Akin Gump
STRAUSS HAUER & FELD LLP

Tax Alert

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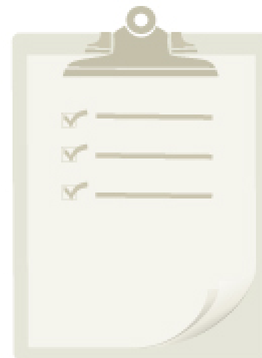
Key Points



- Unless an exemption from aggregation is available, all positions in accounts for which any person controls the trading or holds a 10 percent or greater ownership or equity interest must be aggregated with positions held, and trading done, by such person.
- The final rule adds several new exemptions, including for persons with a 10 percent or greater ownership or equity interest in an entity so long as certain conditions establishing independence are met.

FATCA: Final Deadline to Obtain a GIIN for Sponsored Investment Funds

Under transitional relief, certain non-U.S. investment funds, including certain Cayman Islands funds, which qualify as foreign financial institutions (FFIs), did not have to obtain a Global Intermediary Identification Number (GIIN); instead, they were permitted to certify their status under the U.S. Foreign Account Tax Compliance Act (FATCA) to withholding agents by providing the GIIN of a FATCA sponsor. As of January 1, 2017, sponsored FFIs should expect FATCA withholding agents (including prime brokers, custodians and International Swaps and Derivatives Association (ISDA) counterparties) to require withholding tax forms that include a separate GIIN for both the FATCA sponsor and the sponsored FFI. Current Internal Revenue Service (IRS) instructions suggest that December 22, 2016 is the cutoff date for GIIN registration to ensure timely inclusion on the IRS list of approved FFIs by January 1, 2017. Since the number of registrations that will be received by the IRS, and also the processing times at year-end, are unclear, FATCA sponsors that have not yet obtained GIINs for their sponsored FFIs should apply for any such GIINs as soon as possible.

Enacted in 2010, FATCA represents a wide-ranging effort to increase compliance by U.S. taxpayers with U.S. federal tax obligations. In particular, the FATCA regime seeks to compel non-U.S. entities to disclose the existence and identity of certain U.S. taxpayers who directly or indirectly own an interest in such entities. In furtherance of its objective, FATCA imposes a variety of diligence, withholding and reporting requirements on FFIs, which includes many master funds, offshore feeders and other investment vehicles commonly utilized by investment funds. FATCA is enforced through a 30 percent withholding tax on payments of certain types of U.S. source investment income made to FFIs and certain other non-U.S. entities, and is expected to apply to payments of certain gross proceeds as of January 1, 2019. Payments potentially subject to FATCA withholding may include income that is otherwise exempt from U.S. federal withholding tax, such as U.S. source portfolio interest, and dividends, interest or royalties with respect to which U.S. treaty benefits are claimed.

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FATCA requires FFIs, among other duties, to register with the IRS and obtain a GIIN. FFIs are generally required to certify their FATCA-compliant status to withholding agents on a U.S. withholding tax form (typically, IRS Forms W-8BEN-E and W-8IMY) to avoid incurring FATCA withholding tax. To facilitate consolidation and/or outsourcing of investor diligence and information reporting under FATCA, certain non-U.S. investment funds' compliance obligations may be conducted via a FATCA sponsor, which can be any duly authorized third party (e.g., a fund manager, general partner or administrator). The sponsor must agree to perform the FATCA diligence, withholding and reporting obligations on behalf of the sponsored fund, although the sponsored fund remains ultimately liable for its FATCA compliance obligations. The sponsor must also obtain a separate GIIN to reflect its status as a sponsor. Under transitional rules set to expire, as described above, certain sponsored investment funds were not required to register separately with the IRS and obtain a GIIN.

Contact Information

If you have any questions regarding this alert, please contact the Akin Gump lawyer with whom you usually work or

Patrick B. Fenn
pfenn@akingump.com
+1 212.872.1040
New York

Stuart E. Leblang
sleblang@akingump.com
+1 212.872.1017
New York

Lucy S. Lee
llee@akingump.com
+1 202.887.4182
Washington, D.C.

Olivier De Moor
odemoor@akingump.com
+1 212.872.1032
New York

Kevin M. Rowe
krowe@akingump.com
+1 212.872.8064
New York