



FATCA/CRS

Health check & remediation

Despite the fact that FATCA and CRS laws entered into force years ago, certain implementation gaps and deficiencies may still exist. FATCA and CRS laws have been amended a few times, and interpretations may also have changed. Processes and procedures may not be entirely up to date and give rise to a certain level of non-compliance amongst Reporting Financial Institutions. We even still encounter entities unaware of their obligations under FATCA and the CRS, in need of urgent remediation.

Since the penalties for non-compliance can be significant, it is important to identify these gaps and deficiencies in order to execute a remediation plan before tax authorities carry out FATCA/CRS audits and impose fines for non-compliance.

For whom is this relevant ?

Banks, investment funds and life insurers are generally aware of their classification and reporting obligations under FATCA and the CRS. However, deficiencies in implementation may still exist, procedures may not have been updated to the latest available guidance issued by the OECD or local authorities, group procedures may not have been sufficiently tailored to the particularities and legislative changes in the respective jurisdictions, etc. Specifically for banks, the FATCA obligations are closely related to the obligations of a bank as a QI or NQI. A health check can be combined with a QI health check (we refer to our dedicated flyer on the QI regime in this respect).

On the other hand, there is still a higher risk of insufficient awareness on FATCA and CRS obligations, and/or erroneous classifications of entities amongst non-supervised investment structures (such as private equity and real estate investment structures) and amongst securitisation vehicles. In these cases (e.g. of securitisation vehicles unaware of their status as Reporting Financial Institution, with corresponding classification and reporting obligations), a remediation plan needs to be executed as soon as possible.

Take care:

- Banks, investment funds and life-insurers may be confronted with certain FATCA/CRS implementation gaps and/or deficiencies. A health check can identify such issues, and remediation action can subsequently be taken.
- Non-supervised private equity and real estate investment structures, as well as securitisation vehicles may still be unaware of their classification and reporting obligations under the FATCA/CRS laws. In such cases, a full remediation plan is necessary and urgent.
- Given the significant exposure to fines for non-compliance, a health check is an efficient tool to ensure remediation action and - to the extent possible - reduce the risk of incurring fines.

How can we help?

The health check assistance we propose can be entirely tailored to your needs:

- The scope of the health check can be large, limited, 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: awareness interviews of key personnel, actual knowledge verifications of personnel, review of written procedures, testing of the operating effectiveness of procedures in place, sample testing of classification files and/or reporting cases, review and/or testing of system specifications, review of training materials used, or a combination of one or several of these verifications;
- Further to the health check, we will establish a comprehensive issues report, containing remediation advice and a remediation plan covering the concrete steps needed to achieve compliance with relevant FATCA/CRS obligations.

Remediation action further to a health check

The health check report will be the basis for proposing further assistance to remediate any shortcomings. Based on our extensive experience with FATCA/CRS remediation projects, we are able to provide fast, efficient, and practical assistance in order to execute the necessary remediation steps.

Significant non-compliance - Full remediation action

For cases where significant non-compliance is detected (e.g. in case it appears that a Luxembourg SCSp acting in a similar way as a fund vehicle or a securitisation vehicle clearly qualifies as a Reporting FI, but not any action was taken in respect of FATCA/CRS), we can assist with full remediation action. A detailed remediation plan can then be rolled out to achieve remediation as soon as feasible. Executing such remediation plan to spontaneously remediate FATCA/CRS obligations before non-compliance is detected during e.g. a FATCA/CRS audit by tax authorities, may possibly have as an effect that the risk or extent of penalties is mitigated.



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