

Upcoming FATCA Deadlines

Written by Christopher "Kip" Cawley

June 25, 2016

As noted in the Foley Adviser dated April 14, 2016, there are several upcoming FATCA-related deadlines, two of which are right around the corner:

- **June 30, 2016:** Foreign Financial Institution Due Diligence for Pre-Existing Accounts
- **August 10, 2016:** Cayman Islands FATCA Notification/Reporting

Due Diligence (FATCA) – June 30, 2016

In general, all financial accounts (including interests in investment entities) that were maintained by non-U.S. investment entities as of June 30, 2014 have been classified as “pre-existing accounts” for U.S. and, where applicable, U.K. FATCA purposes. The due diligence requirements with respect to these pre-existing accounts have been phased-in since 2014. To the extent a non-U.S. investment entity has not completed its due diligence with respect to a pre-existing account, it generally must do so by June 30, 2016.

The only remaining exceptions to the due diligence requirement include:

- Pre-existing *individual* accounts whose value on June 30, 2014 was ≤ \$50,000 and did not exceed \$1 million on December 31, 2015; and
- Pre-existing *entity* accounts whose value on June 30, 2014 was ≤ \$250,000 and did not exceed \$1 million on December 31, 2015.

In each of these cases, a pre-existing account will not become subject to FATCA until its value exceeds \$1 million on a subsequent December 31st. At that time, a non-U.S. investment entity will be required to complete due diligence with respect to such account by June 30th of the following year.

Due diligence is the method by which a non-U.S. investment entity determines whether an account is a “Reportable Account” for U.S. or, where applicable, U.K. FATCA purposes. Typically, due diligence is undertaken by obtaining IRS Forms W-8 or W-9 from account holders (for U.S. FATCA purposes) and self-certifications of tax residency (for U.K. FATCA purposes), and then comparing such forms and self-certifications with other information obtained from account holders during the on-boarding process.

For financial accounts opened after June 30, 2014, due diligence generally must be completed within 90 days after on-boarding.

Cayman Islands FATCA Notification/Reporting – August 10, 2016

The Cayman Islands recently announced extensions of certain 2016 FATCA compliance deadlines, as follows:

Compliance Obligation	Old Deadline	Extended Deadline
Notification	June 10, 2016	August 10, 2016
Reporting (for 2015)	July 8, 2016	August 10, 2016

Every Cayman Islands investment entity that is a “Reporting Financial Institution” under U.S. FATCA and/or U.K. FATCA (or its “sponsoring entity,” if applicable) generally is required to submit a notification to the Cayman Islands Tax Information Authority (TIA) with respect to the first year in which it is a “Reporting Financial Institution” under U.S. FATCA and U.K. FATCA.

The TIA has confirmed that a Reporting Financial Institution that has no “Reportable Accounts” still is required to submit a notification to the TIA, even if it opts to not file a “nil report.” Accordingly, every Reporting Financial Institution is subject to the notification requirements, whether or not it is required to file an annual report under U.S. or U.K. FATCA.

Furthermore, even if a Reporting Financial Institution submitted a notification to the TIA in 2015 for U.S. FATCA purposes, 2016 is the first reporting year under U.K. FATCA (with respect to 2014-15). Accordingly, such Reporting Financial Institutions should re-submit their respective notifications to the TIA, checking both U.S. and U.K. FATCA, to ensure that they are compliant under both regimes.

A “sponsored entity” is not required to submit a notification in its own right; rather, its “sponsoring entity” submits the notification on behalf of the “sponsored entity.” For U.S. FATCA purposes, the “sponsoring entity” may be any entity, so long as it has registered with the IRS as a “sponsoring entity.” *For U.K. FATCA purposes, however, the “sponsoring entity” must be a Cayman Islands Financial Institution.*

Investment advisers that have utilized a non-Cayman entity to act as a “sponsoring entity” for U.S. FATCA purposes may need to plan accordingly to identify a Cayman entity to act in that capacity for U.K. FATCA purposes. Cayman Islands investment entities that have been classified as “Reporting Cayman Islands Financial Institutions” for purposes of FATCA (or their “sponsoring entities,” if applicable) may notify the Cayman government of their respective reporting obligations and file reports, as applicable, by these extended deadlines without attracting adverse consequences or enforcement measures.

Notifications and reports may be submitted through the Cayman FATCA reporting portal. The Cayman government has published detailed guidance to assist with this process.

RELATED INDUSTRIES

- [Investment Advisers & Private Funds](#)
- [Professional Services](#)

RELATED PRACTICES

- [Capital Markets](#)
- [Fund Formation](#)
- [Business Counseling](#)
- [Public Companies](#)
- [SBIC](#)
- [Taxation](#)

This communication is intended for general information purposes and as a service to clients and friends of Foley Hoag LLP. This communication should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.

United States Treasury Regulations require us to disclose the following: Any tax advice included in this document was not intended or written to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Attorney advertising. Prior results do not guarantee a similar outcome. © 2017 Foley Hoag LLP. All rights reserved.