FATCA FAQ for funds industry

Overview

So where does this leave alternative funds?

Changes will have limited impact for alternative funds.

Although there is more heavy reliance on existing AML procedures, the delay in the application of the affiliation roles, the extension of the grandfathering provisions to obligations existing as at 1 January 2013 and the further consultation with regard to foreign passthru payments will be welcomed.

Less welcome are the continued requirements for each FFI (broadly fund entity) to require declaration from a responsible officer (previously a Chief Compliance Officer or equivalent) and also the requirement to identify a relationship manager with a number of compliance obligations for all investors with interest in excess of 1,000,000 $.

So where does this leave traditional funds?

The alternative approach of partnering with countries tax authorities to reduce the compliance burden may be a welcomed approach and should be monitored closely, particularly in relation to what other countries may sign up (e.g., Ireland and Luxembourg).

The expansion of the “deemed compliant FFI” definition may not be particularly helpful due to the regulated fund requiring the account holder to be a participating FFI, registered deemed compliant FFI or exempt beneficial owner.

Retail funds should be able to benefit from the de-minimis rules.