



# FATCA/CRS for Private Equity

While any (new) entity needs to determine its FATCA and CRS status, Private Equity structures may well contain entities which have classification and reporting obligations under FATCA and the CRS.

## Why is this relevant for Private Equity?

Not only banks, investment funds and life insurers can have automatic exchange of information obligations: private equity structures may contain entities that have direct classification and reporting obligations under FATCA and/or the CRS.

The impact is potentially two-fold:

- On the one hand, any entity needs to determine its FATCA and CRS status. Banks where an account is held by an entity will already have requested to certify these statuses. A new entity cannot open a bank account in the absence of certification of its FATCA and CRS status;
- On the other hand, certain entities in the structure may themselves qualify as "Financial institutions" under FATCA and/or the CRS (for example, holding companies the capital of which is held by a certain number of unrelated shareholders), and may consequently have direct classification and reporting obligations, as well as notification obligations for data protection purposes.

### Take care:

- An entity's CRS status is often but not always the same as its FATCA status;
- FATCA and CRS statuses can change over time, requiring monitoring of events that could lead to a change in status;
- Non-compliance may give rise to significant fines.

## What needs to be done?

In case there are no entities qualifying as Financial Institutions, it needs to be ensured that the FATCA and CRS status of the entities is captured and monitored. Statuses may indeed change over time (depending e.g., on evolution of activities and/or financials), in which case banks and other financial institutions where accounts are held need to be informed. Under certain statuses, changes regarding controlling persons also need to be notified to banks where accounts are held ( e.g., in case a beneficial owner of a 'Passive NF(F)E' changes and/or changes its tax residence country).

In case the structure contains one or several entities that are themselves Financial Institutions (FI) by reason of qualifying as "Investment

Entities", additionally, these FIs have several obligations. Most importantly, such FIs need to:

- Register with the IRS for FATCA purposes;
- Oblige equity and debt holders to self-certify their FATCA and CRS status;
- Issue certain FATCA/CRS notifications in respect of data protection to protected persons;
- Capture the necessary data to correctly exchange information on reportable equity and debt holders (and their controlling persons in certain cases);
- Have procedures in place to manage and control FATCA and CRS compliance;
- Review legal documentation to ensure compliance with the FATCA and CRS obligations.

## How can we help?

### We can help with:

- Determining an entity's FATCA and CRS status (e.g., upon establishment of a new entity);
- Conducting health checks in order to determine whether FATCA and CRS classifications made are correct and, in case there are FIs in the structure, whether these FIs comply with all their obligations (including classification, reporting, procedural, data protection and other legal obligations);
- Remediating any shortcomings detected during a health check;
- Assisting with procedures, and documentation to be used by FIs in the structure (such as self-certification templates and data protection notification templates);
- Assisting with classification and reporting obligations of FIs within the structure;
- Providing trainings for those personnel members having to manage FATCA and CRS obligations;
- Providing updates on relevant developments in legislation, guidance issued by tax authorities and industry associations, in Luxembourg and abroad;
- Providing a Hotline to facilitate easy access to subject matter experts in order to ensure fast responses to day-to-day questions.



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