role can also be outsourced to a third party service provider. However, the FI should ensure that the appointed person is contactable by local tax authorities and the IRS in case of any questions arising on registration or reporting etc. See below link to the IRS's FAQ section on responsible officers. <http://www.irs.gov/Businesses/Corporations/Frequently-Asked-Questions-FAQs-FATCA--Compliance-Legal#Responsible>

Q 3: Do fund administrators need to register and obtain a GIIN?

A: To the extent that they only fall within the definition of an investment entity by reference to the services they provide to funds, and do not themselves maintain any managed accounts, they should be considered deemed compliant and will not need to register or report under FATCA.

Q 4: What would you say are the biggest risks for compliance (and generally) going forward?

A: The impact of non-compliance is potentially very damaging to the reputation of the fund and the fund promoter. It is imperative that financial institutions ensure that their due diligence procedures are sufficient to capture all reportable accounts for reporting to local tax authorities. It is equally important to ensure that non-reportable accounts are correctly identified and excluded from reporting, in order to prevent non-US investors from receiving questions from the IRS on their US tax compliance.

In addition, consideration should also be given to local rules applying to funds in different countries. There are subtle differences in the impact of FATCA on Cayman funds as compared to Irish funds, including a difference in the local reporting deadline (May for Cayman funds, June for Irish funds).

Data protection requirements should also be given due consideration. As mentioned on the webinar, Irish funds cannot ask individual investors for information on the broader tax residence question until such time as legislation is introduced in Ireland which requires the collection of such information. Cayman funds currently have more flexibility due to their compliance with UK FATCA regulations.

Q 5: Do we require originals of self-certs or would scanned e-mailed copies be acceptable?

A: The Irish Revenue FATCA Guidance Notes provide detail on use of the self-certification for identification of account holders and permit multiple formats including electronic, scanned, email etc. as long as they are signed and include the specific wording conventions outlined in the guidance and discussed during the webinar.

Q 6: Is there any indication whether the extension to January 1st 2015 for entity accounts will also come into effect for Cayman-domiciled funds?

A: No. See 16.1 of the Cayman Guidance Notes referenced below which confirms that for Cayman Financial Institutions, new entity accounts are any accounts opened by or for entities on or after 1 July 2014. This ties in with the timing for new accounts under UK FATCA which Cayman funds must also comply with.

http://tia.gov.ky/pdf/FATCA_Guidance_Notes.pdf

Q 7: Is self-certification/IRS form mandatory for FIs in IGA countries?

A: The US Treasury template Model 1 IGA agreements provide details under Annex I in relation to the due-diligence obligations for reporting Financial Institutions for identifying and reporting on US reportable accounts. The wording within the template agreements requires that a reporting FI obtain a self-certification from the account holder (which may be on an IRS Form W-8 or W-9, or a similar agreed form.)

As discussed as part of the webinar it is essential that fund managers and administrators are aware of the local FATCA rules and regulations that may have an impact on their funds and investors depending on the domicile of the fund.

For example the Cayman Islands, Ireland, and the UK have signed up to a Model 1 IGA and have issued FATCA guidance from the respective tax authorities explaining how FATCA will be implemented in those jurisdictions. They have also issued industry standard self-certification forms that can be used to document investors in funds domiciled in those jurisdictions instead of the IRS Form W-8 or W-9 if preferred.

Q 8: What are the possible FATCA statuses for FIs in IGA countries - is it either Reporting or Non Reporting FATCA partner FI only? Or are other statuses possible? Would you have to query 'reasonableness' if other statuses are claimed?

A: There are several categories of financial institution in IGA countries, including Reporting Model I FFI, Non-reporting IGA FFI (covering certain deemed compliant categories) and Sponsored FFI. All self-certifications or W-8 Forms should be checked for reasonableness when received from investors.

Q 9: Why the distinction between entities and individual when it comes to voluntary information re tax residence on a self cert?

A: Individuals are subject to stringent data protection regulations in Ireland. Corporates are not subject to the same level of data protection requirements. Therefore it is permitted to ask the voluntary question relating to tax residency on the entity self-certification. However it is only currently permitted to ask an individual investor in Ireland whether they are a US citizen or resident for tax purposes under FATCA, and not the broader question on where they are resident.

Q 10: Re data protection, if the "open" question on tax residence is labelled as being an optional field on the self-cert forms, is that OK?

A: As per the previous question, this is only acceptable for an entity self-certification form for Irish domiciled funds, and not for an individual self-certification form for Irish domiciled funds. Currently we are not permitted to ask individual investors the broader question on where they are tax resident and must only ask the relevant US question under FATCA

Q 11: Will guidance be issued by Revenue as to how to complete Self Certs similar to guidance issued by the IRS for W8 forms completion?

A: No, these self-certification forms are not created by Revenue, in contrast to the W8 forms which are produced by the IRS. The industry self-certifications have been drafted by the IFIA FATCA Taskforce and discussed with Revenue, and are meant to be used by industry as an alternative to W8 forms if preferred. The IFIA FATCA Taskforce does intend to include a definitions glossary for use in conjunction with the self-certification forms and this will be published on the IFIA website in due course. The IFIA self-certification forms are available at the following link: <http://www.irishfunds.ie/publications/>

Q 12: When will the next version of the Revenue guidance notes issue?

A: The latest version was issued in January 2014 with a consultation process running until May. Revenue received a large number of comprehensive submissions from industry players and bodies, and also met with a number of impacted parties to discuss some of the main areas requiring clarification. The Guidance Notes are intended to be a “living document” which will be updated at regular intervals (potentially every six months) to reflect more recent clarifications on the application of FATCA to the Irish financial services industry. Revenue has taken on board the recent comments received, and are committed to releasing the next version of the Guidance Notes in the near future. It is likely that this will be the end of August or potentially early September 2014.

Q 13: The FATCA self-cert only refers to the Irish IGA, but many investors are not Irish entities, so do we just 'assume' that other entities must refer to their own IGAs where they exist?

A: Documentation obligations are determined by the legislation that applies to the domicile of the fund, not the investor. For example, an Irish domiciled fund is required to comply with the regulations, legislation and guidance from the Irish Revenue relating to FATCA, so an entity investor in an Irish domiciled fund, would be required to complete an Irish self-certification irrespective of where they themselves are resident. Likewise, for example, investors in a Cayman domiciled fund would be required to complete a Cayman self-certification to demonstrate their tax status to the Cayman Tax Authority for both US FATCA and UK Crown Dependencies and Overseas Territories (“CDOT”) obligations.

Q 14: What are the registration/reporting obligations on the fund where a clearing system is involved?

A: In the case of funds whose units are held through a clearing system, the fund itself should be considered deemed compliant (without the need to register or report) where the interests in the fund are held through another financial institution that is compliant with FATCA. In practice the due diligence and reporting requirements will be carried out by the authorised participants and brokers who trade units in the fund through the clearing system.

In addition, where a broker has opened an account with the clearing firm in the name of the underlying client, and fulfils all verification and due diligence requirements on its underlying clients, the Irish guidance notes confirm that the financial accounts remain those of the broker and the reporting and classification of the underlying client is the responsibility of the broker.

Q 15: For Cayman domiciled entities, are solely self-certs OK (i.e. no requirement to collect w8/w9 forms?)

A: It is perfectly acceptable to use either (i) a self-certification document to identify investors in Cayman domiciled funds for both US FATCA and UK CDOT obligations or (ii) US IRS withholding certificates W-8 or W-9 to establish an investor's identity for US FATCA. Section 12.2 of the Cayman Guidance notes released by the Cayman Islands Tax Information Authority on 22 July 2014, provides comprehensive detail on the use of self-certification and US W-8, W-9 forms.

http://tia.gov.ky/pdf/FATCA_Guidance_Notes.pdf

In addition to this the Cayman Authorities have also released Cayman Industry Standard Individual and Entity Self-Certification forms, similar to the Irish IFIA forms which are recommended for use by Industry.

Q 16: Has there been any discussion/agreement that the format of what Revenue require for reporting will be the same as what Cayman Authorities require i.e. Irish Administrators can create one template from their TA systems for both Irish and Cayman funds.

A: Yes, governments worldwide have been working together to create a FATCA Schema which will be used globally to report details of reportable accounts in each jurisdiction. For Irish Financial Institutions this file will be uploaded via ROS. In the longer term it is intended that a single schema will serve the reporting requirements of FATCA, the Common Reporting Standard and the Directive on Administrative Co-operation.

Q 17: Can Revenue give any indication on how clients elect to have thresholds in place for pre-existing investor base?

A: This will be done via ROS as part of the upload of the FATCA Schema file. Revenue will include a check box on the FATCA upload screen to allow financial institutions to indicate if they are making this election.

Q 18: What is the best way to register master-feeder funds?

A: The master fund and the feeder fund will be treated as two separate financial institutions. To the extent that the master fund is 100% held by the feeder, the master fund itself should be deemed compliant (i.e. its financial accounts are held solely by other financial institutions who are themselves compliant with FATCA). On that basis, the master fund would not need to register for a GIIN or report. The feeder fund should register for a GIIN in its own right and fulfil relevant due diligence and reporting obligations.

It is also possible to register master-feeder funds as an Expanded Affiliated Group. In that case the feeder fund would first register as the Lead FI of the group, and the master fund would subsequently register as a Member FI of that group. However, per the IRS FAQs on Expanded Affiliated Groups (see below), it is not necessary to link all FATCA registrations in this way provided all relevant members of the Expanded Affiliated Group register in their own right.

<http://www.irs.gov/Businesses/Corporations/Frequently-Asked-Questions-FAQs-FATCA--Compliance-Legal#Expanded>

Q 19: IGA states that investors should be documented "upon account opening". What are you seeing in relation to the timing of getting this documentation from investors (i.e. before account is opened or after the account has been opened)?

A: Generally documentation obligations would fall in line with your existing AML/KYC documentation policy. (See below for more detail)

Q 20: What are the consequences of an investor not completing FATCA documentation?

A: Under the Irish Revenue FATCA Guidance Notes and Regulations, investors who do not provide a self-certification or W-8, or W-9 form with their account opening documentation should be issued with reminders as part of operational processes. However if they still have not provided the requested FATCA documentation 90 days following account opening, their account should be flagged as reportable until such a time as you receive the necessary FATCA documentation. Note: no account should be stopped pending receipt of FATCA documentation.

Q 21: Do all joint account holders have to complete a Self-Cert?

A: Yes where there are new joint accounts opened on or after 1 July 2014, each joint account holder will be required to complete a self-certification.

Q 22 We don't permit US Investors to invest in our funds, so am I right in saying that FATCA doesn't apply to our funds?

A: Unfortunately this is incorrect; only certain categories of funds would be exempt from FATCA obligations. (See Appendix II of the IGA). Otherwise all in-scope reporting FIs (funds) are obliged to follow the FATCA obligations as outlined within the presentation. Reportable funds with no investments by US persons will still be required to register with the IRS, obtain a GIIN and make an annual "nil" return to Revenue.

Q 23: Does FATCA replace existing US tax rules that I already follow for my funds?

A: FATCA does not replace the existing US tax regimes, it may however add additional requirements and complexity to the existing tax rules you may already follow. It should always be recommended to investors where they are unsure to contact a professional tax advisor to discuss their personal tax situation.

Q 24: Irish financial institutions have until the end of the year to complete their registration for a FATCA GIIN number. How long does it usually take for the IRS to process the application?

A: Generally it takes between 2 and 5 days for the IRS to produce the GIIN once the submission has been made on the IRS website. However earlier this year, there were a lot of technical difficulties with the IRS website as a result of the volume of traffic on the site. As such it is recommended that FIs do not wait until December to process their GIIN registration, but instead start the process well in advance of the deadline.

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