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Kill or Be Billed: Deregistering Dead FATCA and CRS Entities

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> Nearly a decade into FATCA and CRS reporting, foreign financial institutions are completing annual filings, but are all these entities truly reportable? Given confusion stemming from early guidance, and natural wind downs of activity, it is becoming increasingly apparent that "dead" entities, as well as those that arguably should be classified as non-financial foreign entities (NFFEs), are completing a significant number of annual filings. Although nil reporting is a relatively simple process, the bills can add up. Many countries have yet to provide sufficient guidance on the procedures needed to deregister entities for AEOI purposes, leading to confusion on next steps. In *Kill or Be Billed: Deregistering Dead FATCA and CRS Entities* we discuss issues that persons charged with compliance are facing when deregistering an entity.

Background

After the introduction of the Foreign Account Tax Compliance Act (FATCA) and subsequent rollout of intergovernmental agreements (IGAs), jurisdictions scrambled to issue guidance that would capture reporting requirements under the new law. Likewise, implementation of local laws and regulations for the OECD Common Reporting Standard (CRS) heightened the confusion, as more entities were swept into Automatic Exchange of Information (AEOI) reporting regimes. Amid the confusion and lack of clarity of those early years, many people took a conservative approach and registered entities as financial institutions (FIs) in an effort to be compliant, without fully understanding whether registration and reporting was even required. In some cases, these entities never engaged in the requisite activities or reached applicable thresholds to require reporting. In many cases, such entities simply died natural deaths, stalling out after years of inactivity. Nearly a decade later, after numerous rounds of peer evaluations and country blacklists, jurisdictions are increasing AEOI compliance and enforcement efforts (e.g., more nil reporting requirements, new annual compliance forms, and heftier penalties). Amid the rising maintenance costs (fees to file, new fees to use jurisdiction portals, etc.), many decision makers are stuck wondering what to do with these entities. Unfortunately, jurisdictional guidance regarding how to formally kill off these entities is woefully lacking.

FATCA and CRS Registration Generally

Following enactment of FATCA and CRS legislation, jurisdictions issued regulations and guidance for FIs to follow in order to adhere to complex AEOI reporting requirements. These documents typically provide detailed registration procedures. For example, the Australia guidance webpage[1] contains a section dedicated to Registration procedures, stating that there are no registration requirements for CRS and providing full details for FATCA registration. Specifically, it states that Australian FIs that are Reporting Australian FIs under the FATCA agreement should register with the IRS. The guidance provides additional detail about which FIs are required to register, noting that Reporting FIs also acting as a sponsoring entity for other entities will need to register separately for each role. The webpage also provides a link to the IRS website and directs taxpayers to learn more about the registration process from the IRS guidance. Likewise, the UK guidance webpage[2] points users to the IRS website for further guidance and instructs Reporting UK FIs to register and obtain a Global Intermediary Identification Number (GIIN) with the IRS.

An entity will typically register as a business with a particular jurisdiction then, either at the same time or at such time as it identifies potential FATCA reporting obligations (depending on the particular type of FI), it will register with the IRS. To do this, an FI will create a FATCA account through the FATCA Online Registration System[3] by selecting an FI type and providing requisite information. The entity will be provided a FATCA ID and, once approved, the IRS will assign it a GIIN.[4] The IRS will then add the GIIN to the published IRS FFI List. Once registered, the FI is expected to provide the GIIN, when applicable, and remain in compliance with its reporting requirements to avoid having the GIIN suspended or removed from the IRS's list of compliant FFIs.

Many jurisdictions also require the FI to register locally for FATCA and CRS purposes. Where local registration is required, the jurisdiction typically provides robust guidance, detailing the process. For example, an FI must register with Singapore Inland Revenue Authority of Singapore (IRAS) via myTax Portal. IRAS provides a detailed User Guide walking FIs through the process, along with snapshots of each checkbox they will be required to populate.[5] Thus, the registration process is relatively straightforward. What is not so clear, however, is how to deregister, as most jurisdictions appear to have overlooked this basic step in an FI's lifecycle.

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[1] See the Australia webpage, Section 2.2, at https://www.ato.gov.au/General/International-tax-agreements/In-detail/International-arrangements/Automatic-exchange-of-information---CRS-and-FATCA/.
[2] See HMRC Internal Manual, IEIM404520, at https://www.gov.uk/hmrc-internal-manuals/international-exchange-of-information/ieim404520.
[3] See the FATCA Foreign Financial Institution Registration System webpage at https://www.irs.gov/businesses/corporations/fatca-foreign-financial-institution-registration-system.
[4] For detailed instructions, see Publication 5118, *FATCA Online Registration User Guide*, at https://www.irs.gov/pub/irs-pdf/p5118.pdf.
[5] See the Singapore IRAS User Guide, *Apply for CRS Registration and Provision of FATCA Registration Information*, at https://www.iras.gov.sg/media/docs/default-source/uploadedfiles/pdf/apply-for-crs-registration-user-guide.pdf?sfvrsn=9c233005_11.

FATCA and CRS Deregistration Procedures

In February 2023, the Saint Kitts and Nevis Inland Revenue Department (St. Kitts IRD) issued a deregistration form.[6] Given that the St. Kitts IRD has yet to issue formal AEOI guidance, this was a particularly surprising move for this jurisdiction. The form is straightforward, requesting that the Principal Point of Contact (PPoC) or authorized representative identify the FI and provide a reason for deregistration, including liquidation, strike-off, classification change, transfer by continuation, or termination of trust. If the reason for deregistration does not fit into one of these checkbox categories, the PPoC can provide an alternative reason in an open textbox. The PPoC is required to identify where records will be retained for the subsequent six years, enclose evidence documenting the deregistration, and certify declarations that all FATCA and CRS filings have been submitted. Thus, the form serves as a simple, intuitive, guide for FIs to understand the deregistration process in St. Kitts. However, it raises an important question as to what deregistration procedures are necessary for FIs operating in other jurisdictions.

Unfortunately, jurisdictional guidance is typically silent when it comes to deregistration. Ireland is another one of the outliers, providing the following guidance: *In circumstances where an entity is no longer a Financial Institution and as a result no longer has an obligation to file a FATCA return (for example where a fund has closed and ceased trading) the entity should ensure that it has met all of its FATCA filing obligations before de-registering or deleting their GIIN with the IRS.*[7] This sentence, buried at the back of the guidance notes in Appendix 3, provides more guidance than most jurisdictions. However, there are additional considerations in the process, as discussed below.

Order

Generally speaking, the components of deregistration include the following: final business activities, final jurisdictional returns, final AEOI returns,[8] local/portal deregistration, and (for FATCA) deregistering with the IRS. However, the devil is in the details, as the order and timing can be problematic, and may include additional steps specific to the jurisdiction. Going back to Ireland, following the last date of activity and after submitting final local tax returns and AEOI returns, an FI is required to deregister with Revenue Online Service (ROS). The PPoC is then advised to email the Irish Revenue Commissioner to provide the reason for the deregistration. The FI is advised to wait until the Commissioner has acknowledged the deregistration before deregistering with the IRS in order to ensure that there are no outstanding issues with the entity.

Likewise, the Cayman Islands Department for International Tax Cooperation (DITC) requires that an FI conclude all activities, submit final local returns, and obtain a formal certificate of dissolution, and then file final AEOI returns. Once these steps are completed, the FI is required to deregister locally by submitting a deactivation request via the *CRS/FATCA – FI Deactivation* page on the DITC Portal.[9] The page contains a dropdown to select the relevant FI and fields for the PPoC to populate with the reason for deactivation and the location where records will be kept. In addition, the PPoC is required to upload evidence showing why the FI should be deactivated and certify to certain deactivation declarations.[10] After submitting the request, the DITC will review and, if approved, confirm via email that the FI was successfully deactivated. Following this, the FI must deregister for FATCA purposes with the IRS.

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[6] See Saint Christopher and Nevis Inland Revenue Department Form AEOI-200, *CRS/FATCA Financial Institution (FI) Deregistration*, at https://www.sknird.com/wp-content/uploads/2023/02/AEOI-200-Deregistration-Form.pdf.

[7] See Guidance Notes on the Implementation of Foreign Account Tax Compliance Act (FATCA) in Ireland, Appendix 3 at https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-38/38-03-22.pdf.

[8] As a best practice, FIs which have been filing nil reports in jurisdictions where nil reporting is optional should ensure that they file a final nil report.

[9] The DITC Portal can be accessed at https://ditcportal.secure.ky/login.

[10] For further details, see the DITC Portal User Guide at https://www.ditc.ky/wp-content/uploads/DITC_Portal_User_Guide.pdf.

Conversely, some jurisdictions require the FI to deregister with the IRS prior to notifying the tax authority of the deregistration. For example, Singapore (which provides very detailed guidance on its webpage)[11] notes that an FI that has deregistered from the US IRS FFI List must then submit a deregistration application with the IRAS via myTax Portal.[12] Although Germany does not require formal local deregistration, FIs are advised to follow the same procedures as above (i.e., deregistering with the IRS first) and then send an email to the Federal Central Tax Office of Germany (BZSt) notifying it that the FI will stop reporting, along with the reason (e.g., dissolution, merger, etc.).

The process for deregistering with the IRS is straightforward, but FIs need to ensure that they are aware of the implications. As noted by the FATCA User Guide,[13] FIs simply need to go to their account, click "Agreement – Cancel" and then click the "cancel agreement" button. The IRS will then remove the FI from the FFI List and its GIIN will no longer be valid. However, a tiered FI structure needs to be careful when going through this process. An FI that cancels the agreement for the wrong entity (e.g., if attempting to cancel a branch, but selecting the lead FI instead) may inadvertently cancel the agreement for all associated FIs in the structure, subjecting each to re-registration to obtain new GIINs. Likewise, a sponsoring FI that cancels its agreement will cancel all sponsored entities and sponsored subsidiary branches. Finally, the IRS notes that entities that are required to complete a Certification of Preexisting Accounts (COPA) or periodic certification must complete and submit it within six months of the cancellation.

Timing

Timing can be problematic, particularly when dealing with local laws. Depending on the reason for deregistration, the local process may take months or years. Typically, the entity must conclude all business activities and file its final local returns. Unless a jurisdiction provides for short year returns, this means an entity ceasing activities in February will be required to wait until the open reporting period of the following year to submit its final local tax return. Depending on the jurisdiction, the entity may still be subject to tax reporting obligations during the liquidation period, particularly if any liabilities or assets remain on the books (e.g., if portfolio assets were retained to ensure payment of liquidation fees or expenses). As an example, an entity winding down in the Cayman Islands will continue to be classified as an FI for CRS purposes until it has received a formal certificate of dissolution and ceases to be listed as active on the Cayman General Register. Providing additional complexity, local laws may differentiate between a legal dissolution and a tax dissolution. For example, commercial entities that have dissolved for legal purposes in Germany may be subject to a special tax "liquidation period" that may last up to three years.

Consequently, any delays due to local legal and tax laws will extend the timeframe for the AEOI deregistration process. Following local dissolution (including obtaining formal documentation certifying the dissolution) and final returns, some jurisdictions permit FIs to submit advanced AEOI filings in the year of liquidation.[14] However, in most cases, the FI is required to wait until the AEOI reporting period has opened for the applicable final reporting year. Thus, building on the example of the entity that closed in February, the FI may be required to wait until the following summer or fall before it can submit the final AEOI returns. Furthermore, in some instances, local jurisdictions advise FIs to wait to deregister the entity until the final AEOI returns have been exchanged with the partner jurisdictions to ensure that there are no problems. Finally, as noted

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[11] See the Singapore *FATCA Registration and Deregistration* webpage at https://www.iras.gov.sg/taxes/international-tax/foreign-account-tax-compliance-act-(fatca)/fatca-registration-and-deregistration. See the Singapore *CRS Registration and Deregistration* webpage at https://www.iras.gov.sg/taxes/international-tax/common-reporting-standard-(crs)/crs-registration-and-deregistration.
[12] The Singapore myTax Portal can be accessed at https://mytax.iras.gov.sg/ESVWeb/default.aspx.
[13] See Publication 5118, *supra* note 4, at Section 5.6.3. Note that there are instances where an FI may not be able to cancel the agreement (e.g., if a member FI FATCA status is incomplete or a member is in process of transferring to a different expanded affiliated group (EAG)).
[14] For example, Singapore's myTax Portal provides an option to select "Advance Reporting Year" to file for the current reporting year. See *FATCA Registration and Deregistration, supra* note 11.

above, many jurisdictions require local deregistration, or formal acknowledgement of the deregistration, before the FI can proceed with the final steps. Singapore specifies that processing for the deregistration application is expected to be three weeks, whereas it is estimated to be 30 days for the Cayman Islands. Thus, FIs may be required to wait well over a year after local dissolution requirements have been completed before finalizing the deregistration for AEOI purposes.

Conclusion

Unfortunately, deregistering entities is neither intuitive nor efficient. Given the uptick in dead entities going forward, it is expected that jurisdictions will eventually issue thorough guidance to simplify the process and may even streamline the procedures. However, until that time, FIs suffering a stream of increasing compliance costs are advised to familiarize themselves with the jurisdiction's rules and go into the process prepared with a healthy dose of patience to finally rid themselves of those dead entities.

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