Updated Guidance Notes for the Implementation of FATCA in Ireland Released

On 1 October 2014, the Irish Revenue Commissioners released updated Guidance Notes on the implementation of FATCA in Ireland (“Guidance Notes”). The updated Guidance Notes replace the previous draft Guidance Notes issued in January 2014, and reflect a number of suggestions and clarifications requested by various industry groups. Revenue have previously indicated that the Guidance Notes are intended to be a living document and will be updated intermittently in order to reflect practical issues which may arise over time.

Legislative Background

On 21 December 2012, the governments of the US and Ireland signed an intergovernmental agreement (“the US-Ireland IGA”). The Financial Accounts Reporting (United States of America) Regulations 2014 (“the Regulations”), which give effect to FATCA in Ireland, were signed into law on 20 June 2014 and took effect from 1 July 2014. The Regulations, together with the provisions of Section 891E Taxes Consolidation Act 1997, complete the legislative basis for the registration, due diligence and reporting obligations of Irish Financial Institutions. Further guidance is provided in the Guidance Notes released by Revenue last week.

Key Updates

1. **New categories of Financial Institution**

The Guidance Notes reflect the extended definition of a Reporting Financial Institution to include Relevant Holding Companies and Relevant Treasury Companies. This is in line with Revenue’s introduction of these categories in the Regulations which were released last June. The Guidance Notes clarify that such entities will be classified as Financial Institutions where they are part of a Financial Group i.e. a group which also contains a Custodial Institution, a Depository Institution, a Specified Insurance Company or an Investment Entity, or where they have a qualifying relationship with an Investment Entity. Holding companies and Treasury companies which are not part of a Financial Group should be classed as Non-Financial Foreign Entities (“NFFEs”).

2. **Debt or Equity Interests regularly traded on an established securities market**

The January release of the draft Guidance Notes indicated that debt or equity interests of Investment Entities which were regularly traded were excluded from the definition of Financial Accounts. The draft Guidance Notes further clarified that an equity or debt interest would have been considered “regularly traded” if it was listed on a recognised stock exchange, and there was no requirement to show de minimis levels of trading annually. This meant that many Investment Entities, while falling within the definition of a Financial Institution, would be required to register for a Global Intermediary Identification Number (“GIIN”) but would submit nil returns each year on the basis that they had no Financial Accounts.
Global Information Reporting

The updated Guidance Notes have now changed that position. The revised wording states that an equity or debt interest that is listed solely for regulatory or similar purposes, but where there is clearly no intention to trade, should not be considered as “regularly traded”. The impact of this is that many Investment Entities whose debt or equity interests are listed for withholding tax or other purposes, but whose interests are not actually regularly traded, will now be required to treat those debt or equity interests as Financial Accounts and comply with all relevant due diligence and reporting requirements. Industry groups are in discussion with Revenue on this point to determine whether the impact was intended to be this broad, or whether the original interpretation still stands. It should be noted that the listed debt or equity carve-out will not apply under the OECD’s Common Reporting Standard (“CRS”) and as such reporting of such accounts will be required in due course under the CRS.

3. Securitisation Industry

The January release of the draft Guidance Notes did not give any specific guidance on Securitisation Vehicles but noted that each vehicle should be assessed on a case by case basis to determine whether it falls within the definition of a Financial Institution. The updated Guidance Notes do not elaborate on this point, although there are some positive changes to the conditions to be met in order for Limited Life Debt Investment Entities to avail of the Self-Certified Deemed Compliant status.

Many securitisation vehicles will be impacted by the change to the “regularly traded” point noted at 2. above, which means that even where debt is listed, due diligence and reporting obligations will apply in relation to that listed debt in the absence of any further clarification from Revenue.

4. Insurance Industry

The most important update for the insurance industry is the clarification on the balance or value to be reported in respect of Cash Value Insurance Contracts. The January release of the draft Guidance Notes had included a general comment that the balance or value of an account should not be reduced by any fees, penalties or charges which would apply on surrender or withdrawal from an account. The updated Guidance Notes now clarify that, with respect to Cash Value Insurance Contracts specifically, the amount to be reported is the surrender value of the account, i.e. net of any charges which would apply on surrender or termination of the account.

The Guidance Notes now also include guidance on identifying dormant life assurance policies, referring to the rules set out in the Unclaimed Life Assurance Policies Act 2003.

5. Asset Management Industry

5.1 The revised Guidance Notes clarify that Collective Investment Schemes can choose to register for a GIIN at either umbrella level or sub-fund level. Where registration is done at the level of the umbrella fund, then reporting should also be done at the level of the umbrella fund. On the other hand, where individual sub-funds choose to register for separate GIINs, then reporting should be done on a sub-fund basis.

5.2 The Guidance Notes also provide details on the party responsible for ensuring compliance with the FATCA Regulations in the case of corporate funds, unit trusts and investment limited partnerships.
5.3 The wording around securities held in a Central Securities Depository ("CSD") has been clarified slightly to include CSDs other than CREST and to state that the CSD will not be treated as maintaining Financial Accounts. This will be relevant for Exchange Traded Funds and other funds whose shares are traded through a CSD. The Guidance Notes also discuss the use of a fund platform in certain cases and note that where legal title is held by the fund platform, the fund platform will be a Financial Institution in its own right and must comply with relevant due diligence and reporting requirements.

5.4 The Guidance Notes provide a useful update which is intended to ease the burden of documenting investors who maintain accounts in multiple funds serviced by the same Transfer Agent. Transfer Agents may now obtain one set of FATCA due-diligence documentation for an investor to validate the same investor’s status in all funds serviced by that Transfer Agent. This is in line with customer identification requirements and practices under AML/KYC.

5.5 The definition of Self-Certified Deemed Compliant Entities has been updated to include Investment Managers, where they are brought within the definition of an Investment Entity solely because they provide investment management services to a fund. This is in line with the exemption provided for in the US FATCA Regulations.

5.6 The provisions for Sponsored Investment Entities have been updated, most notably stating that the Sponsoring Entity (often the Investment Manager) must register the Sponsored Entity (i.e. the fund) with the IRS by the later of 1 January 2016 or the date that the fund identifies itself as a Sponsored Investment Entity. This is somewhat disappointing as it does not reflect the more lenient provisions in more recently signed IGAs, whereby Sponsoring Investment Entities are only required to register the sponsored funds with the IRS by the later of 1 January 2016 or 90 days after a US Reportable Account is first identified. Had these more lenient provisions been reflected in Irish Guidance Notes, it would have meant that there would be no requirement to register a sponsored Irish fund for a GIIN unless it had US Reportable Accounts.

Notably, the 90 day provision has been introduced by Revenue in the case of Sponsored Controlled Foreign Corporations. We await clarification from Revenue as to whether this provision will also be extended to Sponsored Investment Entities.

6. Reporting Issues

The Guidance Notes include a useful timetable demonstrating the phased in approach to Reporting over the next three years. They also contain a link to the IRS Schema and provide details on the transmission of the report to Revenue via Revenue’s Online Service ("ROS"). Reporting can be done in US Dollars or in the functional currency of the Financial Account.

The draft Guidance Notes had stated that the IRS may contact Financial Institutions directly in the case of minor errors. This has now been removed, and the updated Guidance Notes state that where reporting errors are discovered by the IRS, the IRS will contact Revenue directly who will liaise with the Financial Institution to resolve the issue.
7. Miscellaneous

Clarification is provided on the role of the Responsible Officer noting that, in a Model 1 IGA jurisdiction such as Ireland, the US Treasury concept of Responsible Officer is not invoked. Irish Financial Institutions do not need to appoint a Responsible Officer when registering for a GIIN and instead are required to appoint a Point of Contact only.

A number of new definitions are included in the Guidance Notes, including a definition of Passive Income for the purposes of identifying Passive or Active NFFEs. Furthermore, a new category of Direct Reporting NFFE has been introduced (similar to the US FATCA Regulations) to allow Passive NFFEs to report details of their beneficial owners directly to Revenue, instead of having to share such information with counterparties. This will allow such NFFEs to maintain the privacy of sensitive shareholder information.

Finally, with respect to self-certifications used by Financial Institutions in identifying US Reportable Accounts, the Guidance Notes state that such self-certifications can be in any format and includes the use of withholding certificates. This is a useful clarification for Financial Institutions who would prefer to use more simplified self-certification forms for their investors or accountholders rather than relying on US W-8/9 Forms, for example.

What should you do now?

- Assess the impact of the updated Guidance Notes on your business;
- Ensure all Financial Institutions within your group, including Relevant Treasury Companies and Relevant Holding Companies, register for a GIIN in advance of 1 January 2015;
- Confirm all new account opening procedures have been properly implemented with effect from 1 July 2014;
- Ensure that all relevant due diligence and reporting requirements are met in preparation for the first reporting date of 30 June 2015;
- Talk to your PwC contact and/or relevant industry group about any concerns regarding the updated Guidance Notes.

How can PwC help?

PwC can assist you in understanding the impact of FATCA on your business in light of these revised Guidance Notes. We can carry out a legal entity analysis to determine which entities within your group may be brought within the definition of a Financial Institution and which would be classified as Non-Financial Foreign Entities.

PwC can assist with the registration requirements for any Financial Institutions within your group, in order to obtain GIINs for all relevant entities in advance of the 1 January 2015 deadline. We can provide technical assistance on the due diligence and reporting requirements for each entity and deliver training sessions for your teams on request.

Please contact your usual PwC contact or any of our contacts listed below with queries on FATCA or other global initiatives on the Automatic Exchange of Information, including the CRS.
Global Information Reporting

Link to Guidance Notes

The updated Guidance Notes can be found on the Revenue website at the following link:


To view PwC Global Information Reporting contacts worldwide, follow this link.

<table>
<thead>
<tr>
<th>Name</th>
<th>Contact Number</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rebecca Maher</td>
<td>+353 1 792 8634</td>
<td><a href="mailto:rebecca.maher@ie.pwc.com">rebecca.maher@ie.pwc.com</a></td>
</tr>
<tr>
<td>John O’ Leary</td>
<td>+353 1 792 8659</td>
<td><a href="mailto:john.oleary@ie.pwc.com">john.oleary@ie.pwc.com</a></td>
</tr>
<tr>
<td>Pat Wall</td>
<td>+353 1 792 8602</td>
<td><a href="mailto:pat.wall@ie.pwc.com">pat.wall@ie.pwc.com</a></td>
</tr>
<tr>
<td>Enda Faughnan</td>
<td>+353 1 792 6359</td>
<td><a href="mailto:enda.faughnan@ie.pwc.com">enda.faughnan@ie.pwc.com</a></td>
</tr>
<tr>
<td>Jim McDonnell</td>
<td>+353 1 792 6836</td>
<td><a href="mailto:jim.mcdonnell@ie.pwc.com">jim.mcdonnell@ie.pwc.com</a></td>
</tr>
<tr>
<td>Yvonne Thompson</td>
<td>+353 1 792 7147</td>
<td><a href="mailto:yvonne.thompson@ie.pwc.com">yvonne.thompson@ie.pwc.com</a></td>
</tr>
<tr>
<td>Marie Coady</td>
<td>+353 1 792 6810</td>
<td><a href="mailto:marie.coady@ie.pwc.com">marie.coady@ie.pwc.com</a></td>
</tr>
<tr>
<td>Pat Convery</td>
<td>+353 1 792 8687</td>
<td><a href="mailto:pat.convery@ie.pwc.com">pat.convery@ie.pwc.com</a></td>
</tr>
</tbody>
</table>

This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

© 2014 PricewaterhouseCoopers. All rights reserved. PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see www.pwc.com/structure for further details.