HM Treasury and HMRC present UK/US regulations to implement FATCA

June 13, 2014

In brief

On June 9, 2014, HM Treasury and HM Revenue and Customs (HMRC) presented the International Tax Compliance (United States of America) Regulations 2014 (UK Regulations) to the House of Commons. The UK Regulations come into force on June 30, 2014 and replace the previous UK International Tax Compliance (United States of America) Regulations 2013 (2013 Regulations) which are revoked. The UK Regulations implement the Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland to Improve International Tax Compliance and Implement FATCA (the Treaty) into UK law.

In detail

The June 30, 2014 effective date eliminates the potential challenge under the 2013 Regulations whereby a reporting financial institution was required to establish and maintain arrangements designed to establish the territory in which any account holder is resident for income or corporation tax purposes beginning September 1, 2013. Other changes from the previous regulations include:

Changes to the definition of a financial institution

The 'investment entity' definition was amended to refer to a financial institution which undertakes the activities described in the Treaty on behalf another person as opposed to an entity which is managed by another financial institution.

The definition of a 'custodial institution' has been added to the UK Regulations and now extends to a nominee of a connected person. As the concept of a nominee to a connected person is not included in the US regulations, it is not yet clear what the purpose of this additional part of the definition is trying to achieve.

While the definitions of 'relevant holding company' and 'treasury company' broadly follow the previous regulations, the definition of a 'qualifying entity' has been amended to refer to an entity that is managed by a financial institution. This appears to be at odds with the change to the 'investment entity' definition which no longer refers to 'managed by.' It is also unclear whether or not the definition of a 'qualifying entity' included in Regulation 8 applies to the definition of a 'relevant holding company' in Regulation 7.

Pre-existing accounts and due diligence

The definition of a 'reportable account' remains in line with the previous regulations with significant simplification achieved through the alignment of dates with the US Regulations. The pre-existing account date is determined by reference to Annex 1 of the Treaty where it is treated as having been updated to June 30, 2014 through the operation of the most favoured nation clause. This also addresses previous concerns with respect to the 2013 Regulations which had been reported by the Select Committee on Statutory Instruments for suspect vires, which challenges their legality.

Regulation 11 regarding the 'identification obligations' requires the identification of the tax residence of account holders and also implements the procedures of Annex 1 of the Treaty. Although the regulation has again been simplified, the procedures to be applied remain unchanged from the 2013 Regulations (e.g., the application of thresholds, lower value and higher value account due diligence). The modification of due diligence provisions included in the 2013 Regulations, have been removed and replaced by the ability to rely on evidence of an account holder's US status, established for another financial account, if the US regulations would allow the financial institution to do so. Examples of the application of this regulation are expected to be included in any future update to HMRC's guidance.

Other items of note

The reporting and identification and disclosure obligations remain unchanged including modification for calendar years 2014 to 2016.

The penalties for breach of obligations have been updated to include a daily default penalty. This introduces a penalty not to exceed £60 per day for each day on which a financial institution continues to fail to comply once notified of a penalty assessment.

The takeaway

Whilst the amendment to the UK Regulations may address any concerns about the vires of the previous regulations, some of the changes require further clarification before their impact can be fully assessed. With less than 20 days until these regulations come into effect and on-boarding requirements for new accounts start, it is hoped HMRC will clarify these points as a matter of urgency.

Let's talk

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