

Foreign Account Tax Compliance Act: Reporting of US Accounts

Introduction

In the previous newsletter from January 2011 we took a closer look at the FATCA-requirements regarding client identification and documentation. In the current newsletter we will focus on the reporting requirements regarding „US Accounts“.

Reporting obligations of „Participating FFIs“ with respect to „US Accounts“

A „Participating FFI“ (called „FFI“ in the following) is required to conduct a yearly reporting on the „US Accounts“ to the IRS. The following items have to be reported:

- Name, address and „Tax Identification Number“ (TIN) of the account holder
- For „Foreign Entities“ (FE) with US-ownership: name, address and TIN of each substantial US-owner
- Account number
- Account balance or value
- Gross values of receipts and withdrawals

The IRS will provide a form for the reporting.

Rules regarding the reporting of account balance, value, gross values of receipts and withdrawals

All account balances and values have to be reported in USD. The conversion methods to be applied have not yet been defined. In each year, the highest month-end account balance of that year has to be reported. Upon request the FFI has to provide additional documents such as account statements or booking confirmations to the IRS.

The rules with respect to the reporting of the gross values of receipts and withdrawals have not been defined yet. The IRS has asked interested parties for comments on how to reduce the administrative burden of reporting such transactions.

Section 1471(c)(2) Election

An FFI may elect to have section 1471(c)(1)(C) or (D) about the reporting of account balances and transactions not apply and instead to report under sections 6041 (Source information), 6042 (Dividend payments and other distributions), 6045 (Brokers) and 6049 (Interest payments) as if such a FFI were a „US Financial Intermediary“ (USFI). An FFI that makes this election must still comply with section 1471(c)(1)(A) and (B), and thus will also have to report the name, address, TIN, etc. of each account holder which is a specified US person. It is doubtful that the administrative expense for an FFI opting for this election is reduced at all.

Elimination of duplicative reporting

Under certain circumstances, the same financial instrument or interest may give rise to a financial account with respect to more than one FFI. For example, assume a participating FFI (Fund) issues shares that are treated as a financial account under section 1471(d)(2)(C), and such shares are held by another participating FFI (Bank) at another participating FFI (Custodian) on behalf of a specified „US person“. In that case both the fund and the bank (respectively the custodian in case of a section 1471(c)(2) election) would have to report to the IRS. In order to eliminate such a duplicative reporting the FATCA-rules foresee, that the reporting is performed by the FFI that is in a direct payment relationship with the account holder, i.e. in our example the bank.

Reporting with regard to recalcitrant accounts

Accounts of recalcitrant account holders (account holders who refuse to provide the information required to comply with FATCA-rules to the FFI) have to be reported to the IRS as well. The FFI has to report the following:

- Number and aggregate value of financial accounts held by recalcitrant account holders
- Number and aggregate value of financial accounts held by related or unrelated non-participating FFIs
- Number and aggregate value of financial accounts held by recalcitrant account holders that have indicia for "US status"

The tax withholding of 30% on payments to recalcitrant account holders is intended to provide an incentive to cooperate with the IRS. It should not, however, become a permanent substitute for collecting and reporting information with respect to „US accounts“. The IRS intends to cancel agreements with FFIs based on the number of recalcitrant account holders after a certain period of time.

Implementation of the reporting requirements in IT-systems

The IRS intends to require all FFIs to file their FATCA-reporting electronically. This requirement has impacts on the IT-systems used by the FFI. One has to bear in mind that the FATCA-requirements with respect to reporting substantially exceed the existing requirements about QI-reporting. The affected FFIs have to deal with the following questions in particular:

- Are the systems used for managing client master data and for processing transactions ready in time to meet the FATCA-requirements regarding reporting (the reporting has to be performed the first time for 2013)? Particular attention has to be paid to the fact that the FATCA-reporting not only consists of transactional data but also includes balances.
- Is it feasible to perform the reporting using existing systems or is it necessary to use new specific solutions? Does it make sense to use different systems for the FATCA-reporting and the QI-reporting?
- How can newly implemented specific solutions be integrated into the existing system landscape?
- Do the providers of existing or new specific solutions have the necessary know-how and capabilities to implement, maintain and develop the chosen solution?

The combination of tax-, business- and IT-know-how enables Banking Concepts to support financial institutions implementing regulatory requirements such as FATCA and to offer them real added value.

The next FATCA newsletter will be published in June 2011.

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