clearstream | DEUTSCHE BÖRSE GROUP

Clearstream
Investment Funds Services

Newsletter

10/11

Getting ready for FATCA

The US Foreign Account Tax Compliance Act (FATCA) was signed into law on 18 March 2010. It provides a mechanism for obtaining additional information reporting with respect to foreign accounts held by US persons. With the new reporting regulation, the US tax authority (Internal Revenue Service, IRS) has an increased ability to detect US tax evaders depositing their money in foreign accounts and investments.

Why act now?

FATCA impacts Foreign Financial Institutions (FFI) and Non-Financial Foreign Entities (NFFE). In order to be compliant, the FFI must enter into an agreement with the IRS, obliging itself to perform certain due diligence procedures to determine any US accounts. Failure to comply will result in a penalty deduction of 30% on income distributions and transactions.

Impact on asset managers

Non US investment funds, fund distributors and fund service providers have a clear interest in addressing FATCA. Without regulatory relief or carveouts, funds will be treated as financial institutions under the broad definition contained in the Act. The FFI definition includes not only banks and custodians but also any entity that is engaged primarily in the business of investing, reinvesting, or trading in securities.

Key issues regarding investment funds

- Investment funds not entering into an FFI agreement (or deemed compliant) will only receive US sourced income net (i.e. after deduction).
- Investment funds (or their appointed agents) can only pay out without deduction if the receiver has been properly identified as a non US person or is a participating FFI.
- Non US investors in investment funds will only receive the full payment if all the intermediaries in the chain are compliant FFIs (deemed-compliant or participating).
- FATCA not only applies directly to US sourced income but also for income from any FFI, where the Pass-Thru Payment Percentage (PPP) has to be applied.

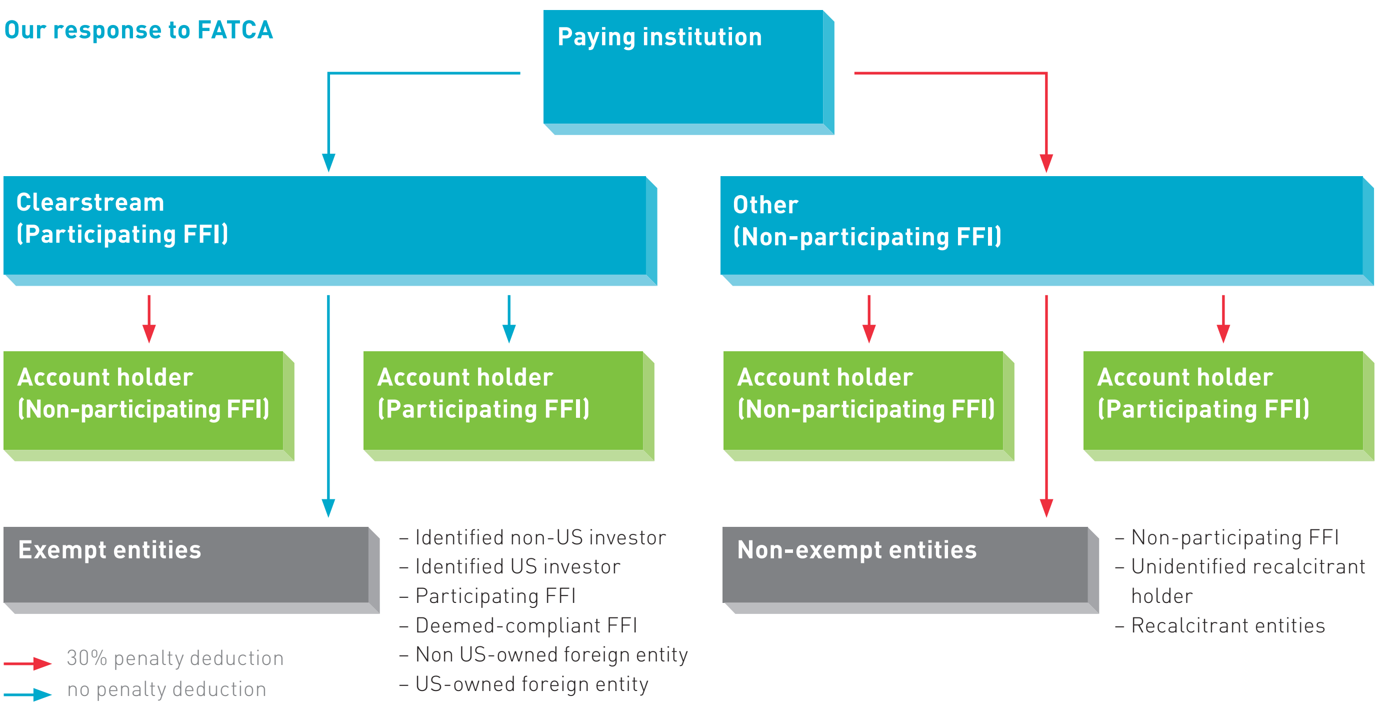
We are the right partner

Clearstream will be fully equipped to support FATCA and provides the ideal infrastructure to make FATCA compliance easy. In order to offer a beneficial and consistent treatment of all payments to our customers, both Clearstream Banking Luxembourg (CBL) and Clearstream Banking Frankfurt (CBF) will become participating FFIs and expect their customers to follow suit. Should a Clearstream account holder not become a participating FFI, we will make the necessary penalty deductions and process payments directly with the IRS. This will also include the applicable PPP.

Therefore, funds can be confident that all payments on positions held on Clearstream's omnibus account are payments to a participating FFI, not requiring any deduction or further documentation. This service will avoid any additional efforts to operationally manage the needs for asset managers and transfer agents for any Clearstream registered positions.

No additional steps are required to ensure FATCA compliance.

Our response to FATCA



Implementation schedule
On 14 July 2011 the IRS issued Notice 2011-53 which describes the timeline of the requirements for participating FFIs.

An FFI must enter into an agreement with the IRS by 30 June 2013 to ensure that it will be identified as a participating FFI. The effective date of an FFI agreement entered into any time before July 2013 will be 1 July 2013.

Reporting requirements will begin in 2014. Withholding on US sourced income will begin on 1 January 2014. FFIs will not be required to calculate and publish the PPP before the first quarter of 2014.

Contact information

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