

IRAS Clarification Note on Treatment of Accounts Held by Sole-proprietorships for FATCA Purposes

(Issued on 17 Nov 2015)

1 Purpose

This note seeks to clarify the treatment of accounts held by sole-proprietorships¹ for FATCA purposes.

2 Background

- 2.1 Paragraph 8.3.3 of IRAS' e-Tax Guide on Compliance Requirements of the SG-US IGA ("FATCA e-Tax Guide") states that an Individual Account is an account held by a natural person or a sole proprietor. Paragraph 8.3.3 seeks to explain that accounts held by sole-proprietorships should be treated as individual accounts for FATCA purposes. The intention is to align the FATCA treatment for sole-proprietorship to Singapore's tax treatment for sole-proprietorships. We have received feedback that while sole-proprietorships in Singapore are commonly owned by individuals, there can be instances where sole-proprietorships are owned by companies. It is unclear, based on paragraph 8.3.3, whether accounts of sole-proprietorships that are owned by companies should also be regarded as Individual Accounts for FATCA purposes.
- 2.2 We also understand that some Reporting SGFIs have been treating sole-proprietorships as corporate clients and prior to the issuance of the FATCA e-Tax Guide in March 2015, these Reporting SGFIs have applied the Entity due diligence procedures on all accounts held by sole-proprietorships regardless of whether the sole-proprietorships are owned by individuals or companies for FATCA purposes.

3 IRAS' clarification

- 3.1 For FATCA purposes, and in the context of paragraph 8.3.3 of the FATCA e-Tax Guide, only accounts held by sole-proprietorships that are owned by individuals should be treated as individual accounts ("Individual Sole-Proprietorship Accounts"). Consequently, Reporting SGFIs will have to apply Individual due diligence procedures on these individual sole-proprietorship accounts. Conversely, Reporting SGFIs will have to apply Entity due diligence procedures on sole-proprietorship accounts that are owned by companies ("Entity Sole-Proprietorship Accounts"). This also means Reporting SGFIs should look through a sole proprietorship and document the owner of the sole proprietorship (whether it is an individual or an entity).

Example 1

ABC Trading Company is owned by John Tan. The name of the financial account is "ABC Trading Company" but the name reflected in the self-certification should be John Tan.

Example 2

Fast Forward Trading Company is owned by John Tan Pte Ltd. The name of the financial account is "Fast Forward Trading Company" but the name in the self-certification should be John Tan Pte Ltd.

¹ This clarification note does not cover accounts that are not required to be reviewed, identified or reported as provided for in paragraph A of Section II, III, IV and V of Annex I to the IGA.

3.2 Reporting SGFIs should maintain documentary evidence, as defined in paragraph D of Section VI of Annex I to the IGA together with the self-certification to reflect the owner of the sole-proprietorship.

3.3 Reporting SGFIs that are not applying or have not applied the right due diligence procedures² are to adhere to the following arrangements to rectify the affected accounts:

(i) Apply the appropriate Individual or Entity due diligence procedures to ALL sole-proprietorship accounts that are opened on or after 1 January 2016.

To allow Reporting SGFIs that have not been applying the right due diligence procedures time to put in place the relevant processes and systems for the correct treatment to be applied, Reporting SGFIs are to apply the appropriate Individual or Entity due diligence procedures to ALL sole-proprietorship accounts that are opened on or after 1 January 2016.

(ii) Rectification of new sole-proprietorship accounts opened from 1 July 2014 to 31 December 2015

Reporting SGFIs are to obtain the correct FATCA self-certification/documentation from the affected new sole-proprietorship account holders no later than 30 Jun 2016. If the Reporting SGFI is unable to obtain the appropriate self-certification/documentation for rectification purposes by 30 June 2016, the Reporting SGFI must treat the account as a U.S. Reportable Account and report it to IRAS by 31 May 2017.

(iii) Rectification of pre-existing sole-proprietorship accounts that were opened before 1 July 2014

Reporting SGFIs are to identify (and remediate) all reportable High Value pre-existing Individual Sole-Proprietorship Accounts by 31 December 2015 and report them to IRAS by 31 May 2016.

For Lower Value pre-existing Individual Sole-Proprietorship Accounts and pre-existing Entity Sole-Proprietorship Accounts, Reporting SGFIs are to identify (and remediate) all reportable accounts by 30 June 2016 and report them to IRAS by 31 May 2017.

If the Reporting SGFI is unable to obtain the self-certification/documentation for remediation purposes by the respective due dates, the Reporting SGFI must treat the account, with one or more identified US indicia, as a U.S. Reportable Account.

² Reporting SGFIs must maintain the relevant records for the affected accounts to demonstrate that the wrong due diligence procedures were applied in the first place to avail themselves to the rectification and remediation procedures provided for in this clarification note.