

Alert

Year-End FATCA Action Items for Investment Funds That Are Sponsored Entities or Have Investors That Are Sponsored Entities

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In order to comply with the U.S. Foreign Account Tax Compliance Act (“FATCA”), certain investment managers chose to sponsor their non-U.S. investment funds, whereby the investment manager (or an affiliate) agreed to perform all FATCA due diligence, withholding, reporting and other requirements on behalf of its sponsored funds.¹ To date, sponsored funds were permitted to rely on the registration of their sponsor and to utilize the Global Intermediary Identification Number (“GIIN”) of their sponsor. Going forward, investment managers acting as “sponsoring entities” will have to register certain of their sponsored entities with the U.S. Internal Revenue Service (“IRS”) and receive a separate GIIN for each sponsored entity.

Sponsored entities resident in jurisdictions that have entered into a Model 1 intergovernmental agreement (“IGA”) with the United States (e.g., the Cayman Islands) are required to obtain a GIIN by year-end if they have (or have had) reportable investors.² Sponsored entities in these jurisdictions that do not currently have (and have not had) reportable investors do not need to obtain a GIIN by the end of the year but will need to obtain a GIIN within 90 days of admitting or otherwise determining that they have a reportable investor.

A sponsored entity that does not benefit from a Model 1 IGA (i.e., a sponsored entity that either benefits from a Model 2 IGA or does not benefit from any IGA) will have to obtain a GIIN by year-end even if it does not have (and has not had) reportable investors.

Each sponsored entity that requires a GIIN should, upon obtaining a GIIN, send updated IRS Forms W-8 and, as applicable, self-certification forms that include its GIIN to its banks, prime brokers and counterparties in order to avoid unnecessary FATCA withholding.

¹ The default mechanism for a non-U.S. investment fund to comply with FATCA, and the route chosen by most non-U.S. investment funds, is to register directly with the IRS as a participating FFI, Reporting Model 1 FFI or Reporting Model 2 FFI (as applicable), to obtain its own GIIN and to undertake its annual reporting obligations on its own. Some investment managers chose to sponsor their investment funds, and thereby centralize FATCA compliance for each such investment fund in one “sponsor.” Other than the centralization achieved by sponsorship, there is generally no substantive difference in compliance obligations between sponsored investment funds and those investment funds that registered directly with the IRS.

² The Model 1 IGA considers an investor to be “reportable” if the investor is a “United States person” other than certain types of entities that the Treasury Department has determined represent a low risk of tax evasion. Certain non-U.S. entities are also reportable if they are controlled by one or more individuals (so-called “Controlling Persons”) who are citizens or residents of the United States.

All Investment Funds Should Obtain Updated FATCA Certifications From Investors That Are Sponsored Entities

All investment funds should speak with their internal and external FATCA service providers to determine if any investor is a sponsored entity. Investment funds with investors that are sponsored entities should reach out to each such investor for an updated certification that includes the investor's GIIN or otherwise obtain comfort that such investor does not require a GIIN.³

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the following attorneys: [Shlomo C. Twerski](#), [Philippe Benedict](#), [David S. Griffel](#), [Christine Harlow](#) or [David S. Wermuth](#).

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³ Investment funds should pay close attention to how a non-U.S. investor who certified to its status as a sponsored entity completed its IRS Form W-8. The IRS Forms W-8 generally provide for a sponsored entity to certify to its sponsored status either pursuant to the Treasury Regulations or pursuant to an applicable IGA.

For example, an investor who certifies on a Form W-8BEN-E that it is a "Sponsored FFI" and completes Part IV has certified to its status pursuant to the Treasury Regulations. Such an investor will need to provide the investment fund with the GIIN that it obtains by year-end. Investment funds should proactively reach out to such investors to obtain updated Forms W-8 in order to avoid any unnecessary withholding obligations under FATCA in 2017.

On the other hand, an investor who certifies on a Form W-8BEN-E that it is a "Nonreporting IGA FFI" under a Model 1 IGA and completes Part XII as a "sponsored entity" has certified to its status pursuant to a Model 1 IGA. Such an investor will be required to provide the investment fund with an updated Form W-8 that includes the investor's own GIIN by year-end only if it has a reportable account. Investment funds may wish to reach out proactively to all sponsored investors who are Nonreporting IGA FFIs to confirm whether or not each such investor is required to provide an updated Form W-8 with a GIIN.