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FATCA, CRS and QI News
for Irish FIs

Customer Tax Operations and Reporting Services (CTORS)

Latest market developments

Any Questions? Get in touch
with us



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Introduction

Enforcement of the Foreign Account Tax Compliance Act (FATCA) is ramping up - as evidenced by news headlines of the first criminal conviction for non-compliance. The former CEO of Loyal Bank Limited in the United States pleaded guilty, for failing to comply with the Act when opening accounts for clients in different jurisdictions.

The case highlights the reputational risks that may impact Financial Institutions (FIs) when it comes to Automatic Exchange of Information (AEOI) regimes. To help you to stay informed about recent developments on the topic, our latest CTORS update focuses on the following topics:

FATCA News:

- Further update on the Internal Revenue Service (IRS) FATCA Registration Portal.
- Extension of IRS Responsible Officer (RO) Certifications for Sponsoring Entities and Trustees of Trustee-Documented Trusts to March 31, 2019.

QI/QDD News:

- IRS Notice 2018-72: extension of Withholding transition rules and phase-in period for a QDD to apply "good faith efforts" in complying with the 2017 QIA rules.

The United Kingdom (UK) Competent Authority Her Majesty's Revenue and Customs (HMRC) News:

- Update on the HMRC AEOI Manual to include the possibility of redaction of information on human rights grounds.
- 2 October EY Webcast: Impact of the new UK Corporate Criminal Offence (CCO) and lessons learned.

Upcoming Events:

- 25 October 2018 - Breakfast Briefing on OECD Model Mandatory Disclosure Rules (MMDR) and CTORS Automation Tools.

FATCA News

Further update on the IRS FATCA Registration Portal

The IRS have published Question 7 to the Frequently Asked Questions (FAQs) which indicated that up to date contact details on the IRS Registration Portal in relation to the RO and the Point of Contact must be provided.

The updated FAQs may be viewed [here](#).

The purpose for identifying those individuals at the time of registration with the IRS is to provide them with a contact that represents the FI for the IRS to communicate under reasons that include certifications, general inquiries and any other FATCA-related queries. The FI is therefore responsible for ensuring it can receive notifications from the IRS and respond on those notifications.

As it is not always the case that the RO will regularly access the Portal and read the message board, those notifications will be received by e-mail to inform the RO of having received a message by the IRS. E-mail contacts are therefore key for communication and must be up to date.

Extension of IRS RO Certifications for Sponsoring Entities and Trustees of Trustee-Documented Trusts to March 31, 2019

ROs of Participating FFIs and Model 2 Foreign Financial Institutions (FFIs) with FFI agreements effective as of June 30, 2014, are required to complete FATCA certifications for the certification period ending December 31, 2017. The due date for completing these certifications was previously extended to December 15, 2018.

On September 19, 2018, the IRS published an additional FAQ in relation to further extending the due date for certifications by sponsoring entities and trustees of trustee-documented trusts to March 31, 2019. This may be accessed [here](#).

RO Certification requirements depend to a great extent on where the sponsored entities are located. Registered deemed compliant and earlier Model 2 Intergovernmental Agreement (IGA) adopters may not require RO certifications.

At the initial stage of FATCA implementation several entities have over registered. At this point certain entities may choose to discontinue as FFIs.

Now is the right time to have an external review of the Legal Entity Analysis conducted on your Group Entities at the early implementation of FATCA.

There are complexities in determining whether the FFI has an obligation to submitting IRS RO certifications in line with FATCA Regulations. There are instances where the Model 1 IGA FI would be classified under a regulation's category that is not identified under local regulations which makes it subject to adhering with the IRS regulations even if it is a Model 1 IGA FI.

If you have made a termination of your agreement with the IRS you are still required to certify. The IRS is aware that such circumstances will create even more complexities especially if the entity does not exist anymore and as such additional FAQs are expected to be published in this area.

QI/QDD News

IRS Notice 2018-72: extension of certain transition rules for Qualified Derivatives Dealers (QDD)

1. The Notice extends the phase-in period to which good faith efforts to comply with the 871-(m) regulations will be applicable as it follows:

- a) Any delta-one transaction: 2017-2020
- b) Non-delta-one transactions that are 871-(m) transactions connected to Specified NPCs entered into on or after 1st January 2017 and Specified ELIs : 2021

Specified NPCs: Specified Notional Principal Contract pursuant to §1.871-15(d)(2)

Specified ELIs: Specified Equity Linked Instruments pursuant to §1.871-15(e)

This extension does not apply to any transaction that is a 871-(m) transaction connected to certain Specified Notional Principal Contract (§1.871-15(d)(1)) entered into before 1st January 2017.

2. Similarly, the good faith efforts standards will be applicable from 2017-2020 for QDDs' efforts to comply with the requirements of 871-(m) regulations and the 2017 QIA.
3. The simplified standard provided by Notice 2016-76 to determine combined transactions was extended to be applicable to withholding agents during years 2019 and 2020.
4. The phase-in relief for QDDs was extended for 2 more years and as such dividends and dividend equivalent amounts (also called manufactured payments) received by a Qualified Intermediary (QI) in 871-(m) transactions in which the QI is acting in its QDD capacity during 2019 and 2020 will not be subject to tax or withholding.
5. The Notice also provides that a periodic review of the QDD activities will not be required in respect to years 2019 and 2020.

Update on the HMRC AEOI Manual to include the possibility of redaction of information on human rights grounds

On 15 August 2018, the HMRC AEOI Manual was updated to include the possibility of redaction of information on human rights grounds.

The update included at IEIM406000 states that an FI or an individual may request HMRC to remove the information related to a person or persons, including a class of individuals, from the data exchanged with other jurisdictions when there is reason to believe that the disclosure of such information may result in a threat to the individual's rights.

The application process is described at the AEOI Manual and consists of the submission of an application form, evidence of the threat and the indication of whether the application relates to specific individuals or a class of individuals to the following HMRC's mailbox enquiries.aeoi@hmrc.gsi.gov.uk.

HMRC will examine the applications and will explain the reasons for any rejections. HMRC urges that applications related to 2017 and 2018 reporting years are made as soon as the FI or individual becomes aware of the threat.

EY Webcast: Impact of the new UK Corporate Criminal Offence (CCO) and lessons learned

On the 2nd of October, EY held a webcast on HMRC CCO.

What is CCO?

HMRC implemented this extra-territorial enforcement legislation as of 30 September 2017. This UK law is exceedingly broad and impacts many entities due to the extraterritorial effect. Those entities which are in scope for CCO are those:

- incorporated under UK law
- carrying on a business or part of a business in the UK; or
- whose associated person is located within the UK at the time of the criminal act that facilitates the evasion of the overseas tax.

This means a corporation can be held criminally liable if its employees, or anyone else providing services for or on its behalf, assist a taxpayer in evading their tax liabilities.

This UK law is similar to the Bribery Act 2010 and provides a defence of having reasonable procedures in place to prevent the facilitation of tax evasion. It is important to note that the legislation also provides for potentially unlimited fines.

Therefore, it is important for entities that have a presence in the UK to ensure that they have implemented reasonable procedures to prevent criminal activity.

What was discussed in the CCO webcast?

- Experiences to date, including common risk-assessment findings and the implementation of reasonable procedures after the risk assessment
- International considerations -- the challenges faced and how they have been overcome
- HMRC activity -- how HMRC is responding and when to expect the first prosecutions
- An update on the wider use of "failure to prevent" legislation by the UK and the future direction of compliance in businesses

Missed the webcast and would like to view a recording? Reach out to us and we will coordinate it!

Upcoming Breakfast Briefing on the OECD MMDR and CTORS Automation Tools - reach out to our contacts for registration

EY Dublin is hosting an event on the 25th of October, registration starts at 8.30 a.m. on Harcourt Street, Dublin 2.

The event agenda includes: A strategic discussion of the OECD MMDR for CRS avoidance arrangements. The event will include topics on how the OECD MMDR fits into the EU Mandatory Disclosure Rules (MDR). A brief on the EU MDR covered by our Tax Director Sinead Colreavy. Followed by an Interactive Q&A discussion led by Amanda Murphy with guest Speaker Ruth Kelly-McEwen, Regulatory Tax SME at State Street, to discuss impact of OECD MMDR and EU DAC6/ MDR on Wealth and Asset Management Industry, including its interaction with existing AEOI CRS/ DAC 2 and AML regulation.

With the significant role of automation today we have dedicated a section in the briefing for our Senior Manager Amit Thaker from our UK office who will cover recent developments in the use of data analytics and machine learning as enablers for AEOI operations.

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