Foreign Account Tax Compliance Act
Trust Update

3rd October 2014

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Background to FATCA

- IRS’s latest attempt to ensure continued tax compliance by all US “Persons”
- Replicating requirements placed on Domestic Entities to provide information to the IRS
- US “Persons” exposed to US federal taxation on worldwide income and gains
- They must also comply with significant information reporting requirements
Introduction

Information required for “United States Persons”

- US Citizen (including dual citizen)
- US Green Card Holders (unless formally returned or effectively expatriated)
- US Resident Alien
- US Domestic partnership
- US Domestic corporation
- US Estate
- US Trust
General Domestic Requirements

FATCA will replicate this information exchange for Foreign Financial Institutions.
**FFIs and NFFEs**

**Foreign Financial Institution (FFI)**
- FFIs have the most exposure to FATCA registration and ongoing compliance

**Non Financial Foreign Entity**
- Potential requirement to provide information about US “substantial owners” if requested
General Rules

- Only a non-US Entity can be a FFI or NFFE
- The term “Entity” is defined as any Person other than individual – a Trust is an Entity
- An individual cannot have FFI or NFFE status
- Implementation of FATCA is governed by US regulations unless an Entity is resident in a Country that has an Intergovernmental Agreement (IGA) with the US Government
FATCA Criteria – FFI Entity Types

- CUSTODIAL
- DEPOSITORY
- SPECIFIED INSURANCE COMPANY
- INVESTMENT – Focus of this discussion

If none of the above = Non-Financial Foreign Entity
**Tax Withholding**

A US withholding agent will be required to withhold 30% on a “withholdable” payment made to a NPFFI / Non-Compliant NFFE

A withholdable payment is a payment of either:

- US source fixed or determinable, annual or periodical (FDAP) income, or
- Gross proceeds from the disposal of property that can produce US source interest or dividend income
Tax Withholding

- 01/07/14 – tax withholding commenced on “withholdable payments” (not gross proceeds or ‘passthru’ payments)

- FFIs Resident of Model 1 IGA Countries considered “deemed compliant” until 01/01/15
**FATCA Steps**

1. **Is the Entity resident in an IGA country?**
   - If Yes – FATCA compliance governed by IGA
   - If No – FATCA compliance governed by US Regulations

2. **Is the Entity an FFI?**
   - If Yes - Consider registration requirements / ongoing compliance / reportable US Persons
   - If No - The Entity is an NFFE. No registration or fixed annual compliance. However, there remains potential FATCA obligations (discussed later)
FATCA Steps

Considering FATCA Status of following parties:

- Individual Trust
- Corporate Trustees
- Investment Managers
- Holding Company
US Regulations

Superseded by IGAs

- Definitions
- Timelines
- Registration
- Reporting
US/UK Model 1 IGA

Govern implementation of FATCA for all UK tax resident Entities:

Investment Entity Criteria:

Option 1

Conducts as a business (50% gross income), for or on behalf of a customer one or more of the following activities:

- Trading in money market instruments (cheques, bills, certificates of deposit, derivatives etc.);
- Foreign exchange;
- Interest rate and index instruments;
- Transferable securities and commodity futures trading;
- Individual and collective portfolio management;
- Otherwise investing, administering or managing funds or money on behalf of other persons
US/UK Model 1 IGA

Governs implementation of FATCA for all UK tax resident Entities:

Investment Entity Criteria:

Option 2

Entity meets the “financial assets” test AND “managed by” test
US/UK Model 1 IGA

Investment Entity – Financial Assets test:

Gross income is primarily (greater than 50%) attributable to investing, reinvesting, or trading in “financial assets”

A Financial Asset is:

• Any asset capable of being the subject matter of a transaction that is an “investment transaction” within the meaning of regulation 14F of Part 2B of the Authorised Investment Funds (Tax) Regulations 2006;
• An Insurance Contract or an Annuity Contract;
• Commodities

(Doesn’t include rental income)
US/UK Model 1 IGA

Investment Entity – Managed By test:

Any level of professional management by a Financial Institution (based on FATCA criteria)

- Corporate Trustee
- Discretionary (not advisory or “execution only”) fund management
US/UK Model 1 IGA

Corporate Trustee

FATCA Status:
Greater than 50% of Gross Income (based upon 3 year period) relates to fees for fiduciary services provided – FOREIGN FINANCIAL INSTITUTION

Relevant Investment Entry Criteria:
Covered by “investing, managing, administering on behalf of a customer”
US/UK Model 1 IGA

Corporate Trustee FFI – Reportable US Persons

• Look at the entity individually

• Would be required to disclose US Shareholders (Equity Interest)
US/UK Model 1 IGA

Investment Managers

FATCA Status:

Greater than 50% of Gross Income (based upon 3 year period) relates to fees for discretionary investment management – FOREIGN FINANCIAL INSTITUTION

Relevant Investment Entry Criteria:

Covered by “investing, managing, administering on behalf of a customer”
US/UK Model 1 IGA

Investment Manager FFI – Reportable US Persons

• Look at the entity individually

• Would be required to disclose US Shareholders (Equity Interest)

• In certain circumstances considered “deemed compliant”
US/UK Model 1 IGA

Trust / Holding Company

FATCA Status (assuming not acting on behalf of a Customer):

Is the trust “managed by” a Financial Institution (Corporate Trustee / Discretionary Investment Manager)?

Is greater than 50% of Gross Income (based upon 3 year period) from “financial assets”?

If “Yes” to both – FOREIGN FINANCIAL INSTITUTION (INVESTMENT ENTITY)
US/UK Model 1 IGA

Trust FFI – Reportable US Persons

- Settlor of the trust ("Grantor" Trust)
- Beneficiary that is entitled to a mandatory distribution
- Beneficiary that receives a discretionary distribution
- US Person exercising effective control
US/UK Model 1 IGA

Reportable US Persons – additional Value information

- Settlor of the trust - total value of the assets of the trust (assumes “Grantor” trust status)
- Beneficiary that is entitled to a mandatory distribution - net present value of amounts payable in the future
- Beneficiary that receives a discretionary distribution – value of benefit received
US/UK Model 1 IGA

Logistics of FFI Compliance – Consider the following:

• Registration with the IRS

• Registration with local jurisdiction

• Ongoing compliance

• Information request from third parties
Trusts / Corporate Trustees

Registration with the IRS

Corporate Trustees – Single FFI and (if required) Sponsoring FFI

Trusts: Single FFI
Trustee Documented Trust
Sponsored Entity
Owner Documented
Trusts – Registration with the IRS

Trustee Documented

- Trustee is a Participating FFI
- Trustee reports all required information
- Trust itself is a Non-Reporting UK FI and no requirement to register

Sponsored Investment Entity

- Contractual arrangement for its due diligence and reporting responsibilities to be carried out by a sponsoring entity
- A sponsoring entity is an entity that is authorised to manage the sponsored Financial Institution
- A sponsor must register with the IRS as a sponsoring entity, and must register each of the entities it manages (or a subset of these) as sponsored entities
Trusts – Registration with the IRS

Owner Documented Financial Institution

- Intended to apply to closely held Investment Entities
- The Owner Documented Financial Institution must provide the required documentation and agree to notify the other Financial Institution which is undertaking the reporting (on its behalf) if there is a change in circumstances
  - must satisfy;
    - The FI must not maintain a Financial Account for any Non-Participating FI; and
    - The FI must not be owned by, nor be a member of a group of, Related Entities with any FI that is a Depository Institution, Custodial Institution or Specified Insurance Company.
  - as sponsored entities
Model 1 IGA Timeframe

Key Deadlines for 2014 (UK IGA)

• 25/10/14 – portal registration to appear on FFI list at 1 January 2015

• 31/05/15 – First FATCA report due date to HMRC (covering 2014 only)
FFI Registration


Create New Account - Establish Access Code  
(FATCA ID provided by IRS)

Appoint Reporting Office – Authorised to act on behalf of entity  
(must be an individual)
FFI Registration

Single FFI (Model 1 IGA)

Corporate Trustee / Trust

- FATCA Classification - Registered Deemed Compliant FFI

Sponsoring Entity

Corporate Trustee (to cover Trustee Documented Trusts)

- FATCA Classification - “None of the above”

Trustee Documented Trust does not need a GIIN
Local Jurisdiction Reporting

Model 1 IGA – Reporting made via HMRC

- Registration with HMRC will be required
- For HMRC registration, this will be available late October 2014
- Exact format of annual reporting is yet to be confirmed
NFFE Status

- “PASSIVE” NFFE
  Greater than 50% of gross income considered passive (includes rents)

- “ACTIVE” NFFE
  Entity that is not considered “passive” – trading companies
“PASSIVE” NFFE

- No direct reporting to IRS or HMRC (unless entered into an IRS agreement)
- Information provided to US withholding agents regarding “substantial” US owners upon request (W-8 Forms)
- Information subsequently provided to IRS
- Includes US Settlor / US Beneficiaries (in receipt of benefit)
- Non compliant Passive NFFE subject to 30% FATCA withholding
- No additional disclosure required for “Active” NFFE
Form W-8BEN-E / W-8IMY


- Confirm income tax status and FATCA status
- Old forms can be used until 2015
- How to confirm FATCA status during 2014?
- Model 1 IGA (signed or substantially agreed) resident FFIs considered deemed compliant for 2014
Form W-8BEN-E / W-8IMY

Chapter 4 (Part 1, Box 5) – FATCA Status (Model 1 IGA)

• Reporting Model 1 FFI: Single FFI with GIIN
• Non-reporting IGA FFI: Trustee Documented Trust
• Passive NFFI: Disclose Substantial US Owners
• Active NFFI: No additional reporting required

(Income tax disclosure remains unchanged)
Practical issues

- Commercial impact of being non-compliant
- Incorrect FATCA withholding – ability to obtain a refund?
- Client relationship risks? Unexpected introduction of US compliance
- Impact on reportable US persons – compliant / non-compliant
- Options to rectify non-compliance
FATCA – FACTS & FIGURES