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# Japan tax alert

Ernst & Young Tax Co.

## IRS Webinar on FATCA Responsible Officer Certifications of Compliance

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The IRS hosted a webinar on FATCA responsible officer certifications of compliance on 22 September 2020. The webinar addressed FATCA responsible officer certification requirements for the Certification of Preexisting Accounts (COPA) and Periodic Certifications including certification due dates and navigation of a certification from initiation to submission.

Key areas covered by the IRS during the webinar are summarized below for general information purposes. Reference should be made to the source FATCA regulations and guidance issued by the IRS.

## 1. IRS summary for FATCA certifications:

- ▶ FATCA registrations must be updated with the name and email address of the current FATCA responsible officer as soon as there is a change.
- ▶ Message board information is being utilized by the IRS for entity specific requests and communications.
- ▶ The FATCA Registration System will suggest certification questions based on the entity's classification and the country of residence or jurisdiction.
- ▶ It is important the entity's certification be as complete and accurate as possible. This is especially important in relation to the description and explanation fields.
- ▶ It is important to ensure the FATCA responsible officer submits certifications timely to avoid an Event of Default notice pertaining to failure to submit a certification.
- ▶ Once the FATCA responsible officer completes and submits a certification, one of four certification results will be provided (and to which the FATCA responsible officer needs to respond as appropriate).

## 2. Additional FATCA certification guidance from the IRS:

- ▶ Within each entity's online account in the FATCA Registration System, the IRS message board shows messages from the IRS that include account status changes and routine reminders. The FATCA responsible officer will receive an email with the heading "A Message from the IRS" when the IRS has sent a message to the message board. Such messages are important as they may include account-specific messages such as formal notices, requests for additional information, or other information specific to the entity that often requires a response from the FATCA responsible officer. The IRS recommends regular monitoring of the message board as it has recently begun using the message board to announce more important entity-specific communication, such as Event of Default notices, notices of termination and requests for information.
- ▶ The IRS indicates that it is important for each entity to ensure that their information on the FATCA Registration System is up to date as FATCA certification requirements and processes are determined based on the information registered for each entity (e.g., FATCA classification, country or jurisdiction of residence, etc.)
- ▶ The IRS reviews every explanation that is submitted by entities together with their FATCA certifications to assess the reasons and explanations provided, after which the IRS will accept or

reject the registration, or request additional information from the FATCA responsible officer. The field designated for entities to provide in their online account can accommodate up to 15,000 characters and may be used for cases such as when an entity has indicated that they are not required to or are unable to certify.

- ▶ The IRS recommends that entities read the FATCA certification questions carefully, as a common error that FATCA responsible officers make is answering questions incorrectly by selecting a different radial button than what was intended (i.e., Yes/No/Not Applicable questions).
- ▶ The IRS indicates that even when an entity's online account is in "Approved Status", the "Renewal Status" may show as overdue; this is due to a technical issue that the IRS is aware of and is currently working to resolve. The IRS also indicates that in such cases, there is no further action required from the entity even if the renewal status is showing as overdue.
- ▶ If an entity fails to submit their FATCA certification by the required due date, the IRS will post an Event of Default notice on the message board. The FATCA responsible officer is then required to complete FATCA certification and provide an explanation of the reasons why the FATCA certification was not submitted.
- ▶ The IRS has emphasized that their goal is to work with the FATCA responsible officers to get entities back on the path of compliance.

## 3. IRS responses to FATCA certification questions:

- ▶ While a periodic FATCA certification is required every three years, the certification of preexisting accounts is a one-time only certification. Entities undergoing certification for the first time must submit both certifications; in subsequent certification periods, only the periodic FATCA certification is required to be submitted.
- ▶ FATCA certifications must be completed by the current FATCA responsible officer. If the registered FATCA responsible officer is no longer with the entity, the FATCA responsible officer information should be updated through the online account prior to submitting the FATCA certification.
- ▶ For entities that have been issued a GIIN and for which the FATCA Registration System indicates that a FATCA certification is required, the FATCA responsible officer is required to submit a FATCA certification even if there are no specified US account holders or other FATCA reportable accounts.

- ▶ When completing FATCA certification for a Consolidated Compliance Group, the member entities within the group are not required to have the same certification date as the lead entity. The lead entity is able to select which member entities to certify regardless of due dates, thereby allowing the lead entity to submit a single FATCA certification for the Consolidated Compliance Group covering both the lead and member entities.
- ▶ FATCA responsible officers who have made mistakes when submitting FATCA certifications due to reasons such as a misunderstanding of certification questions are able to update their answers by resubmitting the FATCA certification with the corrected information using the same process as when submitting the initial certification. Resubmission results in the most current FATCA certification superseding the previous one, and the IRS will refer to the most current FATCA certification when performing their review.
- ▶ When the IRS sends an Event of Default notice on the message board, the notice will specify the nature of the Event of Default, the number of days within which the notice needs to be resolved, how to contact the IRS with respect to the notice, and other details. The IRS states that upon failure to submit a FATCA certification, it is better to submit late than to remain a non-filer, and the explanation to be provided to the IRS may be as simple as not knowing when the certification was due, or that the deadline was missed.
- ▶ The IRS indicates that when an entity receives a “Failure to Certify” result even after the FATCA responsible officer has completed a FATCA certification, this is likely a result of incorrect responses to some certification questions, possibly due to the selection of a different radial button than what was intended.
- ▶ If the FATCA responsible officer is unable to log into the online account in the FATCA Registration System, then the online account needs to be reset following the instructions provided by the IRS in Publication 5118: FATCA Registration User Guide, which was recently updated.

For additional information with respect to this alert, please contact the following:

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