

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](mailto:Amanda.murphy@ie.ey.com)



**Bruna Costa**  
Manager

T: +353 1 221 2476  
E: [Bruna.costa@ie.ey.com](mailto:Bruna.costa@ie.ey.com)



**Magda Eskander**  
Manager

T: +353 1 221 1713  
E: [Magda.eskander@ie.ey.com](mailto:Magda.eskander@ie.ey.com)



**Alvaro Martinez**  
Senior Tax Advisor

T: +353 1 479 2173  
E: [Alvaro.martinez@ie.ey.com](mailto:Alvaro.martinez@ie.ey.com)



**James Keane**  
Assistant Tax Advisor

T: +353 1 479 2164  
E: [James.keane@ie.ey.com](mailto:James.keane@ie.ey.com)

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

### Foreign Account Tax Compliance Act (FATCA) News:

- 3 December 2018: The U.S. Internal Revenue Service (IRS) published the Semi-Annual Report to the Congress on the efforts made by the IRS to ensure that taxpayers, Foreign Financial Institutions (FFIs) and Withholding Agents (WA) comply with FATCA.
- 6 and 12 December 2018: The IRS updated its FATCA General Frequently Asked Questions (FAQs) to include questions 16, 17 and 18 regarding FATCA certifications.
- 10 December 2018: The IRS published Form 8966 (FATCA Report) and 8966 Instructions on its website.
- 11 December 2018: The IRS published the draft version of Form 1099-DIV (Dividends and Distributions) for 2019 on its website.
- 12 December 2018: The IRS published Form 1099-R (2019) (Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, Individual Retirement Agreements (IRAs), Insurance Contracts, etc.) on its website.
- 13 December 2018: The IRS published the proposed regulations under sections 1441, 1461, 1471, 1472, 1473 and 1474 of the Internal Revenue Code (IRC). The proposed regulations will aim to reduce taxpayer's burden with respect to certain requirements under Chapter 3 and FATCA.
- 17 December 2018: The IRS published instructions for Form 1099-MISC (Miscellaneous Income) on its website.
- 20 December 2018: The IRS updated its FATCA General FAQs on Registration update. Question 16 regarding the Registration update of FFI agreement was added.

### Organisation for Economic Cooperation and Development (OECD) News:

- 4 December 2018: The OECD released the AEOI Implementation Report 2018.
- 5 December 2018: The OECD published the Terms of Reference adopted by the Global Forum to be used in the peer reviews of the effectiveness of the implementation of the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters (AEOI Standard). These reviews will commence in 2020.
- 21 December 2018: Publication of the list of exchanges that took place during 2018 under the AEOI Standard.

## Qualified Intermediary (QI) News:

- 22 December 2018: Impact of the US Government shutdown - this will not affect the QI Certification deadline.

## In-depth Analysis

### FATCA News

#### The IRS published Semi-Annual Report on efforts made by the IRS to ensure FATCA compliance

On 3 December 2018, the IRS published the Treasury Inspector General for Tax Administration (TIGTA) Semi-Annual Report to Congress. In this regard, TIGTA states that the IRS efforts to ensure Taxpayers, FFIs and WA complied with FATCA were not sufficient, despite the fact that the IRS spent nearly \$380 million on the implementation of FATCA. According to TIGTA, the IRS had taken action in a few cases in respect to the planned activities that were outlined in the FATCA Compliance Road-map.

As an example, reports filed by the FFIs did not include (or included invalid) Tax Identification Numbers (TINs), making the IRS's efforts to match the FFIs' data and the data of the individual tax payers unsuccessful, affecting IRS ability to enforce FATCA and its goals.

Actions to enforce WA compliance were only taken by the IRS after feedback was provided by TIGTA, having a significant percentage of 1042-S forms with invalid TINs. This was not the case on 1099 series forms pertaining to FATCA where most of these forms had valid TINs, allowing the IRS to enforce their compliance strategies.

#### FATCA General FAQs regarding FATCA certifications updated

On the 6 and the 12 of December 2018, the IRS issued an update on the [FATCA General FAQs](#) with respect to FATCA Certifications, updating questions 16, 17 and 18.

Q16 provides further information on how FFIs may submit their FATCA certifications in cases where FFI agreements were terminated by cancelling their account and or where they no longer have a Global Intermediary Identification Number (GIIN).

In Q17, the IRS provides a response to those FFIs that have registered branches in multiple jurisdictions regarding how to submit FATCA certifications where they are required to certify. When submitting a certification for an entity, all approved branches at the time of the submission are automatically included in the certification. However, the IRS recognizes that the submission of the certification is only intended for branches with a certification requirement (i.e. branches maintained by the entity which are not located in a Model 1 Intergovernmental Agreement (IGA) jurisdiction.

Finally, Q18 provides some clarification on how to certify when there is a material failure or Event of Default (EoD) for some of the approved branches of an entity.

#### The IRS published Form 8966 and 8966 instructions.

On 10 December 2018, the IRS published on their website Form 8966 (FATCA Report) and its instructions.

The purpose of form 8966 is to report information with respect to certain U.S. accounts, substantial U.S. owners of Passive Non-Financial Foreign Entities (NFFEs), specified U.S. persons that own certain debt or equity interest in Owner-Documented FFIs (ODFFIs), and certain other accounts as applicable based on the filer's chapter 4 status. Unless otherwise indicated, Reporting Model 2 FFIs should submit Form 8966 to report on its accounts consistent with instructions for Participating FFIs (PFFIs). Both, 8966 Form and its instructions can be found [here](#).

#### IRS published draft version of form 1099-DIV (2019)

On 11 December 2018, IRS published Form 1099-DIV (2019) Information Copy.

As a reminder, Form 1099-DIV has to be completed and issued by investment platforms for all the investors who have received distributions from any type of investment during the calendar year of holdings held at those investment platforms. More information can be found [here](#).

#### IRS published form 1099-R (2019)

On 12 December 2018, the IRS Published form 1099-R (2019).

Regarding FATCA, this form will be required for FFIs reporting a cash value insurance contract or annuity contract that is a U.S. account. More information can be found [here](#).

#### IRS published Proposed regulations aiming to reduce Taxpayers burden under Chapter 3 and Chapter 4 (FATCA)

On 13 December 2018, the IRS published [proposed regulations](#) under sections 1441, 1461, 1471, 1472, 1473 and 1474 of the IRC.

The proposed regulations suggest eliminating withholding on payments of gross proceeds, deferring withholding on foreign passthru payments, eliminating withholding on certain insurance premiums and clarifying the definition of Investment Entities. The proposed regulations, also include suggested guidance on certain due diligence requirements of withholding agents and attempt to clarify the procedures for refunds and credits of amounts withheld.

## Instructions for form 1099-MISC published

On 17 December 2018, the IRS published [instructions](#) for 1099-MISC form on its website.

1099-MISC is used to report broker payments in lieu of dividend or tax-exempt interest as well as rents, prizes and awards, other income payments, etc.

## FATCA General FAQs regarding FFI Agreement Registration update added

On 20 December 2018, the IRS added [question 16 to the FATCA General FAQs Registration Update section](#).

Q16 provides some clarification regarding the FFI Agreement renewal as this expires on 31 December 2018. Participating FFIs may renew the FFI agreement via the FATCA registration website or as otherwise provided by the IRS. As per the provisions of section 12.08 of Rev. Proc. 2017, 2017-3 I.R.B. 501, there is no renewal action for correctly registered FFIs. Rather than renewing the FFI agreement via a link on the FATCA registration website, a Participating FFI that intends to renew the FFI agreement may do so by remaining registered on the FATCA registration website after 31 December 2018.

## OECD News

### The OECD released the AEOI Implementation Report 2018

On 4 December 2018, the OECD released the AEOI Implementation Report 2018.

As per this Report, in 2018, 86 jurisdictions completed around 4,500 bilateral exchanges of detailed information on the financial accounts held in the sending jurisdiction by tax residents in their partner jurisdictions.

Also, the Report mentions about the efforts made by the OECD to ensure that the 100 jurisdictions committed to exchanges in 2017 or 2018. In the meantime, the Global Forum is working with the remaining jurisdictions to maintain the focus on the implementation and to complete the deliver of the commitments.

In addition to this, the Global Forum is reviewing in detail each jurisdiction's domestic legislative frameworks to ensure they are in compliance with the Standard.

More information about the report can be found [here](#).

### OECD published Terms of Reference adopted by the Global Forum

On 5 December 2018, the OECD published the Terms of Reference adopted by the Global Forum to be used in the peer reviews of the effectiveness of the implementation of the AEOI Standard. These reviews will commence in 2020.

These Terms of Reference are part of the Global Forum's mandate to ensure the effective implementation of tax transparency standards worldwide by conducting these peer reviews. The Terms of Reference incorporate aspects in relation to both, the legal implementation of the AEOI Standard and its effective operation in practice.

With regard to the domestic and international legal frameworks being put in place to implement the AEOI Standard, the Global Forum has already been conducting assessments under the "Staged Approach" to monitor, assess and assist the implementation of the AEOI Standard. The Global Forum is now working on the Methodology with which to conduct the AEOI peer reviews in relation to effectiveness of the implementation of the AEOI Standard in practice. This will incorporate lessons learned from the early exchanges as well as build on the assessments that have already been conducted.

### List of Exchanges that took place in 2018 under the OECD CRS

On 21 December 2018, the OECD published the [list of jurisdictions](#) that exchanged information in 2018 under the AEOI Standard on its website. There were over 3,600 bilateral exchange relationships exchanged. This list, also contains the number of partners that each jurisdiction exchanged information with as of 20 December 2018.

This list also includes those Jurisdictions that have not yet exchanged information because their technical or legal implementation ongoing (e.g. Israel which does not have a domestic and international legal framework in place).

## QI News

### US Government Partial shutdown on federal financial regulatory agencies

As a result of the United States Congress not adopting an appropriations bill or continuing resolution to fund specific government departments, agencies or functions, certain federal agencies are currently subject to a partial government shutdown.

The mentioned shutdown did not affect the QI section of the IRS nor the QI Certifications deadline.

**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](http://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](http://ey.com)