

## Foreign Account Tax Compliance Act: Identification and documentation of clients

### Introduction

In the last newsletter of October 2011 we discussed the relationships between the existing QI-Status and the future FATCA-status of financial institutions. In the current newsletter we will take a closer look at the FATCA-requirements regarding client identification and documentation.

### Responsibilities of „Participating FFIs“

According to the provisions in the IRS Notice 2010-60 a „Participating FFI“ (called „FFI“ in the following), is obliged to comply with the following points:

- Provision of the necessary information to determine „US Accounts“
- Compliance with the „Due Diligence“ regulations as defined by the US-authorities
- Reporting on „US Accounts“ to the IRS

### Classification and identification of clients

A „FFI“ has to classify its clients as follows:

- Individual persons: breakdown in „US Persons“ and „Other Persons“
- Entities (legal persons):
  - „US Persons“, divided into „Specified US Persons“ and „Other US Persons“
  - „FFIs“, divided into „Participating FFIs“, „Deemed Compliant FFIs“ and „Non-Participating FFIs“
  - So-called „Low Risk Entities“
  - NFFEs („Non-Financial Foreign Entities), divided into „US Owned NFFEs“, „Excepted NFFEs“ and „Non-US Owned NFFEs“

The regulations regarding the identification of clients differentiate between individual persons and entities on the one hand and between „Pre-Accounts“ (client relationships existing before the coming into effect of the FFI-agreement) and „Post-Accounts“ (client relationships entered into after the coming into effect of the FFI-agreement) on the other hand.

The rules applicable for the client identification for the different types of client relationships are **very extensive** and vary depending on the type of client and on the time at which the relationship was opened. In the following we give an overview on the treatment of existing client relationships with individual persons.

### Identification of clients with existing relationships of individuals

Existing relationships with individuals have to be classified as follows:

- „US Accounts“
- „Accounts“ of recalcitrant account holders
- „Other Accounts“

To conduct the classification the IRS notice 2010-60 stipulates a detailed graduated scheme. In a **first step** the FFI may treat cash and securities accounts as „**Other Accounts**“ if the average month-end balance of all such accounts a client holds at an FFI in the year before the coming into effect of the FFI-agreement (deviating rules may also be accepted) was below USD 50'000 (or equivalent in another currency).

The remaining relationships have to be treated as „**US Accounts**“, if the account holders have already been classified as „US Persons“ for other purposes (e.g.: USQI). All other accounts may be treated as „Other Accounts“ if the FFI has no circumstantial evidence for a US status in its electronically retrievable information on the client relationship. A US status has to be assumed if for example the account holder has his place of birth in the USA or if only a „Hold Mail“, c/o- or P.O. Box address is available for the client relationship. These addresses do not have to be located in the USA.

All relationships that have circumstantial evidence for a possible US status have to be documented by the FFI in such a manner that either the US status or the non-US status can be determined. For individuals with a place of birth in the USA for example either the form W-9 (for „US Persons“) or the form W-8BEN for „**Non-US Persons**“ and additional „documentary evidence“ (e.g.: a valid passport of a country other than the USA) have to be obtained as proof for „Non-US-Status“.

### **Client documentation and deadlines for individual persons**

The FFI may rely on the documents available in the client files for existing relationships. Missing documents have to be obtained by the FFI **within one year after the coming into effect of the FFI-agreement**. After receiving such a request to provide missing documents, clients are granted **another year** to comply with the request. Clients that do not provide requested documents have to be treated as **recalcitrant account holders**.

### **Impact on the management of client master data**

Affected financial institutions must meet extensive and complex requirements in order to comply with the new FATCA rules regarding documentation and identification of clients. In particular the following questions have to be answered:

- Should the client master data of FATCA-relevant client relationships („US Persons“ and fully documented account holders) be managed centrally?
- How far should and can the client relationship opening process and the administration of the client master data be supported and secured by IT systems?
- Which new or changed processes and internal regulations are necessary to ensure the compliance with the regulations?  
How does the implementation and the compliance with the rules impact the profitability of the US-business and the client relationships with US status?

The FFI with an existing QI-agreement will have answered the majority of these questions. The processes and systems will already have been adapted to the special requirements to be met when managing client relationships with US status. For such a „FFI“ the challenge is to determine and implement the necessary adjustments imposed by the FATCA rules. A FFI without any existing QI-agreement has to determine if and at which costs the organization, processes and systems have to be adapted when implementing the FATCA rules. In particular smaller FFI's will have to decide whether they (still) want to be active in the US-business.

The next FATCA newsletter will be published in February 2011 and focus on the FATCA requirements with regard to the reporting requirements on „US Accounts“.

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