



ANALYSIS OF THE CLIENT DUE DILIGENCE RULES



More than Forms

- FATCA requires the withholding agent's due diligence processes encompass more than just Forms W-8 and W-9.
 - Withholding agents can accept documentary evidence in lieu of a Form W-8 for offshore obligations.
 - Certain FATCA statuses require additional documentary evidence in order to support a claimed status, particularly with respect to certified deemed compliant FFI statuses.
 - All documentation used to establish a FATCA classification, whether Forms W-8 or documentary evidence, must be reviewed against other information on account for consistency – e.g., AML/KYC, account on-boarding info.

Account On-boarding Processes

- When accepting documentary evidence will you require English only, or will you accept the local language?
- What skill-set will you require in staffing? Can account on-boarding personnel also validate tax certifications or should there be a separate validation team? Who can manage changes in circumstances?

Other Account On-boarding Considerations

- Documentary evidence requirements for entities are significantly more complex than those for individuals. Will you require Forms W-8 for entities with offshore accounts?
- If you accept documentary evidence for offshore accounts, does that change your staffing decisions?

Administrative Matters

- The FATCA proposed regulations ease the administrative burden by allowing for faxed Forms W-8, if the withholding agent confirms the person furnishing the withholding certificates is the person named on the form.
- Is this a change from existing rules following Chief Counsel announcement?

Expiration Dates

- Documentary evidence effective dates – documentary evidence including an expiration date expired the earlier of the expiration date or three years following the year in which the information is provided.
 - New process is required to track documentary evidence expiration dates.
 - When renewing documentary evidence does it make sense to renew tax certification as well?
 - Will final regs provide relief from this rule?

Changes in Circumstance

- A change in circumstance is any change having an impact on the account holder's Chapter 4 classification.
- Withholding agents have 90 days to follow-up on changes and obtain appropriate cure documentation prior to designating account holder as non-compliant. This is a change from existing Chapter 3 rules.
- Some changes in circumstance are easy to identify – e.g., addition of U.S. mailing address or phone number to account; however, some changes are not as easy to identify as being FATCA relevant – e.g., change of SIC code from non-financial to financial institution based on a change in business model.

Impacts of Changes in Circumstance

- Change in FATCA status – e.g., does account holder move from a FATCA compliant to FATCA non-compliant status.
 - PFFI no longer listed on IRS FFI-EIN listing
- Account previously classified as low value has a change in circumstance. Account must now be reviewed in accordance with FFI Agreement standards.
- Individual account previously classified as low exceeds \$1million as of year end testing. Account is now subject to all high-value account review procedures.

Issues to Consider:

- How do you implement an automatic tracking process to identify changes in data elements relevant to determining whether there has been a change in circumstance?
- How often do you monitor? What is practical for operations if process is not automated? How to balance with 90 day period to cure?
- How to manage both Chapter 3 and Chapter 4 implications?

Solutions

- Leverage automated solutions such as electronic Forms W-8 and W-9 applications. Most solutions capable of being linked with account on-boarding applications via API and can provide real time identification of changes in circumstance.
- Consider collecting cure documentation at time account is opened to document non-U.S. status – e.g., collection of an entity's Certificate of Incorporation.