

QI Compliance Requirements

December 2017



Background



The updated Qualified Intermediary (“QI”) Agreement (‘Revenue Procedure 2017-15’) released on 30 December 2016 subsequently replaced the external audit requirement of the previous rules with internal compliance requirements. Under this, a QI has to designate a Responsible Officer (“RO”) to oversee the QI’s compliance with its QI Agreement, make certifications (every three years) to the Internal Revenue Service (“IRS”) and provide the IRS with certain factual information regarding the QI.

The new QI compliance requirements propose challenges for ROs. The QI Agreement states that the RO needs to have provided the IRS with the necessary certifications by 1 July of the calendar year that follows the certification period. The initial certification period ends on 31 December 2017. Thus, the RO certification is due to the IRS by 1 July 2018 (31 December 2018 if the review year is 2017).

ROs must make certifications on a number of areas including the QI’s internal controls and this should cover controls under the QI Agreement and FATCA regime. In order for the RO to make this certification, he or she needs to have comfort and ensure the QI is compliant covering the main areas below:

- Written policies and procedures for QI and FATCA;
- Training the relevant staff who are involved or impacted by the QI regime;
- Systems are required to be in place to ensure the QI is compliant with documentation, withholding and reporting rules under the QI Agreement; and
- Compliance with the Periodic Review requirement (which replaced the old external audit).

Challenges



QIs may be challenged by the new compliance requirements and the limited time for ROs to implement changes (e.g. implementing updated policies and procedures, curing documentation failures and ensuring staff are trained to a compliant standard) and certify the QI on internal controls.



How can KPMG member firms help?

Compliance Review

The first part of the compliance review should be similar to the old QI external audit Phase 1 activities and that it would only be necessary to perform the additional subjective tests (review of procedures, training etc) if there are any systemic errors or process failures identified at this stage.^(a)



Training Operational Staff

Completing a training session / workshop for operational staff can help to ensure the RO has a good level of comfort that the staff have complete understanding of the requirements under the QI regime.



Responsible Officer Training

Completing a training session/workshop for RO's can help to ensure the RO has a good level of comfort and understanding of their requirements prior to the certification.

Health Checks

Completing a structured QI health check review of your status and readiness can help to ensure you have a good level of comfort prior to the formal QI Compliance Review.



Review of Procedures

Completing a review of your current procedures can help to ensure the RO has a good level of comfort prior to the certification of internal controls.



Note: (a) Under KPMG's approach we will be able to carry out the QI Compliance Review, using established methodologies with which you may be familiar and comfortable with, something which can help to reduce disruption to 'business-as-usual' for you as well as keeping down the cost of the review.

KPMG's professional approach to sampling will generally be based on the 'safe harbor' methodology identified in the QI Agreement, which means that your RO will be able to provide the requisite certification knowing that the IRS has approved the scope of the review that underpins it.



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