

AN ALERT FROM THE BDO FINANCIAL SERVICES PRACTICE

ASSET MANAGEMENT **INSIGHTS**

FUNDS MUST REVIEW FATCA REGISTRATION AND FFI AGREEMENT RENEWAL BY JULY 31, 2017

Unless action is taken soon, foreign investment funds ("financial institutions" for FATCA purposes) may soon be removed from the FFI list and lose their Global Intermediary Identification Number (GIIN). The Internal Revenue Service (IRS) expects all foreign funds to visit the IRS website by July 31, 2017, to determine whether such renewal is required.

SUMMARY

In general, investment funds that are not covered by an Intergovernmental Agreement (IGA) or that are covered by a Model 2 IGA are subject to the FFI Agreement with the IRS. This Agreement, together with the registration and the corresponding GIIN, will expire unless it is renewed by July 31, 2017. There are a number of important Model 2 countries such as Japan, Switzerland, Hong Kong, Taiwan, Bermuda, Austria, Chile, Macao, and San Marino. Countries that do not have an IGA at all include Argentina, Uruguay and most African nations.

Failure to renew will terminate the FFI agreement retroactively (effective Jan. 1, 2017).

BACKGROUND

Offshore investment funds (including hedge funds, private equity funds, and mutual funds) are subject to multiple account disclosure regimes designed to satisfy the desire for tax transparency in the investor's country of residence. The United States introduced the U.S. Foreign Account Tax Compliance Act (FATCA) in 2010, and non-U.S. investment entities have slowly learned to document and report their United States account holders in accordance with U.S. FATCA regulations and the IGAs. Investment Funds wishing to be compliant with FATCA had to register with the IRS a few years ago to obtain a GIIN and to establish their status as either a participating FFI or a deemed compliant FFI under an Intergovernmental Agreement. As part of the registration, the Fund would generally agree to abide by the terms of the FFI Agreement, which outlines the Offshore Fund's obligations to document and report its U.S. account holders (see Rev. Proc. 2014-38 and Rev. Proc. 2017-16).

As an alternative to the FFI Agreement, many jurisdictions preferred to adopt an IGA whereby they could choose between two basic versions (Model 1 and 2 IGA), both of which facilitate a local investment fund's compliance with the FATCA principles. However, whereas the Model 1 IGA serves as a complete substitute for



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the FFI Agreement, Model 2 is merely supplementing it. As a result, registered Funds located in Model 2 jurisdictions (or in jurisdictions that do not have an IGA in place) are party to the FFI Agreement. The FFI Agreement expires, however, and in order to remain FATCA compliant, investment funds (and other FFIs) in the relevant jurisdictions must renew their Agreement by renewing their FATCA registration. The IRS FATCA Registration System has been updated to allow for such renewals. All FFIs should have received a notification from the IRS through their FFI homepage.

Investment Funds in Model 1 IGA jurisdictions (including the Cayman Islands, British Virgin Islands and most other offshore financial centers) should also visit the FATCA portal on the IRS home page to confirm that no renewal is required.

On a separate but related subject: The Cayman Island Tax Authorities extended the due date for funds and other Cayman FFIs to register with the Automatic Exchange of Information Portal to July 31, 2017. That is also the filing due date for the actual FATCA and/or CRS submissions.

HOW BDO CAN HELP

BDO USA, LLP has the technical expertise and the technology to support its clients with this important compliance function. BDO can help investment funds determine whether renewal is necessary and, if so, how to renew. Please contact our FATCA/CRS Practice Leader Martin Karges at 212-885-8156 or one of the local BDO partners listed on this brochure for more information.

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