



# FATCA/CRS for Funds

All supervised funds have certain FATCA/CRS obligations, whether they qualify for a deemed compliant status or not.

**Before a new fund is launched, the FATCA/CRS status of the fund needs to be considered.**

## Why is this relevant for Funds?

All types of investment funds under supervision (or supervised through their AIFM; such as e.g., Luxembourg RAIF) are "Financial Institutions" (FI) under FATCA and the CRS. The key question for an investment fund is to determine whether the fund qualifies as a "Reporting FI" (and consequently incurs the full scope of classification and reporting obligations under FATCA and the CRS), or could benefit from a "lighter" non-reporting FI status under FATCA and/or the CRS (in which case certain classification obligations still apply, but no reporting obligations).

The main decisive element to determine the FATCA/CRS status of an investment fund is related to the way the fund shares or units are distributed. However, complications may arise since:

- On the one hand, under FATCA, several non-reporting statuses exist for funds, while under the CRS there is only one such status. For example, a fund qualifying as a "Restricted fund" under FATCA could well be a Reporting FI for CRS purposes as "Restricted fund" status does not exist under the CRS;

- On the other hand, although the "Exempt CIV" status exists under both FATCA and the CRS, the application conditions are not the same. A fund that e.g., qualifies as an "Exempt CIV" under the CRS may thus be excluded from such status under FATCA and qualify as a Reporting FI, or *vice versa*.

Additionally, non-reporting statuses are conditional and permanent monitoring is required in order to ensure the fund is able to maintain its non-reporting status.

Hence, the importance of considering well in advance which possible statuses a newly established investment fund could adopt, whether the fund would have the same or a different status under FATCA and the CRS, and what is the impact of these respective statuses.

### Take care:

- The status of a fund may be different under FATCA and the CRS.
- Even in case a non-reporting status is adopted, permanent monitoring of the application conditions is required to preserve the status.

## What needs to be done?

Investment funds need to determine their FATCA/CRS status upon establishment. Strategic considerations need to be taken into account to adopt (or not) a non-reporting FI status (which is closely linked to, amongst others, the distribution model and possible distribution restrictions).

In case a fund classifies as a Reporting FI, the fund needs to:

- Cover FATCA and the CRS appropriately in the prospectus/PPM;
- Register with the US IRS in order to obtain its GIIN number;
- Ensure that all investors certify their FATCA and CRS status upon subscription through self-certification;

- Issue certain FATCA/CRS notifications towards protected persons in respect of data protection;
- Capture the necessary data to correctly exchange information on reportable investors and controlling persons of certain types of investors;
- Have procedures in place to manage and control FATCA and CRS compliance;
- If the fund is an existing fund, conducting a review or health check may be recommended in order to ensure continuing compliance with all the rules, and possible changes in rules or interpretations.

## How can we help?

### We can help with:

- Determining a fund's FATCA and CRS status, and advise on the most appropriate status;
- Conducting health checks in order to determine whether FATCA and CRS classification and reporting obligations were met;
- Remediating any shortcomings detected during a health check;
- Reviewing constitutive documents such as prospectus and PPM from a FATCA/CRS perspective;
- Assisting with FATCA registration of a fund;
- Assisting with procedures, and documentation to be used by investment funds (such as self-certification templates and data protection notifications);
- Assisting with FATCA and CRS classification and reporting obligations for the fund;
- 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;
- Providing trainings to relevant persons in charge of FATCA/CRS.



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