



Qualified Intermediary (QI) Regime

Ensuring QI periodic review obligations and QI compliance through a QI Review or Health Check

Given the complexity of the QI regime, subject to both the US NRA (Chapter 3) provisions and FATCA rules, many non-US financial institutions, including banks, have been struggling with on-going compliance as well as their periodic review and certification obligations under the QI Agreement. Consequently, there is a risk of implementation and/or compliance deficiencies, which may lead to (significant) penalties imposed by the IRS.

Outsourcing the QI Review to an external reviewer provides the opportunity of an external objective verification. The process may allow the QI to remediate deficiencies before the certification and can prove crucial for a timely and correct certification.

Alternatively, a Health Check is an ideal tool for managing the risk of poor or non-compliance with (certain of) the QI requirements, and allows to execute, where needed, a remediation plan, in advance of a QI Review.

The Qualified Intermediary (QI) regime was launched in the year 2000; and has evolved over time. Due to the implementation of FATCA, the QI Agreement was revamped to ensure coordination between the FATCA and QI regimes. The latest version of the QI Agreement (Revenue Procedure 2017-15) became effective on 1 January 2017.

For whom is this relevant, and why?

In particular (but not only) banks entered into QI Agreements with the IRS since the start of the regime in 2000.

Under Chapter 3 of the US Internal Revenue Code, QIs that are non-US financial institutions can achieve relief at source on the US withholding tax for their non-US account holders without disclosing them to the IRS. Intermediaries signing a QI Agreement (QIA) with the IRS agree to certain documentation and reporting obligations, and can either elect to be a withholding QI (i.e. assume primary withholding responsibility and deposit tax to US Treasury), or not (and instruct upstream withholding agents to withhold, where applicable).

NQIs can access tax relief at source as well; however subject to full disclosure of their customers to another financial institution that is a QI or a US withholding agent. Additionally, NQIs are always subject to reporting at beneficial owner level, while QIs can benefit from certain “lighter” pooled reporting obligations. Entering into a QI Agreement thus has a beneficial effect, compared to being a NQI.

The QI Agreement brings along periodical review obligations.

A QI needs to monitor and periodically certify compliance with the QI Agreement. The “Responsible Officer” (often the same person as the individual identified as FATCA Responsible Officer) needs to issue such certification to the IRS every 3 years.

The QI Agreement sets out the verifications to be made, as well as certain safe harbor rules as to sample checks to be performed. The QI has the choice to perform such verification either based on an internal or an external review. In practice, most QIs contract an external review, or combine an internal and external review to achieve additional comfort on compliance with the QI Agreement.

If a bank (or partnership/trust) concluded or renewed its QI agreement with effective date between January 1, 2017 and January 2, 2018, it has the obligation to choose by July 1, 2021 which of the years (2018, 2019 or 2020) will be subject to periodic review and certification.

Importantly, if 2018 or 2019 is chosen for the review, the certification should be filed through the QI system by July 1, 2021 (however extended to December 1, 2021). In case 2020 is chosen as the review year, the periodic certification would be due by December 31, 2021 (however extended to March 1, 2022).

Complexity leads to possible poor compliance or non-compliance

The QI agreement obliges QIs to simultaneously coordinate compliance of due diligence, reporting and withholding rules, as well as the compliance program requirements under the US NRA and the applicable FATCA rules (IGA Model 1, Model 2 or IRS Regulations in non-IGA countries). Those QI adopting Qualified Derivative Dealer (QDD) status have certain additional requirements to meet.

Even for those QIs not having QDD status or not part of a consolidated compliance program, the due diligence burden gives rise to additional complexities in function of the number of a.o. direct entity accounts, non-institutional intermediary accounts, trusts, and passive offshore vehicles in the client base.

Whether the QI assumes primary withholding responsibilities or instructs others to withhold, it will remain liable for any tax under withheld, as well as penalties and late payment interest, and any other sanctions that may result from the failure to meet its reporting obligations according to the Chapter 3 (NRA) provisions. Moreover, incompliance with its FATCA obligations may result in combined sanctions under local FATCA rules in the country of QI's residence and/or directly under US regulations.

Hence, the importance of ensuring the QIs' obligations are met, and/or possible implementation deficiencies or gaps are detected and remediated.

NQIs have even more extensive reporting obligations towards the IRS and should equally seek assurance that all their obligations are met, for example through a health check.

How can we help?

QI Review

Within the context of the application of the QI Agreement, we can perform a QI External Review. Our QI Review will be performed, and the resulting report will be issued, in line with the IRS requirements laid down in the QI Agreement and its Appendixes. The QI will have the opportunity to remediate discovered deficiencies and inform the IRS through the certification process about curing actions already undertaken.

A Health Check to identify deficiencies

Conducting a Health Check allows to identify and remediate potential implementation gaps, poor compliance or non-compliance and to improve certain implementation aspects and procedures and processes. Consequently, such Health Check allows to mitigate the risk of penalties upon review by the US IRS, but also the risk of reputational damage.

We are entirely flexible to determine together with you the scope of the Health Check: limited, very extensive, or anything in between. The extent and means of conducting the Health Check can be adapted in function of what is most appropriate to the case:

- Review of written QI procedures, processes and compliance program;
- Concrete testing of the operating effectiveness of the procedures and processes in place, including their interactions with FATCA and the CRS (e.g. in regard to tax residence of non-US beneficial owners) processes;
- Accounts sample testing for compliance with QI documentary, reporting and withholding obligations;
- Review and/or testing of IT system specifications;
- Assessment of required knowledge of key personnel through interviews and/or concrete test cases;
- Review of training material used or a combination of one or several of these verifications.

Remediation action

We provide a thorough and comprehensive issues and recommendations report. No long theoretical considerations, but:

- qualification and quantification of issues and risks identified; and
- action plan containing the recommended concrete steps to remediate QI non-compliance, and/or achieve full compliance with relevant QI obligations.



Where required, we can ensure assistance to efficiently execute the proposed remediation actions. If relevant, we can combine QI assistance with FATCA remediation assistance.

Mazars International QI Team

Within the Mazars network, we have extensive experience in QI external periodic reviews and capabilities to conduct cross-border Health Checks internationally. Through our US network, we can also deal with complex US withholding and reporting questions.

Our highly specialized teams in the banking and fund industries collaborate seamlessly across borders as one team to provide truly valuable deliverables.

If you have any questions concerning QI Reviews or QI Health Checks, feel free to be in touch.

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