
FATCA for Irish financial institutions

13 February 2013

Background

In March 2010, the U.S. enacted the Hiring Incentives to Restore Employment Act (the 'HIRE' Act). This act incorporated the information reporting provisions known as the Foreign Account Tax Compliance Act ("FATCA"). FATCA is a response by the US tax authorities to the perception that US individuals are not reporting all of their income earned outside the US. The detailed requirements under FATCA are set out in the final FATCA Regulations, released by the US Treasury in January 2013.

The FATCA provisions generally require non-US financial institutions to enter into a legally binding agreement with the IRS (under US law) to identify any US investors or account holders and report certain details to the IRS. Failure to enter into or to abide by the terms of such an agreement would result in the operation of a 30% withholding tax on relevant payments received by that financial institution from sources within the US.

US-Ireland IGA

On 21 December 2012, the Chargé d'affaires at the US Embassy in Ireland and the Minister for Finance of Ireland signed an intergovernmental agreement (the US-Ireland IGA), for which enabling provisions are due to be enacted into Irish tax legislation in the coming months.

The IGA changes the way in which FATCA affects Irish financial institutions.

Its effect is to give Irish laws and regulations precedence in governing FATCA compliance for Irish entities and it provides that reporting will be carried out to the Irish Revenue Commissioners, rather than to the IRS. The reporting requirements will apply to all Irish financial institutions, as defined, regardless of whether the entity has US account holders or US assets.

What entities are in scope?

The IGA defines a **Financial Institution** as:

1. A Custodial institution;
2. A Depository institution;
3. An Investment Entity; or
4. A Specified Insurance Company.

The scope of this definition is extremely broad and includes banks, custodians, investment funds, fund managers and administrators, as well as certain insurance companies that issue cash value insurance contracts or other investment-type products.

The IGA specifies certain types of institutions and products that are either exempt from the scope of FATCA altogether or that can qualify as "Deemed-Compliant Financial Institutions". Entities qualifying under the "Deemed Compliant" status will benefit from a reduced compliance burden under FATCA. Such entities include non-profit organisations, financial

institutions with a local client base and certain collective investment vehicles.

For the asset management industry, the IGA covers investment funds, their administrators and investment managers, as well as other parties involved in the running of the fund. The forthcoming Irish regulations are expected to clarify that the fund is the party with primary responsibility for complying with the relevant obligations, but that certain due diligence and reporting responsibilities can be delegated to a third party, such as the fund administrator, at the fund's discretion.

IGA Benefits

The US-Ireland IGA addresses legal barriers encountered by Irish financial institutions when complying with FATCA, as well as ensuring that the burdens imposed on financial institutions are proportionate and further the goal of combating tax evasion.

Under the IGA and its enabling Irish provisions, reporting Irish financial institutions will not be required to sign an agreement with the IRS, as envisaged by the FATCA regulations. Instead, relevant entities must report account holder information annually to Irish Revenue. Irish Revenue will then collate and exchange this information with the IRS. The first deadline for the exchange of information between Irish Revenue and the IRS is 30 September 2015, in relation to information for both 2013 and 2014.

FATCA Withholding tax

Under the FATCA rules, non-compliant Foreign Financial Institutions will suffer 30% withholding tax on receipts of US source income and certain gross proceeds. In addition, a 30% withholding tax must be operated on relevant payments made by FATCA compliant entities making payments to non-compliant (known as "recalcitrant") account holders or investors.

However, under the US-Ireland IGA, reporting Irish financial institutions are considered to be FATCA compliant and as a result, those entities should not suffer 30% FATCA withholding tax on US source income or gross proceeds. Similarly, reporting Irish financial institutions should not be obliged to operate 30% FATCA withholding tax on such payments made to recalcitrant account holders or investors provided the requirements of the IGA are met.

This is a very positive feature of the US-Ireland IGA, and means that the task of developing complex withholding tax systems to identify and withhold on payments to certain account holders is avoided in most cases.

The above beneficial treatment is available to financial institutions in "Model I IGA" countries (such as Ireland). Certain countries, such as those with banking secrecy provisions in their local law, will enter "Model II" IGAs, the terms of which are distinguishable from Ireland's Model I agreement. The main difference is that financial institutions in countries which sign a Model II agreement will still be obliged to sign a direct agreement with the IRS in order to comply with FATCA.

Registration

Reporting Irish Financial Institutions and Irish entities which qualify as Registered Deemed-Compliant FFIs will use the IRS' FATCA registration portal to register as such and will receive a Global Intermediary Identification Number (GIIN) once their registration is approved. The portal is expected to be accessible online no later than 15 July 2013 with GIINs assigned no later than 15 October 2013.

The IRS will electronically post the first list of Participating FFIs and Registered Deemed-Compliant FFIs on 2 December 2013 and intends to update this list monthly. An FFI must register by 25 October 2013 in order to be included on the December 2013 list.

Due Diligence on existing accounts

Under the IGA, Reporting Irish Financial Institutions will be required to apply due diligence procedures to identify and report certain information on US Reportable Accounts and accounts held by Non-Participating Financial Institutions.

There are certain exemptions from these due diligence and reporting requirements for accounts below certain monetary thresholds. Further detail on each of the steps required to perform appropriate due diligence on each of the account types is set out in the text of the IGA.

New Account Procedures

Accounts opened on or after 1 January 2014 will be regarded as new accounts. Reporting Irish Financial Institutions will be required to amend their account on-boarding procedures to identify whether the account holder is considered a US person (individual accounts) and classify and document the account into different categories of account holder (entity accounts).

Reporting

The information to be reported by Reporting Irish Financial Institutions on US Reportable Accounts includes*:

1. Name, address and US Tax Identification Number (TIN) of each specified US person
2. Account number
3. Name and identifying number of the Reporting Irish Financial Institution
4. Account balance/value
5. Amount of interest, dividends or other income paid/credited to the account during the calendar year
6. Gross proceeds from the sale/redemption of US assets paid/credited to the account during the calendar year

*With respect to 2013 and 2014, only information included in 1) to 4) above needs to be reported.

Observation: Irish Revenue are working together with the IRS to discuss the format the reporting will take.

Timelines

- **13 February 2013** – Finance Bill 2013 contains provisions which enable Ireland to introduce specific regulations for the implementation of the IGA. These regulations are expected to be released in the coming months.
- **No later than 15 July 2013** – Registration portal will be available online for registration of registered deemed-compliant FFIs (including all FFIs covered under the US-Ireland IGA).
- **25 October 2013** – last day to register on portal to be on first IRS list of FFIs.

- **2 December 2013** – IRS will post the first list of FFIs and intends to update the list monthly.
- **1 January 2014:**
 - New account on-boarding procedures must be in place.
 - 30% FATCA withholding tax commences for non-compliant entities. Reporting Irish financial institutions should not suffer withholding tax on payments received from the US.
- **30 September 2015** – Irish Revenue required to exchange information relating to the calendar years 2013 and 2014 with the IRS.
- **30 September 2016** - Irish Revenue required to exchange information relating to the calendar year 2015 with the IRS.

Observation: The Irish Revenue Commissioners are due to report to Revenue by 30 September each year. At this stage, it is not clear how far in advance of that deadline Irish financial institutions will be required to report to the Irish Revenue Commissioners. We are still awaiting an announcement from Irish Revenue on this point.

Next Steps

Irish Revenue is currently in discussions with the other IGA Partner Countries and the US about the practical implications of implementing the IGA. The legislation to support the implementation of the IGA into Irish law is expected March/April 2013.

What should you do now?

- Review your existing accounts to determine whether you have any US account holders;
- Consider changes to your new account on-boarding systems in order to gather the information required from 1 January 2014;
- Start discussions with your service providers;
- Stay tuned for the latest developments on the Irish regulations.

Useful links

Please click [here](#) to read the full text of the US-Ireland IGA.

PwC US has also recently produced some thought leadership on the final FATCA regulations, which were released on 17 January 2013. Although those flyers deal with the FATCA regulations themselves and not the US-Ireland IGA, there is some useful discussion here on the interpretation of some of the terms which will also impact IGA countries. PwC US is also hosting upcoming webcasts on industry specific issues. Links to the flyers and registration facilities for the webcasts are attached below.

Please click to read PwC's guidance on the [impact of FATCA on asset managers](#) and to [register for the upcoming webcast on 26 February 2013](#).

Please click for guidance on [FATCA for the insurance industry](#) and to [register for PwC's webcast on 15 February 2013](#) which will address FATCA for insurers.

Let's talk

If you would like to discuss FATCA in more detail please call your local PwC contact or alternatively any of the FATCA team members listed below:

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