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The Foreign Account Tax Compliance Act ("FATCA") and Your Business

FATCA is the automatic exchange of information regime created by the United States and adopted into domestic Irish tax legislation with reporting on financial accounts via the Irish Revenue Commissioners ("Revenue") on an annual basis, for onward submission to the IRS.

FATCA in General

- It requires Foreign Financial Institutions ("FFIs") to report information on accounts held by Specified US Persons (individuals and entities) and certain Non-Financial Foreign Entities ("NFFEs") controlled by Specified US Persons.
- FFIs are required to register with the IRS in order to obtain a Global Intermediary Identification Number ("GIIN").
- Failure to comply with the relevant FATCA Regulations will result in a 30% withholding tax penalty on US Source Withholdable Payments.

FATCA in Ireland

- Ireland implemented FATCA by entering into an Intergovernmental Agreement ("IGA") with the US. The provisions implementing Ireland's IGA are set out in Section 891E of the Taxes Consolidation Act ("TCA") 1997, which provides Revenue with the power to make regulations necessary for implementing the full terms of Ireland's IGA.
- The initial detailed Irish Regulations on FATCA (S.I. No. 292 of 2014) were subsequently amended in November 2015 by S.I. No. 501 of 2015 and January 2018 by S.I. No. 19 of 2018.
- Guidance on the application of FATCA in Ireland was issued via Tax and Duty Manual Part 38-03-22: Guidance Notes on the Implementation of FATCA in Ireland.
- Foreign tax resident subsidiaries or branches of Irish FFIs are governed by the FATCA provisions in their jurisdiction of tax residence.

FATCA Reporting Requirements in Ireland

- Irish FFIs are required to file an annual FATCA return with Revenue via Revenue Online Service ("ROS") on or before 30 June with respect to the previous calendar year.
- In order to file a FATCA return via ROS, Irish FFIs are required to have an Irish tax reference number (e.g. Corporation Tax, Investment Undertaking Tax, Income Tax, etc.) and complete a once-off reporting registration.
- Even if a Reporting Irish FFI does not hold any US Reportable Accounts, it will still be classified as an FFI. However, it will simply be required to file a nil FATCA return. It is important to note that the requirement for an FFI to file a nil return may differ between jurisdictions.
- If an Irish entity is not classified as an FFI, it will most likely be an NFFE and should not have any FATCA registration and reporting obligations. However, it may be required to disclose information on its Controlling Persons (typically 25% or more for Irish IGA purposes), which are Specified US Persons for self-certification purposes.

Key Dates and Deadlines

- **FATCA GIIN Registration:** No later than 30 days after the Entity becomes an FFI.
- **FATCA Reporting:** FFIs are required to file an annual FATCA return on or before 30 June with respect to the previous calendar year.
- **Due Diligence:** The due diligence requirements under FATCA vary depending on whether the account is a New Account or a Pre-Existing Account, an Entity Account or an Individual Account and whether an Individual Account is a Low Value Account or a High Value Account. Ongoing FATCA due diligence obligations should be completed throughout the year.

How Can KPMG Help?

- **Legal Entity Classification** – Determine an entity's FATCA status and its corresponding registration and reporting obligations.
- **Registration** – Register with the IRS via the online registration portal to obtain a GIIN and register a FATCA reporting obligation with Revenue via ROS.
- **Reporting** – Prepare FATCA returns aligned with Irish domestic reporting requirements to be filed with Revenue by 30 June annually with respect to the previous calendar year via ROS.
- **FATCA Policy and Procedures and Due Diligence Review** – Review FATCA policy and procedures documents and information reported to ensure best practices are utilised and high quality information is returned to Revenue.
- **Self-Certification Form / W-8 Form** – Guidance on the completion or review of Self-Certification Forms or W-8 Forms to minimise the risk of a US withholding agent applying the 30% FATCA withholding tax on certain US source payments in error.
- **Legal Agreements** – Reviewing FATCA language included in legal agreements (i.e. loan agreements, prospectuses, subscription documents, etc.).
- **Technical Training Sessions** – Conduct training sessions on FATCA.
- **KPMG Reporting Tool** – KPMG globally has developed an extensive suite of technology tools to assist with meeting due diligence and reporting obligations under the various AEOI regimes.

Additional information:

More information is available on our AEOI website via the link below:
kpmg.ie/aeoi

If you have any questions, or would like to discuss your particular circumstances, please contact a member of your KPMG team or one of the contacts listed below to discuss the potential impact of AEOI on your business.

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